

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकरअपीलसं./ITA Nos.477 to 486/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Virtual Court Hearing)

Printisha Pravinbhai Patel, Bhaat Falia, Dumas Road, Dumas - 394 550.	Vs.	The ITO, Ward-2(3)(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BEWPP0202A		
(Appellant)		(Respondent)
Jyotiben Shantilal Patel, Garas Falia, Dumas Road, Dumas, Surat- 394550.	Vs.	The ITO, Ward-2(3)(2), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BQYPP8720R		
(Appellant)		(Respondent)
Ushaben Maganbhai Patel, Bhaat Falia, Dumas Road, Dumas, Surat - 394550.	Vs.	The ITO Ward-2(3)(4), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No BHVPP6288A		
(Appellant)		(Respondent)
Kirtibhai Prabhubhai Patel, 265, Bhat Falia, Dumas, Surat - 394550.	Vs.	The ITO, Ward-2(3)(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BHJPP3585Q		
(Appellant)		(Respondent)
Navinbhai Prabhubhai Patel, Bhat Falia, Dumas Road, Surat- 394550.	Vs.	The ITO, Ward-2(3)(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BHFPP9900B		
(Appellant)		(Respondent)
Akashbhai Vijaybhai Patel, Legal heir of Late Vijaybhai C. Patel, Bhat Falia, Dumas Road, Dumas, Surat-394550.	Vs.	The ITO, Ward-2(3)(4), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AJWPP5777C		
(Respondent)		(Respondent)
Jayesh Maganbhai Patel, 251, Bhat Falia, Dumas Road, Dumas, Surat – 394 550.	Vs.	The ITO, Ward-2(3)(2), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AVDPP7026R		
(Appellant)		(Respondent)

Princebhai Pravinbhai Patel, Bhaat Falia, Dumas Road, Dumas – 394550.	Vs.	The ITO, Ward-2(3)(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BITPP4888F		
(Appellant)		(Respondent)
Amratbhai Prabhubhai Patel, Bhaat Falia, Dumas Road, Dumas- 394550.	Vs.	The ITO, Ward-2(3)(1), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: CFEP4357Q		
(Appellant)		(Respondent)
Girishbhai Prabhubhai Patel, Bhatt Falia, Dumas Road, Dumas- 394550.	Vs.	The ITO, Ward -2(3)(5), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BGDPP9041A		
(Appellant)		(Respondent)

Assessee by	Shri Mehul K. Patel, AR
Respondent by	Ms Anupama Singla, Sr. DR
Date of Hearing	08/12/2021
Date of Pronouncement	16/02/2022

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned ten appeals filed by different assesseees, all pertaining to Assessment Year (AY) 2013-14, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Through these appeals, different assesseees assail the correctness of separate orders passed by the Commissioners of Income-tax (Appeals), in relation to the captioned assessment year 2013-14. Since these appeals are based on similar facts and common grounds of appeal, we are proceeding to dispose them off by this consolidated order for the sake of convenience. The grounds as well as facts narrated in ITA No.477/SRT/2019, for AY.2013-14, in the case of Printisha

Pravinbhai Patel have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the assessee in lead case ITA No.477/SRT/2019, for AY.2013-14, are as follows:

“(1) That on facts, in law, and on evidence on record, the learned CIT(A) ought to have held that the agricultural land sold is not a “capital asset” within the meaning of section 2(14) of the Act, and hence no Capital Gains is chargeable to tax.

(2)Alternatively, and without prejudice to the above ground, the learned CIT(A) has grievously erred in adopting the cost of acquisition as on 1/4/1981 at Rs.200/- per sq. mtr. as against Rs.380/- per sq. mtr. adopted by the appellant for calculating the LTCG.”

4. The relevant material facts, as culled out from the material on record, are as follows. In these ten appeals addition is made due to revising of cost of acquisition being FMV as on 01.04 1981 by AO/DVO. Only issue of disagreement between the assessing officer and the assessee is the Fair Market Value (FMV) as on 01-04-1981 to be taken as cost of acquisition. The different assessees under consideration had adopted FMV @ Rs.380 per sq meter on the basis of Valuation report furnished by Government Approved Value (GAV in short) Shri P.K. Desai. The assessing officer observed that the fair market value of the land as on 1.4.1981 taken by the assessee at the rate of Rs.380 per square meter was found on higher side, as compared to the sale instances obtained from Sub Registrar in the same/nearby area which is of Rs.1.98 to 2.14 per Sq. Meter (Dumas) only. Thus, it is seen that there is huge variance found in the cost shown by the assessee and obtained by the Department as on 01.04.1981.

5. Therefore, assessing officer referred the matter to the DVO for valuation. The DVO in his report dated 31-12-2015 has estimated the FMV as on 01-04-1981 @ Rs.42.60 per sq.meter. The assessing officer issued a show cause notice to the assessee, stating that why not FMV as on 01-04-1981 @ Rs.42.60 per sq.meter, should not be adopted.

6. In response to the above show cause notice, the assessee submitted the written submission before the Assessing Officer dated 18.01.2016, which is reproduced by the assessing officer at page nos. 4 to 9 of the assessment order.

7. The Assessing Officer gone through the written submissions of the assessee and observed that fair market value shown by the assessee is higher side therefore assessing officer had taken the FMV of land as on 01.04.1981 at Rs.42.60 per sq. meter, as suggested by DVO, and accordingly computed the Long Term Capital Gain (LTCG) as follows:

Area of land	<u>16187 sq. mtr.</u>
Value determined by the DVO as on 1.4.1981 for entire land	Rs. 6,89,570/-
Assessee's share Rs.6,89,570 x 2.50%	Rs. 17,239/-
Indexed cost 17,239 x 852/100	Rs. 1,46,876/-
Sale consideration of the assessee as shown	Rs. 15,78,330/-
Less: Indexed cost	<u>Rs. 1,46,876/-</u>
Taxable Long term Capital gain	Rs. 14,31,454/-
Less: LTCG shown in the return of income	Rs. 2,68,158/-
Addition required	<u>Rs. 11,63,296/-</u>

8. Accordingly, the assessing officer made addition to the tune of Rs.11,63,296/-.

9. Aggrieved, the issue was taken up before the first appellate authority for relief. The Id CIT(A) partly allowed the appeal of the assessee by enhancing the fair market value (FMV) from Rs.42.60 per sq. meter, to Rs. 200 per sq. meter. Aggrieved, the assessee is in further appeal before us.

10. Shri Mehul K. Patel, Learned Counsel for the assessee submitted before us written submissions, which are reproduced below:

“Assessee e-filed Return of Income for A.Y.2013-14 on 28/03/2014 declaring a Total Income of Rs.2,68,160/-. Assessee along with other co-owners have sold Agricultural Land situated at R.S. No.159 at Sultanabad, Dumas, Surat on 15/02/2013 and offered long term capital gains of Rs.2,68,158/- at the time of filing Income Tax Return for the year under consideration. The Ld. A.O. referred the matter to the DVO u/s 55A of the Income Tax Act, 1961 for valuation of cost as on 01/04/1981 and computed the indexed cost of land at Rs.1,46,846/- instead of Rs.13,10,172/- and made an addition of Rs.11,63,296/-. However, during the course of appeal before CIT(A), an additional ground of appeal was raised, stating that the Assessee was unaware of the fact that Assessee has sold Agricultural Land and the same is not situated in urban area but the same is situated in rural area and at the same time it is not a Capital Asset within the meaning of section 2(14) of the Act, and not Liable to Capital Gain. Thus by mistake Assessee has treated as Capital Asset & has worked out the Long Term Capital Gain Tax.

The additional ground was admitted by CIT(A) and Remand Report was also called for from the AO. The agricultural Land Sold by Assessee and other Co-owners are not liable to Long Term Capital Gain Tax on the basis of following Explanations, Notification, Circulars, and Judgments of various Authority.

For ready reference, section 2(14) as applicable to A.Y. 2013-14 is reproduced below:

Section 2(14) in The Income- Tax Act, 1961

(14) "capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include-

(iii) agricultural land in India, not being land situate-

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand or

(b) in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;]

For ready reference, the Notification dated 6/1/1994 is reproduced below with relevant specified limit of Gujarat, Surat:

SECTION 2(1A) , READ WITH SECTION 2 (14) , OF THE INCOME-TAX ACT, 1961 - AGRICULTURAL INCOME -VICINITY OF URBAN AREAS NOTIFIED - SUPERSESSON OF NOTIFICATION NO.SO 77 (E) , DATED 6-2-1973

NOTIFICATION NO.SO 10(E) [No.9447 (F No.164/3/87-ITA-I), DATED 6-1-1994

[AS AMENDED BY NOTIFICATION NO. SO. 1302(E) (F.NO.164/1/96-ITA-1) DATED 28-12-1999]

Whereas a draft notification was published by the Central Government in exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (B) of sub-clause (iii) of clause (14) of section 2 of the Income-tax Act, 1961 (43 of 1961), in the Gazette of India Extraordinary, Part II, section 3, sub-section(ii), dated 13-2-1991 under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. SO 91 (E), dated 8-2-1991, for specifying certain areas for the purposes of the said clauses and objections and suggestions were invited from the public within a period of 45 days from the date the copies of the Gazette of India containing such notification became available to the public;

And whereas copies of the said Gazette were made available to the public on 13-2-1991;

And whereas the objections and suggestions received from the public on the said draft the notification have been considered by Central Government;

Now, therefore, in exercise of the powers of conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) of sub-clause (iii) of clause (14) of section 2 of the Income-tax Act, 1961 (43 of 1961) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) No. SO 77 (E), dated 6-2-1973, the Central Government having regard to the extent of, and scope for urbanization of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the Schedule hereto annexed and falling outside the local limits of Municipality or Cantonment Board, as the case be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory-shown in column (2) thereof for the purposes of the above-mentioned provision of the Income-tax Act, 1961 (43 of 1961).

SCHEDULE

Sl Name of the State or UT	Name of the Municipality	Detailing of areas
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No.	Or Cantonment Board falling in the State/UT mentioned under column (2)	falling outside the local limits of Municipality or Cantonment Board; etc., mentioned under column (3)	(4)
8.	(1) GUJARAT	(2) 1. Ahmedabad	Areas upto a distance of 8 km. from the Municipal limits in all directions.
37.	SURAT	Areas upto a distance 8 kms. From the municipal limits in all directions.	

This notification shall have effect on and from the date of its publication in the Official Gazette.

Explanations: (1) In this notification, "Municipality" shall mean any area which is comprised within the jurisdiction of a municipality, (whether known as a municipality, municipal corporation, Notified Area Committee, Town Area Committee, Town Committee or by any other name) which has population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

The reference to municipal limits or the limit of Cantonment Board in the Schedule to this notification is to the limits as existing on the date on which the notification is published in the Official Gazette.

Notification : No. SO 10 (E), dated 6-1 1994, as amended by Notification No. SO 1302, dated 28-12-1999

Hence, as per the above Explanation 2 of the above Notification, the Municipal limits are the limits as existing on the date on which the notification is published in the Official Gazette

7. Now as on Dt. 06/01/1994, Surat City Limit was ending at Village Piplod. The impugned land is situated at Dumas which was beyond 8 Km from the Limit of Surat Municipal Corporation & there by it is complying with the Notification No. (SO 9447) (File No.164/3/87 ITA.I) dated 06.01.1994. The municipal limits of Surat were increased from Piplod to Sultanabad, Dumas in the year 2006 as stated by the AO himself in the Remand Report dated 29/8/2017 reproduced on pages 55 & 56 of the order of CIT(A). Further during the appellate proceedings, the learned CIT (A) directed the AO to depute Inspector and measure the actual shortest road distance from Piplod up to the impugned property sold. The Inspector's Report dated 18/2/2019 and the AO's 2nd Remand Report dated 21/2/2019 are reproduced on page 63 of order of CIT (A), and the Inspector has reported that the shortest road distance is 11.5 kms. In view of the above, the learned CIT (A) has also given a finding on page 68, para 8.5.2 of his order that as per the Notification dated 6/1/1994, the impugned land is beyond 8 Kms, however, he has dismissed this ground on the reasoning that as on the date of sale, the said land was falling within the limits of Surat Municipal Corporation as enhanced in 2006.

8. Hence, the short point for consideration of this Hon'ble Tribunal is that for the purpose of deciding the limits of Municipal Corporation, whether the limits as prevailing on the date of issue of Notification as on 6/1/1994 is to be applied, or whether the limits of Municipal Corporation prevailing on the Date of sale is to be applied.

a) Now as on Dt. 06/01/1994, Surat City Limit was admittedly ending at Village Piplod. Thus the land is situated beyond 8 Km from the Limit of Surat Municipal Corporation &

There by it is complying with the Notification No. (SO 9447) (File No.164/3/87-ITA.I) dated 06.01.1994. Most importantly, it is submitted that there is no such Notification published by the CBDT in the Official Gazette after the issue of the above Notification. Now in view of the above stated Notification Dt. 06/01/1994, particularly Explanation 2 of the Notification and I.T.A.T Judgment of Ahmedabad, Jaipur, Indore Bench, Karnataka High Court as well as decisions of the other courts, it is humbly submitted that Assessee's Land is not covered by the definition of Capital Assets and as a result not Liable to Capital Gain Tax."

11. On the other hand, Ms Anupama Singla, Sr. DR for the Revenue, submitted before us written submissions, which are reproduced below:

"The present set of appeals involves the issue whether the municipal limits for the purpose of section 2(14) of the Income Tax Act are to be considered as exist is on the date of notification i.e. 06/01/1994 or on date of the transaction of sale of impugned land. In this regard, kind attention is invited to the notification which is annexed with this submission. The relevant row is extracted hereunder:

8	Gujarat	37	Surat	Area upto 8 km after
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The ld. A.R. for the assessee has contended that the municipal limit as on the date of notification have to be considered to decide if a purchase piece of land falls within 8 km. For this, he placed reliance on explanation to the notification & submitted that the explanation restricts the municipal limits as on the date of notification. At this juncture it is important to extract the explanation to the notification number 9447/F. No. 164/3/87-ITAT dated 06.01.1994 hereunder:

- (1) In this notification, "Municipality" shall mean any areas which is comprised within the jurisdiction of a municipality, (whether known as a municipality, municipal corporation notifies area committee, town area committee, town committee or by any other name) which has population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
- (2) The reference to municipal limits or the limits of cantonment board in the schedule to this notification is published in the official gazette. (Notification No. 9447/F.No.164/3/87-ITAT)

On perusal of the "Explanation" Municipality means:

- (1) any area which is comprised within the jurisdiction of municipality, (whether known as a municipality, municipal corporation notifies area committee, town area committee, town committee or by any other name) which has population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
- (2) The reference to municipal Limit in the schedule is published in the official Gazette.

And now if the explanation is read with the schedule, it means municipal limit of Surat up to 8 Km. Nowhere, the notification states that municipal limits as on 06/01/1994 have to be restricted. In fact, such an interpretation would be absurd as the municipal limits are decided by the State Authorities. It is pertinent to mention that the entire village of Sultanabad is comprised within the limit of Surat Municipal Corporation vide Collector of Surat letter No.19.06.2006 and notification dated 20.07.2006 declared by the Urban Development Authority. Vide Notification No.62/2008 dated 23.12.2008 of Surat Municipal Corporation, the area was declared as a residence zone under T.P. Scheme No. 80. So, the piece of land was well covered with in the limits of Surat Municipal Corporation. Definition of the limits of Municipal area comes within the purview of State Government & it is not a Central Govt. subject neither the notification anywhere intends to restrict the municipal limit as on 06.01,1994. In the last, almost 26 years since this notification was gazetted, there has been much change in the urban landscape of the country and certainly Surat city too. Therefore, it is most humbly prayed that defining of Municipal Limit being a State Govt. Subject, this notification will have to be read in conjunction with the municipal Limit as notified by the designated State Govt.

Authorities. Therefore, the land in question was well within the limit of Surat Municipal Corporation on the date of transaction. Alternatively, the ld. AR submitted that post 2014-15, this issue is redundant as aerial limits have to be considered rather than the shortest motorable route. It is submitted in this regard that issue does not become redundant as the aerial distance has to be considered from the limit of municipality. To conclude, it is prayed that the said notification dated 06.01.1994 has to be read in conjunction with the Municipal Limits as notified by the designated State Government Authority. The Notification of Municipal Limit is a State Govt. Subject and nowhere the notification intends to limit, the Municipal Limits as on 06.01.1994.”

12. We have carefully considered the rival submissions. The crux of the controversy before us is whether assessee`s land is agricultural land or not?

We note that government had issued notification NO.SO 10(E) [No.9447 (F.No.164/3/87-ITAT), DATED 6-1-1994. [AS AMENDED BY NOTIFICATION NO. SO 1302(E) (F.NO.164/1/96-ITA-1) DATED 28-12-1999]. Now as on dated 06/01/1994, Surat City Limit was admittedly ending at Village Piplod. Thus, the land is situated beyond 8 Km. from the Limit of Surat Municipal Corporation and thereby it is complying with the Notification No (SO 9447) (File No.164/3/87-ITA.I) dated 06.01.1994. Learned Counsel submits that there is no such Notification published by the CBDT in the Official Gazette after the issue of the above Notification. Now in view of the above stated Notification dated 06/01/1994, particularly Explanation 2 of the Notification, the Tribunal Judgments of Ahmedabad, Jaipur and Indore Bench are favoring to the assessee. The ld Counsel also submits that Hon`ble Karnataka High Court judgment is also favoring to the assessee on the same issue. Therefore, we note that Assessee's Land is not covered by the definition of Capital Assets and as a result not Liable to Capital Gain Tax.

13. We note that there is no dispute regarding sale consideration agreed/received by the assessee. Only issue of disagreement between the assessing officer and the assessee is the FMV as on 01-04-1981 to be taken as cost .of acquisition. Therefore, based on the facts narrated above, Learned Counsel for the assessee invited our attention to the order dated 11.08.2015, passed by the Division Bench of ITAT Ahmedabad, in the case of Akash Deep Farms Pvt. Ltd in ITA Nos. 2138/AHD/2012 & 2564/AHD/2012, for the AY.2009-10, on identical and similar facts, whereby the issue relating to agricultural land sold was not treated a capital asset, within the meaning of section 2(14) of the Income Tax Act. The disputed issue whether the distance for identifying geographical location of the agricultural

land is to be taken by road or by aerial and whether the municipal limits enhanced by the State Government is to be considered as starting point or it has to be taken from notification issued by the Central Government dated 06.01.1994 etc., have been discussed and adjudicated. The Coordinate Bench held that notification issued on 06.01.1994 by the Central Government is to be considered and therefore the Coordinate Bench has decided the issue in favour of the assessee. Therefore, Learned Counsel for the assessee submitted that the issue is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

14. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of Tribunal in the case of Akash Deep Farms Pvt. Ltd (supra), vide order dated 11.08.2015. In this order, the Tribunal has *inter alia* observed as follows:

3. *Brief facts of the case are that the assessee has filed its return of income electronically on 30.9.2009 declaring total income at Rs.1,10,350/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) dated 23.8.2010 was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee had earned a profit of Rs.3,99,63,932/- on sale of land. The ld.AO has noticed the details in tabular form exhibiting name of village where the land was situated and survey no, date of purchase, purchase amount, date of sale, sale consideration and the gain. Such details are produced at page no.3 of the assessment order, which read as under:*

Sr.	Village	Agri. Or NA	Date of purchase	Purchase amount	Date of Sale	Sale amount	Gain
1.	98/2	Agri.	05.07.06	2,11,108	04.07.08	10,16,400	8,05,292 (ST)
2.	99, 100/1 100/2	NA	26.04.05	11,35,440	30.05.08	92,56,500	81,21,060
3.	87/P	Agri	26.04.05	11,22,843	04.08.08	69,30,000	58,07,157
4.	87/P, 95/1, 95/2, 98 100/1	Agri	26.04.05	26,18,467	24.07.08	2,43,25,103	2,17,06,636
5.	94/2	Agri	20.07.05	3,85,216	24.07.08	39,10,897	35,25,681
							3,99,63,826

**transaction at Sr.No. 2 is Offered to tax as Long term capital gains i.e Rs.79,26,870/- (after indexation)*

From the above lucid chart it is seen that the assessee has made a total profit of Rs.3,99,65,826/- from sale of the lands situated at Kaneti and Telav villages of Sanand Taluka of Ahmedabad District during the year. From these sale transactions the assessee has offered to tax only the gains resulting from transaction no.2 as Long term capital gains since the land in question has been considered as Non-agricultural. The balance i.e Rs.3,99,65,826 - Rs.81,21,060 = Rs.3,18,44,766 has not been offered for tax and claimed as exempt u/s 10(1) as agricultural income."

4. *The assessee has contended that this land was situated beyond 8 KMs. of municipal area. It was an agriculture land, and therefore, it is to be excluded from the definition of "capital asset" provided in section 2(14)(iii) of the Income Tax Act. Thus, any gain*

accrued to the assessee on sale of this land was not taxable. The ld.AO has rejected the contention of the assessee.

5. Dissatisfied with the action of the AO, the assessee carried the matter in appeal before the ld.CIT(A). The ld.CIT(A) has examined the issue in detail, and by way of reasoned finding held that gain arisen to the assessee on account of sale of agriculture land would not be taxable. Well reasoned finding of the ld.CIT(A) reads as under:

“3.5 I have considered the facts of the case, assessment order, AO's report and appellant's written submission and rejoinder. Appellant sold certain agricultural lands during the year and claimed the same as exempt within the definition of capital asset under section 2(14)(iii). Assessing officer found that the agricultural lands sold by the appellant during the year were situated within 8 km from Ahmedabad municipal limit and therefore these lands were capital assets and sale thereof were liable for capital gains. Assessing officer got certificate from ADDA that lands situated in two villages were within 8 km of air distance from the limit of Ahmedabad Municipal Corporation. A map drawn by AUDA is also incorporated in assessment order quoted earlier. During appeal, appellant took two arguments-(1) for calculating distance from municipal limit, road distance is to be seen and not air distance as done by the AO. Appellant submitted several judicial decisions supporting its contention. (2) The AUDA has taken present municipal limit whereas municipal limit has expanded over a period of time.

Assessing officer in the reports submitted that limits of Ahmedabad municipal Corporation increased from 2006 and therefore at the time of sale of agricultural lands, Ahmedabad municipal Corporation limits have already been expanded and therefore from the expanded municipal limit, the agricultural lands situated in Telav Village were within 8 km and therefore the same were capital asset and taxable under section 45. As regards agricultural land situated in Kaneti Village, assessing officer did not object that the same was situated beyond 8 km road distance from Ahmedabad municipal limit. As regards the issue of air distance or road distance from municipal limits, assessing officer could not counter the judicial decisions relied upon by the appellant except mentioning that these decisions were not accepted by the Department.

Considering the entire submissions and reports referred earlier, this issue can be divided in two parts-(1) while computing distance from municipal limit, which distance- air distance or road distance to be considered. (2) Which municipal limit should be considered for computing distance from agriculture land- municipal limit on the date of sale or municipal limit on the date of issue of the notification by the government or municipal limit as on date.

As regards the first part of the issue, appellant submitted decision of honourable Punjab and Haryana High Court in which it is clearly held that it is the road distance from municipal limit and not air distance to be considered. Several tribunal decisions have also upheld this view. There is no judicial decision contrary to this view. Even if Department has not accepted these decisions, these are binding on the appellate authorities. Respectfully following these decisions assessing officer is directed to compute distance of the agricultural lands sold by the appellant by taking road distance from the limits of Ahmedabad Municipal Corporation.

As regards second part of the issue as to municipal limit as on which date is to be considered, it would be relevant to refer the relevant provision of income tax act as well as notification issued by government in this regard.

2(14) (iii) agricultural land in India, not being land situate—

(a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town

area committee, town committee, or by any other name or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or

- (b) in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in f his behalf by notification in the Official Gazette

As per clause (b), in order to be excluded from the definition of Capital Asset, the land should not be situated within such distance from the local limits of ANY municipality {referred to in clause (a)} as specified by the central government by notification in the Official gazette. The said notification i.e Notification No. (SO 9447) (File No.164/3/87-ITA.I) dated 06.01.1994 for the purpose of item (b) of sub clause (iii) of clause (14) of section 2 of the Income Tax Act 1961 is reproduced below:

INCOME-TAX ACT, 1961 : NOTIFICATION UNDER SECTION 2(1A)(C), PROVISIO. CLAUSE (II)(B) AND SECTION 2(14)(III)(B): URBANISATION OF AREAS

Notification No. [SO 9447J (File No. 164/3/87-ITA.I), dated 6-1-1994

Whereas a draft notification was published by the Central Government in exercise of the powers conferred by item (B] of clause (ii) of the proviso to sub-clause (c] of clause (1A], and item (b) of sub-clause (iii) of clause (4), of section 2 of the Income-tax Act, 1961 (43 of 1961, in the Gazette of India, Extraordinary Part II, section 3, subsection (ii], dated February 13, 1991, under the notification of the Government of India in the Ministry of Finance (Department of Revenue] No. S O 91 (E], dated February 8, 1991, for specifying certain areas for the purposes of the said clauses and objections and suggestions were invited from the public within a period of 45 days from the date the copies of the Gazette of India containing such notification became available to the public;

And whereas copies of the said Gazette were made available to the public on February 13, 1991;

And whereas the objections and suggestions received from the public on the said draft notification have been considered by the Central Government;

Now, ther fore, in exercise of the powers conferred by item (B)of clause (ii] of the proviso to sub-clause (c) of clause (JA] and item (b) of sub-clause (iii] of clause (14] of section 2 of the Income-tax Act, 1961 (43 of 1961], and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance] No. S.O. 77(E], dated February 6, 1973, the Central Government having regard to the extent of, and scope for urbanisation of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the schedule hereto annexed and falling outside the local limits of municipality or cantonment board, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above mentioned provision of the Income-tax Act, 1961 (43 of 1961].

	Gujarat	1. Ahmedabad	Area upto a distance of 8 kms. From the municipal limits in all directions.
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Expln1(2) - the reference to municipal limits or the limit of cantonment board in the schedule to this notification is to the limits as existing on the date on which the notification is published in the official Gazette."

From the above, it is clear that the land situated within 8 kilometers from Ahmedabad municipal corporation limit is urban land and to be treated as capital asset. However land situated outside 8 km limit will be agricultural land not to be treated as capital asset. For computing the distance of 8 km, the municipal limit is also defined. Since municipal limit is dynamic and changing over a period of time, an explanation is given at the end of the aforesaid notification that municipal limit is the limit as existing on the date of publication of the notification and not the limit on the date of transaction or as on date. The notification is published on 6-1-1994 and therefore the municipal limits as on 6-1-1994 is to be taken for computing 8 km road distance to decide whether agricultural land is a capital asset or not. The municipal limit on the date of transaction is not relevant as far as application of this notification is concerned. Appellant submitted that prior to 2006, the municipal limit of Ahmedabad Municipal Corporation was very restricted and from that limit, both the villages in which agricultural lands were situated are much beyond 8 km distance. Since notifications with regard to Ahmedabad municipal Corporation limits are available from which assessing officer can work out the distance of these agricultural lands. In view of the clear provisions in the notification referred earlier, it is held that the municipal limits relevant for computing distance is the municipal limit existing on the date of issue of this notification i.e. 6-1-1994. Assessing officer is therefore directed to compute the road distance of the agricultural lands from the municipal limits of AMC as on 6-1-1994. If the distance is within 8 km, appellant is liable for capital gains and if the distance is beyond 8 km, the agricultural lands sold will be outside the purview of capital asset and hence no capital gains can be charged on the same. This ground is accordingly disposed off."

6. Before us, limited dispute is whether the distance for identifying the geographical location of the agriculture land is to be taken by road or by aerial. Second fold of dispute is whether the municipal limit enhanced by the State Government is to be considered as starting point or it is to be taken from notification issued by the Central Government dated 6.1.1994. The ld.CIT(A) has held that notification issued on 6.1.1994 by the Central Government is to be considered.

7. Ld.DR relied upon the order of the AO. On the other hand, the ld.counsel for the assessee contended that Hon'ble Punjab & Haryana High Court in the decision referred by the ld.CIT(A) in the case of CIT Vs. Satinder Pal Singh, 229 CTR 82 has held that distance requires to be computed for identifying the geographical location of the agriculture land from the municipal limit is concerned, it is to be measured by road, and if the distance is beyond 8 KMs, then that land would not fall within the definition of capital asset. He further pointed that Hon'ble Bombay High Court has also concurred with this view in the decision of CIT Vs. Nitish Rameschandra Chordia, 57 taxmann.com 394. He placed on record copy of this decision. In this decision, the Hon'ble Bombay High Court has specifically laid down that the distance is to be measured by road and not as per crow's flight. The ld.counsel for the assessee pointed out after this decision of the Hon'ble Bombay High Court, the Board has issued circular bearing nos.17/2015 and accepted the decision. He placed on record copy of the circular.

8. We have duly considered rival contentions and gone through the record carefully. The definition of "capital asset" has been provided in section 2(14) of the Act. Sub-clause (a) and (b) of Section 2(14)(iii) contemplates that if an agriculture land is in India, and it is situated at a distance of more than 8 KMs. from the local limit of any municipality cantonment board, then, that land would not fall within the ambit of definition "capital asset". In other words, if the land which is not forming part of capital asset sold by an assessee, then, no gain as such would be considered, as accrued to the assessee. In the present case, the ld.AO has observed that if the distance of geographical situation of the assessee's land is being measured from municipality limit, by way of crow's flight, then, it

is within the municipal limit. In various authoritative pronouncements, as discussed by the ld.CIT(A), it has been held that the distance is to be measured by road and not by aerial route. At this stage, it is important to take note of the Board Circular bearing No.17/2015. It reads as under:

“CBDT CIRCULAR NO -17/2015, Dated: October 06, 2015

Subject:- Measurement of the distance for the purpose of section 2(14)(iii)(b) of the Income-tax Act for the period prior to Assessment year 2014-15

“Agricultural Land” is excluded from the definition of capital asset as per section 2(14)(iii) of the Income-tax Act based, inter-alia, on its proximity to a municipality or cantonment board. The method of measuring the distance of the said land from the municipality, has given rise to considerable litigation. Although, the amendment by the Finance Act, 2013 w.e.f. 1.04.2014 prescribes the measurement of the distance to be taken aerially, ambiguity persists in respect of earlier periods.

2. *The matter has been examined in light of judicial decisions on the subject. The Nagpur Bench of the Hon. Bombay High Court Vide order dated 30.03.2015 in ITA 151 of 2013 in the case of Smt. Maltibai R Kadu has held that the amendment prescribing distance to be measured aerially, applies prospectively i.e. in relation to assessment year 2014-15 and subsequent assessment year. For the period prior to assessment year 2014-15, the High Court held that the distance between the municipal limit and the agricultural land is to be measured having regard to the shortest road distance. The said decision of the High Court has been accepted and the aforesaid disputed issue has not been further contested.*

3. *Being a settled issue, no appeals may henceforth be filed on this ground by the officers of the Department and appeal already filed, if any, on this issue before various Courts/Tribunals may be withdrawn/ not pressed upon. This may be brought to the notice of all concerned.*

[F. No. 279/Misc./140/2015-ITJ]

(D S Chaudhry) CIT (A&J), CBDT”

9. *Thus, if the finding of the ld.CIT(A) is being examined in the light of the circular, then one thing is clear that the distance is to be measured by roads in this accounting year. The land sold by the assessee is situated beyond 8 KMs. of the municipal limit.*

10. *Next objection of the AO was that the State Government has enhanced the municipal limit in 2006 and the distance is to be measured from new boundary of the Ahmedabad Municipal Corporation Limit. AMC limit was extended upto Sarkhej since 2006. The ld.CIT(A) has examined this aspect, and has observed that perusal of sub-clause (b) of section 2(14)(iii) would indicate that the municipal limit is to be taken from the area which has been notified by the Central Government in its gazette notification. Central Government has notified the area on 6.1.1994, and from that notification, the agriculture land of the assessee was situated beyond a distance of 8KMs. This aspect has been lucidly considered by the ld.CIT(A) in the finding extracted supra. We do not see any reason to interfere in this finding. In view of the above discussion, we do not find any merit in the appeal of the Revenue. It is dismissed.”*

15. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in the case of ITO vs. Akash Deep Farms P. Ltd.(supra) and there is no change in facts and law and the Revenue is unable to produce any

material to controvert the aforesaid findings of the Coordinate Bench. We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding precedent of the Coordinate Bench in case of Akash Deep Farms P. Ltd. (supra), we delete the addition of Rs.11,63,296/-, made by the Assessing Officer on account of Long Term Capital Gain (LTCG).

16. In the result, appeal filed by the assessee is allowed.

17. We have adjudicated the appeal by taking lead case in ITA No.477/SRT/2019, for AY.2013-14, in the case of Printisha Pravinbhai Patel. Since facts and issues involved in other appeals of assesseees are similar and identical therefore, our decision in the case of Printisha Pravinbhai Patel(supra) shall apply *mutatis mutandis* in case of other assesseees also

18. In the result, appeals filed by the assesseees (in ITA Nos.477 to 486 for AY.2013-14), are allowed.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order is pronounced in the open court on 16/02/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 16/02/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat