

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "एक-सदस्य" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
 PUNE BENCH "SMC", PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष।  
**BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM**

**आयकर अपील सं. / ITA No.1375/PUN/2017**  
**निर्धारण वर्ष / Assessment Year : 2012-13**

The Deputy Commissioner of Income Tax,  
 Circle – 2, Nashik

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Shri Sagar Suresh Somwanshi,  
 A-2, Murlidhar Near Indraprashta Hall,  
 Old Gangapur Naka,  
 Gangapur Road, Nashik – 422 013  
 PAN : BHOPS2699G

.....प्रत्यर्थी / Respondent

Assessee by : None  
 Revenue by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 19-06-2018  
 घोषणा की तारीख / Date of Pronouncement : 14-08-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Nashik dated 17-03-2017 for the assessment year 2012-13.

2. None has appeared on behalf of the assessee despite service of notice. The notice of the appeal was sent to the assessee on 24-04-2018 through RPAD for 19-06-2018. The notice was duly served on 03-05-2018. Acknowledgment of service of notice is available on record. Despite service of notice, none has appeared on behalf of the assessee nor any letter

seeking adjournment from assessee/respondent has been received. It appears that the assessee is not keen to defend his case. Under such circumstances, we proceed to decide the appeal of Revenue with the assistance of by Id. Departmental Representative and the material available on record.

3. The Revenue in this appeal has assailed the findings of Commissioner of Income Tax (Appeals) in deleting the addition of Rs.1,65,50,809/- on account of long term capital gains on sale of plots.

4. The brief facts of the case as emanating from records are : The assessee is running a Fast Food Restaurant. The assessee filed return of income for the impugned assessment year on 29-03-2013 declaring total income of Rs.87,04,594/-. The case of the assessee was selected for scrutiny under CASS. Statutory notice u/s.143(2) of the Act was issued to the assessee on 13-08-2013. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee has sold two plots of land (herein after referred to as 'P-1 and P-2'). The P-1 was sold for Rs.3,10,00,000/-, the market value for stamp duty purposes of the said plot was Rs.3,08,71,000/-. The P-2 was sold for Rs.50,00,000/- and the market value for stamp duty purposes of the said plot was Rs.55,50,000/-. In P-1, the assessee had 100% share and in P-2 the assessee had only 14.28% share. Both these plots were acquired by the assessee prior to 01-04-1981. Thus, for the purpose of calculating long term capital gains, the assessee valued the property as on 01-04-1981. The assessee declared the value of P-1 as on 01-04-1981 at Rs.20,05,500/- and P-2 at Rs.4,35,000/-. The Assessing Officer made reference to the Department Valuation Officer (DVO) u/s.55A for determining fair market value of both the properties. The Valuation Officer ascertained the fair market value of

P-1 as on 01-04-1981 at Rs.1,75,000/- and P-2 as Rs.31,500/-. On the basis of the Valuation Report by DVO, the AO re-computed the long term capital gains declared by the assessee and made addition.

Aggrieved by the assessment order dated 27-03-2015, the assessee filed appeal before the Commissioner of Income Tax (Appeals).

5. The Commissioner of Income Tax (Appeals) deleted the addition by following the decision of Hon'ble Bombay High Court in the case of CIT Vs. M/s. Puja Prints 360 ITR 697. The Commissioner of Income Tax (Appeals) held that the Assessing Officer had no power to refer valuation of properties to DVO where the value declared by the assessee is more than the fair market value.

Against the findings of Commissioner of Income Tax (Appeals) the Revenue is in appeal before the Tribunal.

6. Shri Ajay Modi representing the Department vehemently supported the findings of Assessing Officer and submitted that reference to the DVO was made by the Assessing Officer on 23-03-2014. He submitted that the amendment to section 55A of the Act was made by the Finance Act, 2012 w.e.f. 01-07-2012. Thus, reference to the DVO was made much after the amendment to section 55A of the Act. The Commissioner of Income Tax (Appeals) has erred in applying the ratio laid down by the Hon'ble High Court in the case of CIT Vs. M/s. Puja Prints.

7. We have heard the submissions made by the ld. Departmental Representative and have perused the orders of the authorities below. The only dispute in appeal is whether the amended provisions of section 55A would apply to the facts of the present case. Undisputedly, the assessee

has sold the property in the period relevant to the assessment year 2012-13. Reference to the DVO for valuation of property can be made under the provisions of section 55A. The provisions of section 55A were amended by the Finance Act, 2012 w.e.f. 01-07-2012. Prior to the amendment, Assessing Officer could have made reference to DVO only if the value of asset claimed by assessee is less than the fair market value. In the present case undisputedly the value of plots sold by assessee is much higher than the fair market value determined by the DVO. Even if reference is made to DVO after the date of amendment, the unamended provisions of section 55A would apply to the transactions entered into prior to the date of amendment.

The Hon'ble Bombay High Court in the case of CIT Vs. M/s. Puja Prints (supra) has held that amended provisions of section 55A would not apply retrospectively. The relevant extract of the observation of Hon'ble High Court on the applicability of the amended provisions of section 55A reads as under :

*"9 The contention of the revenue that the reference to the Departmental Valuation Officer by the Assessing Officer is sustainable in view of Section 55A(a) (ii) of the Act is not acceptable. This is for the reason that Section 55A(b) of the Act very clearly states that it would apply in any other case i.e. a case not covered by Section 55A(a) of the Act. In this case, it is an undisputable position that the issue is covered by Section 55A(a) of the Act. Therefore, resort cannot be had to the residuary clause provided in Section 55A(b)(ii) of the Act. In view of the above, the CBDT Circular dated 25 November 1972 can have no application in the face of the clear position in law. This is so as the understanding of the statutory provisions by the revenue as found in Circular issued by the CBDT is not binding upon the assessee and it is open to an assessee to contend to the contrary.*

*10. The contention of the Revenue that the Assessing Officer is entitled to refer the issue of valuation of the property to the Departmental Valuation Officer in exercise of its power under Sections 131, 133(6) and 142(2) of the Act is entirely based upon the decision of the Guwahati High Court in Smt. Amiya Bala Paul (supra). However, the Apex Court in Smt. Amiya Bala Paul (supra) has reversed the decision of the Guwahati High Court and held that if the power to refer any dispute with regard to the valuation of the property was already available under Sections 31(1), 136(6) and 142(2) of the Act, there was no need to specifically empower the Assessing Officer to do so in circumstances specified under Section 55A of the Act. It further held that when a specific provision under which the reference can be made*

*to the Departmental Valuation Officer is available, there is no occasion for the Assessing Officer to invoke the general powers of enquiry.”*

Thus, in view of the judgment of Hon'ble jurisdictional High Court, the amended provisions of section 55A would not apply to the transactions entered into by the assessee prior to amendment.

8. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in deleting the addition. The appeal of Revenue is dismissed being bereft of any merit.

9. In the result, the appeal of Revenue is dismissed.

Order pronounced on Tuesday, the 14<sup>th</sup> day of August, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14<sup>th</sup> August, 2018  
Satish

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Nashik
4. The Pr. CIT2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “SMC” बेंच, पुणे / DR, ITAT, “SMC” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune