

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 2022/Ahd/2018
Assessment Year 2015-16**

Shri Jagdish Navnitlal Shah, Prop Global Travel Care, 16-B, Paritosh Society, St Xavier High School, Memnagar, Ahmedabad PAN: AEAPS1023B (Appellant)	Vs	The ACIT, Circle-3(3), Ahmedabad (Respondent)
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**Assessee by: Shri S.N. Divetia, A.R.
Revenue by: Shri Vidhyut Trivedi, CIT-D.R.**

Date of hearing : 19-02-2020
Date of pronouncement : 20-02-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2015-16, arises from order of the CIT(A)-3, Ahmedabad dated 25-07-2018, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has challenged the decision of ld. CIT(A) mainly on two issues (i) validity of reference made u/s. 55A(a) to DVO by the assessing

officer and against the decision of upholding the valuation of immovable property made by the DVO at Rs./ 11,36,000/- and thereby confirming addition of Rs. 32,38,080/- towards capital gain.

3. The fact in brief is that the assessee has filed return of income on 7th December, 2015 declaring income at Rs. 33,79,550/-. The case was selected for limited scrutiny under CASS for examining following issues.

- (i) Tax credit claimed in ITR is less than credit available in 26AS
- (ii) Sale consideration of property in ITR is less than sale consideration reported in form 26QB
- (iii) Substantial increase in capital in a year

Accordingly, a notice u/s. 143(2) of the act was issued on 21st Sep, 2016. During the course of assessment on verification of the detail filed by the assessee, the assessing officer has noticed that assessee has sold an immovable property being land at Mouje Chiloda (Narodoa) Gam for an amount of Rs. 2 crores. The assessee has claimed cost of acquisition of the property as on 01-04-1981 at Rs. 13,28,000/- on the basis of report of registered valuer M/s. Pranav Pariskha and Associate. The assessee has claimed indexed cost of acquisition of Rs. 1,35,98,720/- and shown net long term capital gain of Rs. 33,29,280/-. On further verification, the assessing officer stated that sold property was acquired by the father of the assessee in the year 1964 for a cash of Rs. 3500/- @ 0.38% sq. mtr, however, as per a report of registered valuer the property was valued at a very high rate at Rs. 13,28,000/- @ 145 per sq. mt. without assigning specific reason and comparative data without any basis. The assessing officer has referred the

matter to the district valuation officer. The DVO has valued the property at Rs. 11,36,000/- as on 01-04-1981 as against the value declared by the assessee at Rs. 13,28,000/-. The assessee has objected the valuation made by the DVO stating that valuation officer has not properly considered the reports of the registered valuer while determining the value of the property. He has pointed out that there was difference of Rs. 21 per sq. mt in the report of the DVO as compared to the valuation made by the registered valuer. The assessee has stated that the following points were not considered by the DVO.

“a.1 My land is situated at 1.2 to 2 Km away from Reliance Industries Ltd. (i.e. Vimal Textiles Ltd.), Rubi Rush/ Coach- builders, Kelama Pump Ltd., Modern Baker, Coca cola Plant & Ingersol Rend Co. Moreover, airport is only 3 Km. away from land. This situation is before 1981. Kotarpur water works is away by 1 Km only

a.2 The main road NH 8 is only 1 Km away from land.

a.3 Earlier, the inner road was to pass near to my whole land. Thereafter builder, in near area moved application & now that road passes from my total plot. It divided total plot in 2 parts. One side of sold open plot is on roadside and other side is unsold.

b. During visit of land, it was shown that land is at higher level as compared to adjoining plots. Hence, its location is better as compared to surrounding lands.

C. Further following points stated in valuation report 8/12/14 should be considered as additional weightage.

(i) (a) Plot is situated open plot at chiloda (Naroda), Gandhinagar

(b) The plot is open N.A. land for the residential purpose admeasuring 9162sq.mtrs.

(ii) The shape of land is almost rectangular. Hence the rate of the plot is more. Frontage to the plot is wide, 30 ft. wide Nala road is passing in front of the plot, it is an independent plot & Non agricultural land are prominent in this area.

(iii) Water supply, drainage etc are available by Gram panchayat, electric supply; Telephone line, paver finish road etc. are also available.

(iv) Schools, Hospitals, Banks, Post office, temple and railway station, S.T. Bus station, Cinemas and police station etc. are in nearby vicinity of 7.0 Km.

(v) The plot is situated at the place where logging is less, the ground is leveled and having good soil.

(vi) There is no restriction on the said plot; the premises can be used for residential purpose.

(vii) Value of freehold land has more value than leasehold land. The property is freehold.

(viii) No H.T. lines, railways or highways passes through the plot, FSI available has no restriction. Hence the value of said plot has no effect.

(ix) As the plot is N.A. with residential use and the rates for residential purpose land has less than the same land if situated with N.A. commercial use.

d) In absence of availability valuer shri Pranav Parikh the valuation report of Paras S Rangwala is obtained, wherein he has sited sale instances of nearby area- naroda having rate of Rs. 158/54 & 363/64, As Per I

He has valued land @ Rs. 150/- per sq. mtr. But I request you to value @ Rs. 145/- as taken by us in return.

Under circumstance, it is believed that this will enable you to consider rate @ 145" amounting to 13.28 lakhs."

The assessing officer has not accepted the submission of the assessee stating that DVO has done the valuation based on the available comparable sale instances for the nearby area which was fair and reasonable as against the present development elements of the area reported by the assessee. Therefore, the assessing officer has computed long term capital gain at Rs. 32,38,080 after adopting the fair market value of the sold property as on 01-04-1981 at Rs. 11,36,000/- as determined by the district valuation officer.

4. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee stating that all the relevant factors mentioned by the assessee have been duly considered by the DVO while determining the fair market value of the property sold by the assessee.

5. During the course of appellate proceedings before us, the ld. counsel has contended that reference of valuation of property made u/s. 55A(a) to the DVO by the assessing officer was not valid since the case of the assessee was selected for limited scrutiny assessment on the three specific issues and as per the instruction of the CBDT dated 30-11.2017. The assessing officer in limited cases cannot travel beyond the issue for which the case was selected. The ld. counsel has referred the decision of ITAT, Lucknow Bench in the case of M/s. Yukti Tiwari vs. ITO vide ITA No. 660/Lkw/2018 on merit. The ld. counsel has also referred page no. 35 of the paper book comprising notice u/s. 143(2) of the act issued by the assessing officer for limited scrutiny assessment on merit. The ld. counsel has referred to the

page no. 12 of the paper book containing valuation report of registered valuer M/s. Pranav Parikh and Associate stating that registered valuer has properly determined the fair market value of the land after considering the sale instances of other land. The ld. counsel has also referred page no. 29 pertaining to the report of DVO vide which the fair market value of the sold property was determined at Rs. 11,36,000/- stating that DVO has not considered the proper sale instances and other factor pertaining to the sold land. On the other hand, the ld. departmental representative has referred page no. 3 of the assessment order stating that before referring the case to the DVO, consent of the assessee was taken and he has also referred page no. 32 of the paper book pertaining to the valuation report of the DVO wherein DVO has also given reply to the objection raised by the assessee and after considering all the facts, the DVO in a fair manner determined the fair market value of the property @ 124 per sq. mt. The ld. authorized representative has pointed out that 25% increase estimated by the DVO has no basis and logic.

6. We have heard both the sides and perused the material on record. First issue in the ground of appeal of the assessee that reference to DVO u/s. 55A(a) was not valid as the case was selected for limited scrutiny. In this regard, we have gone through the issues on the basis of which this case was selected for limited scrutiny assessment. It is noticed that as per notice u/s. 143(2) of the act placed at page no. 35 in the paper book one of the issues for selecting the case for scrutiny was mismatch in income capital gain on sale of land or building. The assessing officer has verified this specific issue on income determined on sale of land during the year under consideration

and for proper verification of the valuation of the sold land, the assessee has duly agreed for referring the issue of valuation to the district valuation officer during the course of assessment. In view of the facts and circumstances, we do not find any merit in the ground of the appeal of the assessee that reference made to the DVO u/s. 55A(a) was not valid. The fact of the case of the ITAT Lucknow cited by the assessee is distinguishable from the fact of the case. Therefore, this ground of appeal of the assessee is dismissed

7. During the course of assessment, the assessing officer observed tremendous hike of approximately 400% in the fair market value of the land determined by the registered valuer @ 145 per sq. mt. as against the cost of land of Rs. 3500/- acquired by the father of the assessee on 07-01-1964. The assessing officer also observed that registered valuer has not provided proper basis for determining the fair market value of the property. Therefore the matter was referred to the district valuation officer for determining the fair market value of the sold property as on 01-04-1981. The district valuation officer has determined the value of the sold property at Rs. 11,36,000/- @ 145 per sq. mt. The assessee has objected the valuation determined by the DVO stating that land of the assessee was located only one kilometer distance from the Reliance Industry and was one kilometer away from the main road of NH-8. It was also pointed out that location of the land was at higher level. It was also pointed out that there was a number of amenities available at the land site i.e. water supply, drainage, etc. telephone line and also pointed out places nearby like school, hospital bank, post office etc. We have gone through the report of the DVO wherein he has recommended

the valuation of the sold property @ 124 per sq. mt after adopting comparable sale instances and after considering the objection of the assessee that the specific factor like location of the land area NH-8, Reliance Industry, GIDC etc. and other factors as reported above by the assessee. In the light of the above facts and circumstances, we consider that it will be reasonable to estimate the fair market value of the land sold by the assessee @ Rs. 130 per sq. mt as against the rate of 124 per sq. mt determined by the DVO after considering the specific factors as pointed above in this order. Therefore, the assessing officer is directed to determine the long term capital gain on sale of impugned property after taking into consideration the fair market value of the land sold as on 01-04-1981 @ 130 per sq. mt. as against Rs. 124 per sq. mt. Accordingly, the appeal of the assessee is partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 20-02-2020

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad : Dated 20/02/2020

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद