

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1105/PUN/2019  
निर्धारण वर्ष / Assessment Year : 2004-05

Shri Nitin Narayan Shewale, Vs. ITO, Ward-11(1),  
S.No.197, SadesatraNali, Pune  
Hadapsar, Pune 411 028  
PAN : BBGPS3153J

(Appellant)

(Respondent)

आयकर अपील सं. / ITA No.1106/PUN/2019  
निर्धारण वर्ष / Assessment Year : 2004-05

Shri Nitin Narayan Shewale, Vs. ITO, Ward-11(1),  
Legal heir of Pune  
Late Smt. Chandrabhaga E. Shewale,  
S.No.197, SadesatraNali,  
Hadapsar, Pune 411 028  
PAN : COQPS9814C

(Appellant)

(Respondent)

आयकर अपील सं. / ITA No.1107/PUN/2019  
निर्धारण वर्ष / Assessment Year : 2004-05

Smt. Asha Narayan Shewale, Vs. ITO, Ward-11(2),  
S.No.197, SadesatraNali, Pune  
Hadapsar, Pune 411 028  
PAN : BDBPS1726C

(Appellant)

(Respondent)

Appellant by Shri Abhay A. Avchat  
Respondent by Smt. Vranda U. Matkari

Date of hearing 05-02-2020  
Date of pronouncement 06-02-2020

आदेश / ORDER

PER R.S.SYAL, VP :

These three appeals by different but connected assesseees relating to the assessment year 2004-05 involve common issue. For the sake of convenience, I am disposing them by this consolidated order.

2. Briefly stated, the facts in the case of Shri Nitin Narayan Shewale are that the assessee filed his return declaring certain long term capital gain arising from transfer of total land admeasuring 2,52,322 sq.ft. at survey numbers 187/2/13B/17, 198/7/8A/9C/9G/9E/9H and 243/1 at Sadesatranali, Hadapsar, Pune to M/s. City Corporation Ltd. along with certain other family members and co-owners. The assessee computed capital gain by taking sale price as the full value of consideration and the fair market value of the property as on 01-04-1981 at Rs.16.35/- per sq. ft. as the unindexed cost of acquisition. The Assessing Officer (AO) tweaked both the components in the computation of capital gain. He observed that the stamp value of the land in question was more than the

amount of actual sale consideration and also the fair market value as on 1.4.1981 was less. The assessee was called upon to explain as to why the stamp value of the transferred land be not considered against the actual value declared in terms of section 50C of the Act. On an objection from the side of the assessee, the AO made a reference to the DVO for determining the fair market value of the property as on 01-04-1981 and also on the date of sale, namely, 08-01-2004. Since the assessment was getting time barred and the report of DVO was not received, the AO finalised the assessment by espousing cost of acquisition as on 01-04-1981 at Rs.15/- per sq.ft. and full value of consideration as per the stamp value, with the assessee's share coming at Rs.20,17,613/-. The assessee challenged the computation of capital gain before the Id. first appellate authority, who dismissed the appeal and also made enhancement on the basis of the report of DVO, which was received after the completion of assessment. The assessee is aggrieved by such confirmation/enhancement.

3. I have heard both the sides and perused the relevant material on record. The first issue in this appeal is

determination of the full value of consideration in terms of section 50C of the Act. It is seen that the DVO valued the property as on the date of sale in two tracts, namely, Survey No.198 with per sq. meter valuation rate of Rs.1,670/- and Survey Nos.187 and 243 with per sq. meter valuation rate of Rs.1,240/-. The ld. AR submitted that the DVO was not justified in adopting these values, more so, when the DVO in another case of Shri Hemant Sudam Tupe determined Rs.820/- as the per sq.mtr value of land as on 06-12-2003 in the same locality with Survey Nos. 187/8/A, 188/1A & 188/A/5. I have gone through the reports of the DVO given in the case of the assessee as well as Shri Hemant Sudam Tupe, copies of which have been placed in the paper book. It can be seen that the DVO while valuing the assessee's property in the same locality, took valuation as on 8.1.2004 at Rs.1,670/- p.s.m against Sy. Nos.198 and Rs. 1,240/- per sq.mtr against Sy.Nos. 187 and 243. Another DVO in the case of Hemant Sudam Tupe valued Sy.Nos.187 and 188 in the same locality at Rs.820/- per sq.mtr. on 06-12-2003. Thus, it can be seen that there is hardly a month's difference between the two sale dates

of 08-01-2004 and 06-12-2003. It can further be seen that the DVO in the case of Shri Hemant Sudam Tupe considered the sale instances for land at Sy.No.187 in December, 2003 at Rs.820/-. However, the DVO in the case of assessee has considered a sale instance of Sy.No.189 at Rs.1,245/- per sq. mtr with date of sale at 16-09-2004. If we average the two rates, namely, Rs.820/- per sq. mtr and Rs.1,245/- per sq.mtr, the rate comes at Rs.1,032/- per sq.mtr. This, in my considered view is a more balanced and representative rate of the fair market value of the land as on the date of sale. I, therefore, order to adopt Rs.1,032/- as per sq.mtr value on the date of sale by the assessee, namely, 08-01-2004 against Sy.Nos. 187 and 243. In so far as the Sy. No. 198 is concerned, I find that there are sale instances noted in the assessee's valuation report at Rs.1,801/- p.s.m. against land at Sy.No.211 and in the report of Shri Hemant Sudam Tupe at Rs.1,369/- against Sy.No.197 and Rs.818/- against Sy.No.197. These surveys are admittedly close to the survey no. 198 sold by the assessee. Average of these three figures comes to Rs.1,330/-. I, therefore, direct to apply Rs.1,330/- as per

sq.mtr rate in respect of land at Sy.No.198 sold by the assessee as on 08-01-2004.

4. The second issue is the valuation as on 01-04-1981. The assessee adopted the unindexed rate of Rs.176/- p.s.m. as on 01-04-1981 giving rate of Rs.16.35 per sq.ft. The AO in the assessment order adopted rate of Rs.161.40 per sq.mtr with average rate per sq. ft. rate at Rs.15/-. It was on the basis of the DVO's report that the Id. CIT(A) adopted the rate of Rs.60/- per sq.mtr and Rs.50/- per sq.mtr for Sy.Nos. 198 and 187/243 respectively. The assessee contended before the Id. CIT(A) that no reference could have been made by the AO to the DVO in as much as the fair market value of the property was claimed by the Officer to be lower than the value adopted by the assessee. In support of such an argument, the assessee relied on the judgment of the Hon'ble jurisdictional High Court in *CIT Vs. Puja Prints (2014) 360 ITR 697 (Bom.)* holding that reference u/s.55A can be made to DVO only when the value adopted by the assessee is less than the fair market value. The Id. CIT(A) agreed with such a proposition. He, however, did not find applicability of such a *ratio* to the

facts of the instant case in the light of amendment carried out to section 55A under clause (a) providing for making a reference of valuation to a capital asset. This provision provides that a reference can be made by the AO if he is of the opinion that the value so claimed *is at variance* with its fair market value, which was substituted w.e.f. 01-07-2012 for the earlier words *is less than its fair market value*. The ld. CIT(A) held that *ratio* in the case of *Puja Prints (supra)* would be applicable only where the assessee furnishes a report of some Registered valuer, which was not extantly done. He, therefore, did not accept this contention of the assessee.

5. Having heard both the sides and gone through the relevant material on record, it is seen that amendment to section 55A in the above terms has been carried out and made effective from 01-07-2012. The assessment year under consideration is 2004-05 and the AO made reference to the DVO for determining the fair market value on 20-10-2011. Thus, it is apparent that, by no standard, the amended provision is attracted in the instant case. Going by the interpretation of the pre-amended provision by the Hon'ble

jurisdictional High Court in the case of *Puja Prints (supra)*, as applicable to the facts of the instant case, it is vivid that no reference could have been made to the DVO when the value adopted by the assessee was more than the fair market value of the land in the opinion of the AO. Notwithstanding the above, it is seen that the assessee did file a Registered valuer's report along with computation of income, relevant part of which has also been placed in the paper book. Since valid reference could not have been made to the DVO, the value so determined by him as on 01-04-1981, ergo, becomes meaningless for the instant exercise. Going by the provision as applicable to the instant case, it is held that the value of the land as declared by the assessee on 01-04-1981, which is patently more than the value so determined by the DVO/AO, cannot be interfered with.

6. In view of the foregoing discussion, I set-aside the impugned order and remit the matter to the file of the AO for determining the amount of capital gain afresh in accordance with the discussion *supra*. Needless to say, the assessee will be allowed a reasonable opportunity of hearing.

7. The other two appeals of Nitin N. Shewali, Legal heir of Smt. Chandrabhaga E. Shewale and Smt. Asha Narayan Shewale are admittedly based on similar facts and identical grounds as they were co-owners of the property transferred by the above assessee. In view of my above decision in the case of Shri Nitin Narayan Shewale, I set-aside the impugned orders in these appeals and remit the matter to the file of the AO for deciding the issue afresh in conformity with directions given above.

8. In the result, all the three appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 06<sup>th</sup> February, 2020.

**Sd/-  
(R.S.SYAL)  
उपाध्यक्ष/ VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 06<sup>th</sup> February, 2020  
सतीश

**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 (Appeals)-9, Pune
4. The Pr. CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /  
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,****// True Copy //**Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	05-02-2020	Sr.PS
2.	Draft placed before author	05-02-2020	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

\*