Sohanlal Sewaram Jaggi (Huf),Mumbai vs Income Tax Officer Ward 41(1)(5), ... on 27 May, 2026

IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH MUMBAI BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER & SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER (Assessment Year :2012-13) Sohanlal Sewaram Vs. Income Tax Officer Jaggi (HUF) Ward 41(1)(5), Mumbai 18 Floor, A Wing th Avanti Apartment, Flank Road Sion (E) Mumbai - 400 022 PAN/GIR No.AAHHS2203Q (Appellant) .. (Respondent) Assessee by Shri Dharan Gandhi Revenue by Shri Swapnil Choudhari, SR. AR Date of Hearing 06/05/2026 Date of Pronouncement 27/05/2026

/ O R D E R PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against the impugned order dated 13.11.2025 passed by the learned Additional Commissioner of Income Tax (Appeals), Bengaluru, arising out of the reassessment order passed under section 143(3) read with section 147 of the Income-tax Act, 1961 for the assessment year 2012-13. The assessee is mainly aggrieved by the action of the Assessing Officer in treating the land sold by the Sohanlal Sewaram Jaggi (HUF) assessee as "capital asset" within the meaning of section 2(14) of the Act and consequently bringing the alleged gains arising from transfer thereof to tax under the head "Capital Gains", which action has been affirmed by the learned CIT(A).

2. The brief facts borne out from the records are that the assessee, namely Sohanlal Sewaram Jaggi (HUF), along with co-owners, had transferred land situated at Village Wada Bolhai, Taluka Haveli, District Pune, forming part of Gat No.831/2. During the course of reassessment proceedings initiated under section 147, the Assessing Officer examined the nature and character of the said land and formed an opinion that the same was liable to capital gains tax. According to the Assessing Officer, though the assessee had relied upon 7/12 extracts and revenue records showing the land as agricultural land, however, mere classification in revenue records was not conclusive and actual user of the land was equally important. The Assessing Officer observed that no substantial agricultural income had been reflected in the return of income and no documentary evidence such as sale of agricultural produce, cultivation expenses, irrigation expenditure, labour payments or crop sale receipts had been produced. On this basis, the Assessing Officer inferred that no genuine agricultural operations were being carried out on the land.

3. The Assessing Officer further observed that the land possessed substantial commercial potential considering its proximity to Pune city and according to him the transaction itself indicated commercial exploitation rather than agricultural use. He referred Sohanlal Sewaram Jaggi (HUF) to certain judicial precedents wherein courts had observed that mere classification in revenue records would not be determinative if surrounding circumstances indicated otherwise. The Assessing Officer therefore held that the assessee had failed to discharge the burden of proving that the land

retained agricultural character and accordingly treated the same as "capital asset" within the meaning of section 2(14) of the Act. Consequently, long-term capital gain amounting to Rs.49,04,000/- was brought to tax.

4. Before the learned CIT(A), the assessee vehemently challenged the action of the Assessing Officer and submitted that the authorities below had fundamentally misconstrued the scope and interpretation of section 2(14)(iii). It was submitted that the impugned land was situated approximately 17 to 18 kilometers away from the municipal limits of Pune and therefore beyond the notified urban limits contemplated under section 2(14)(iii). It was further submitted that the land consistently remained agricultural land in official revenue records including 7/12 extracts; no permission for non-agricultural conversion had ever been obtained either by the assessee or purchaser; the land fell within "No Development Zone"; surrounding areas continued to remain rural and agricultural; and even the purchaser continued agricultural activities after purchase.

5. The assessee further relied upon contemporaneous survey records and 7/12 extracts recording cultivation of Bajra crop and other agricultural produce on the land. A detailed affidavit was also filed by Shri Sohanlal Sewaram Jaggi explaining that due to Sohanlal Sewaram Jaggi (HUF) advanced age and practical difficulties, the co-owners themselves were unable to physically supervise cultivation operations and therefore local caretakers attended the agricultural activities and retained the negligible produce against maintenance expenses. It was specifically contended that absence of reflected agricultural income in the return cannot by itself destroy the agricultural character of the land. The assessee further submitted that the authorities below had erroneously imported into section 2(14)(iii) the conditions specifically contained in section 54B and section 10(37), which was legally impermissible.

6. However, the learned CIT(A) did not accept the submissions of the assessee. The learned CIT(A), after referring to several judicial precedents, held that actual agricultural use of the land constituted an important and relevant factor while determining agricultural character. According to the learned CIT(A), except for revenue records, the assessee had failed to furnish convincing evidence demonstrating actual agricultural operations during the relevant period. The learned CIT(A) further observed that no substantial agricultural income was shown and no contemporaneous evidence of cultivation expenditure or agricultural produce was furnished. The learned CIT(A) therefore concurred with the Assessing Officer that the assessee had failed to establish that the land retained agricultural character and accordingly confirmed the addition made by the Assessing Officer.

7. Before us, the learned counsel appearing on behalf of the assessee took us extensively through the statutory provisions, Sohanlal Sewaram Jaggi (HUF) legislative history, CBDT circulars and the entire judicial evolution governing the concept of "agricultural land" under the Income-tax Act. It was vehemently argued

that the authorities below had fundamentally erred in law by reading into section 2(14)(iii) a condition of actual agricultural user which Parliament itself consciously omitted. The learned counsel submitted that section 2(14)(iii), post amendment by Finance Act, 1970, consciously shifted the legislative focus towards objective geographical and municipal criteria and therefore once the land admittedly falls beyond the prescribed municipal limits and continues to retain agricultural character in revenue records, the same cannot be treated as capital asset merely because agricultural income was not separately reflected.

8. The learned counsel further submitted that wherever Parliament intended to impose a condition of actual agricultural use, it expressly incorporated the same in the statutory provision itself. In this regard, he drew our attention to section 54B which specifically uses the expression "was being used for agricultural purposes" during the two years immediately preceding transfer.

Likewise, section 10(37) also expressly requires actual agricultural use during the preceding two years. It was therefore submitted that the conscious omission of such phraseology in section 2(14)(iii) clearly demonstrates legislative intent that actual agricultural operations are not a mandatory statutory condition under section 2(14)(iii). According to him, agricultural user may at best constitute one relevant evidentiary circumstance but cannot override the statutory scheme consciously enacted by Parliament.

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9. Ld. Counsel was directed to give decision both in favour and against the assessee and the decision in the context of old unamended law, amendment made by the Finance Act, 1970, various provisions of the Act and other judgments in favour. In response, the ld. Counsel had submitted as under:-

"1) Position prior to the Finance Act, 1970 - definition of capital asset and exemption under section 47

a) Prior to the amendment by the Finance Act, 1970, the definition of "capital asset" in section 2(14) excluded agricultural land in India.

There was no statutory distinction based on municipal location, population, or notified distance.

Extract of Section 2(14)(iii) before amendment read thus:

"(14) capital asset means-

(a) but does not include-

(1)....

(iii) agricultural land in India"

b) Further, section 47(viii) read thus:

"47. Nothing contained in section 45 shall apply to the following transfers

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viii) any transfer of agricultural land in India"

c) Thus, capital gain on transfer of agricultural land was not taxable

2) Decisions in the context of old unamended law The said section was subject matter of interpretation by Courts in India including various High Courts and Supreme Court. The decisions of the Hon'ble Supreme Court are referred, as the same are conclusive in this regard, are brought out hereunder:

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a) Commissioner of Wealth-tax v. Officer-in-Charge (Court of Wards) [1976] 105 ITR 133 (SC)

i) Statute/Provision: Wealth-tax Act, 1957, section 2(e) ii) Relevant findings "For the reasons already given, we do not think that the term "agricultural land" had such a wide scope as the Full Bench appears to have given it for the purposes of the Act we have before us. We agree that the determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose, It is not the mere potentiality, which will only affect its valuation as part of "assets", but its actual condition and intended user which has to be seen for purposes of exemption from wealth-tax. One of the objects of the exemption seemed to be to encourage cultivation or actual utilisation of land for agricultural purposes. If there is neither anything in its condition, nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with an agricultural purpose, the land could not be "agricultural land" for the purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence. We do not think that all these considerations were kept in view by the taxing authorities in deciding the question of fact which was really for the assessing authorities to determine having regard to all the relevant evidence and the law laid down by this court. The High Court should have sent back the case to the assessing authorities for deciding the question of fact after stating the law correctly."

b) Smt. Sarifabibi Mohmed Ibrahim v. CIT [1993] 204 ITR 631 (SC)

i) Statute/Provision: Income-tax Act, 1961, section 2(14) read with section

ii) Facts: The assessees sold land situated within municipal limits, about one kilometre from Surat railway station. Though the land remained entered as agricultural in revenue records and land revenue was paid, it had not been cultivated for about four years. It had been agreed to be sold to a housing co-operative society, Sohanlal Sewaram Jaggi (HUF) permission for such transfer had been obtained under tenancy law, and construction commenced almost immediately after sale.

iii) The Supreme Court held that whether land is agricultural is a question of fact on cumulative consideration of all circumstances. It approved the Gujarat High Court's 13-factor test in CIT v. Siddharth J. Desai and, on the facts, held that the land was not agricultural land at the time of sale. This remains the leading authority on the proposition that revenue records are relevant but not conclusivé.

iv) Relevant findings:

"8. The sale-deeds concerned herein were executed in the month of May 1969. By virtue of clause (viii) in section 47 of the Act-which clause was inserted by the Finance Act, 1970 with effect from 1-4-

1970-"any transfer of agricultural land in India effected before the 1-3-1970' is exempt from the levy of capital gains tax. By the very same Finance Act, it may be mentioned, agricultural lands situated within the jurisdiction of municipalities and within a radius of 8 kms of such municipalities as may be specified in that behalf by the Central Government (sub-clauses (a) and (b) in clause (iii) of the definition of 'Capital asset" in section 2 (14) of the Act) were excluded from the purview of agricultural land but again with effect from 1-4-1970. Inasmuch as the land concerned herein was sold in May 1969, it does not fall within the mischief of the said sub- clauses (a) and (b) in clause (ill) of section 2(24). If it was agricultural land, it is exempt from capital gains tax notwithstanding the fact that it is situated within the jurisdiction of a municipality.

9. Whether a land is an agricultural land or not is essentially a question of fact. Several tests have been evolved in the decisions of this Court and the High Courts, but all of them are more in the nature of guidelines. The question has to be answered in each case having regard to the facts and circumstances of that case. There may be factors both for and against a particular point of view. The Court has to answer the question on a consideration of all of them a process of evaluation. The inference has to be drawn on a cumulative consideration of all the relevant facts.

16. Now, we may consider the various circumstances appearing for and against the appellant's case. The facts in their favour are: land being registered as agricultural land in the Revenue records, payment of land revenue in respect thereof till the year 1968-69:

absence of any evidence that it was put to any non-agricultural use Sohanlal Sewaram Jaggi (HUF) by the appellants, that the land was actually cultivated till and including the agricultural year 1964-65: that there were agricultural lands abutting the said land and that the appellants had no other source of income except the income from the said land. As against the above facts, the facts appearing against their case are: the land was situated within the municipal limits it was situated at a distance of one kilometer from the Surat railway station; the land was not being cultivated from the year 1965-66 until it was sold in 1969; the appellants had entered into an agreement sale with a Housing Co-operative Society to sell the said land for an avowed non-agricultural purpose, namely, construction of houses; they had applied in June 1968 and March 1969 for permission to sell the said land for non-agricultural purposes under section 63 of the Bombay Tenancy and Agricultural Lands Act and obtained the same on 22-4-1969; soon after obtaining the said permission they executed sale-deeds in the following month, i.e., in May 1969; the land was sold at the rate of Rs. 23 per sq. yd. and the purchaser-society commenced construction operations within three days of purchase. What is the inference that flows from a cumulative consideration of all the aforesaid contending facts? This question has to be answered keeping the criteria evolved in Begumpet Palace's case (supra) set out hereinbefore. In our opinion, the entering into the agreement to sell the land for housing purposes, the applying and obtaining the permission to sell the land for non-agricultural purposes under section 63 and its sale soon thereafter and the fact that the land was not cultivated for a period of four years prior to its sale coupled with its location, the price at which it was sold do outweigh the circumstances appearing in favour of the appellants' case. The aforesaid facts de establish that the land was not an agricultural land when it was sold. The appellants had no intention to bring it under cultivation at any time after 1965-66 certainly not after they entered into the agreement to sell the same to a Housing Co-operative Society. Though a formal permission under section 65 of the Bombay Land Revenue Code was not obtained by the appellants, yet their intention is clear from the fact of their application for permission to sell it for a non-agricultural purpose under section 63 of the Bombay Tenancy Agricultural Lands Act."

3) The decision in case of Sarifabibi (supra) has categorically decided the issues, by not applying the amendment as carried out by Finance Act, 1970. The Hon'ble Supreme Court has consciously not interpreted the term "agricultural land" under the amended law. It is therefore, submitted that the term "agricultural land has to be understood in terms of amendment after Finance Act, 1970.

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4) Amendment by Finance Act, 1970: location/population-based shift; and connected amendments

a) The Finance Act, 1970 changed the concept of agricultural land under the Income-tax Act. The amendment made the exclusion location-based and population-based. There were three

amendments. Section 2(14)(iii) was amended, along with section 47 and insertion of section 54B. The same are brought out hereunder Section 2(14)(iii) "(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 this behalf by notification in the Official Gazette,"

> Section 47 "(viii) any transfer of agricultural land in India effected before the 1st day of March, 1970, Section 54B Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.
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> "54B. Where the capital gain arises from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes, and the assessee has, withih a period of two years after that date, purchased any other land for being used for agricultural purposes, Sohanlal Sewaram Jaggi (HUF) then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say-
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> (1) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year, and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or
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> (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45, and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced by the amount of the capital gain."

b) CBDT Circular No. 45 dated 02.09.1970 explains the amendment.

Paragraph 30 explains this.

"30. Prior to the amendment made by the Finance Act, 1970, the definition of the term "capital asset" in section 2(14) excluded from its scope, inter alia, agricultural land in India. Accordingly, no liability to tax arose on gains derived from transfer of agricultural land in India. This exemption of agricultural land from the scope of levy of tax on capital gains has a historical origin and is not due to any bar in the Constitution on the competence of Parliament to legislate for such levy. Agricultural land situated in municipal and other urban areas is essentially similar to non-agricultural land in such areas in its potentialities for use due to the progress of urbanisation and industrialisation. The Finance Act, 1970 has, accordingly, amended the relevant provisions of the Income-tax Act so as to bring within the scope of taxation capital gains arising from the transfer of agricultural land situated in certain areas. For this purpose, the definition of the term "capital asset" in section 2(14) has been amended so as to exclude from its scope only agricultural land in India which is not situate in any area comprised within the jurisdiction of a municipality or cantonment board and which has a population of not less than ten thousand persons according to the last preceding census for which the relevant figures have been published before the first day of the previous Year. The Central Government has been authorised to Sohanlal Sewaram Jaggi (HUF) notify in the Official Gazette any area outside the limits of any municipality or cantonment board having a population of not less than ten thousand up to a maximum distance of 8 kilometres from such limits, for the purposes of this provision. Such notification will be issued by the Central Government, having regard to the extent of, and scope for, urbanisation of such area, and, when any such area is notified by the Central Government, agricultural land situated within such area will stand included within the term "capital asset" Agricultural land situated in rural areas, Le., areas outside any municipality or cantonment board having a population of not less than ten thousand and also beyond the distance notified by the Central Government from the limits of any such municipality or cantonment board, will continue to be excluded from the term "capital asset"," c) Thus, the 1970 amendment shifted the concept from a broad exclusion of all agricultural land to a more targeted taxation of urban and peri-urban agricultural land.

d) The same circular explains the insertion of section 54B. Paragraph 32 notes the same as under

"32. The effect of the amendments to section 2(14) and section 47, as stated above, will be that capital gains arising from transfer of agricultural lands situated in the municipal and other urban areas on or after 1-3-1970, will become liable to taxation even where such land was held for bona fide agricultural purposes, often as the main source of livelihood. With a view to relieving the burden of taxation on the capital gains in such cases, a provision has been made, in a new section 54B, for exempting from tax the capital gain arising from the transfer of agricultural land in certain circumstances. Under the new section 54B, where the capital gain arises from transfer of land which in the two years immediately preceding the date of transfer

> was being used by the assessee or a parent of his for agricultural purposes, and the assessee has, within a period of two years after that date purchased any other land (whether in the same area or elsewhere) for being used for agricultural purposes, then the capital gain will not be charged to tax to the extent that it has been utilised for acquiring the fresh land. Where the amount of the capital gain exceeds the cost of acquisition of the fresh land, only the excess will be chargeable to tax. The concession will, however, be forfeited if the assessee transfers the fresh land acquired by him within a period of three years from the date of its purchase."

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e) The amendment to section 47 was part of the same scheme. As already noted, section 47 specifically protected transfers of agricultural land in India effected before 1-3-1970.

5) Insertion of section 10(37)

a) Though not part of the 1970 amendment, section 10(37) was later inserted by the Finance (No. 2) Act, 2004, with effect from 1-4- 2005. The attached CBDT Circular No. 36/2016, para 1, records that section 10(37) grants specific exemption for capital gains arising from compulsory acquisition of certain agricultural land situated in specified urban areas, again subject to conditions including actual agricultural use. "13. Providing for exemption on capital gains arising from compulsory acquisition of agricultural land situated within specified urban limits Section 10 of the Income-tax Act, 1961, relates to incomes which do not form part of total income.

In order to provide relief to the farmers, a new clause (37) has been inserted in section 10 providing exemption on capital gains arising to a Hindu undivided family or to an individual from the transfer of agricultural land (being capital asset within the meaning of clause (14) of section 2) by way of compulsory acquisition under any law or under a transfer of such land, the consideration for which is determined or approved by the Central Government or the Reserve Bank of India. Such exemption shall be available where the compensation/enhanced compensation / enhanced consideration consideration has been received on or after Ist April, 2004, and such land, during the period of two years immediately preceding the date of transfer was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his.

6) User requirement in section 2(1A) and Explanation inserted by Finance Act, 1989

a) Under section 2(1A), "agricultural income" includes rent or revenue derived from land which is situated in India and used for agricultural purposes. Thus, the statutory text itself imposes a user requirement.

b) This position was further clarified by the Finance Act, 1989, by insertion of an Explanation to section 2(1A) with retrospective effect from 1-4-1970. This is explained in CBDT Circular No. 550 dated 01.01.1990, para 10.1 to 10.3. Paragraph 10.1 notes the controversy created by some court decisions holding that profits Sohanlal Sewaram Jaggi (HUF) from sale of agricultural land

constituted agricultural income. Paragraph 10.2 explains that the Explanation was inserted to clarify that capital gains arising from transfer of agricultural land referred to in section 2(14)(iii)(a) / (b) would not constitute "revenue" within the meaning of section 2(IA)(a) Paragraph 10.3 states that the amendment operates retrospectively from 1-4-1970.

7) User requirement in section 54B, section 10(37) and 2(IA) but not in section 2(14)(iii)

a) This distinction is vital. Section 2(14)(iii) excludes agricultural land from capital asset on the basis of location and population, subject to the statutory exceptions in clauses (a) and (b). There is no express statutory requirement in section 2(14)(iii) that the land must have been used for agricultural purposes in the two years immediately preceding the transfer.

b) By contrast, section 54B specifically imposes such a requirement.

Section 54B applies when the capital gain arises from transfer of land which in the two years immediately preceding the date of transfer was being used by the assessee or parent for agricultural purposes.

c) Likewise, section 10(37) expressly requires, in clause (ii), that the land during the period of two years immediately preceding the date of transfer was being used for agricultural purposes.

d) The significance of this legislative drafting difference is important to note. When the law amended section 2(14) at the same time section 54B was inserted, but the user requirement was consciously inserted in section 54B and not in section 2(14).

8) Judgments in context of new law and for the subsequent years Judgments in favour user of land is not necessary for section 2(14)(iii)

a) Manubhai A. Sheth v. N.D. Nirgudkar, Second ITO, [1981] 128 ITR 87 (Bom.) /[1980] 4 Taxman 381 (Bom.), r

i) The petitioners challenged the constitutional validity of the amended section 2(14)(iii) bringing certain urban agricultural lands within capital gains. The Bombay High Court held that profits or gains arising from transfer of land actually used for agricultural purposes would amount to agricultural income and that section 2(14)(iii) had to be read down accordingly. It also importantly Sohanlal Sewaram Jaggi (HUF) distinguished the user of the land requirement in section 2(1A) from 2(14)(iii). Though later overruled on constitutional validity by Singhai Rakesh Kumar, the judgment remains historically significant for its reasoning.

ii) Relevant findings:

> "26. The conclusion that capital gains made on sale of agricultural land would be "revenue derived from land" within the meaning of that expression in section 2(1)(a), is, however, not decisive of the matter. What sub-clause (iii) of section 2(14) speaks of

is "agricultural land in India", while the words used in section 2(1)(a)are "land which is situated in India and is used for agricultural purposes". Thus, there are two qualifications to the word "land" in section 2(1)(a), namely, (1) the land must be situated in India, and (2)the land must be used for agricultural purposes. The first qualification, namely, with respect to the location of the land in India, is the same as in section 2(14)(iii) and need not trouble us, but the question which arises is whether land which is used for agricultural purposes is the same as agricultural land. It is obvious that the land which is used for agricultural purposes is agricultural land. But is the converse true? Is agricultural land the same as land which is used for agricultural purposes ? It is not that agricultural land must always be and always is used for agricultural purposes. Agricultural land can be and is at times used for non-agricultural purposes. In Raja Mustafa Ali Khan v. CIT [1948] 16 ITR 330, the Privy Council held that whether exemption was claimed under section 2(1)(a) or (b)of the 1922 Act, the primary condition must be satisfied that the land "is used for agricultural purposes". The Privy Council further held that unless there was some measure of the cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes within the meaning of the Income-tax Act. In CIT v. Raja Benoy Kumar Sahas Roy (1957) 32 ITR 466, the Supreme Court considered the meaning of the term "agricultural purposes". It held that those operations which the agriculturist had to resort to and which were absolutely necessary for the purpose of effectively raising produce from the land, operations which were to be performed after the produce sprouted from the land such as weeding, digging the soil around the growth, removal of undesirable undergrowth, and all operations which fostered the growth and preservation of the same not only from insects and pests but also from depredation from outside, tending, pruning. cutting, harvesting and rendering the produce fit for the market, would all be agricultural operations when taken in conjunction with Sohanlal Sewaram Jaggi (HUF) the basic operations of agriculture, namely, agriculture in its primary sense denoting the cultivation of the field by tilling of the land, sowing of the seeds and planting and similar operations of the land. The Supreme Court further held that the mere performance of these subsequent operations on the products of the land, where such products had not been raised on the land by the performance of the basic operations, would not be enough to characterise them as agricultural operations, and in order to invest them with the character of agricultural operations, the subsequent operations must necessarily be in conjunction with and in continuation of the basic operations which were the effective cause of the products being raised from the land. The Supreme Court further held that the subsequent operations divorced from the basic operations could not constitute by themselves agricultural operations. According to the Supreme Court, it is only where this integrated activity is undertaken and performed in regard to any land that the land can be said to have been used for "agricultural purposes" and the income therefrom said to be "agricultural income"

derived from the land by agriculture under section 2(1)(a) of the Indian Income-tax Act, 1922. The question before the Supreme Court in that case was whether income derived from certain forest land was income derived from land which was used for agricultural purposes by agriculturist and therefore, agricultural income within the meaning of section 2(1)(b). Thus, unless agricultural operations are carried upon the land in the sense defined by the Privy Council and the Supreme Court in the above cases, land cannot be said to have been used for agricultural purposes even though it may be agricultural land."

b) Ashok Chaganlal Thakkar v. National Faceless Assessment Centre [2024] 466 ITR 726 (Bom.)

1) Assessment Year: 2013-14

ii) The assessee produced official certificates and village-level records showing the land sold was agricultural. The AO rejected the claim due to absence of evidence of actual agricultural operations. The Bombay High Court held that the AO failed to verify the documentary evidence and explicitly accepted the proposition that actual agricultural operations are not a necessary condition under section 2(14). It further distinguished section 2(14) from sections 54B and 10(37), which expressly require user.

iii) Relevant findings.

Sohanlal Sewaram Jaggi (HUF) "3. Aggrieved by the order of CIT (A), petitioner preferred an appeal before the Income-tax Appellate Tribunal (ITAT). No appeal was filed by the Revenue or any cross objection filed. Therefore, the finding of the CIT (A) that actual carrying on of agricultural operations is not a necessary condition for deciding that a particular parcel of land was agricultural land, has attained finality. In our view also, in the facts and circumstances of this case, actual carrying on of agricultural operation may not be necessary condition. We say this because it is petitioner's claim that the agricultural land sold was not within the jurisdiction of municipality or municipal corporation or notified area committee or town area committee or town committee or a cantonment board and which has a population of not less than ten thousand. The only requirement was to see whether this fact as alleged by petitioner was correct....

8. Mr. Sharma submitted that because the ITAT has directed the AO to adjudicate de novo, the AO was entitled to disregard the findings of the CIT(A) in its entirety. We do not agree with Mr. Sharma's submission that the AO was being directed to deal with the entire matter on its own merits. The order of the ITAT must be read and understood in the proper context and in law. All that is stated in the order itself. There was considerable force in the submission of Mr. Jain that the order must be read as restricting the scope of the AO only to question the evidence filed by petitioner and nothing more, and to ascertain whether the land would not be covered under definition of capital asset as stated in Section 2(14)(iii) of the Act. Moreover, the ITAT has not disturbed the findings of the CIT(A) that actual carrying on of agricultural operation is not a necessary condition for deciding that a particular parcel of land was agricultural land. As noted earlier, we agree with the opinion of the CIT(A) in this regard because Section 45(1) of the Act reads as under:

None of these provisions require that it has to be used for agricultural purpose. Only Section 10(37) and Section 54B of the Act provide for agricultural activity to be carried out and these sections read as under:

Section 10(37): In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

It is nobody's case that petitioner's case falls under these two categories. Further, the ITAT has in its order stated "..... It is evident, the Revenue authorities have not conducted any enquiry to verify the nature of land sold by the assessee, whether agricultural or otherwise. In fact, Sohanlal Sewaram Jaggi (HUF) the evidences furnished by the assessee have not at all been examined in proper perspective file of the Assessing Officer for de novo adjudication after examining the evidences and restore the issue to the filed by the assessee and conducting enquiry, if necessary, with the concerned authorities of the Government to find out the true nature and character of the land sold. Only after the Assessing Officer comes to a conclusion on the basis of material brought on record that the lands sold by the assessee are not in the nature of agricultural land, hence, come within the purview of "Capital Asset" as defined u/s 2(14) of the Act. then the question of applicability of section 50C of the Act would arise." Therefore, it is obvious that the matter has been restored to the AO only to examine the evidence filed by petitioner and conducting enquiry, if necessary, with the concerned authorities of the Government to find out the true nature and character of the land sold and only if the AO comes to a conclusion on the basis of material brought on record that the lands sold by petitioner are not in the nature of agricultural land, can he come to conclusion that the land would come within the purview of "capital asset" as defined under section 2(14) of the Act.

9. In the circumstances, we hereby quash and set aside the impugned order dated 24th March 2022 and remand the matter for passing the fresh assessment order. The AO will only examine whether the evidence brought on record to establish the claim that the lands sold are in the nature of agricultural land, was authentic. If the AO has to reject the evidence filed by petitioner, he shall bring contrary material on record. For that, the AO has to conduct an enquiry to ascertain the authenticity of the certificates filed by petitioner. The AO may take such steps as required by conducting necessary enquiry with the concerned Government authorities. The contention of petitioner cannot be rejected purely on presumption that the lands sold were not an agricultural lands because petitioner sold the parcels of lands within two years of purchase. I the AO is satisfied that the parcels of land actually are not situated in an area which will fall under Section 2(14)(iii), the AO shall proceed on the basis that in the facts and circumstances of the case, actual carrying on of agricultural operation is not a necessary condition for deciding that the parcels of lands were agricultural lands."

c) Mrs. Sakunthala Vedachalam v. ACIT [2014] 369 ITR 558 (Mad.)

i) The assessees sold lands and claimed exemption on the basis that they were agricultural. The Tribunal doubted the claim because neighbouring lands had been used for commercial plotting. The Madras High Court rejected that approach and held that once the lands were classified in the revenue records as agricultural and otherwise satisfied section 2(14), the Tribunal could not deny exemption based on use of adjacent lands.

Sohanlal Sewaram Jaggi (HUF)

ii) Relevant findings:

> "8. Per contra, learned Standing Counsel appearing for the Revenue submits that that there were no agricultural operations prior to the date of sale. Hence, the lands are not agricultural in nature. Accordingly, the Tribunal is correct in coming to the conclusion that the assessees are not eligible for exemption....
>
> 18. The plea of the learned standing counsel appearing for the Revenue that there was no agricultural operations prior to the date of sale is of no avall as the definition under Section 2(14) of the Income Tax Act has the answer to such a plea raised. Further more, it is also on record that the lands are agricultural lands classified as dry lands, for which kist has been paid."

d) PCIT v. K.P.R. Developers Ltd. [2020] 274 taxmann 449(Mad.)

i) Assessment Year: 2011-12

ii) The Revenue argued that land was not agricultural because no agricultural operations were being carried on. The Tahsildar produced computerized pattas showing the land as wet land. The Madras High Court held that the patta carried a presumption of correctness and that the land did not cease to be agricultural merely because agricultural activity could not be carried on during certain periods.

iii) Relevant findings:

> 2"
>
> ii. Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in holding that the lands in question sold by the company are "agricultural" when it is on record and not in dispute that no agricultural activity whatsoever was carried out by the assessee from the Financial Year 2005-06 onwards?
>
> 3. There is a presumption to the validity of such official document and if a party states that the entry is incorrect or the document is false, the onus is on the party to prove the same. There is no allegation made by the Assessing Officer that the patta, copy of which was furnished by the Tahsildar, is a bogus patta. Even going by the

> Adangal extracts, which were furnished by the VAO, on being summoned under section 131 of the Act, we find that in column no. 19 of the Adangal extract, the land has been described as "Tharisu". Therefore, even going by the subsequent Sohanlal Sewaram Jaggi (HUF) records, the character of the land is not stated to be non agriculture. A land, which is an agricultural land, at many at times, cannot be put to use for agricultural purposes. Merely because an agriculture activity could not be carried on for various reasons including natural causes, it will not cease to be an agricultural land. In the instant case, the CIT(A) and the Tribunal have done an elaborate exercise, assessed the documents placed before it and given a categorical finding that the land continues to remain as an agricultural land. Apart from that, the land in question upon being mansferred to the purchaser, seil contract remate an agricultural land. Therefore, we cannot be called upon to examine the factual findings recorded by the Tribunal while affirming the factual findings rendered by the CIT(A) as if we are third appellate authority. A similar view was taken in the case of CIT(A) v. P. Ashok Kumar, T.CA.No.268 of 2011, dated 2-1- 2018"

e) Hindustan Industrial Resources Ltd. v. ACIT (2011) 335 ITR 77 (Delhi)

i) The Delhi High Court held that mere intention to use the land for industrial purpose did not alter its agricultural nature, especially when on the date of acquisition the character of the land remained agricultural and no actual change had taken place. The Court emphasized that absence of agricultural operations by the company did not by itself convert the land into non-agricultural land.

1) Relevant findings:

> 9. Having considered the arguments advanced by the counsel for the parties, we are of the view that the assessee's contentions deserve to be upheld and the findings returned by the Income-tax Appellate Tribunal ought to be reversed. We are conscious that we are not merely reversing a finding of fact, what we are intending to do is to point out that the Tribunal's finding of fact is contrary to its own record and, therefore, is in the realm of perversity. This is so because the Tribunal clearly held that at the point of time when the assessee purchased the said land, it was agricultural land. There is no dispute with regard to this. The Tribunal also noted that the Award passed on 1-4-1992 by the District Collector (Land Acquisition). Greater Noida, Bulandshar, was a document which established beyond doubt that the land in question was agricultural land. Thus, on the date of purchase, the land in question was agricultural land and on the date of acquisition, the character of the land continued to be agricultural. When these two clear findings have been returned. it is apparent that in the transitional period, that is, between purchase and acquisition, the Sohanlal Sewaram Jaggi (HUF) nature and character of the land did not change. The fact that the appellant/assessee intended to use the land for industrial purposes did not in any way alter the nature and character of the land. The further fact that the appellant/assessee did not carry out any agricultural operations did not also result in any conversion of the agricultural land into an industrial land. It is nobody's case that

> the appellant/assessee carried out any operations for setting up any plant or machinery or of the like nature so as to lead to an inference that the nature and character of the land had been changed from agricultural to industrial. The mere fact that the appellant/assessee did not carry out any agricultural operation did not alter the nature and character of the land. In any event, this discussion is not relevant in the backdrop of the clear finding given by the Tribunal that on the date of the purchase and an also on the date of acquisition, the land in question was agricultural land Having come to much a concherion, the Tribunal ought not to have gone into question of intention of the appellant intressee and definitely not into the question of intention of the land acquiring authority, the latter being a wholly irrelevant consideration."

f) PCIT v. P.S. Raghupathy [2018] 96 taxmann.com 200 (Mad.) Assessment Year: 2007-08

ii) The assessee sold land used as a nursery. The Revenue contended that the assessee had not established agricultural operations. The Tribunal found the land to be agricultural from revenue records and distance criteria, and the High Court refused to interfere, bolding that the Tribunal's view was a pure finding of fact.

in) Relevant findings:

> "9. Based on the evidence on record, the learned Tribunal which is a fact finding body arrived at the factual finding that the land in question was agricultural land. which did not attract capital gains. A perusal of the definition of "capital asset" in Section 2(14) of the Income Tax Act makes it amply clear that capital asset does not inchade agricultural land, except for agricultural land exempted under Clauses (a) and (b) of Section 2(14)(iii) of the Income Tax Act. The learned Tribunal, in effect and in substance, held that the land in question did not come within any of the exceptions to the definition of agricultural land enumerated in Section 2(14)(iii) of the Income Tax Act.
>
> Sohanlal Sewaram Jaggi (HUF)
>
> 18. Mr. T.R. Senthil Kumar, emphatically argued that the Assessing Officer arrived at his finding based on the fact that the land in question had been classified in the records of the Sub Registrar Office as revenue land. However, as would appear from the order of the assessment itself, it was classified as agricultural land in the revenue records. Even otherwise, the learned Tribunal had looked into the relevant materials including the revenue records, as also records which indicate that the respondent assessee ran a Nursery.
>
> 19. The learned Tribunal was of the view that whether there was agricultural income or not was not relevant. No fault can be found with the reasoning of the learned Tribunal. The fact that there was loss and not income could not have made any

difference to the nature and character of the land."

g) CIT v. Smt. Debbie Alemao [2011] 331 ITR 59 (Bom.)

i) The assessees purchased land as agricultural land and sold it later to a resort company. The Revenue argued that it was not agricultural land because there was no agricultural income shown and the land had non-agricultural potential. The Bombay High Court held that the land was agricultural because it was entered as such in the revenue records, and the assessees had obtained no permission for non-agricultural use. The Court also held that absence of surplus agricultural income did not matter since the produce may only have been sufficient to maintain the land.

ii) Relevant findings:

> "5. Under section 260A of the Income-tax Act, it is not open to the High Court to interfere in the finding of the fact. The finding of fact that could be interfered only if it was arrived at by application of wrong principles of law or was perverse, le., to say that no prudent man versed in law would come to the said finding. In our view, the finding is neither perverse nor is it arrived at by wrong application of any principle of law and it is not open for us to interfere in the possible finding of fact in an appeal under section 2604 of the Income-tax Act. The Assessing Officer has noted that the said land was entered in the revenue record as an agricultural land. i.e.. garden or orchard. The ITAT also held that the land was recorded in the revenue records as an agricultural land. This is not disputed by the revenue. It is however contended that the land was not actually used for agriculture inasmuch as no agricultural income was derived from this land and was not shown by the respondents Sohanlal Sewaram Jaggi (HUF) in their Income-tax return. This was explained by the respondents by saying that there were coconut trees in the land but the agricultural income derived by sale of the coconuts was just enough to maintain the land and there was no actual surplus. Hence, no agricultural income was shown from this land. In our opinion, if an agricultural operation does not result in generation of surplus that cannot be a ground to say that the land was not used for the agricultural purpose. It is not disputed that the land was shown in the revenue record to be used for agricultural purpose and no permission was ever obtained for non-agricultural use by the respondents. Section 30 of the Goa, Daman and Diu Land Revenue Code, 1968 provides that no land used for agriculture shall be used for any non-agricultural purpose and no land assessed for one non- agricultural purpose shall be used for any other non-agricultural purpose except with the permission of the Collector. Section 32 of the Goa, Daman and Diu Land Revenue Code prescribes the procedure for conversion of use of land from one purpose to another including conversion from agricultural purpose to non-agricultural purpose. The permission for non-agricultural use was obtained for the first time by the Varca Holiday Beach Resort Private Limited the purchaser after it purchased the land. Thus, the finding recorded by the two authorities below that the land was used for the purpose of agriculture is based on appreciation of evidence and by application of correct

> principles of law. The Tribunal has relied upon two unreported decisions of this Court in CIT v. Minguel Chandra Pais/Smt. Maria Leila Tovar Furtado [2006] 282 ITR 6181 which involved identical issue. In those appeals, this Court has upheld the order of the Tribunal holding that the land was agricultural land and its sale did not invite the payment of capital gain. It is not disputed before us that the facts of the sald cares were similar to the facts of the present case. We are bound by the decision in those cases.
>
> h) CIT v. Minguel Chandra Pais [2006] 282 ITR 618/[2005] 149 Taxman 131 (Bom.) by noting as under-
>
> 1) "The AO has noted that the said land was entered in the revenue record as an agricultural land te garden or orchard. It is contended by the revenue that the land was not achially used for agriculture in as much as no agricultural income was derived from this land and was not shown by the respondents in their Income Tax Return, This was explained by saying that there were coconut trees in the land but the agricultural income derived by sale of coconut was just enough to maintain the land and there was no actual surplus, hence, no agricultural income was shown from this land. In our Sohanlal Sewaram Jaggi (HUF) opinion, if an agricultural operation does not result in general of surplus that cannot be a ground to say that the land was not used for the agricultural purpose. It is not disputed that the land was shown in the revenue record to be used for agricultural purpose and no permission was ever obtained for non-agricultural purpose by the respondents."

1) Shankar Dalal v. CIT [2017] 247 Taxman 170 (Bom.)

i) Assessment Year: 2007-08

ii) The Revenue argued that the land was not agricultural because regular agricultural activities were not shown and the land was sold to a non-agriculturist. The Bombay High Court held that under the local law "agriculture" included horticulture, grazing and similar activities. It found that fruit-bearing trees had been planted, produce was used for personal consumption, and no NA conversion application had been made. Therefore, the land retained its agricultural character

iii) Relevant findings.

> "16. The tax law is very clear that it requires clear provision and clear facts and defaults and/or act of suppression or inaccurate submissions of facts to avoid tax liability. The case in hand, therefore, requires to be considered in the background of geographical as well as physical conditions of the agriculture property and its use and utilization for the stated "agriculture"

purpose. The agricultural purpose, so defined, under the Code therefore, always remains same one who owns such property and so also the purchaser and/or the third party. Therefore, merely

because the assessees could not produce and/or could not use and utilize the land fully by employing labourers and/or unable to give the crop statements should not have been the criteria, specifically when the assessees and the owners of the land had been using the products for their personal consumption. The whole approach of the Tribunal and the AO is incorrect and unsustainable in law."

j) PCIT v. Anthony John Pereira (2020) 425 ITR 134 (Bom.)

i) Assessment Year: 2011-12

ii) The village in which the land was located had a population of only 5,912. The Bombay High Court held that since one of the Sohanlal Sewaram Jaggi (HUF) conditions in section 2(14)(iii)(a), namely minimum population of 10,000, was absent, the land remained agricultural land.

iii) Relevant findings:

> "15. Therefore, what this provision Le.. Section 2(14)(lli)(a) of the Act contemplates is that capital asset does not include agricultural land. But land would not be treated as agricultural land if it is situated within the jurisdiction of a municipality or a cantonment board and which has a population of not less than 10000. Therefore. inversely speaking, a land which is outside the jurisdiction of a municipality or a cantonment board and which has a population of less than 10000 would come within the ambit of the expression "agricultural land" to be excluded from 'capital asset' The use of the word "and" between the two conditions le.. first condition being not situated within the jurisdiction of a municipality or a cantonment board and second being such area having a population of not less than 10000, to bring the land outside the purview of agricultural land, is indicative of the legislative intent that the two requirements as alluded to hereinabove would have to be read conjunctively. In other words, both the requirements or conditions would have to be fulfilled to bring the land outside the scope and ambit of agricultural land to be treated as capital asset. Otherwise, even if one is not fulfilled or is not present, it would be an agricultural land which would not be included within and treated as capital asset.
>
> 21. Having noted that, we may once again revert back to the requirements of clause (iii)(a) of sub-section (14) to Section-2 of the Act. For land to be excluded from capital asset, it has to be agricultural land in India; such land to be not agricultural must fulfill two conditions viz. it must be land situated in any area which is comprised within the jurisdiction of a municipality or cantonment board and which has a population of not less than 10,000. These two conditions are pre-conditions and must be read conjunctively. In other words, if both the conditions are present then it would not be agricultural land and would be treated as capital asset. However, inversely speaking, if either of the two conditions are absent then the land would be agricultural land and excluded from capital asset. Though we have held the land in question to be within the jurisdiction of a municipality we find the second condition

> to bring the land outside the ambit of agricultural land i.e. that the area has a population which is not less than 10,000 absent. In this connection, Tribunal had considered the census report as well as the population certificate of the village dated 2-6- Sohanlal Sewaram Jaggi (HUF) 2008 and other relevant documents and thereafter returned a finding of fact that at the time of sale, the land in question was situated at village Juchandra, the population of which was 5,912 which is less than the statutory requirement of 10.000. Thus, this condition being absent the sold land was rightly treated as agricultural land, not included within the ambit and meaning of capital asset."

k) CIT v. Venkateswara Hospital [2019] 106 taxmann.com 282 (Mad.);

1) SLP dismissed in [2019] 106 taxmann.com 283 (SC)

ii) Assessment Year: 2012-13

iii) The Tribunal found, based on revenue records, classification as dry land, and payment of kist, that the land was agricultural. The Madras High Court treated that as a factual finding not giving rise to any substantial question of law, and the Supreme Court dismissed the SLP

iv) Relevant findings:

> "5. The Revenue has contended that entry of land in the revenue records as agricultural land would not, in itself, mean that the land was being used for the purpose of agriculture
>
> 6. The question of whether a plot of land is in effect and in substance agricultural land or non agricultural land is a matter of fact. Of course, by reason of deeming provisions contained in law, certain principles may have to be applied for determination of whether a plot of land is agricultural land or non agricultural land.
>
> 7. There can be no doubt that registration simpliciter of a plot of land as agricultural land would not in itself mean that the land was being used for the purpose of agriculture.
>
> 8. The learned Tribunal held "Therefore, the ratio of case laws relied upon by the AO as well as Ld. CIT (A) are not applicable in the assessee's case. The Hon'ble Jurisdictional High Court in the case of Mrs. Sakunthala Veachalam & Mrs. Vanitha Manickavasagam v. ACIT [2014] 369 ITR 558 (Mad.) held that merely because of the adjacent land divided into Plots for sale not a reason that the land sold by the assessee were for the purpose of development of land. Records are showing that the lands are Sohanlal Sewaram Jaggi (HUF) agricultural land, classified as dry land for which Kisthu has been paid and falls far exclusion from the definition of capital asset u/s.2(14) of Income Tax Act. The case laws relied upon by the assessee are squarely

applicable in the assessee's case. Therefore, we hold that the land in question sold by the assessee was agricultural land and cannot be held as capital asset and no capital gains are chargeable and hence we set aside the orders of the lower authorities and the assessee's appeal is allowed."

1) CIT vs. Bolla Ramaiah [1988] 174 ITR 154 (Andhra Pradesh)

i) Assessment Year: 1970-71

ii) The assessees' lands were situated either within municipal limits or within 8 kilometres of municipal limits. The lands had been requisitioned by the Defence authorities under the Requisitioning and Acquisition of Immovable Property Act, 1952. Later, an acquisition notification was published in the Official Gazette on 12.03.1970, though dated 12.02.1970. The Hon'ble Court held that even assuming the lands were agricultural lands, they would still constitute capital assets because they were within the municipal / 8 km area specified in section 2(14)(iii), and then separately states that section 54B relief fails because the lands were not used for agricultural purposes in the two years immediately preceding transfer.

iii) Relevant findings:

"On a combined reading of the above provisions, it is clear that inasmuch as the lands concerned herein have been transferred on 12-3-1970, they are liable to capital gains tax. Our answer to question No. 2, therefore, is that it is unnecessary to go into the question whether the lands concerned herein were agricultural lands or not, on the date of acquisition, because even if they were agricultural lands, they are not exempt from the capital gains tax. Being situate within the municipal limits or within 8 kilometres of the municipal limits, they constitute 'capital asset' for the purpose of assessment year 1970-71, and having been transferred after 1- 3-1970, they are also not entitled to the benefit of clause (viii) of section 47 In this view of the matter, it is unnecessary for us to refer to the test enunciated by the Supreme Court in CWT v. Officer- in-Charge (Court of Wards) [1976] 105 ITR 133 to find out whether a land is an agricultural land, or to apply the said tests to the lands concerned herein.

Sohanlal Sewaram Jaggi (HUF)

11. Now coming to the third question, the contention of the assessee is liable to fail on the simple ground that these lands were not being used by the assessee, or a parent of Ms, for agricultural purposes in the two years immediately preceding the date on which the transfer took place, as required by the said section. Unless this requirement is satisfied, the assessee cannot claim the benefit provided by section 54B, even though he may have purchased another agricultural land within two years of the transfer. Now, admittedly, in all these cases the land concerned was not used by the assessee or his parent, for agricultural purposes. It was under requisition by the Defence Department and in their possession. For this reason, question No. 3 is to

be answered in the negative, i.e., against the assessees and in favour of the revenue."

m) CIT vs. Shree Hanuman Sugar & Industries Ltd. [1992] 195 ITR 625 (Cal)

i) Relevant findings:

"At the hearing, Mr. Dey appearing for the assessee has contended that the facts which have been found by the Tribunal are all findings of fact, and, accordingly, on that basis, the Tribunal came to a correct conclusion. He has drawn our attention to the order parred by the Tribunal which we have already extracted hereinbefore. On the firat question which has been referred to us, the findings of the Tribunal have been challenged. Merely because the assessee produced several varieties of crops on the disputed land, the land would be not treated as agricultural land, nor is the fact of parment of land revenue in respect of the land decisive. Section 2014)(0) which deals with the agricultural land has been amended by the Finance Act. 1970, with effect from the assessment year 1970-71. Before the said amendment, agricultural income arising from the transfer of agricultural land was exempt from tax but, by the amendment, the capital asset being the agricultural land which is situated in the urban areas specified in the sub-clause or in their vicinity notified by the Central Government would come within the purview of the capital gains tax. It was, therefore. absolutely necessary for the Tribunal to find out whether having regard to the amendment effected in section 2(14)(iii), the land in dispute would come within the mischief of the aforesaid amendment or not. Admittedly, the notification was not issued until February 6, 1973, and, therefore, cannot be applied retrospectively to the assessment year in question. In other words, section 2(14)(ill)(b) will have no application to the facts of this case.

Sohanlal Sewaram Jaggi (HUF) However, the Tribunal did not properly apply its mind as to whether section 2(14)(iii)(a) would be applicable or not. We, therefore, answer the first question in the affirmative (sic) and in favour of the Revenue."

n) CIT vs. Surjan Singh [2003] 260 ITR 351 (Delhi)

i) Relevant findings:

"12. In that view of the matter, we feel that section 507 of the DMC Act has no bearing insofar as the applicability of section 2(14)(iii)(a) of the Act is concerned. The relevant portion of the section reads as under "(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"

Sub-clause (a) postulates only two conditions, namely (1) that the agricultural land should be in an area within the municipality, and

(ii) the area should have population of more than 10,000. The controversy which had arisen earlier and now stands resolved was whether it was only the population of the area concerned which was to be taken into account for the purposes of the said clause or the population of the municipality within whose jurisdiction the area falls. Both the said conditions are attracted in respect of the subject land."

o) PCIT v. Heenaben Bhadresh Mehta [2018] 409 ITR 196 (GuJ.)

i) The Revenue treated the profit from sale of agricultural land as business income because it had been sold to an industrial unit and yielded substantial profit. The Gujarat High Court held that purchaser's intention and sale price cannot determine the agricultural character of the land sold by the assessee. What mattered was that the land sold was agricultural land and entered as such in the revenue records.

ii) Relevant findings:

> Sohanlal Sewaram Jaggi (HUF) "7. From the order passed by the Assessing Officer, it appears that the Assessing Officer treated the profit of Rs. 68,18,800/- earned by the assessee from sale of agriculture lands as business income mainly on the grounds that (i) the land was sold to the company, which used the said land for industrial purpose, (ii) that there was a steep rise in the profit and (iii) that the lands were sold within a short span of time. However, it is required to be noted and it is not in dispute that as such, what was sold by the assessee was agriculture land. In the revenue record also, lands were shown as agriculture lands. It is also required to be noted that the agriculture lands in question were sold by the assessee after a period of approximately 15 to 16 months from purchase.
>
> 8. Therefore, on plain reading of Section 2(14) of the Act, if the "agriculture land" as mentioned in Section 2(14)(iii) is sold, the assessee shall be entitled to claim exemption on profit earned on sale of agricultural land as per Section 2(14) read with Section 45 of the Act, unless it is established and proved that the transaction carried out was "adventure in the nature of trade" and the profit thus required to be taxed as business income. On appreciation of evidence, the learned Tribunal has specifically observed and held that the transaction carried out by the assessee was not "adventure in the nature of trade" and therefore, profit earned was not required to be taxed as business income. The aforesaid is the finding recorded by the learned Tribunal on appreciation of evidence.
>
> 9. As observed hereinabove, the land was sold as an agricultural land and in fact, what was sold was agriculture land. What was the intention of the purchaser cannot be the determinative factor to treat the profit earned by the assessee on sale of

agriculture land as business income. Similarly, merely because for whatever reason, the assessee has earned sufficient huge amount of profit also cannot be a ground to treat the profit earned by the assessee on sale of agriculture land as business income

p) CIT v. Harrisons Malayalam Ltd. [2019] 414 ITR 344 (Ker.)

i) The Court held that sale proceeds of rural agricultural land not coming within section 2(14)(iii)(a)/(b) are not agricultural income though the land itself is outside capital asset. Thus, while confirming the exclusion from capital asset, it held that sale proceeds are not "revenue derived from land" for section 115JB purposes.

Sohanlal Sewaram Jaggi (HUF)

ii) Relevant findings:

"23. Again we notice the inclusion of rent or revenue in sub-clause

(a) of Section 2(1A). The words 'revenue derived from land employed in the sub-clause, according to us, would only take within its ambit the periodic payments or revenue derived, when the owner of the property is not divested of the title and the land is continued to be used for agricultural purposes. When a sale of agricultural land is made, the purchaser is not obliged to carry on agricultural operations, nor can the consideration received on such sale of agricultural land deemed to be agricultural income. We hasten to add that it will not be assessable to income-tax under the I.T. Act unless the land is covered under item (a) & (b) of Section 2(14)(iii), in which event tax would be levied on the capital gains."

4) Shri Rajesh Ramchandra Dake v. DCIT, ITA No. 03/Mum/2021, order dated 23.01.2025, which followed Ashok Chaganlal Thakkar and reiterated the same proposition.

1) Relevant Para 24.1 and 24.2

9) Relevant circulars in this regard

a) CBDT Circular No. 17/2015 dated 06.10.2015 clarifies in para 1 as under:

""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."

b) CBDT Circular No. 36/2016 dated 25.10.2016 clarifies as under:

Under the existing provisions of the Income-tax Act, 1961 ('the Act'), an agricultural land which is not situated in specified urban area, is not regarded as a capital asset.

Hence, capital gains arising from the transfer (including compulsory acquisition) of such agricultural land is not taxable. Finance (No. 2) Act, 2004 inserted section 10(37) in the Act from 1-4-2005 to provide specific exemption to the capital gains arising to an Individual or a HUF from compulsory acquisition of an agricultural land situated in specified urban limit, subject to fulfilment of certain conditions. Therefore, compensation received from compulsory acquisition of an agricultural land is not Sohanlal Sewaram Jaggi (HUF) taxable under the Act (subject to fulfilment of certain conditions for specified urban land).

10) Unfavorable decisions where user of land is held to be one of the relevant criteria

a) Sreedhar Asok Kumar v. CIT [2018] 89 taxmann.com 145 (Ker.)

i) Assessment Year: 2008-09

ii) The assessee reliod on revenue records showing the land as "Nilam." The Kerala High Court held that this by itself was insufficient, especially where the assessee was not shown to be an agriculturist and there was no evidence that the land had been put to agricultural use.

iii) Relevant findings:

"9. It is observed by the Tribunal that the assessee is not an agriculturist and is the Proprietor of a Management Institute, and there is no evidence to indicate that the land has been put to any agricultural use. In the decision reported in Smt. Sarifabibi Mohmed Ibrahim v. CIT [1993] 70 Taxman 301/204 ITR 631 (SC) it is held that the question whether a particular piece of land is agricultural or not is essentially a question of fact, to be decided after a consideration of circumstances appearing for and against the assessee. In the decision reported in Smt. Asha George v. ITO [2013] 30 taxmann.com 334/214 Taxman 236/351 ITR 123 (Ker.), this Court held thus "The crucial question is whether the land was actually being used for agricultural purpose during the two years prior to the date of transfer We do not think that we can overturn a finding on fact, at any rate, based on our reappreciating the material which was considered by the Tribunal which is the final fact finding authority."

It is also held in the above decision that a Certificate of the Village Officer showing the land as "Nilam" (paddy land) alone may not be sufficient for the crucial question is whether the land was actually used for agricultural purposes during the two years prior to the date of transfer The mere categorisation of the land as 'Nilam' in the revenue records would not hence, suffice to raise a valid claim of exemption. In the instant case, the Tribunal has concluded that the subject land has to be treated as capital asset within the meaning of Section 2(14) of the Act. Ordinarily, the question whether a land is an agricultural land or not is a question of fact Sohanlal Sewaram Jaggi (HUF) and the finding on the question of fact recorded by the Tribunal is final. We are not inclined to upset the decision of the Tribunal, and therefore, there is no merit in the argument advanced by the learned

Senior Counsel for the assessee. The appeal will stand dismissed finding no question of law arising from the impugned order. No costs."

b) Prashant Jaipal Reddy vs. ITO 2025] 481 ITR 547 (Bombay)

1) Assessment Year: 2011-12

ii) Relevant findings:

> "19. The fact-finding authorities have also correctly referred to the contradictory stances of the assessee. The moment one of the defences was found untenable, the same was sought to be substituted or explained by yet another stance. From the perusal of the three orders, we agree with the fact-finding authorities that the assessee was bent upon adopting inconsistent and contrary stances on the issue of property being used for agricultural purposes. The various inferences drawn by the three fact-finding authorities from the holistic consideration of the material on record are most reasonable and can hardly be described as perverse. The FAA had observed that one could not ignore the fact that the property under reference was near Kalyan, Bhiwandi, and suburban parts of Mumbai. From this, the FAA correctly inferred that this property was embedded with commercial opportunity and viability for commercial exploitation. The future conduct of the assessee has only confirmed this. 20. This is not a case where the authorities have not considered the material placed on record by the assessee. However, after considering and evaluating such material and weighing it against the other material available on record, the three authorities have concluded the property in question was not used for any agricultural purpose by the assessee. None of the three authorities has violated any legal principles regarding evaluating such material.
>
> 21. In an appeal under Section 2604. there is no question of this Court going into the sufficiency and adequacy of evidence. This Court is not exercising powers of the First Appellate Court when dealing with appeals under Section 260A of the Income-tax Act. In this case, the findings of fact are supported by more than adequate material on record. The three authorities have ignored no vital pieces of evidence. There are no allegations that the findings are based on irrelevant or inadmissible evidence. No legal principle Sohanlal Sewaram Jaggi (HUF) concerning the appreciation of evidence has been violated. Considering all these circumstances, we see no reasonable ground to entertain this appeal
>
> 22. The decisions relied upon by Mr. Jain entirely turn on the peculiar facts Such facts do not obtain in the present case. In any event, the case of H.V. Mungale (supra) was the matter where the revenue had appealed, and the Co-ordinate Bench of this Court found that there was no perversity in the record or findings of fact by the final fact-finding authority, te. ITAT. Shri Shankar Dalal (supra) was a matter where the ITAT had recorded a finding that 1/5th of the land was cultivated, and the balance

> 4/5th was not agricultural land. The Coordinate Bench of this Court found no basis for making such a distinction and, therefore, interfered with the ITAT's conclusion
>
> 23. So also in Mamta Parekh (supra), the revenue was in appeal, and this Court did not think that the ITAT's finding suffered from any perversity.

Besides, as noted earlier, all these decisions turned on their facts, which are incomparable to the facts in the present matter. Therefore, based on these three decisions, no case is made to entertain this appeal."

c) CIT v. GRK Reddy & Sons (HUF) [2021] 430 ITR 283 (Mad.)

i) Assessment Year: 2008-09

ii) The assessee relied on revenue entries and argued that the land was agricultural. The High Court held that mere revenue classification was not conclusive, particularly where there was no evidence of agricultural operations and the land had commercial development characteristics. It therefore ruled against the assessee.

iii) Relevant findings:

> "3. The Tribunal reversed the order passed by the CITA, who confirmed the order of assessment only on the ground that the lands were shown as agricultural lands in the revenue record during the relevant period and therefore, would not fall within the purview of the definition of 'capital asset' under the Act. Unfortunately, the Tribunal applied the wrong test and ignored the settled legal position, as held in the case of Smt. Sarifabibi Mohmed Sohanlal Sewaram Jaggi (HUF) Ibrahim v. CIT [1993] 70 Taxman 301/204 ITR 631 (SC). The Hon'ble Supreme Court in the said decision had laid down thirteen factors/indicators, which would be relevant to determine the character of the land. They being as hereunder-
>
> 13. Apart from the above, reliance was also placed in the case of Pr. CIT v. Mansi Finance Chennai Lad. [2016] 73 taxmann.com 312/388 ITR 514 (Mad.). In the said decision, the fact finding authority as well as the Tribunal held that there was sufficient evidence adduced by the assessee to prove that the subject lands have been put to agricultural operation before sale.
>
> 14. Under the said facts and circumstances, the revenue's appeal was dismissed. The fact situation in the case on hand is entirely different and there was no evidence placed before the assessing officer or before the CITA or before the Tribunal to establish the character of the land, as claimed by the assessee to be agricultural. It is argued by the learned counsel for the assessee that the statements of the Village Administrative Officer was not put to the assessee, however, no such plea was raised before the Tribunal that they were put to prejudice on account of a statement given

by the Village Administrative officer, therefore, to raise such a plea at this juncture, is impermissible.

16. Further, the conduct of the assessee in selling the property within a short period of one year and the property being used to develop the SEZ ought to have taken note of by the Tribunal while deciding the character of the land, as mere classification of the land in the revenue record, as agricultural land, does not conclusively prove that the nature of the land is an agricultural land. As noted above, the lands were transferred to non- agriculturists for non-agricultural purpose and this would also be one of the relevant factors to test the case of the assessee. The Tribunal relied on the decision in the case of M.S. Srinivasa Naicker v. ITO [2008] 169 Taxman 255/[2007] 292 ITR 481 (Mad.), the said Judgment could not have been applied to the case on hand because in the said decision on examining the facts and as admitted by the revenue, on the date of sale, agricultural operations were carried on in the lands, which is not so in the case of the assessee. Thus, for all the above reasons, we find that the Tribunal erred in interfering the order passed by the CIT(A) affirming the order of assessment dated 14-3-2014."

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10. Per contra, the learned CIT-DR strongly relied upon the orders of the lower authorities and submitted that actual agricultural operations and surrounding circumstances constitute highly relevant factors while determining agricultural character of land. He submitted that mere classification in revenue records is not conclusive and that the assessee had failed to establish actual cultivation by producing cogent evidence of agricultural produce or agricultural income. According to him, the judicial precedents relied upon by the Revenue support the proposition that surrounding circumstances and actual use of land are important considerations while determining whether the land retained agricultural character.

11. We have thoughtfully considered the rival submissions, carefully perused the assessment order, the impugned appellate order, the documentary evidences placed in the paper book including the 7/12 extracts, survey records, affidavit and sale agreement, and have deeply reflected upon the entire statutory framework, legislative history and judicial evolution governing the concept of "agricultural land" under the Income-tax Act, 1961. In our considered opinion, the controversy involved before us cannot be decided merely on isolated factual observations such as absence of reflected agricultural income or absence of intensive cultivation during a particular period, divorced from the larger statutory context and legislative intent underlying section 2(14)(iii). The issue requires a deeper examination of the legislative scheme itself, particularly the conscious distinction maintained by Parliament between "agricultural land" under section 2(14)(iii) and Sohanlal Sewaram Jaggi (HUF) "land used for agricultural purposes" occurring in other provisions such as section 54B and section 10(37). The entire edifice of the assessment order as well as the impugned appellate order proceeds substantially on the premise that unless the assessee demonstrates actual and continuous agricultural operations immediately preceding transfer coupled with reflected agricultural income in the return, the land cannot retain agricultural character. In our considered

opinion, such an approach not only oversimplifies the statutory framework but also overlooks the fundamental legislative distinction consciously embedded by Parliament itself in the Act.

12. At the very outset, it is necessary to appreciate the legislative evolution of section 2(14)(iii). Prior to the amendment introduced by Finance Act, 1970, agricultural land in India broadly remained outside the ambit of "capital asset" without any statutory distinction based upon municipal limits, urbanisation or population criteria. Consequently, courts evolved various judicial tests to determine whether a particular parcel of land was agricultural in character. The Hon'ble Supreme Court in Sarifabibi Mohmed Ibrahim vs. CIT [204 ITR 631] and earlier authorities referred to several factors such as classification in revenue records, actual user of land, intention of owner, surrounding development, possibility of cultivation, physical characteristics of land, permission for non-agricultural use and similar attendant circumstances. However, what is extremely significant is that even under the pre-amendment regime, the Hon'ble Apex Court never elevated any single factor into a conclusive or mandatory test. On Sohanlal Sewaram Jaggi (HUF) the contrary, the Hon'ble Supreme Court categorically observed that no one factor could be treated as decisive and that the issue had to be adjudged upon cumulative consideration of totality of circumstances appearing for and against the assessee. Thus, even under the old regime, actual agricultural operations were never treated as the sole or determinative criterion.

13. Thereafter came the watershed legislative amendment through Finance Act, 1970 whereby Parliament consciously introduced section 2(14)(iii)(a) and (b), incorporating objective statutory criteria based upon municipal limits, population and urban proximity. This amendment fundamentally altered the statutory landscape and shifted the legislative focus from uncertain subjective factual tests towards objective geographical and demographic determinants. The legislative intent behind the amendment was abundantly clear, namely, to bring within the tax net urban and peri-urban agricultural lands possessing commercial urban potential while simultaneously continuing exclusion of genuinely rural agricultural lands. Thus, post amendment, Parliament itself consciously recognized that agricultural lands situated beyond specified municipal and urbanisable limits ordinarily ought to remain outside the ambit of "capital asset". Once such objective statutory criteria were consciously incorporated by the Legislature, courts cannot dilute or override the same by importing additional mandatory conditions not found in the statutory provision itself.

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14. In this context, the interplay between section 2(14)(iii), section 54B and section 10(37) assumes enormous interpretative significance. Section 54B specifically grants exemption where capital gains arise from transfer of land "which, in the two years immediately preceding the date of transfer, was being used for agricultural purposes". Likewise, section 10(37) expressly requires actual agricultural use during the preceding two years. Thus, wherever Parliament intended to impose a mandatory requirement of actual agricultural user, it consciously and expressly employed such language in the statute itself. However, significantly and conspicuously, section 2(14)(iii) does not use the phrase "used for agricultural purposes" at all. It merely excludes "agricultural land in India" except land situated within specified municipal or urbanisable limits. This distinction, in our considered

opinion, is deliberate, meaningful and incapable of being ignored. It is a settled principle of statutory interpretation that where Legislature uses particular language in one provision and consciously omits the same in another provision of the very same statute, courts cannot judicially transplant the omitted words into the latter provision. Therefore, importing into section 2(14)(iii) a mandatory requirement of actual agricultural operations would amount to judicial legislation and would obliterate the distinction consciously maintained by Parliament itself.

15. One must also appreciate the conceptual distinction between "agricultural income" under section 2(1A) and "agricultural land"

> under section 2(14)(iii). Agricultural income necessarily contemplates income derived from land by agricultural operations Sohanlal Sewaram Jaggi (HUF) and therefore postulates active cultivation yielding revenue or produce. However, section 2(14)(iii) concerns the intrinsic nature and character of the land itself. A land may continue to retain agricultural character even where agricultural income generated therefrom is negligible, seasonal, subsistence-oriented or not separately reflected due to practical realities such as advanced age of owners, caretaker cultivation, subsistence farming or insignificant produce barely sufficient to maintain the land. Therefore, absence of reflected agricultural income in the return cannot automatically destroy or extinguish the agricultural character of the land, particularly when overwhelming surrounding circumstances continue to support its agricultural nature.

16. The legislative history further fortifies this interpretation. Prior to the Finance Act, 1970, agricultural land in India was broadly excluded from the ambit of "capital asset" without any distinction based upon municipal limits or urbanisation. Consequently, courts evolved multifactor tests for determining agricultural character of land. The Hon'ble Supreme Court in Sarifabibi Mohmed Ibrahim vs. CIT [204 ITR 631] and several earlier authorities referred to various indicators such as classification in revenue records, actual user, intention of owner, surrounding development, physical characteristics, possibility of cultivation and permission for non-agricultural use. However, importantly, the Hon'ble Apex Court never held that actual agricultural operations constituted the sole or mandatory test. On the contrary, the Hon'ble Supreme Court categorically observed that Sohanlal Sewaram Jaggi (HUF) no single factor could be treated as conclusive and ultimate determination had to arise from cumulative consideration of totality of circumstances.

17. Thereafter came the watershed legislative amendment introduced by Finance Act, 1970 whereby Parliament consciously inserted section 2(14)(iii)(a) and (b), thereby introducing objective statutory criteria based upon municipal limits, population and urban proximity. The legislative intent behind this amendment was abundantly clear, namely, to bring within the tax net urban and peri-urban agricultural lands possessing commercial urban potential while continuing exclusion of genuinely rural agricultural lands. Thus, post amendment, the legislative focus consciously shifted from purely subjective factual indicators towards objective geographical and demographic determinants.

18. In our considered opinion, once Parliament itself introduced objective statutory criteria based upon municipal limits and population, courts cannot dilute the same by importing additional mandatory conditions not found in the statute. If the land admittedly falls beyond the prescribed municipal limits and otherwise retains agricultural character, absence of intensive cultivation or non-disclosure of agricultural income cannot by itself convert such land into "capital asset".

19. The judicial precedents relied upon by the assessee substantially support this interpretation. The Hon'ble Delhi High Court in CIT vs. Surjan Singh [260 ITR 351] specifically observed Sohanlal Sewaram Jaggi (HUF) that section 2(14)(iii)(a) postulates only two statutory conditions, namely:

(i) the land should fall within municipal jurisdiction; and

(ii) the municipality should have prescribed population.

19.1. Likewise, the Hon'ble Bombay High Court in PCIT vs. Anthony John Pereira [425 ITR 134] reiterated that both statutory conditions must co-exist before agricultural land can lose exclusion from "capital asset".

20. Similarly, the Hon'ble Gujarat High Court in PCIT vs. Heenaben Bhadresh Mehta [409 ITR 196] categorically held that purchaser's intention, steep appreciation in value or industrial use by purchaser cannot determine agricultural character where the land continued as agricultural land in revenue records and had not undergone conversion. The Court specifically held that unless the transaction itself constituted an "adventure in the nature of trade", gains arising from transfer of agricultural land outside section 2(14)(iii) could not be taxed merely because purchaser subsequently exploited the land commercially.

21. Equally important are the judgments of the Hon'ble Bombay High Court in CIT vs. Debbie Alemao, CIT vs. Minguel Chandra Pais and Shankar Dalal vs. CIT, wherein the Hon'ble Court consistently emphasized that agricultural character of land does not disappear merely because agricultural income is insignificant or because the land was not cultivated personally by the owner. The Hon'ble Court repeatedly emphasized the significance of Sohanlal Sewaram Jaggi (HUF) revenue records, absence of non-agricultural conversion and continuity of agricultural character.

22. The judgments relied upon by the Revenue, in our considered opinion, are clearly distinguishable on facts. In Sreedhar Asok Kumar vs. CIT [89 taxmann.com 145 (Ker.)], the Hon'ble Kerala High Court itself observed that the issue is essentially factual depending upon cumulative circumstances. The Court merely found that except for bare revenue entries, overwhelming evidence demonstrated commercial non-agricultural character. Likewise, in Prashant Jaipal Reddy vs. ITO [481 ITR 547 (Bom.)], the Hon'ble Bombay High Court declined interference because concurrent factual findings indicated surrounding commercial development and contradictory factual conduct. Significantly, nowhere did the Hon'ble Court hold that actual agricultural operations constitute express statutory requirement under section 2(14)(iii). Similar is the position in GRK Reddy & Sons (HUF) where overwhelming evidence demonstrated non-agricultural commercial development.

23. Thus, upon a careful synthesis of the entire judicial jurisprudence, what emerges is that actual agricultural operations may certainly constitute one relevant evidentiary factor, but it is neither the sole test nor an independent statutory mandate under section 2(14)(iii). The decisive inquiry is whether the land, viewed holistically and cumulatively, retained agricultural character at the time of transfer.

Sohanlal Sewaram Jaggi (HUF)

24. Applying the aforesaid principles to the facts of the present case, we find that the cumulative evidences overwhelmingly support the assessee's stand. Firstly, the land has consistently remained classified as agricultural land in official revenue records including 7/12 extracts. Secondly, admittedly the land is situated approximately 17 to 18 kilometers away from the municipal limits of Pune and therefore beyond the notified urban limits contemplated under section 2(14)(iii). Thirdly, contemporaneous survey records and 7/12 extracts record existence of Bajra crop and other agricultural produce on the land. Fourthly, the sale agreement itself records that the land falls within "No Development Zone", thereby substantially negating immediate urban or commercial exploitation. Fifthly, admittedly no permission for non-agricultural conversion was ever obtained either by the assessee or purchaser. Sixthly, even the purchaser continued agricultural activities after purchase. Seventhly, surrounding areas admittedly remained rural without industrial estate or housing complex development.

25. We further find considerable substance in the affidavit filed by Shri Sohanlal Sewaram Jaggi explaining the practical circumstances regarding cultivation. The affidavit categorically states that due to advanced age and practical difficulties, the co- owners themselves were unable to personally supervise cultivation operations and therefore local caretakers attended the agricultural activities and retained negligible produce against maintenance expenses. Such practical arrangements are neither uncommon nor unnatural in rural agricultural holdings. Agricultural Sohanlal Sewaram Jaggi (HUF) operations carried out through caretakers or village supervisors cannot destroy agricultural character merely because separate agricultural income was not reflected in the return.

26. The authorities below, in our considered opinion, committed a serious legal error by virtually equating absence of substantial agricultural income with absence of agricultural character. Such reasoning effectively imports into section 2(14)(iii) the statutory conditions consciously incorporated in sections 54B and 10(37). This approach is legally impermissible because courts cannot legislate by interpretation nor obliterate the distinction consciously maintained by Parliament.

27. Another important aspect which fortifies the assessee's case is that in the case of co-owner Talikraj Sewaram Jaggi HUF arising from the same transaction and same reassessment proceedings, the Department itself accepted the agricultural character of the land and did not subject the gains to tax. Though strict principles of res judicata may not apply to income-tax proceedings, nevertheless consistency and fairness remain important facets of tax administration.

28. Thus, upon a cumulative consideration of the statutory provisions, legislative history, CBDT circulars, judicial precedents and surrounding factual circumstances, we are firmly of the considered opinion that the impugned land retained its agricultural character and did not fall within the ambit of "capital asset" under section 2(14)(iii). The Revenue authorities have Sohanlal Sewaram Jaggi (HUF) proceeded substantially upon presumptions and by importing into the statute a condition consciously omitted by Parliament itself. Such an approach, in our considered opinion, is legally unsustainable.

29. Accordingly, we hold that the impugned land being agricultural land situated beyond the prescribed municipal limits and having retained its agricultural character, was outside the ambit of "capital asset" under section 2(14)(iii) and therefore no capital gains could have been charged on transfer thereof. Consequently, the addition made by the Assessing Officer and sustained by the learned CIT(A) stands deleted.

30. In the result, the appeal of the assessee stands allowed.

Order pronounced on 27th May, 2026.

Sd/-	Sd/-
(PRABHASH SHANKAR)	(AMIT SHUKLA)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai; Dated 27/05/2026
KARUNA, sr.ps

Sohanlal Sewaram Jaggi (HUF)

Copy of the Order forwarded to :
1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

Asstt. Registrar)
ITAT, Mumbai