

आयकर अपीलिय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER
AND Dr.SHRI ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.275/AHD/2016

निर्धारण वर्ष/Assessment Year: 2012-13

Smt.Padmaben N. Patel, Village Mota, Taluka: Bardoli, District: Surat. [PAN: BMHPP 9078 F]	Vs .	The Income Tax Officer, Ward-1, Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A No.2201/AHD/2016

निर्धारण वर्ष/Assessment Year: 2012-13

Smt. Vinaben Pravinbhai Patel, AT & Post: Kosmada, Taluka: Kamrej, District: Surat – 395008. [PAN: ASBPP 6448 G]	Vs .	The Income Tax Officer, Ward-2(2)(5), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओर से /Assessee by	Shri Bharat Jhaveri - Advocate
राजस्वकीओर से /Revenue by	Smt. Anupama Singla - Sr.DR

सुनवाई की तारीख/ Date of hearing:	13.01.2021
उद्घोषणा की तारीख/Pronouncement on:	13.01.2021

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMEBER:

1. These two appeals by two assessees are directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Surat dated 04.12.2015 & 19.07.2016 for assessment year (AY) 2012-13. In both the appeals, the assessee's have raised certain common grounds of appeal. Facts are common in

both the appeals being part of same group, thus, both the appeals were clubbed, heard and are decided by consolidated order. For appreciation of facts, the appeal of Smt Padmaben N Patel in ITA No.275/AHD/2016 is treated as lead case.

2. Brief facts of the case are that assessee filed the Return of Income for the assessment year 2012-13 on 17.12.2013 declaring Nil income. The case was selected for scrutiny. In the computation of income, filed along with the Return of Income, the assessee claimed Long Term Capital Loss of Rs.10,23,492/- on sale of agricultural land along with her co-owner situated at Survey No.78/1+79, Block No.83, Village Karadava, District Surat on 07.03.2012. The assessee had 1/5th share in the said land. The assessee has received consideration of her 1/5th share at Rs.17,95,600/-. The assessee has shown cost of acquisition as on 01.04.1981 at Rs.3,59,120/- on which index cost was calculated at Rs.28,19,092/-. The assessee adopted the rate of cost of acquisition on the basis of Government Registered Valuer. The Government Registered Valuer worked out the valuation @ Rs. 250 per sq.mtr on the basis of reverse index method. During the assessment, the Assessing Officer collected information from Sub-Registrar, Surat on similar sale intense

of nearby locality. The Assessing Officer on the basis of information provided from Sub-Registrar office adopted Rs.0.40 per sq.mtr on 01.04.1981, and accordingly worked out Long Term Capital Gain of Rs.17,91,090/- and added to the income of the assessee.

3. On appeal before the Id. CIT(A), the assessee was allowed partial relief. The Id. CIT(A) adopted the Fair Market Value(FMV) of cost of acquisition as on 01.01.1981 @ Rs.14.18 sq. mtr on the basis of report of District Valuation Officer(DVO) and accordingly granted partial relief.
4. Further aggrieved, the assessee as filed present appeal before this Tribunal by raising the following grounds of appeal.

“1. The learned CIT(A) has erred both in law and on the facts of the case in rejecting the Valuation report prepared by the Government approved registered valuer computing the Fair market value of the land as on 01.04.1981 @Rs.2.50 per Sq. mtr by adopting Reverse Index Method.

2. The learned CIT(A) has erred in not appreciating that Reverse Index Method adopted by the Government approved registered valuer is one of the recognized modes of Valuation and is valid.

3. The learned CIT(A) has erred in law in directing the Assessing officer to refer the matter to DVO which is against the provisions of Section 55A of the Act.

4. The learned CIT(A) has erred in law in adopting the Fair Market Value of the land as on 01.04.1989 @14.18 per sq. mtr as determined by DVO.

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

5. At the outset, on hearing the ld. Authorised Representative (AR) of the assessee submits that the grounds of appeal raised by the assessee are now covered by the decision of Tribunal in assessee's co-owners case in Mahesh Nagin Bhai Patel Vs ITO in ITA No.1070/AHD/2017 dated 18.07.2019, wherein fair market value as on 01.04.1981 is arrived by Tribunal at Rs.100 per sq.mtr. The ld.Authorised Representative, accordingly submits that similar order may be passed in the assessee's case.
6. On the other hand, the ld. Sr. Departmental Representative for the Revenue supported the order of the ld.CIT(A).
7. We have considered the contention of both the parties and have gone through the order of the lower Authorities. We have noted that in assessee's co-owners case/group case, in ITA No.1070/AHD/2017 in Mahesh N. Patel, on similar set of facts on identical grounds of appeal the Tribunal has passed the following order:

“7. We have heard the rival submissions and perused the relevant material on record. We observe that the Hon'ble High Court in Gaurangiben S. Shodhan Indl [2014] 367 ITR 238 (Gujarat) / [2014] 45 taxmann.com 356 (Gujarat) has specifically held that amendment in

section 55A with effect from 01.07.2012 in a case, the value of assets claimed by the assessee is in accordance with the estimate made by the Registered Valuer, if the AO was of the opinion that the value so claimed was less than the fair market value as on 01.04.1981 then reference can be made. If the value adopted by the assessee on the basis of Registered Valuer was not less than fair market value rather it was on higher side. The AO wants to reduce the value i.e. cost of acquisition as on 01.04.1981. It is not permissible prior to amendment carried out in section 55A of the Act. Whether this amendment can be taken into consideration for the assessment year under consideration. We find that the Government Registered Valuer has considered the rate of land at village Karadva @250 per sq. meter and for land at village Sania Kande @200 per sq. meter as against which the DVO has adopted the rate @ 14.18 and 5.59 per sq. meter respectively. Whereas Ld. CIT (A) has considered the rate for both land @ 30 per sq. meter. Considering, the variation in three authorities, and considering the facts of the case, we are of the considered opinion that it would be fair, reasonable and logic if the average rate of adopted by the Government Registered Valuer of the assessee and DVO and Ld. CIT (A) is considered for average valuation of FMV as on 01.04.1981 considering the ratio laid down by the ITAT Mumbai in the case of the case Vijay Kumar M Shah (supra) as cited both Ld. CIT (A) as well as the learned counsel for the assessee. Accordingly, the arriving rate comes to Rs.99.95 rounded to Rs. 100 per sq. meter i.e. $[250+200+30]$ for both land under consideration. Accordingly, the AO is directed to worked out long-term capital gain by taking arrive rate @ 100 as FMV as on 01.04.1981 for both impugned the land under consideration. In view of this matter, Ground No. 1 to 4 of the appeal are therefore, partly allowed.

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

8. Considering the fact that in assessee's co-owner's case, the Tribunal has directed the Assessing Officer to adopt the Fair

Market Value of land @100 per sq.mtr as on 01.04.1981, therefore, respectfully following the order of coordinate bench the Assessing Officer is directed to follow the order of the Tribunal dated 18.07.2019 passed in ITA No.1070/AHD/2017, accordingly, appeal of the assessee partly allowed.

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

ITA No.2201/Ahd/2016 for A.Y. 2012-13:

10. As noted above, the assessee has raised identical ground of appeal, facts in this appeal is also identical, therefore, respectfully following our decision in ITA No.275/Ahd/2016, this appeal also partly allowed with similar direction.

11. To sum up, appeals of both the assessee's are partly allowed.

Order announced at the time of hearing of appeal on 13th January 2021 in the Virtual Court hearing.

Sd/-

(Dr.ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 13th Jan 2021 /#SGR

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / **TRUE COPY** / /

Sd/-

(PAWAN SINGH)

(न्यायिक सदस्य/JUDICIAL MEMBER)

Assistant Registrar, Surat