

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH 'B'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

*आयकर अपील सं./ ITA No.902/Ahd/2017*

*निर्धारण वर्ष/Asstt. Year: 2009-10*

Smt. Dhirajben Pravinbhai Patel Ramipoura, Dakor Dist. Kheda Nadiad 388 225 PAN : BGWPP 6338 R	Vs.	ITO, Ward-3 Nadiad.
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**ITA No.1754/Ahd/2017**

*निर्धारण वर्ष/Asstt. Year: 2009-10*

Shardaben Chimanlal Patel Kal Bhairav Mandir Sevasi Vadodara. PAN : BOBPP 2349 F	Vs.	ITO, Ward-1(2)(5) Baroda.
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<i>अपीलार्थी/ (Appellant)</i>	<i>प्रत्यर्थी/ (Respondent)</i>
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Assessee by :	Shri Sunil Talati, AR
Revenue by :	Shri Jayant Jhaveri, Sr.DR

*सुनवाई की तारीख/Date of Hearing* : 08/04/2019

*घोषणा की तारीख/Date of Pronouncement:* 10 /04/2019

**आदेश/ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Present two appeals are directed at the instance of the assesseees against the orders of the Id.CIT(A)-2, Vadodara dated 13.1.2017 and 3.4.2017 passed for the Asstt.Year 2009-10 on the respective appeals of the assesseees.

2. Solitary substantial grievance of both the appellants relates to determination of long term capital gain assessable in their hands on transfer of assets.

3. With the assistance of the Id.representatives, we have gone through the record carefully.

4. As facts emerge out from the record, both the appellants are co-owners of the land bearing RS/Block No.315, 312, 306, Village Gorva, Vadodara. They have sold this piece of land during the accounting year relevant to this assessment order. The sale consideration has been received as under:

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|------|---|--|
| i)   | <i>Shardaben Chimanhbai Patel</i>       | <i>Rs.53,50,000/-</i>                    |
| ii)  | <i>Sureshbhai Chimanhbai Patel</i>      | <i>Rs.53,50,000/-</i>                    |
| iii) | <i>Late Hansaben Shankarbhai</i>        | <i>Rs.67,50,000/-</i>                    |
|      | <i>i) Shirishbhai Shankarbhai Patel</i> | <i>ii) Jigneshbhai SI</i>                |
|      | <i>Patel</i>                            | <i>iii) Anilbhai S. Patel – each 1/3</i> |
| iv)  | <i>Dhirajben Pravinbhai Patel</i>       | <i>Rs.63,50,000/-</i>                    |

5. Smt. Dhirajben Pravinbhai Patel has shown her share in the sale proceeds at Rs.63,50,000/- in her computation of income. She has taken the value of said land at Rs.37,71,870/- as on 1.4.1981. Her share was 1/5<sup>th</sup>. She had computed indexed cost of acquisition at Rs.58,56,870/- and computed long term capital at Rs.4,93,130/-. Similarly, Smt. Shardaben Chimanhbai Patel has also shown long term capital gain of Rs.4,15,129/-. The Id.AO has made a reference to the valuation officer who determined the value of the property as on 1.4.1981 at Rs.24,72,500/- as against the declared value of Rs.37,71,870/- by the assessee. The Id.AO has computed the long term capital gain assessable in the hands

of both the assessees on the basis of value determined by valuation officer as on 1.4.1981. In other words, he took indexed cost for the purpose of acquisition on the strength of value determined by the DVO as on 1.4.1981. Appeals to the CIT(A) did not bring any relief to the assessees.

6. The question before us is, whether reference under section 55A could be made for determining the fair market value of the property as on 1.4.1981. According to the Id.counsel for the assessees, the value declared by both the appellants on the basis of registered valuation report was more than the fair market value sought to be determined by the AO. If the value was more than the value before 1.7.2012, the Id.AO cannot make a reference to the DVO for determining fair market value of the property as on 1.4.1981. For buttressing his contention, he relied upon the judgment of the Hon'ble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan Indl. Vs. CIT, 45 taxmann.com 356 (Guj) and order of ITAT in the case of Shri Devendra Rasiklal Shah, ITA No.2027/Ahd/2015. He placed on record copies both these decisions.

7. On due consideration of the above facts, we find that the ITAT in the case of Shri Devendra Rasiklal Shah (supra) has considered judgment of Hon'ble jurisdictional high Court in the case of Gauranginiben S. Shodhan (supra) and has held that if the value declared by an assessee as on 1.4.1981 on the strength of registered valuer's report is more than the fair market value sought to be determined by the AO, then reference under section

55A for determining fair market value by the DVO cannot be sent. The discussion made by the Tribunal reads as under:

*"10. I have duly considered the rival contention and gone through the record. Short issue for my adjudication is, whether reference to the DVO made by the Assessing Officer was within the parameter of law or not ? Before I advert to the facts of present case, I would like to make reference to relevant part of the decision of Hon'ble Gujarat High Court in the case of Gauranginiben S. Shodhan on this issue which reads 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 55 A 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 [20091 310 1TR 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. 55 A 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 reasonings adopted by the Tribunal in the impugned judgment. Tax Appeal is dismissed.*

*11. The Hon'ble High Court has specifically held that prior to the amendment in section 55A with effect from 01.07.2012 in a case, the value of the assets 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 01.04.1981 than reference can be made. In the present case the value adopted by the assessee on the basis of registered valuer was not less than fair market value rather it was on the higher side. The Assessing Officer wants to reduce the value i.e cost of acquisition as on 01.04.1981. It is not permissible prior to the amendment carried out in the section 55A. Whether this amendment can be taken into consideration for this assessment year i.e 2008-09 is concerned. This aspect covered by the decision of Bombay High Court extracted (supra).*

*11. Respectfully following these two decisions I allow the appeal of assessee and direct the Assessing Officer to recompute the capital gain arisen to the assessee without taking cognizance of the report of DVO.*

8. There is no disparity on facts in the present appeals. Both the assessees have declared cost of acquisition for the purpose of indexation as on 1.4.1981 more than the one determined by the DVO. Thus, the AO was not possessing any material which can suggest that the value declared by the assessees was less than the fair market value as on 1.4.1981. Therefore, it requires to be re-determined. In the above situation, he cannot make a reference under section 55A to the DVO, and if the reference cannot be made, then cognizance of that cannot be taken for

determining long term capital gain assessable in the hands of both the appellants. In view of the above discussion, we allow this fold of grievance and direct the AO to accept long term capital gain disclosed by both the appellants on the basis of registered valuer's report.

9. In the result, both appeals of the assesseees are allowed.

Order pronounced in the Court on 10<sup>th</sup> April, 2019.

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER