आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.1424/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Rajendra Kanhiyalal Bhartiya,
Kerosene Dealer,
Naya Bazar, Shola Chowk,
Jalna – 431203 .... अपीलार्थी/Appellant

PAN: AMSPB4560E

Vs.

The Income Tax Officer,
Ward 1, Jalna .... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1425/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Sanjay Kailashchand Bhartiya,
Prop. of Dainik Krushnaniti,
Naya Bazar, Shola Chowk,
Jalna – 431203 .... अपीलार्थी/Appellant

PAN: AFNPB3190E

Vs.

The Income Tax Officer,
Ward-1, Jalna .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri S.N. Puranik
प्रत्यर्थी की ओर से / Respondent by : Shri Yogesh Kamat

सुनवाई की तारीख / **Date of Hearing : 13.08.2018**		घोषणा की तारीख / **Date of Pronouncement: 28.08.2018**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by related assessee are against separate orders of CIT(A)-I, Aurangabad, dated 29.03.2017 relating to assessment years 2010-11 against respective orders passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals of related persons on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issue, reference is being made to the facts in ITA No.1424/PUN/2017.

3. The assessee in ITA No.1424/PUN/2017 has raised the following grounds of appeal:-

1. *Honourable Commissioner Appeals has erred in not dropping the FMV as on 01/04/1981 as per Regd. Valuers Report, for computation of Capital Gain, and substituting his own, Appellant prays for following the Value as per Regd. Valuers Report.*
2. *Without prejudice to Ground No.1 above, lower Authorities have erred in not referring the matter to 'Valuation Officer' for arriving at FMV on 01/04/1981.*
3. *Appellant prays for adopting just and equitable FMV as of 01/04/1981 for computing Capital Gain.*
4. *CIT(A) has erred in not allowing deduction u/s 54F as claimed by the Appellant.*
5. *Appellant prays for just and equitable relief in computing Capital Gain as to FMV of 01/04/1981. Indexed and u/s 54F.*
6. *Appellant prays for cancellation / reduction of interest charged u/s 234B.*

4. The issue raised in both the appeals is against adoption of Fair Market Value as on 01.04.1981 while computing income from capital gains.

5. The assessee moved an application for adjournment, which was refused in view of the issue being settled by the Hon'ble Bombay High Court.

6. Briefly, in the facts of the case, the assessee had filed return of income declaring total income of ₹ 1,51,500/-. The Assessing Officer noted from the information available on record that the assessee along with three other relatives had sold land to four different persons vide registered sale deeds dated 08.10.2009 for total consideration of ₹ 1.56 crores and ₹ 66 lakhs, totaling ₹ 2,22,00,000/-. The fair market value of the said property for the purpose of stamp duty was adopted by the State Government authorities at ₹ 1,55,08,000/- and ₹ 66,00,000/- as against actual consideration at ₹ 2.22 crores. Thus, the consideration received by the assessee was adopted for computing Income from Capital Gains. The assessee had 25% share in the said property i.e. to the extent of ₹ 55,50,000/-. The Assessing Officer from the return of income noted that the assessee had not disclosed any details of capital gains nor declared any income in the computation of income. Therefore, the Assessing Officer recorded reasons for reopening the assessment under section 147 of the Act and issued notice under section 148 of the Act. In response to the same, the assessee vide letter dated 04.06.2013 pointed out that he had already filed the return of income, which may be considered. The case of assessee was taken up for scrutiny. The assessee explained that it had sold land measuring 13 acres in total. The cost of acquisition for the land as on 01.04.1981 was adopted as per the record available for financial year 1989-90. For the first piece of land out of Gut No.169, the same was valued at the rate of ₹ 80/- per square meter and for the second Gut No.176, same was adopted at ₹ 100/- per square meter. The cost of acquisition of land measuring 2675 square meters at the rate of ₹ 80/- per square meter worked out to ₹ 2,14,007/- and for land measuring 52,967 square

meters at the rate of ₹ 100/- per square meter worked out to ₹ 52,96,692/- i.e. totaling ₹ 55,10,699/-. The indexed cost of acquisition of land thus worked out to ₹ 2,02,48,614/-. The assessee claimed that it had taken reverse calculation for working the value as on 01.04.1981 starting from financial year 1989-90. Since the assessee further claimed that it had made investment in house property and hence, the claim of deduction under section 54F of the Act. In the facts of each of the persons, balance capital was claimed at Nil. The details of the same are reproduced by the Assessing Officer under para 6 of assessment order. The Assessing Officer was of the view that the assessee had received land on family partition and further the assessee had made wrong and substantial claim of cost of acquisition and expenses with an intention to evade payment of tax. The claim made under section 54F of the Act was claimed to be not correct by the Assessing Officer. The assessee was show caused as to why the fair market value as on 01.04.1981 be not adopted at ₹ 10,000/- being sale instance of nearby area. The Assessing Officer rejecting the explanation of assessee held that cost of acquisition as on 01.04.1981 was to be adopted at ₹ 10,000/- per acre. He accordingly, re-worked the Income from Capital Gains in the hands of assessee.

7. The CIT(A) upheld the order of Assessing Officer. Further, the deduction claimed under section 54F of the Act was also not allowed to the assessee.

8. The assessee is in appeal against the orders of authorities below in not adopting the fair market value as on 01.04.1981 as per the report of registered Valuer. The assessee is also aggrieved by the order of Assessing Officer in not making reference to the DVO for getting the valuation report from the competent person and has objected to the order of Assessing Officer in

adopting the value as on 01.04.1981 at ₹ 10,000/- per acre on his own motion. The assessee has further made claim under section 54F of the Act.

9. On perusal of record and after hearing the learned Departmental Representative for the Revenue, it transpires that the issue of adoption of fair market value as on 01.04.1981 and whether the same can be adopted at value lesser than the value declared by the assessee, while computing Income from Capital Gains, has been deliberated upon by the Hon'ble Bombay High Court in CIT Vs. Puja Prints (2014) 360 ITR 697 (Bom) and it has been held as under:-

> *"6. We have considered the rival submissions. We find that the impugned order dated 18 February, 2011 allowing the respondent assessee's appeal holding that no reference to the Departmental Valuation Officer can be made under Section 55A of the Act, only follows the decision of this Court in the matter of Daulal Mohta HUF (supra). The revenue has not been able to point out how the aforesaid decision is inapplicable to the present facts nor has the revenue pointed out that the decision in Daulal Mohta HUF (supra) has not been accepted by the revenue. On the aforesaid ground alone, this appeal need not be entertained. However, as submissions were made on merits, we have independently examined the same.*
>
> *7. We find that Section 55A(a) of the Act very clearly at the relevant time provided that a reference could be made to the Departmental Valuation Officer only when the value adopted by the assessee was less than the fair market value. In the present case, it is an undisputed position that the value adopted by the respondent-assessee of the property at Rs.35.99 lakhs was much more than the fair market value of Rs.6.68 lakhs even as determined by the Departmental Valuation Officer. In fact, the Assessing Officer referred the issue of valuation to the Departmental Valuation Officer only because in his view the valuation of the property as on 1981 as made by the respondent-assessee was higher than the fair market value. In the aforesaid circumstances, the invocation of Section 55A(a) of the Act is not justified.*
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> *8. The contention of the revenue that in view of the amendment to Section 55A(a) of the Act in 2012 by which the words "is less then the fair market value" is substituted by the words " "is at variance with its fair market value" is clarifactory and should be given retrospective effect. This submission is in face of the fact that the 2012 amendment was made effective only from 1 July 2012. The Parliament has not given retrospective effect to the amendment. Therefore, the law to be applied in the present case is Section 55A(a) of the Act as existing during the period relevant to the Assessment Year 2006-07. At the relevant time, very clearly reference could be made to Departmental Valuation Officer only if the value declared by the assessee is in the opinion of Assessing Officer less than its fair market value.*
>
> *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 131(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.

In view of the above and particularly in view of clear provisions of law as existing during the period relevant to Assessment Year 2006-07, we are of the view that questions (a) and (b) do not raise any substantial question of law.

Regarding Question (c):-

11 . The Tribunal by its impugned order has merely remanded the issue to the Assessing Officer to determine the date on which the respondent-assessee acquired the property for the purpose of working out the cost of acquisition. No specific submissions in regard to this issue was made by the revenue during the oral submissions. In any event, an order of remand in these facts does not give rise to any substantial question of law.

12. Accordingly, we see no reason to entertain questions (a), (b) and (c) as formulated by the revenue as they do not raise any substantial questions of law. Accordingly, appeal is dismissed with no order as to costs."

10. The Tribunal applying the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Puja Prints (supra) in series of cases with special mention in ITA No.587/PUN/2014, relating to assessment year 2009-10, in the case of Smt. Ratnakanta B. Agrawal Vs. ITO vide order dated 24.07.2017 had held as under:-

"10. On perusal of record and after hearing both the learned Authorized Representatives, the preliminary issue which is raised by way of additional ground of appeal is a purely legal ground of appeal, which challenges the jurisdiction of the Assessing Officer in completing assessment both under sections 50C and 55A of the Act. In the facts of the case, the assessee had sold property at Amravati admeasuring 0 H 38R. The assessee had received her share in the said property as gift from her father and had sold one portion of the property much earlier. During the year under consideration, the assessee received total consideration of Rs.87,21,000/- on sale of balance share in the property. On the other hand, the stamp duty authorities had adopted the valuation of said plot of land under section 50C of the Act at Rs.1,07,31,000/-. The Assessing Officer during the course of assessment proceedings had made reference to the Valuation Officer under section 50C of the Act as the assessee

had objected to the valuation made by the stamp valuation authorities. The Assessing Officer also referred to the Valuation Officer the cost of acquisition of land as per section 55A of the Act. The first objection raised by the assessee is against invoking the provisions of section 55A of the Act, under which, cost of acquisition declared by the assessee has been adopted at a figure lesser than the value declared by the assessee. In this regard, I find that the issue is squarely covered in favour of assessee by the order of the Hon'ble Bombay High Court in CIT Vs. Puja Prints (supra), wherein the Hon'ble High Court held as under:-

