

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ -SMC अहमदाबाद /

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD – SMC BENCH AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 781,784 & 785/Ahd/2011

निर्धारण वर्ष/Asstt. Year: 2011-12

(1) Late Shantaben P Patel, L/H Govindbhai P. Patel, 36, Gourav Co-op. Society V.T. Park, Gota Road, Chandlodiya, Ahmedabad PAN: BFCPP6980A	Vs.	Income-tax Officer, Ward-6(5), Ahmedabad
(2) Babubhai Ramanlal Patel 'Darshak', 14A Swastik Society, Punjabi Hall Gali, Navrangpura, Ahmedabad- 380009 PAN: ABYPP8048A	Vs.	Dy. Commissioner of Income- tax, Circle-1, Ahmedabad
(3) Ilaben K. Patel A-12, Shyam Sattadhar Society, Near Sarvoday Part-I, Sola Road, Ghatlodiya, Ahmedabad PAN: AFEP9294E	Vs.	Income-tax Officer, Ward-6(5), Ahmedabad

अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
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Assessee by :	Hemanshu Shah, A.R.
Revenue by :	Aditya Shukla, Sr. D.R

सुनवाई की तारीख/Date of Hearing : 12/02/2018

घोषणा की तारीख/Date of Pronouncement: 02/04/2018

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

The present three appeals are directed at the instance of assessee's against the orders of Ld. CIT(A) dated 05.02.2015, 18.02.2015 & 05.02.2015 passed on the respective appeals of Ilaben K. Patel, Babubhai Ramanlal Patel & Late Shantaben P Patel in A.Y 2011-12.

2. The solitary substantial ground of appeal taken by Ilaben K. Patel and Shantaben P Patel are interconnected with ground No.3 in the case of Babubhai Ramanlal Patel. Therefore we heard all these appeals together and deemed it appropriate to disposed of them by this common order. The grievance of the assessee's relates to determination of long term capital gain on sale of a plot. All these three assessee's are challenging the additions of Rs. 6,98,630/-, 1,74,650/- & 13,97,290/- in their respective heads i.e Ilaben K. Patel, Babubhai Ramanlal Patel & Shantaben P Patel under the head long term capital gain.

3. Brief facts of the case are that assessee's were co-owners of a property which was sold for Rs. 5,10,00000/-. Smt. Ilaben K. Patel was having 1/32 shares in the property. While computing the capital gain they have adopted the cost of acquisition as on 01.04.1981 at Rs. 800 per sq. meter. The Ld. Assessing Officer made reference to the DVO for valuation of the property as on 01.04.1981. The valuation officer has determined the value of the property at Rs. 36,54,000/- as against Rs. 67,98,400/- adopted by the assessee's. In other words the assessee's have worked out the cost of acquisition as on 01.04.1981 @ 800 per sq. meter whereas valuation officer worked out the value @ Rs. 430/- per sq. meter. The Assessing Officer after taking into consideration the cost of acquisition at the value of 430 per sq. meter worked out the capital

gain assessable in the hands of each assessee according to their share in the property.

4. Appeal to the Ld. CIT(A) did not bring any relief to the assessee.

5. Before me Ld. Counsel for the assessee contended that issue in dispute is squarely covered in favour of the appellant by the decision of Hon'ble Gujarat High Court rendered in the case of CIT vs. Gauranginiben S. Shodhan Indl. reported in 367 ITR page 238. He pointed out that Assessing Officer had no power to refer the matter to the DVO as per section 55A of the Act, as the value shown by the appellants was not less than fair market value which is a basic condition for referring the matter to the DVO. He further pointed out that in the case of other co-shares namely Late Shri Ramanbhai Kakubhai Patel this proposition was accepted by the CIT(A) whose order is placed on page No. 71 of the paper book.

6. Ld. D.R on the other hand relied upon the order of Revenue authorities.

7. We have duly considered the rival contentions and gone through the record carefully. The dispute before me is, whether Assessing Officer could make a reference to the DVO for determining the fair market value of the assets as on 01.04.1981. According to the Ld. Counsel for the assessee a reference under sub-clause A of section 55A could be made, if value shown by the assessee as on 01.04.1981 is less than the fair market value. In other words assessee has shown the value at Rs. 67,98,400/- which is higher than the market value otherwise determined by the DVO after the reference. He adopted value at Rs. 36,44,000/-.

Hon'ble Gujarat High Court has considered this aspect in the case of Gauranginiben S. Shodhan and held that the Assessing Officer has no power to make a reference if the value shown by assessee is not less than fair market value. The discussion made by the Hon'ble High Court in paragraph 15 to 17 read as under:-

15. Coming to the question of reference to DVO for ascertaining the fair market value as on 1.4.1981 also, we find that such reference was not competent. We have noticed that prior to the amendment in section 55A with effect from 1.7.2012 in a case, the value of the asset claimed by the assessee is in accordance with the estimate made by the Registered Valuer, if the Assessing Officer was of the opinion that the value so claimed was less than its fair market value as on 1.4.1981. It would not be the case of the Assessing Officer that the value of the asset shown as on 1.4.1981 was less than the fair market value. Such clause, 'therefore, as it stood at the relevant time, had no application to the valuation as on 1.4.1981. We are conscious that with effect from 1.7.2012, the expression now used in clause (a) of section 55A is "is at variance with its fair market value". The situation may, therefore, be different after 1.7.2012. We are, however, concerned with the period prior thereto. Clause (b) of section 55A is in two parts and permits a reference to DVO if the Assessing Officer is of the opinion that (i) the fair market value of the asset exceeds the value of the asset so claimed by the assessee by more than such percentage of the value of the asset so claimed or by more than such amount as may be prescribed in this behalf; or (ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do. Sub-clause (i) of clause (b) also for the same reasons recorded above, would have no bearing on the fair market value as on 1.4.1981. The Assessing Officer had not resorted to sub-clause(ii) of clause (b). In any case, clause (b) would apply where clause (a) does not apply since it starts with the expression "in any other case". In other words if assessee has relied upon a Registered Valuer's Report, Assessing Officer can proceed only under clause (a) and clause (b) would not be applicable.

16. In the present case, admittedly the assessee had relied on the estimate made by the Registered Valuer for the purpose of supporting its value of the asset. Any such situation would be governed by clause (a) of section 55A of

the Act and the Assessing Officer could not have resorted to clause (b) thereof as held by the Division Bench of this Court in the case of Hiaben Jayantilal Shah v. ITO [2009] 310 ITR 31/181 Taxman 191 (Guj.). In the said decision, it was held and observed as under:—

"10. Under clause(a) of sec. 55A of the Act under the Assessing Officer is entitled to make the reference to the Valuation Officer in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by the Registered Valuer, if the Assessing Officer is of the opinion that the value so claimed is less than the fair market value. In any other case, as provided under clause(b) of Sec. 55A of the Act, the Assessing Officer has to record an opinion that (i) the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage or by more than such an amount as may be prescribed; or (ii) having regard to the nature of the asset and other relevant circumstances, it is necessary to make such a reference."

17. In the result, we see no reason to interfere. However, we have given our independent reasons and should not be seen to have confirmed the reasoning adopted by the Tribunal in the impugned judgment. Tax Appeal is dismissed.

8. In light of the above, if facts of the present appeals are examined then it would reveal value shown by the appellants of the property as on 01.04.1981 is considered then it was not less than fair market value and reference cannot be made. As far as the amendment carried out in section 55A is concerned, it is with effect from 01.07.2012 i.e. by finance Act 2012 the transaction taken place in F.Y. 2010-11 relevant to assessment year 2011-12 and the amended provision would not be applicable on this transaction.

9. Respectfully following the decision of Hon'ble Gujarat High Court. I allow these grounds of appeal in the case of all the three appellants and delete the additions made under the head long term capital gain.

10. In the case of Babubhai Ramanlal Patel there is one more ground of appeal whereby assessee has challenged disallowance of interest expense of Rs. 2,02,376/-. The brief facts of the case are that on scrutiny of the account it reveals to the Assessing Officer that assessee has borrowed loan @ 12% and he has given loans @ 6% to the persons covered under section 40A(2)(b). Ld. Assessing Officer has made an analysis and disallowed interest expenditure by a sum of Rs. 2,02,376/-.

11. Appeal to the CIT(A) did not bring any relief to the assessee.

12. Before us it was contended that assessee is in the business. It has used the borrowed fund for the purpose of the business when funds were lying idle and not required for the purpose of the business then in order to reduce burden of interest expenditure, he has given these funds on a lower rate of interest.

13. I have duly considered the rival contention and gone through the record carefully. Section 40A(2)(b) of the Income tax Act contemplates that if an assessee incurred expenditure for availing the services or purchase of a goods from the persons mentioned in sub-clause-(b) and make them payments over and above the market price then the expenditure incurred over and above the market price would be disallowed. The assessee has given interest bearing loan funds to the HUF where he is the Karta. Therefore section 40A(2)(b) has rightly been applied by the Assessing Officer and he has rightly made the disallowance. This ground of appeal is rejected.

14. In the result appeal of Ilaben K. Patel, Govindbhai Patel L/H of Shantaben P. Patel are allowed, whereas appeal of Babubhai Ramanlal Patel is partly allowed.

Order pronounced in the Court on 02/04/2018.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 02/04/2018

आदेश की प्रतिलिपि अद्योषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधित आयकर आयुक्त/ Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण/ DR, ITAT,
6. गार्ड फाईल/ Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad