

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

(Virtual Court Hearing)

S.No.	ITA No.	Assessee Name / Particulars		Revenue
1	610/SRT/2018 for A.Y.2013-14	Shri Balubhai Chandubhai Patel, At Post: Antroli, Taluka: Palsana, Surat. PAN: BCYPP 7577 A	Vs.	The Income Tax Officer, Ward-1, Bardoli.
2	611/SRT/2018 for A.Y.2013-14	Smt. Neetaben Ramanbhai Patel, At Post: Antroli, Taluka: Palsana, Surat. PAN: BYBPP 7897 N		
3	612/SRT/2018 for A.Y.2013-14	Shri Ramanbhai Chandubhai Patel, At Post: Antroli, Taluka: Palsana, Surat. PAN: BYBPP 7900 A		
4	613/SRT/2018 for A.Y.2013-14	Smt. Heenaben Balubhai Patel, At Post: Antroli, Taluka: Palsana, Surat. PAN: BYBPP 7898 D		
5	614/SRT/2018 for A.Y.2013-14	Shri Pareshbhai Chandubhai Patel, At Post: Antroli, Taluka: Palsana, Surat. PAN: ACFPP 1518 D		
6	615/SRT/2018 for A.Y.2013-14	Smt. Seemaben Pareshbhai Patel, At Post: Antroli, Taluka: Palsana, Surat. PAN: BQLPP 5959 D		

Assessee by : Shri P.M.Jagasheth - CA

Respondent by : Smt. Anupama Singla – Sr. DR

सुनवाईकीतारीख/ **Date of Hearing** : 11/01/2021

घोषणाकीतारीख/**Date of Pronouncement**: 01/02/2021

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned six appeals filed by the different assessees, pertaining to common Assessment Year 2013-14, are directed against the separate orders passed by the Id. Commissioner of Income Tax (Appeals)-1, Surat [in short "the Id. CIT(A)"] which in turn arise out of separate orders passed by the Assessing Officers under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"].

2. Similar issues are involved in all appeals and all the appeals belong to the same group, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts as well as grounds of appeals raised in ITA No.610/SRT/2018, for A.Y. 2013-14, in case of Shri Balubhai Chandubhai Patel has been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeals raised by the assessee in lead case, in ITA No.610/SRT/2018, for AY.2013-14, are as follows:

"1. On the facts and in the circumstances of the case, as well as law on the subject, the Learned Income Tax Officer, Ward-1, Bardoli wrongly referred valuation of the agriculture land to DVO.

2. On the facts and in the circumstances of the case DVO Surat has erred in valuation of agriculture property @ Rs. 6.95 per sq. mtr as on 01/04/1981.

Your assessee therefore prays that looking to the facts and circumstances of the case the addition made by the Income Tax Officer to the tune of Rs.77,73,400/- may please be deleted.

Your assessee further reserves his right to add, alter or to amend any of the aforesaid grounds at the time of hearing of an appeal."

4. The facts of the case which can be stated quite shortly are as follows: The assessee before us is an individual doing agricultural activities. He filed Return of Income for the year under consideration on 25.01.2014, declaring total income at Rs.Nil and agricultural income at Rs.1,75,200/- for rate purpose. The assessee's case was selected for scrutiny under CASS and assessment was framed by

assessing officer under section 143(3) of the Act. On verification of the case records, it was noticed by the assessing officer that assessee has sold an ancestral immovable property admeasuring 25900 square meters, situated at Block No. 54, R.S. No. 82 and 92 at Antholi, Tal – Palsana, Dist. Surat, on 26.03.2013, along with other five co-sellers for a sale consideration of Rs. 4,81,74,000/-. As the assessee has shown value of property at the rate of Rs.180/- per sq. meter, as on 01.04.1981, which has been considered by very assessing officer very higher side. Therefore, matter of valuation was referred to the D.V.O., Surat on 26.11.2015 by the assessing officer under section 55A(a) of the Income Tax Act for determination of valuation of the property in question as on 01.04.1981.

5.The DVO, Surat has furnished the Valuation Report of property as on 01.04.1981 at Rs. 6.95 per square meter, vide report of DVO dated 24.02.2016.

6.As there was difference in valuation of said immovable property, (as per assessee it was at Rs.180 per square meter, whereas as per DVO it was at Rs.6.95 per square meter, as on 01.04.1981), therefore, the Assessing Officer issued a show-cause notice dated 29.02.2016 to the assessee, stating that why not the immovable property should be valued at Rs.6.95 per square meter?

7.In response to the show cause notice, the assessee has furnished reply to the assessing officer on 12.03.2016, which is reproduced below:

“... I am not agreed with the valuation given by the AVO. I had also filed my objections against the AVO, copy of which is enclosed herewith...”

8. However, the Assessing Officer has rejected the contention of the assessee and held that the objection raised by the assessee before the Assistant Valuation Officer(AVO) is not a matter to be considered by him at the stage of assessment proceedings. Thereafter, Assessing Officer computed the capital gain taking into account the value of the property, at Rs.6.95 per square meter, as on 01.04.1981 and valued the assessee's share in the property, at Rs.30,000/-, as on 01.04.1981, and then computed the index cost of acquisition as on 01.04.1981 at Rs.2,55,600/- (Rs.30,000 x 852/100).

9. On appeal, the Id. CIT(A) confirmed the action of the Assessing Officer. Aggrieved, the assessee is in appeal before us.

10. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that solitary grievance of the assessee in this appeal is that assessing officer has adopted less fair market value of agricultural land, @ Rs. 6.95 per square meter, as compared to fair market value of assessee @ Rs.180 per square meter, as on 01.04.1981. The assessing officer made addition by adopting less fair market value of agricultural land u/s 55A of the Act on the basis of valuation given by DVO. The assessee has sold an ancestral property at Palsana, Surat along with five other co-sellers on 26.03.2013 for a total sale consideration of Rs.4,81,74,000/-. The assessee had taken the FMV as on 01.04.1981, @ Rs.180/- per sq. mtr. on the basis of the Valuation report dated 08.01.2014 of the Govt. Approved Valuer, Shri P.K. Desai. The Assessing Officer referred the property valuation to the DVO on 26.11.2015, under section 55A of the Act. The DVO, vide his report dated 24.02.2016 valued the FMV as on 01.04.1981 @ Rs.6.95 per sq. mtr. and valued the property at Rs.30,000/- (Assessee's share). The Assessing Officer after taking into the Index cost of acquisition and deduction under section 54B of the Act, calculated the LTCG at Rs.61,52,225/-.

11. Shri P.M. Jagasheth, Learned Counsel for the assessee submits before the Bench that the reference made by the Assessing Officer to the DVO, under section 55A of the Act is erroneous. The Id Counsel contended that the report of the DVO is defective and biased, as the DVO in case of other assessees, had given a valuation report of the villages near to assessee's village in which DVO had given the FMV @ Rs.229/- and Rs.251/-, while in assessee's case DVO has given FMV @ Rs.6.95/- The Id Counsel contended that the sales instances taken by the DVO is not comparable, besides, the valuation report of valuer of Shri Ramesh Jain, which is placed on paper book page No. 17, has not been considered by the Id CIT(A). The Id Counsel also contended that assessee has right to challenge the DVO

report, however, the opportunity to challenge the DVO report was neither given by assessing officer nor by Id CIT(A), therefore, Id Counsel prayed the Bench that matter may be remitted back to the file of the Id CIT(A) with the direction to him to provide an opportunity to file the objections and to the assessee to challenge the DVO report.

12. On the other hand, Ms. Anupama Singla, Learned DR for the Revenue, has fairly agreed that since the Id CIT(A) has not considered the valuation report of Shri Ramesh Jain, submitted by the assessee, during the appellate proceedings, therefore, the matter may be remitted back to the file of the Id CIT(A) for fresh adjudication.

13. We note that assessee had relied on the Valuation Report of the Government Approved Registered Valuer who had determined the value of the property in question as on 01.04.1981 @ Rs. 180 per sq. meter. The DVO (Valuation Officer) after making the inspection submitted his Valuation Report determining the Fair Market Value of the property as on 01.04.1981 @ 6.95 per sq. meter. The Assessing Officer on the basis of the report of the DVO calculated the capital gains. The Id Counsel submits before us that the DVO (Departmental Valuer) has not based his valuation on any scientific and objective basis by taking into consideration the relevant factors which have an important bearing on the valuation as on 01.04.1981. The Id Counsel further submits that the Registered Valuer (Assessee's Valuer) had taken the various important factors, such as fertility of land, availability of water, infrastructure facility availability of labour etc. in his report and therefore the value adopted by the registered valuer is to be adopted rather than the value worked out by the DVO (Departmental Valuer). Besides, no opportunity was given to assessee to object or to challenge the report of DVO (Departmental Valuer), during appellate proceedings, therefore, Id CIT(A) has adopted one sided approach to adjudicate the assessee's appeal. That is, the contention of the Id Counsel is that assessee was not provided sufficient opportunity to object or to challenge the valuation done by the DVO (Departmental Valuer), during the appellate proceedings, which is against the principle of natural justice.

14. We note that where the assessee objects before the assessing officer that value adopted by stamp valuation authority under section 50C(1) exceeds fair market value of property on date of transfer, assessing officer may either accept valuation of property on the basis of report of approved valuer filed by the assessee or he may refer question of valuation of capital asset to DVO in accordance with section 55A of the Act, in this regard, the reliance can be placed on the judgment of the Hon`ble High Court of Allahabad in the case of Chandra Narain Chaudhri, [2013] 38 taxmann.com 275 (Allahabad), wherein it was held as follows:

“14. We are of the view that whenever objection is taken or claim is made before AO, that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub-section (1) of Section 50-C exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection of the assessee. He may either accept the valuation of the property on the basis of the report of the approved valuer filed by the assessee, or invite objection from the department and refer the question of valuation of the capital asset to DVO in accordance with Section 55-A of the Act. In all these events, the AO has to record valid reasons, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO under Section 55-A of the Act as a matter of course, without considering the report of approved valuer submitted by the assessee. In all such cases, the reasons recorded by the AO may be questioned by the assessee or the department as the case may be.

15. The questions of law, as framed in the memo of appeal, are decided in favour of the revenue and against the assessee. The order of ITAT dated 10.05.2011, is set aside. The matter is remanded to AO, to decide the valuation of the capital asset in accordance with law as explained by us in this judgement.”

15. We note that the correctness of a DVO's report can be challenged by the assessee, as held by the Coordinate Bench of ITAT Ahmedabad in ITA No.2107/Ahd/17, in the case of Lovy Ranka, for A.Y.2013-14, order dated 01.04.2019 the findings of the Coordinate Bench are as follows:

“5. It is sufficient, for our purposes, to take note of the fact that the provisions of Section 23A(1)(i) of the Wealth Tax Act, 1957, “shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act”. Section 23A(1)(i) of the Wealth Tax Act provides that “Any person..... objecting to any order of the Valuation Officer under section 35 having the effect of enhancing the valuation of any asset or refusing to allow the claim made by the assessee under the said sectionmay appeal to the Commissioner (Appeals) against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner ...”. In effect thus, by the virtue of Section 23A(1)(i) being incorporated, with necessary modifications, in Section 50C,

the correctness of a DVO's report can indeed be challenged. It is, however, also important to note that the provisions of Section 23A(6) of the Wealth Tax Act shall, with necessary modifications, also apply in the present context- as has been provided in Section 50C(2) itself. Section 23A(6) of the Wealth Tax Act provides as follows:

(6) If the valuation of any asset is objected to in an appeal under clause (a) or clause (i) of sub-section (1), the Commissioner (Appeals) shall,—

(a) in case where such valuation has been made by a Valuation Officer under section 16A, give such Valuation Officer an opportunity of being heard;

(b) in any other case on request being made in this behalf by the Assessing Officer, give an opportunity of being heard to any Valuation Officer nominated for the purpose by the Assessing Officer.

6. Section 24(5) of the Wealth Tax Act, 1957, the scheme of which also stands incorporated in Section 50C as is specifically stated therein, provides as follows:

(5) The Appellate Tribunal may, after giving both parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the assessment or penalty :

Provided that if the valuation of any asset is objected to, the Appellate Tribunal shall,—

(a) in a case where such valuation has been made by a Valuation Officer under section 16A, also give such Valuation Officer an opportunity of being heard;

(b) in any other case, on a request being made in this behalf by the 51[Assessing Officer], give an opportunity of being heard also to any Valuation Officer nominated for the purpose by the Assessing Officer

7. What essentially follows from the above provision is that in the event of the correctness of the DVO's report is called into question in an appeal before the Commissioner (Appeals), the DVO is required to be given an opportunity of hearing. While the above provision refers to valuation under section 16A of the Wealth Tax Act, 1957, the provisions of Section 50 C of the Income Tax Act, 1961, specifically refer to the provisions of Section 16A of the Wealth Tax Act, 1957. Accordingly, a valuation under section 50C(2) is also covered by the requirements of Section 23A(6) which are, as specifically stated in Section 50C, applicable in the present context. The same is the position with respect to the proceedings before this Tribunal. While the correctness of the DVO report can indeed be challenged before us as well, as a corollary to the powers of the CIT(A) which comes up for examination before us, once again the rider is that the Valuation Officer is to be given an opportunity of hearing. This opportunity of hearing to the DVO is a mandatory requirement of law. That is the unambiguous scheme of the law.

8. With this clarity on the scheme of the law, let us revert to the facts of this case.

9. The assessee before us is an individual. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has sold a bungalow for Rs 1,15,00,000 but the stamp duty valuation of the said bungalow, as evident from the sale deed, was Rs 1,40,00,000. The assessee, however, contended that the fair market price of the property was much less than the stamp duty valuation, and, accordingly, a reference was made to the Departmental Valuation Officer under section 50C(2). The valuation as

per DVO was Rs 1,27,12,402. The assessee made elaborate submissions on incorrectness of this valuation, and submitted that the objections taken by him before the DVO were not properly dealt with. The Assessing Officer was of the view that the valuation done by the DVO binds him and it is his duty to pass an order in conformity with the DVO's report. He referred to, and relied upon, various judicial precedents in support of this proposition. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) observed that "Section 50C of the Act is a deeming provision" and "a deeming provision is to be strictly applied without enlarging its scope". Learned CIT(A) was of the view that "considering the provisions of Section 50C, the value taken by the AO is correct" and no interference is thus called for. The assessee is not satisfied and is in further appeal before us. He is once again challenging the correctness of the DVO's report, is pointing out, what he perceives as, glaring errors in the methodology adopted by the DVO and is submitting that the CIT(A) fell in error in not adjudicating upon the same on merits.

10. In view of our analysis of the legal provisions earlier in this order, the assessee is indeed correct, even though somewhat serendipitously that the CIT(A) ought to have examined the matter on merits. Of course, before doing so, the CIT(A) was under a statutory obligation to serve notice of hearing to the DVO and thus afford him an opportunity of hearing. Clearly, learned CIT(A) took too narrow and somewhat superficial a view of his powers under the scheme of the law, and the assessee did not point out the specific legal provisions to him either. Be that as it may, the fact remains that correctness of the DVO's report is to be examined on merits and there is no adjudication, on that aspect, by the CIT(A). In view of these discussions, as also bearing in mind entirety of the case, we deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication on merits in accordance with the scheme of the law, after giving a due and reasonable opportunity of hearing to the assessee as also to the DVO, and by way of a speaking order. We further direct the CIT(A) to dispose of the remanded proceedings within three months of receiving this order, and, in case the DVO does not avail the opportunity of hearing, on the basis of material on record and submissions of the assessee. Ordered, accordingly."

16. We note that assessee has objected/challenged the DVO report during the assessment proceedings as well as appellate proceedings. Besides, the Id CIT(A) has also not considered the valuation report of Shri Ramesh Jain, submitted by the assessee, during the appellate proceedings. The Id CIT(A) ought to have considered the valuation report of Shri Ramesh Jain, submitted by the assessee and he must have disposed of the objections of the assessee in respect of DVO report, but he has failed to do so therefore it is against the principle of natural justice. The Valuation report of DVO, after all, cannot be treated as the last word on valuation, and there has to be a grievance redressal mechanism against incorrectness of the DVO's valuation- particularly when the DVO has not properly disposed of the objections of the assessee. It is abundantly clear from the precedents cited above, that correctness of a DVO's report can be challenged by the assessee. We note

that correctness of the DVO's report is to be examined on merits and there is no adjudication, on that aspect, by the CIT(A). Thus, Ld CIT(A) has to examine correctness of the DVO's report on merits after hearing both sides. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits, in accordance with the scheme of the law, after giving a due and reasonable opportunity of hearing to the assessee as well as DVO.

17. We have adjudicated the above issue by taking lead case in the case of Balubhai Chandubhai Patel, in ITA No.610/SRT/2018, for assessment year 2013-14. Since the matter is same in case of other assessees therefore, our above decision would be applicable *mutatis mutandis* to other assessees.

18. For statistical purposes, the appeals of all the assessees (in ITA No.610 to 615/SRT/2018) are treated as allowed.

Order is pronounced on 01/02/2021, as per Rule 34 of Income Tax Appellate Tribunal, Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Surat /दिनांक/ Date: 01/02/2021 /#SGR

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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