> *"6 . We have considered the rival submissions. We find that the impugned order dated 18 February, 2011 allowing the respondent assessee's appeal holding that no reference to the Departmental Valuation Officer can be made under Section 55A of the Act, only follows the decision of this Court in the matter of Daulal Mohta HUF (supra). The revenue has not been able to point out how the aforesaid decision is inapplicable to the present facts nor has the revenue pointed out that the decision in Daulal Mohta HUF (supra) has not been accepted by the revenue. On the aforesaid ground alone, this appeal need not be entertained. However, as submissions were made on merits, we have independently examined the same.*
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> *7 . We find that Section 55A(a) of the Act very clearly at the relevant time provided that a reference could be made to the Departmental Valuation Officer only when the value adopted by the assessee was less than the fair market value. In the present case, it is an undisputed position that the value adopted by the respondent-assessee of the property at Rs.35.99 lakhs was much more than the fair market value of Rs.6.68 lakhs even as determined by the Departmental Valuation Officer. In fact, the Assessing Officer referred the issue of valuation to the Departmental Valuation Officer only because in his view the valuation of the property as on 1981 as made by the respondent-assessee was higher than the fair market value. In the aforesaid circumstances, the invocation of Section 55A(a) of the Act is not justified.*
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> *8. The contention of the revenue that in view of the amendment to Section 55A(a) of the Act in 2012 by which the words "is less then the fair market value" is substituted by the words " "is at variance with its fair market value" is clarifactory and should be given retrospective effect. This submission is in face of the fact that the 2012 amendment was made effective only from 1 July 2012. The Parliament has not given retrospective effect to the amendment. Therefore, the law to be applied in the present case is Section 55A(a) of the Act as existing during the period relevant to the Assessment Year 2006-07. At the relevant time, very clearly reference could be made to Departmental Valuation Officer only if the value declared by the assessee is in the opinion of Assessing Officer less than its fair market value.*
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> *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 131(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.

In view of the above and particularly in view of clear provisions of law as existing during the period relevant to Assessment Year 2006-07, we are of the view that questions (a) and (b) do not raise any substantial question of law.

Regarding Question (c):-

11 . The Tribunal by its impugned order has merely remanded the issue to the Assessing Officer to determine the date on which the respondent-assessee acquired the property for the purpose of working out the cost of acquisition. No specific submissions in regard to this issue was made by the revenue during the oral submissions. In any event, an order of remand in these facts does not give rise to any substantial question of law.

12. Accordingly, we see no reason to entertain questions (a), (b) and (c) as formulated by the revenue as they do not raise any substantial questions of law. Accordingly, appeal is dismissed with no order as to costs."

11. The Hon'ble Bombay High Court in the case of CIT Vs. Daulal Mohta (HUF) reported in 360 ITR 680 has held that reference to DVO can only be made in a case where value of asset shown by the assessee is less than its fair market value of the land.

12. Following the same parity of reasoning, I hold that no reference can be made under section 55A of the Act in order to value the cost of acquisition of property as on 01.04.1981 at a figure lesser than the value declared by the assessee. Accordingly, the order of CIT(A) is reversed in this regard."

11. The year under appeal before the Tribunal is assessment year 2010-11 and in case the same *simile* is applied to the facts of the present case, the Assessing Officer is not empowered to adopt the fair market value of the said property at ₹ 10,000/- per acre. Accordingly, we reverse the order of CIT(A) in this regard and direct him to adopt the fair market value as on 01.04.1981 as declared by the assessee.

12. Now, coming to the second claim of assessee i.e. deduction under section 54F of the Act. In case the fair market value adopted at a figure shown by the assessee, then in case it is necessary to adjudicate the claim of deduction under section 54F of the Act, the Assessing Officer may provide reasonable opportunity of hearing to the assessee in this regard to furnish complete information and thereby decide the said issue. The grounds of appeal raised by the assessee are thus, allowed as indicated above.

13. The facts and issues in ITA No.1425/PUN/2017 are identical to the facts and issues in ITA No.1424/PUN/2017 and the decision in ITA No.1424/PUN/2017 shall apply *mutatis mutandis* to ITA No.1425/PUN/2017.

14. In the result, both the appeals of assessee are allowed as indicated above.

Order pronounced on this 28th day of August, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 28th August, 2018.
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Aurangabad;
4. The Pr.CIT-1, Aurangabad;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune