

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
(CONDUCTED THROUGH E-COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And

SHRI Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 330/RJT/2014

अाधरण वर्ष/Asstt. Year: 2009-2010

M/s Shri Venu Pipe Industries, Dolatpara, Rajkot Road, Junagadh. PAN: ABAFS2183B	Vs.	Income Tax Officer, Ward-1(2), Junagadh.
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(Applicant)		(Respondent)
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Assessee by :	Shri Mehul Ranpura, A.R
Revenue by :	Shri Praveen Kumar Verma, Sr. D.R

सुनवाई का ताराख/Date of Hearing : 09/04/2019

घोषणा का ताराख /Date of Pronouncement: 25/04/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-IV, Rajkot, dated 31/03/2014 (in short 'Ld.CIT(A)') arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.23/12/2011 relevant to the Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:

1. *The grounds of appeal mentioned hereunder are without prejudice to one another.*
2. *The Ld.CIT(A) erred on fact as also in law in sustaining term capital gain at Rs.3,64,20,009/- as determined by Income tax officer, Ward 1(2), Junagadh ignoring registered valuer's report. The addition made by the assessing officer and sustained by the Ld.CIT(A) in total disregard to the appellant's facts and circumstances and submission is totally unjustified and unwarranted and may kindly be deleted.*
3. *Your Honor's appellant craves leave to add, amend alter or withdraw any or more grounds of appeal on or before the hearing of appeal.*

3. The only effective issue raised by the assessee is that learned CIT (A) erred in confirming the order of the AO by sustaining the addition of 3,64,20,009.00 as a long-term capital gain on the sale of land.

4. Briefly stated facts are that the assessee in the present case is a partnership firm and filed its return of income declaring total income nil. As such the assessee had no business activity from the past several years. The assessee in the year under consideration has sold its factory land admeasuring 24598.67 Square Metres for 3,78,28,000 only. As the impugned factory land was acquired before 1st April 1981, therefore the assessee obtained the valuation report from civil engineer Shri D.J. Bavishi of Junagadh. The valuer valued the factory land along with the cost of compound wall etc. as on 1st April 1981 as detailed under:

<i>Value of land (at Rs.240/- per Sq. Mtr.)</i>	<i>Rs.59,03,680/-</i>
<i>Cost of compound wall</i>	<i>Rs.65,000/-</i>
<i>Cost of wall</i>	<i>Rs.35,000/-</i>
<i>Total</i>	<i>Rs.60,03,680/-</i>

In view of the above, the assessee worked out its long-term capital gain in respect of the impugned land at Rs. -8,37,616.00 only.

5. However, the AO was not satisfied with the valuation made by the registered valuer as on 1st April 1981 on the ground that the assessee sold part of adjoining land of the factory on 7th December 1982 at 1.78 per square meter. Therefore the AO was of the view that the fair market value of the impugned land as on 1st April 1981 cannot exceed 1.78 per square meter.

5.1 Accordingly, the AO worked out the long-term capital gain on the sale of the impugned land by observing as under:

Working of Long Term Capital Gain

	<i>Sale of factory land dtd 30.12.2008</i>	<i>Rs.3,78,28,000/-</i>
<i>Less:</i>	<i>Index cost of acquisition:</i>	
	<i>Property purchased on</i>	
	<i>08.08.1970</i>	
	<i>Market value as on 01.04.1981</i>	
	<i>Determined on the basis of sale</i>	
	<i>consideration of a part of the</i>	
	<i>same factory land sold by the</i>	
	<i>assessee firm on 07.12.1982 (at</i>	
	<i>Rs.1.78 per Sq.Mtr.) (24598.67</i>	
	<i>Sq. Mtr. X Rs.1.78)</i>	
	<i>=Rs.43,786/-</i>	
	<i>Rs.43,786 x 582 divide by 109</i>	<i>Rs.2,33,793/-</i>
<i>Add:</i>	<i>Land Cess</i>	<i>Rs.49.198</i>
	<i>House tax claimed</i>	
	<i>Rs.30,00,000/- by assessee-paid</i>	<i>Rs.4,50,000/-</i>
	<i>to Muncipal Corporation</i>	
	<i>(Rs.25,50,000/- is deposited</i>	
	<i>with Nazir's A/c. as per order of</i>	
	<i>Sr. Civil Court dtd07.02.2009)</i>	
	<i>Payment of land vacating to the</i>	<i>Rs.6,75,000/-</i>
	<i>ex-workers</i>	<i>Rs.14,07,991/-</i>
	<i>Total long term capital gain</i>	<i>Rs.3,64,20,009/-</i>

6. The aggrieved assessee preferred an appeal to the learned CIT (A). The assessee before the learned CIT (A) again supported its stand based on valuation report obtained from the Government registered valuer.

7. However, the learned CIT (A) disregarded the contention of the assessee and confirmed the order of the AO by observing that the assessee during the relevant time has sold part/adjoining land of the factory at 1.78 per square meter. Therefore the value of the impugned land as on 1st April 1981 cannot exceed the value at 1.78 per square metre.

8. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us. The learned AR before us filed the two paper books running from pages 1 to 35 and 1 to 40 and submitted that there was no power to the AO to reject the valuation determined by the registered valuer as on 1st April 1981 under the statute for the year under consideration. Therefore the AO is bound to accept the value determined by the registered valuer as on 1st April 1981. In this regard, the learned AR relied on the judgment of Honøble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan Indl reported in 367 ITR 238.

9. On the other hand the learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions, and the perused the materials available on record. The facts of the case are not in dispute, therefore, we are not inclined to repeat the same for the sake of brevity.

10.1 The limited issue before us arises for our adjudication whether the AO can substitute the value determined by the registered valuer as on 1st April 1981 in the given facts and circumstances. For this purpose we refer to the provisions of section 55A of the Act as applicable for the year under consideration which reads as under:

[Reference to Valuation Officer.

⁴³55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter⁴⁴, the ⁴⁵[Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—

- (a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the ⁴⁵[Assessing] Officer is of the opinion that the value so claimed is less than its fair market value ;*

- (b) in any other case, if the ⁴⁵[Assessing] Officer is of opinion—*
 - (i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage⁴⁶⁻⁴⁷ of the value of the asset as so claimed or by more than such amount⁴⁶⁻⁴⁷ 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,*

10.2 A plain reading of the above provision reveals that the AO may refer the valuation of capital assets to a valuation officer where he is of the opinion that value so claimed by the assessee is less than its fair market value. It is an undisputed fact that the assessee did not claim the value of the impugned land as on 1st April 1981 which is less than the fair market value. As such the assessee has claimed higher value than the fair market value as per the AO. Thus in our considered view, the AO has no power to refer to the valuation of capital assets to the valuation officer in the given facts and circumstances. Accordingly, the AO cannot substitute the value declared by the assessee as on 1st April 1981. In this regard, we draw support and guidance from the

judgment of Honøble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan Indl (*supra*) wherein it was held 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 [\[2009\] 310ITR 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 reasonings adopted by the Tribunal in the impugned judgment. Tax Appeal is dismissed.

10.3 Thus there remains no ambiguity that there was no power under the statute to the AO to refer the matter to the AO for valuing the impugned land as on 1st April 1981. Therefore we hold that the AO in the given facts and circumstances cannot substitute the value of the impugned land as on 1st April 1981 with the value of the adjoining land at which the assessee sold it during the relevant period.

10.4 Before parting, we want to make it clear that there was an amendment under the provisions of section 55A of the Act by the Finance Act 2012 which reads as under:

[Reference to Valuation Officer.

55A. *With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter⁷⁹, the ⁸⁰[Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—*

- (a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the ⁸⁰[Assessing] Officer is of opinion that the value so claimed ^{80a}[is at variance with its fair market value];*
- (b) in any other case, if the ⁸⁰[Assessing] Officer is of opinion—*
 - (i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such per centage⁸¹ of the value of the asset as so claimed or by more than such amount⁸¹ 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,*

10.5 A plain reading of the above-amended provisions reveals that the AO was given power to refer the matter to the valuation officer if he has the opinion that the value claimed by the assessee is at variance with the fair market value. Indeed the AO can refer the matter to the valuation officer if registered valuer value the property as on 1st April 1981 which is at variance with the fair market value. However such amendment is prospective in nature and therefore the same cannot be applied to the earlier years. In this regard, we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan Indl (*supra*). The relevant extract of the judgment has already been extracted in the preceding paragraphs.

10.6 As the dispute before us relates to the year prior to the amended provisions of section 55A of the Act which is applicable prospectively. Therefore such amended provisions cannot be applied to the case on hand. Thus we are inclined to reverse the order of the learned CIT-A, and accordingly we direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 25/04/2019 at Ahmedabad.

**-Sd-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 25/04/2019
Manish