



**आयकर आयुक्त(अपील्स)-7, पुणे का कार्यालय**

**IN THE OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS)-7, PUNE**

Room no. 515, 5<sup>th</sup> Floor, Bodhi Tower, AayakarSadan, Salisbury Park, 548/2B,  
Gultekdi, Pune-411037. Email: [pune.cit.apl7@incometax.gov.in](mailto:pune.cit.apl7@incometax.gov.in)

अपील संख्या.:PN/CIT(A)-7/Ward-1, Pandhar/10401/2015-16

आदेश की तिथि: 23/09/2020

Instituted on 31/03/2015 from the order of the Assessing Officer

1.	निर्धारण वर्ष/Assessment Year(s)	2012-13
2.	अपीलार्थी का नाम और पता Name & address of the Appellant	Shri. Samir Jabbar Mulani. Opp. to Police Station, Kurduwadi, Tal.- Madha, Solapur-413208.
3.	स्थायी लेखा संख्या / Permanent Account Number	ANLPM6914F
4.	निर्धारित आय/Assessed Income	Rs. 1,74,62,370/-
5.	आयकर/शमस्ति मांग Tax / Interest /Penalty-levied	Rs. 63,42,790/-
6.	किस धारा के अधीन पारीत आदेश के विरुद्ध अपील दाखिल की है Section under which order appealed against was passed	143(3) r.w.s. 147 of the I.T. Act, 1961
7.	सुनवाई की तिथि Date/s of hearing	As per records
8.	अपीलार्थी की ओर से उपस्थित Present for the appellant	Shri. Pramod Shingte, CA & AR
9.	आयकर विभाग की ओर से उपस्थित Present for Department	None
10.	जिस आदेश के विरुद्ध अपील दाखिल की है उसे पारित करनेवाले अफसर का नाम Name of the AO who passed the order against which appeal filed	Shri S.D. Angarkar, ITO Ward-1, Pandharpur.

**अपील आदेश एवं निर्णय के आधार**

**APPELLATE ORDER AND GROUNDS OF DECISION**

- The appeal is directed against the order dated 05/03/2015 passed by the ITO Ward-1, Pandharpur, u/s. 143(3) r.w.s. 147 of the Income tax Act, 1961(hereinafter referred to as 'Act). The AO in ITNS -51 stated that the notice of demand was served to the appellant on 12/03/2015 and thus the appeal has been filed within time.

2. The appellant has raised the following grounds of appeal:

*“1. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in passing order u/s 147 of the Income Tax Act, 1961 without passing a speaking order against the objections raised, therefore the entire proceedings are bad in law.*

*2. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in treating a sum of Rs. 1,73,31,135/- as income from long term capital gains by rejecting the appellants contention in this regard.*

*3. Without prejudice to Ground No. 2, the learned assessing officer erred in not granting the eligible deduction u/s 54B and 54F of the Income Tax Act, 1961 for purchase of agricultural land and construction of House Property respectively. Same may kindly be allowed as per the law.*

*4. On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in making an addition of Rs. 1,31,236/- being interest on bank deposit by disregarding appellants contention in this regard.”*

3. Briefly stated, facts of the case are that the assessee Shri Samir Jabbar Mulani (hereinafter referred to as ‘Appellant’) is an individual and was carrying out agricultural activities. The notice u/s 148 of the Act was issued to the appellant on 14/02/2014 and was stated to have duly served on the appellant on 20/02/2014 followed other statutory notices. During the assessment proceedings, the appellant submitted that he was an agriculturist having no other source of income and therefore, no return of income was filed for the year under consideration. As per the AO, during the year under consideration, the appellant along with his brother Shri Jameer J. Mulani had sold an immovable property being land on 20/01/2012 for a sale consideration of Rs. 3,52,50,000/- to Vitthal Buildcon Pvt. Ltd. The AO further verified the authenticity of the said transaction by issuing notices u/s 133(6) of the Act on 16/09/2014 to the Sub-Registrar, Tal.-Madha, Solapur and the Tehsildar, Madha. As per the AO, the sale deed registered on 20/01/2012, he found that the appellant had sold non-agricultural land as mentioned in the sale deed. The AO further stated that the alleged land was originally purchased on

10/11/1998 for a sum of Rs. 2,47,820/- including stamp duty and registration charges and the AO further computed the long-term capital gains so arose due to the sale transactions as under: -

Sale Consideration as on 20/01/2012	: Rs. 3,52,50,000/-
(Less) Indexed Cost of Acquisition	
Rs. 2,47,820/- x 785/331	: Rs. 5,87,730/-
Long Term Capital Gain	: Rs. 3,46,62,270/-

As the appellant has having 50% share in the alleged land, the LTCG stands of Rs. 1,73,31,135/- in the hands of the appellant. In response to the proposed LTCG computed at Rs. 1,73,31,135/-, the appellant submitted before the AO that the appellant and his brother Shri Jameer J. Mulani were the joint holder/owners of the sold land which was purely an agricultural land situated at Survey No. 33, Mouje - Bhosare, Tal.-Madha, Solapur and was used for agricultural purposes for long back. It was the submission of the appellant before the AO that he and his brother entered into an agreement for sale ('Satekhat' in Marathi) on 15/12/2010 with Vitthal Buildcon Pvt. Ltd. for a sale consideration of Rs. 3,52,50,000/-. The said satekhat was duly registered and the entire amount of stamp duty was paid by the buyer at the time of entering the satekhat and out of the total sale consideration of Rs. 3,52,50,000/- an amount of Rs. 2,00,00,000/- was received on the date of sale of agreement i.e. on 15/12/2010. The possession of the said land was also handed over to the buyer and in support of this, the appellant submitted a 'kabza pavti' (Possession Receipt), however, the final sale deed was executed on 20/01/2012 to complete the formality by paying a nominal stamp duty of Rs. 100/-. In view of this, the appellant argued before the AO as per the provisions of section 2(47) of the Act, that the transfer took place in F.Y. 2010-11 and also relied on the decision of the Hon'ble Bombay High Court in the case of Chaturbhuj Dwarkadas Kapadia Vs. CIT (2003) 260 ITR 491 (Bom). In view of the above, the appellant argued before the AO to consider the capital gains so computed in AY 2011-12 only of at all the same was warranted. The appellant further submitted before the AO that said land was purely an agricultural land as the same was mentioned in the satekhat and submitted 7/12 extracts evidencing agricultural produce grown in the alleged

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land. It was also claimed by the appellant that the alleged land fall outside the notified limits of nearest municipality. The appellant further claimed deductions u/s 54B and 54F of the Act for the investments with the sale consideration received. However, the AO rejected the claims of the appellant based on the sale deed made at later date than the satekhat and concluded that the transfer took place only with the execution of the sale deed. The AO further contended that the alleged sold land was a non-agricultural land and therefore capital gains arose due to the sale transactions made.

- 3.1 The AO further contended that during the year under consideration, the appellant had earned a sum of Rs. 1,31,279/- on account of interest income and the appellant failed to offer the same for taxation. In view of this, the AO added a sum of Rs. 1,31,236/- to the total income. Thus, aggrieved by the aforesaid additions/disallowances made by the AO, the appellant preferred the present appeal raising various grounds as detailed in para 2 above.
4. In response to notice of hearing, Shri Pramod Shingte, CA & AR appeared and filed written submission and the same have been taken on record. The assessment order, grounds of appeal and the submissions made have been gone through. The oral arguments made by the AR are also considered in disposing this appeal.
5. Ground No.1 :- This ground relates to the objection raised by the appellant challenging the validity of the reopening proceedings u/s 147 of the Act. During the appeal proceedings, the AR of the appellant could not substantiate with documentary evidences in support of his contention, therefore, this ground is treated as **dismissed** ground of appeal.
6. Ground No. 2:- In this ground, the appellant challenged the long term capital gains computed at Rs. 1,73,31,135/- by the AO and further contended that the AO had erred in ignoring the facts submitted during the assessment proceedings.
- 6.1 During the appeal proceedings, the appellant submitted following issues relating to this ground which are enumerated as under:-

(a) The alleged land sold was an agricultural land that situated out of the notified area and therefore did not constitute any capital asset and in view of this, there arose no capital gain.

(b) Transfer took place in F.Y. 2010-11 relevant to AY 2011-12 as the agreement to sale was registered on 15/12/2010 and the possession of the land was handed over to the buyer on that year itself.

6.2 Now, the very first issue taken for adjudication is whether alleged land sold was an agricultural land or not and whether the land sold was a capital asset or otherwise in terms of Section 2(14) of the Act. It is evident that the appellant had sold an immovable property being land at Survey No. 33 situated at Mouje- Bhosare, Tal.- Mhada, Dist.- Solapur at a sale consideration of Rs. 3,52,50,000/- to Vitthal Buildcon Pvt. Ltd. vide agreement to sale bearing no. registration no. 6627/2010 dated 15/12/2010 registered with the Sub-registrar Grade-1, Madha and a stamp duty of Rs. 14,10,000/- was also paid on 15/12/2010. During the appeal proceedings, the appellant argued that the alleged land was an agricultural land within the meaning of Section 2(14)(iii) of the IT Act, 1961 and the said land is not located in any area within the jurisdiction of any nearest Municipality or Cantonment Board. Also, the appellant argued that the said land is located beyond the notified area as per notification dated 06/01/1994 issued by Govt. of India. The appellant further submitted that at the time of agreement of sale and the sale deed, the total population of Mouje - Bhosare was less than 10,000/- and Mouje Bhosari is located beyond 08 kms from any municipal corporation/Nagar Palika.

6.2.1 The assessment order, submission of the appellant and relevant case laws have been carefully perused. It is a fact that, the definition of 'Agricultural land' is nowhere mentioned in the Act. However, while defining 'Capital Asset' u/s 2(14) of the Act, certain Agricultural lands were kept apart from the ambit of capital asset. In order to appreciate the issue better, the relevant clause of Sec. 2(14) is reproduced below as applicable for the A.Y. 2012-13:-

*“Capital assets means –*

*(iii) Agricultural land in India, not being land situate-*

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*(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 first day of the previous year or;*

*(b) In any areas 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 consideration, specify in this behalf by notification in the Official Gazette.”*

6.2.2 A close reading of the above section indicates that the Central Govt. has been empowered to treat certain areas measuring not more than 8 KMs from the municipal limits as capital assets having regard to the scope of urbanization of that area. The Central Govt. in exercise of this power has been issuing notifications time to time specifying the areas to be treated as capital assets under this section. One such Gazette notification is notification number- **[SO-9447] (File No.164/3/87-ITA.I) dtd. 06/01/1994** and the relevant portion of the notification is reproduced below:

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

Notification No. [SO 9447] (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 (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 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 therefore, 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), 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).

SCHEDULE

Sl No	Name of the State or Union Territory	Name of the municipality or Cantonment Board falling in the State/Union Territory mentioned under column (3)	Details of areas falling outside the local limits of municipality or Cantonment Board, etc., mentioned under column (2)
14	Maharashtra	1 Anmednagar	Areas up to a distance of 8 kms. from the municipal limits in all directions
		2 Akkalkot	Areas up to a distance of 4 kms. from the municipal limits in all directions
		3 Akola	Areas up to a distance of 5 kms. from the municipal limits in all directions
		4. Alibag	Areas up to a distance of 8 kms. from the municipal limits in all directions,
		5. Amravati	Areas up to a distance of 5 kms. from the municipal limits in all directions
		6. Aurangabad	Areas up to a distance of 8 kms. from the municipal limits in all directions
		7. Baramati	Areas up to a distance of 8 kms. from the municipal limits in all directions
		8. Barsi	Areas up to a distance of 4 kms. from the municipal limits in all directions
		9. Beed	Areas up to a distance of 8 kms. from the municipal limits in all directions
		10. Bhandara	Areas up to a distance of 5 kms. from the municipal limits in all directions
		11. Bhiwandi	Areas up to a distance of 8 kms. from the municipal limits in all directions
		12. Bhore	Areas up to a distance of 8 kms. from the municipal limits in all directions
		13. Greater Bombay	Areas up to a distance of 8 kms. from the municipal limits of Greater Bombay in all directions
		14. Chandrapur	Areas up to a distance of 5 kms. from the municipal limits in all directions
		15. Dahanu	Areas up to a distance of 8 kms. from the municipal limits in all directions
		16. Daud	Areas up to a distance of 8 kms. from the municipal limits in all directions
		17. Dehu Road	Areas up to a distance of 8 kms. from the municipal limits in all directions
		Cantonment Board	

18. Deolali Cantonment Board	Areas up to a distance of 8 kms. from the municipal limits in all directions.
19. Dhule	Areas up to a distance of 8 kms. from the municipal limits in all directions.
20. Gondia	Areas up to a distance of 5 kms. from the municipal limits in all directions.
21. Ichalkaranji	Areas falling within the villages of Kabnor, Koruchi, Terdaj and Yadrav but up to a distance of 8 kms. from the municipal limits.
22. Jalaba	Areas up to a distance of 8 kms. from the municipal limits in all directions.
23. Jalgaon	Areas up to a distance of 8 kms. from the municipal limits in all directions.
24. Junnar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
25. Kalyan	Areas up to a distance of 8 kms. from the municipal limits in all directions.
26. Khapoli	Areas up to a distance of 8 kms. from the municipal limits in all directions.
27. Kirkee Cantonment Board	Areas up to a distance of 8 kms. from the municipal limits in all directions.
28. Kolhapur	Areas up to a distance of 8 kms. from the Cantonment limits in all directions.
29. Latur	Areas up to a distance of 8 kms. from the municipal limits in all directions.
30. Lonawala and Khandala	Areas up to a distance of 8 kms. from the municipal limits in all directions.
31. Mahad	Areas up to a distance of 8 kms. from the municipal limits in all directions.
32. Malegaon	Areas up to a distance of 8 kms. from the municipal limits in all directions.
33. Mira-bhayandar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
34. Murad	Areas up to a distance of 8 kms. from the corporation limits in all directions.
35. Nagpur	Areas up to a distance of 8 kms. from the corporation limits in all directions.
36. Nanded	Areas up to a distance of 8 kms. from the corporation limits in all directions.
37. Nasik	Areas up to a distance of 8 kms. from the corporation limits in all directions.
38. New Bombay	Areas up to a distance of 8 kms. from the corporation limits in all directions.
39. Osmanabad	Areas up to a distance of 8 kms. from the corporation limits in all directions.
40. Pandharpur	Areas up to a distance of 4 kms. from the municipal limits in all directions.
41. Parvel	Areas up to a distance of 8 kms. from the municipal limits in all directions.
42. Parbhani	Areas up to a distance of 8 kms. from the municipal limits in all directions.
43. Pen	Areas up to a distance of 8 kms. from the municipal limits in all directions.
44. Pimpri Chinchwad	Areas up to a distance of 8 kms. from the municipal limits in all directions.
45. Poona Municipal Corporation	Areas up to a distance of 8 kms. from the corporation limits in all directions.
46. Pune Cantonment Board	Areas up to a distance of 8 kms. from the municipal limits of Cantonment in all directions.
47. Roha	Areas up to a distance of 8 kms. from the municipal limits in all directions.
48. Saswad	Areas up to a distance of 8 kms. from the municipal limits in all directions.
49. Shirur	Areas up to a distance of 8 kms. from the municipal limits in all directions.
50. Shrivardhan	Areas up to a distance of 8 kms. from the municipal limits in all directions.
51. Solapur	Areas up to a distance of 8 kms. from the municipal limits in all directions.
52. Talegaonb Dabhade	Areas up to a distance of 8 kms. from the municipal limits in all directions.
53. Thane	Areas up to a distance of 8 kms. from the corporation limits in all directions.
54. Ulhasnagar	Areas up to a distance of 8 kms. from the corporation limits in all directions.
55. Uran	Areas up to a distance of 8 kms. from the municipal limits in all directions.
56. Vasai	Areas up to a distance of 8 kms. from the municipal limits in all directions.
57. Virar	Areas up to a distance of 8 kms. from the municipal limits in all directions.
58. Wardha	Areas up to a distance of 5 kms. from the municipal limits in all directions.

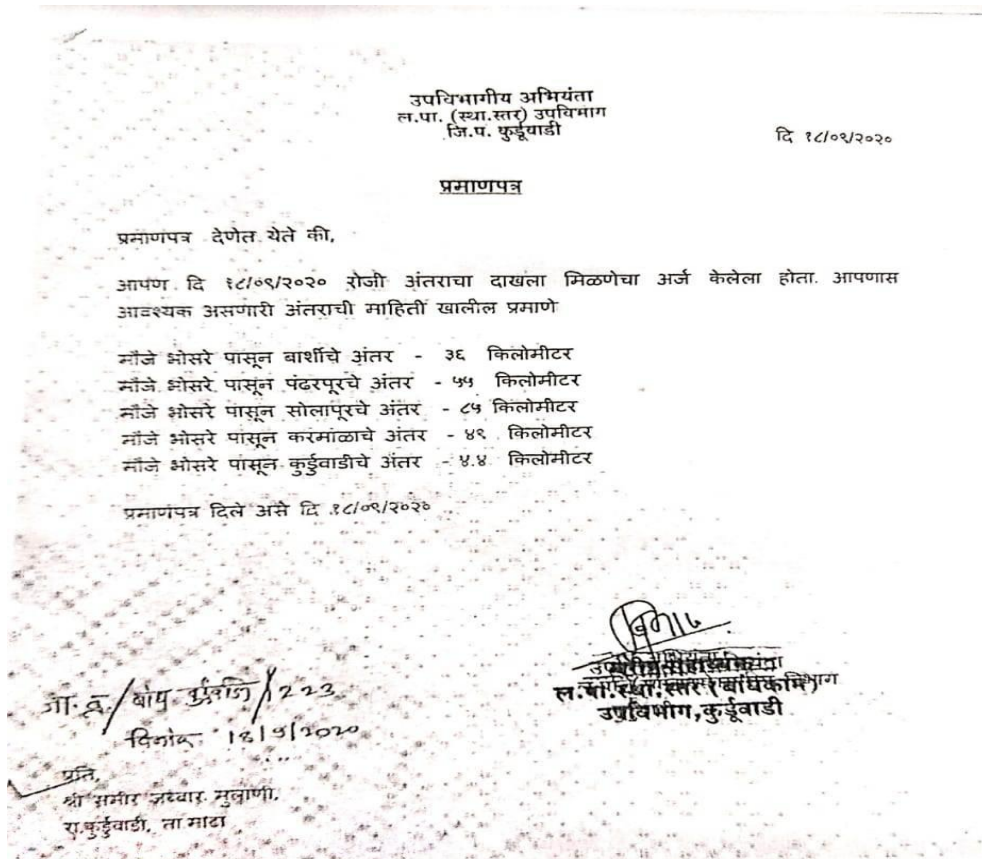
6.2.3 The above notification has clearly taken into consideration the scope of urbanization of various areas and has accordingly specified different distances from the limits of the municipalities for different municipalities. It has also specified that the distances on either side of a specific road upto a specific distance from the municipal limits on that road. This clearly shows that the scope of urbanization of each area surrounding the municipalities has been considered while notifying the area. It is also seen that the objections from the public have been considered before issuing this notification. So, this notification has the authority of the Central Govt.



6.2.4 Now, coming to the present case, it is seen that the alleged land is situated at Mouje- Bhosare, Tal.- Mhada, Dist.- Solapur and is surrounded by following Nagar Plaikas as per the letter issued by Sub Divisionsal Engineer, Minor Irrigation (L.S.) Sub Division, Zilla Parishad, Kurudwadi dated 18/09/2020 filed by the appellant:-

- (i) Distance from Mouje Bhosare to Barshi : 36 Kms.
- (ii) Distance from Mouje Bhosare to Pandharpur : 55 Kms
- (iii) Distance from Mouje Bhosare to Solapur : 85 Kms
- (iv) Distance from Mouje Bhosare to Karmala : 49 Kms

The copy of the said letter is reproduced as under:-



6.2.5 From the above, it is clear that the impugned land does not attract the provisions of sec. 2(14)(iii) to be treated as capital assets. In the appellant's case the Mouje- Bhosare does not fall in the notified area and is also situated beyond 8 kms as certified by the Sub Divisionsal Engineer, Minor Irrigation (L.S.) Sub Division, Zilla Parishad, Kurudwadi. Hon'ble High Court of Punjab &

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Haryana while dealing the distance for section 2(14) in the case of **CIT Vs. Satinder Pal Singh** reported in **[2010] 188 Taxman 54** held as under:

*“Section 2(14) of the Income-tax Act, 1961 - Capital gains - Capital asset - Whether distance of land for purpose of section 2(14)(iii) has to be taken in terms of approach by road and not as per straight line distance on a horizontal plane or as per crow flight distance - Held, yes”*

6.2.6 In the case of **CIT Vs. Madhukumar N. (HUF)** reported in **(2012)78DTR391 / 254CTR564**, Hon'ble Karnataka High Court held that *“Assessee claimed to have sold a piece of land - Assessing Officer held that said land was capital asset and that consideration therefrom was capital gain - Though said land was located within 8 kms within limits of City Municipal Corporation, Central Government had not issued any notification under section 2(14)(iii)(b) for purpose of including said area up to 8 kms from municipal limits - Whether land in question was to be assessed as agriculture land - Held, yes [In favour of assessee]”*

6.2.7 Section 2(14)(iii)(b) of the Act covers the situation where the subject land is not only located within the distance of 8 kms from the local limits, which is covered by Clause (a) to section 2(14)(iii) of the Act, but also requires the fulfilment of the condition that the Central Government has issued a notification under this Clause for the purpose of including the area up to 8 kms, from the municipal limits, to render the land as a “Capital Asset. In the present case, the subject land is not located within 8 Kms from the limits of any Nagar palikas surrounded Mouje Bhosare which is clearly evident from the certificates issued by the Sub Divisionsal Engineer, Minor Irrigation (L.S.) Sub Division, Zilla Parishad, Kurudwadi. Therefore, Clause (a) to section 2(14)(iii) of the IT Act is not attracted in the present case.

6.2.8 Also, it is evident that the population of Mouje- Bhosare was approximately 8,691 as per census 2011 which also fulfils other criteria of assets not covered u/s 2(14)(iii) of the IT Act, 1961.

(Source : <https://villageinfo.in/maharashtra/solapur/madha/bhosare.html>)

(Source : Solapur District Census Handbook for 2011 issued by Directorate of Census Operations Maharashtra (Page no. 126, location Code 561925))

6.2.9 During the appeal proceedings, the appellant also argued that the land has been classified as agricultural land and actual cultivation of Jowar were carried out which can be seen from 7/12 extracts for 2003-004 to 2010-11. In the facts of the appellant's case, it is seen from the 7/12 extract that the same is shown as agricultural land and Jowar were being grown in the alleged land.

6.2.10 The jurisdictional ITAT, 'B' Bench, Pune in the case of **Thanmal Ganeshmal Parmar** in **ITA No. 266/PN/2013** dated 04/11/2015, where the Hon'ble ITAT has held as under:

*“6.....The 7/12 extracts are prepared by the Revenue authorities and the assessee has no control over them. The main purpose of referring to 7/ 12 extracts is to ascertain:*

- i. the ownership and possession of land;*
- ii. nature of land;*
- iii. crops cultivated on the land; and*
- iv. source of irrigation, if any.”*

6.2.11 It is also seen that the AO has brought nothing on record to show that the land under consideration was used other than agricultural purposes nor did the appellant applied for conversion of the alleged land into NA lands. The 7/12 extract shows that the land was regularly used for agricultural activities during A.Ys. 2003-004 to 2010-11. Hon'ble High Court of Gujarat in the case of **CIT Vs. Rajshibhai Meramanbhai Odedra** reported in **(2014) 42Taxmann.com 497 (Guj.)** held that as under

*“Where land used/held by assessee was agricultural land which was situated beyond 8 Kms. from municipal limits, merely because land was sold to non-agriculturist which was in breach of law prevailing in State, character of land would not be changed into a capital assets and land would continue as agricultural land.”*

6.2.12 Now coming to assessment order, it is evident that the AO cooked his own story while computing the capital gains in the hands of the appellant ignoring the facts, submissions of the case. The AO mainly stuck to the sale deed only and ignored other aspects before assessing the total income. It is a fact that capital gains whether short term or long term u/s. 2(42B) or 2(29B) of the Act arise only when transfer u/s 2(47) of a capital asset defined under section 2(14) of the Act takes place. It is an undisputed fact that transfer u/s 2(47) of the Act took place, however, it is held above that the alleged land sold is not a capital asset defined u/s 2(14) of the Act, therefore, there arose no capital gain in the hands of the appellant. Even, the AO overlooked the applicability of section 53A of the Transfer of Property Act, wherein, the satekhat entered and the possession of the said sold land was handed over on 15/12/2010 and a consideration amount paid were clearly mentioned. Section 2(47) of the Act, lays down that transfer would include a transaction allowing possession of an immovable property in part performance of a contract of a nature referred to in Section 53A of the transfer of property Act. In the case on hand, part performance of a contract has taken place and possession has been handed over. Under these circumstances, the claim of the appellant that alleged land has been transferred, has to be accepted. In view of the aforesaid facts, discussions and judicial decisions cited, it is ample clear that the alleged land sold is of rural agricultural in nature and does not constitute to be a capital asset u/s 2(14) of the Act. Therefore, any transfer u/s 2(47) of such assets other than capital asset defined u/s 2(14) does not warrant for any capital gains. Therefore, I find no reason to sustain the addition made of Rs. 1,73,31,135/- on account of long term capital gains in the hands of the appellant. Since, the character of the land as decided above is of agricultural in nature and there arose no capital gain in the sale transactions held, therefore, other remaining two issues related to the AY of transfer and the claim of deductions u/s 54B and 54F become infructuous/null and void at this juncture. In view of the above, the addition made of Rs. 1,73,31,135/- is deleted and the ground no.2 of the appeal is accordingly **allowed**.

7. Ground No.3 :- This ground is an alternate ground to the Ground no.2, wherein, the appellant contended that no benefit u/s 54B and 54F of the Act was provided for the investments made in purchasing of agricultural land and construction of a residential house by the AO. Since, ground no.2 of the appeal has already been adjudicated in preceding paras allowing the contention of the appellant, therefore, this alternate ground needs no separate adjudication. In view of this, this ground is treated as dismissed for statistical purposes.
8. Ground no. 4 :- The AR of the appellant, vide submission dated 12/09/2016 stated as under:-
- “At the outset, your appellant wish to state that considering the smallness of the amount, your appellant do not intend to press ground no. 4 and pray before your honor to allow the appellant to withdraw the ground.”*
- In view of the above, these grounds are treated as **dismissed** being withdrawn.
9. In the result, the appeal is **partly allowed**.

(टि.विजयभास्कररेड्डी )  
आयकरआयुक्त(अपील)-7,पुणे

Copy to:-

1. The Pr. CIT- 4  
(Erstwhile Pr. CIT-6, Pune's Jurisdiction is merged with the Pr. CIT-4, Pune vide notification No. 63/2020/F. NO. 187/3/2020-ITA-I dt. 13/08/2020)
2. The Addl./Jt. CIT Range, Pandharpur
3. The ITO Ward-1, Pandharpur
4. Appellant
5. Batch Folder

आयकर आयुक्त(अपील)-7