

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No.2289/AHD/2016 (AY 2012-13)  
(Hearing in Virtual Court)

Nanubhai G. Ahir, 143, Sultanabad, Ambawadi, Dumas, Surat. PAN : ATGTA 0140 A	Vs	The Income Tax Officer, Ward-2(3)(3), Surat.
Applicant		Respondent

Assessee by	Shri Sapnesh Sheth – CA
Revenue by	Ms. Anupma Singla – Sr. DR
Date of hearing	19.05.2021
Date of pronouncement	19.05.2021

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the orders of Id. Commissioner of Income tax (Appeals)-1, Surat, dated 27.06.2016, for assessment year (AY) 2012-13. The assessee raised the following grounds of appeal:

- “(1) That on facts and in law, the learned CIT(A) has grievously erred in confirming the action of the AO in determining the long term capital gains at Rs.1,48,41,340/- instead of Rs.9,40,565/- as shown by the appellant.*
- (2) That on facts and in law, the learned CIT(A) ought to have held that the indexed cost of acquisition is rightly adopted by the appellant at Rs.1,7,33,935/- @ Rs.290/- per sq.mt., and the entire addition as long term capital gains ought to have been deleted.*
- (3) The appellant craves leave to add, alter, amend any ground of appeal.”*

2. Brief facts of the case are that the assessee while filing the Return of Income for the assessment year under consideration offered Income from House Property, Long Term Capital Gain (LTCG), and Income from Other Sources. The case was selected for scrutiny. During the assessment, the Assessing Officer (AO) noted that the assessee sold a piece of land out of S.No.275, TP No.80, FP No.257 situated at Sultanabad, Surat for a

consideration of Rs.3.30 crore on 15.06.2011. In the computation of income, the assessee has shown the index cost of land by adopting value as on 01.04.1981 @ 290 per sq.mtr and arrived at market rate of Rs.22,59,100/- and worked out the index cost at Rs.1,77,33,935/-. The assessee also claimed deduction under section 54B. To support his contention, the assessee also filed report of Government Approved Valuer Shri B.H.Patel who valued the property @ Rs.290 per sq.mtr as on 01.04.1981. In order to verify the claim of assessee, the AO obtained necessary information from Sub-registrar, Surat and noted that value in nearby area in Bhimpore and Dumas in 1981 were @ Rs.1.80 per sq.mtr and Rs.8.40 per sq.mtr respectively. On the basis of information about the value of similar assets in the nearby area from the office of Sub-registrar, Surat, the AO issued show cause notice to the assessee as to why the valuation adopted @ Rs.290 per sq.mtr should not be rejected and appropriate value @ Rs.8.04 per sq.mtr based on the sale instances in nearby area should not be applied. The assessee objected about the application of rate suggested by AO and reiterated that valuer has prepared valuation on scientific basis and insisted to accept it. The AO referred the matter for valuation by District Valuation Officer (DVO) for determining the fair market values of land as on 01.04.1981. The DVO furnished his report dated 18.03.2015 and suggested valuation @ Rs. 63.50 per sq.mtr. The AO applied the rate as suggested by the DVO and reworked the Long Term Capital Gain at Rs.2,64,97,840/-. The assessee claimed exemption under section 54B of the Act of Rs.1,16,56,500/- on the net Long Term

Capital Gain. The AO after allowing the set off of exemption of section 54B, treated the remaining Long Term Capital Gain of Rs.1,48,41,340/- as taxable Long Term Capital Gain.

3. Aggrieved by the additions by the AO, the assessee filed appeal before the Id. CIT(A), the assessee filed detailed written submission, which are referred in para 5 of impugned order. The Id.CIT(A) after considering the detailed written submission upheld the order of AO by taking view that the Valuation Report prepared by the Registered Valuer is not only absurd, arbitrary and unrealistic and not having any scientific basis. The Id.CIT(A) accepted the rate of DVO by treating it as a quite fair and reasonable and scientific basis. Further aggrieved, the assessee filed present appeal before this Tribunal.
4. We have heard the submission of Ld. Authorised Representative (AR) of the assessee and Id. Departmental Representative (Sr. DR) of the Revenue and perused the material available on record. At the outset of hearing, the Id.AR of the assessee after explaining fact that while computing Long Term Capital Gain, the assessee adopted Fair Market Value(FMV) of property on the basis of valuation suggested by Government Approved Valuer @ Rs. 290 per sq.mtr as on 01.04.1981. The AO referred the matter to the DVO, the DVO suggested the rate of the property as on 01.04.1981 @ Rs. 63 per sq.mtr. The Id.AR for the assessee submits that he is raising a purely legal contention that the assessee while adopting the value of asset as shown asset at higher rate than the FMV and the amendment to section 55A(a) i.e. substitution of the word "*is at variance with the Fair Market*

*Value*” were inserted in the Income Tax Act w.e.f 01.07.2012 and the same is not applicable respectively. The ld.AR further submits that before making the reference, the AO has to form an opinion that FMV adopted by assessee is not a fair value. Since the amendment made in the statute is not applicable for the assessment year under consideration, therefore, the reference made by the AO was invalid. The ld.AR for the assessee further submits that his contentions is squarely covered by the decision of Tribunal in Ranchodbhai C. Patel vs. ITO in ITA No.821/AHD/2016 dated 27.11.2020, wherein on almost similar set of facts the appeal of that assessee was allowed by the Tribunal, by following the decision of Jurisdictional High Court in CIT Vs Gauranginiben S Sodhan (367 ITR 238 Guj) and Hon’ble Bombay High Court in CIT Vs. Pooja Prints 360 ITR 697 (Bom) The ld.AR for the assessee also provided the copy of decision of the Tribunal in Ranchodbhai C.Patel vs. ITO (supra).

5. On the other hand, the ld.Sr.DR for the Revenue after going through the grounds of appeal and hearing the submission of ld.AR of the assessee submits that she supports the order of ld.CIT(A).
6. We have considered the submission of both the parties and have gone through the orders of Lower Authorities. There is no dispute about the fact which we have noted above. The Surat Bench of Tribunal (authored by same combination) in Ranchodbhai C.Patel vs. ITO (supra) considering the similar set of facts, passed the following order;

“6. We have heard the submission of learned authorised representative of assessee and the learned Department of representative for revenue. We have also gone through the orders of lower authorities carefully. We learned of the assessee submits that he has raised purely a legal grounds to challenge the validity of reference to the valuation officer. The learned submitted that before making reference under section 55A, the assessing officer has to form an opinion that fair market value is on 1<sup>st</sup> April 1981 claimed in the computation of income is less than fair market value. In the present case the assessee has shown the value of asset at a higher rate than the fair market value and the amendment to the section 55A( a) i.e. substitution of the words “is at variance with the fair market value” were inserted with effect from 1<sup>st</sup> July 2012 and the same is not applicable retrospectively, further the assessing officer has to form an opinion that fair market value as on 1<sup>st</sup> April 1981 as claimed by assessee is not fair value. The learned AR of the assessee would submit that the ratio of decision of Hon’ble was rather High Court in case of CIT Versus Gauranginiben S Shodhan Ind. reported in (367 ITR 238) is squarely applicable on the facts of the present case. The learned AR of the assessee also relied on the following case laws.

- JigneshKumar S Modi (HUF) and 6 others Vs ITO (ITA No. 544 to 550/Srt/2018,
- Shantaben P Patel Vs ITO & 2 other ( ITA No. 781, 784 & 785/Ahd/2011,
- Gujarat High court in PCIT Vs Shantiben P Patel ( Tax Appeal No. 1204 of 2018 and
- Mahadevi Mohanbhai Naik Vs ITO ( ITA No.82/Ahd/2016)

7. *The learned AR for the assessee submits that in view of the decision of jurisdictional High Court in CIT Versus Gauranginiben S Shodhan (supra), the issue of validity of reference under section 55A(a) may kindly be addressed first as not in accordance with the law and in case it is held that reference to the DVO is not in accordance with law the additions based on such reference be deleted in such even the other contention raised before the lower authorities would become academic.*
8. *On the other hand the learned senior department representative for the revenue strongly supported the order of lower authorities. The learned Senior DR submits that the lower authorities have passed a reasoned order.*
9. *We have considered the rival contention of the parties and have gone through the orders of authorities below. We have noted that on similar set of fact, the coordinate bench of Tribunal in Jignesh Kumar S Modi (HUF) Vs ITO in ITA No.544 /SRT/2018 dated 26 June 2019, while relying on the decision of jurisdictional High Court in CIT Versus Gauranginiben S Shodhan (supra) and the decision of Bombay High Court in Commissioner of Income Tax Versus Pooja Prints (supra) passed the following order ;*

*“13. We have heard the rival contentions and perused the material available on record. The relevant provisions which are under consideration are contained in section 55A, it would, therefore, be relevant to refer to the said provisions which reads as under:*

*“55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the 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 assessing Officer is of opinion that the value so claimed is at variance with its fair market value;*

*(b) in any other case, if the 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 percentage of the value of the asset as 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,*

*and where any such reference is made, the provisions of sub-sections (2),(3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and 4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the 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.*

*Explanation.—In this section, "Valuation Officer" has the same meaning, as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957)."*

*14. The aforesaid provisions are as amended by the Finance Act, 2012 with effect from 1.07.2012 wherein in clause (a), for "is less than its fair market value" was substituted for "at variance with its fair value". As per the Revenue, the amended provisions of section 55A(a) are applicable for the impugned assessment year 2012-13 and the Assessing officer was well within his jurisdiction to refer the matter to the valuation officer. The assessee's contention is that unamended provisions of section 55A(a) are relevant for the impugned assessment year 2012-13 and the Assessing officer was not having the jurisdiction to refer the matter to the valuation officer.*

*15. In order to resolve the controversy, let's examine the provisions of section 55A(a). First and foremost, it provides that with a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer. In the instant case, for the purposes of this chapter means for the*

*purposes of determining the liability towards the capital gains tax on the sale of the land. There is no dispute that the liability towards the capital gains has arisen during the year as the transfer of the land has happened during the year. The second condition is that where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer. In the instant case, there is no dispute that cost of acquisition as substituted by the assessee with the fair market value as on 1.4.1981 is based on and in accordance with the estimate made by the registered valuer. The third condition is that the Assessing Officer should form an opinion that the value so claimed by the assessee is less than its fair market value (as per unamended provisions) or is at variance with its fair market value (as per the amended provisions). The formation of the opinion by the Assessing officer therefore has to be seen and examined in the context of determining the liability towards the capital gains and the liability towards the capital gains can be examined during the course of assessment proceedings. Therefore, the formation of the opinion by the Assessing officer has to be during the course of assessment proceedings and not prior or subsequent to the completion of the assessment proceedings. As per the unamended provisions, the Assessing officer has to form an opinion that the value so claimed by the assessee is less than its fair market value. Therefore, only in a scenario, the value so claimed by the assessee of the capital asset is less than its fair market value in the opinion of the Assessing officer, the matter can be referred to the valuation officer. In a scenario, where the value so claimed by the assessee is more than its fair market value, the matter couldn't be referred to the valuation officer. However, the amended provisions takes care of both the scenarios and has provided that where the value so claimed by the assessee is at variance with its fair market value, the matter can be referred to the valuation officer. In the instant case, the Assessing officer has invoked the amended provisions and has held that the value so claimed by the assessee is at variance with its fair market value. The contention of the assessee is that the amended provisions have only been brought on the statute books w.e.f 1.07.2012 and the same cannot be invoked in the instant case and therefore,*

*the AO lacks the necessary jurisdiction to refer the matter to the valuation officer.*

*16. The question is how one should read the amendment in section 55A(a) which has been brought on the statute books w.e.f 1.07.2012. Whether we should read the amendment in the context of transactions which have happened on or after 1.07.2012 and which are liable for capital gains tax and therefore, satisfying the initial condition of reference “for the purposes of this chapter” to the valuation officer. Alternatively, irrespective of period to which the transaction pertains, where the assessment proceedings are initiated by the Assessing officer or pending before the Assessing officer on or after 1.07.2012, given that the Assessing officer has to form an opinion during the course of assessment proceedings, the amended provisions will apply. In this regard, it would be useful to refer to the Memorandum explaining the Finance Bill, 2012 which reads as under:*

*“Under the provisions of section 55A, where in the opinion of the Assessing Officer value of asset as claimed by the assessee is less than its market value, he may refer the valuation of a capital asset to a Valuation Officer. Under section 55 in a case where the capital asset became the property of the assessee before 1st April, 1981, the assessee has the option of substituting the fair market value of the asset as on 1st April, 1981 as the cost of the asset. In such a case the adoption of a higher value for the cost of the asset as the fair market value as on 1st April, 1981, would lead to a lower amount of capital gains being offered for tax.*

*Accordingly, it is proposed to amend the provisions of section 55A of the Income-tax Act to enable the Assessing Officer to make a reference to the Valuation Officer where in his opinion the value declared by the assessee is at variance from the fair market value. Therefore, in case where the Assessing Officer is of the opinion that the value taken by the assessee as on 1-4-1981 is higher than the fair*

*market value of the asset as on that date, the Assessing Officer would be enabled to make a reference to the Valuation Officer for determining the fair market value of the property.*

*This amendment will take effect from 1st day of July, 2012.”*

*Therefore, the intent and purpose behind the amendment is to enable the Assessing officer to make a reference to the Valuation officer where he is of the opinion that the value adopted by the assessee as on 1-4-1981 is higher than the fair market value of the asset as on that date and in order to check whether the adoption of a higher value for the cost of the asset as the fair market value as on 1st April, 1981, has lead to a lower amount of capital gains being offered for tax. It is therefore an empowering provision wherein the Assessing officer has been given requisite power and authority w.e.f 1.07.2012 to refer the matter relating to valuation of a capital asset to the valuation officer. The question however remains in respect of which all transactions, the Assessing officer is empowered to make a reference to the valuation officer with effect from 1.07.2012.*

*17. In this regard, we refer to the decision of the Hon'ble Bombay High Court in case of CIT vs. Puja Prints [2014] 224 Taxman 22 (Bom) wherein it was held that the Parliament has not given retrospective effect to the amendment and the law to be applied is as existing during the period relevant to the Assessment Year 2006-07. The findings of the Hon'ble High Court are as under:-*

*“6. We have considered the rival submissions. We find that the impugned order dated 18 February, 2011 allowing the respondent assessee's appeal holding that no reference to the Departmental Valuation Officer can be made under Section 55A of the Act, only follows the decision of this Court in the matter of Daulal Mohta HUF (supra). The revenue has not been able to point out how the aforesaid decision is inapplicable to the present facts nor has the revenue pointed out that the decision in Daulal Mohta HUF (supra) has not been accepted by the revenue. On the aforesaid ground alone, this appeal need not be entertained. However, as submissions were*

*made on merits, we have independently examined the same.*

*7. We find that Section 55A(a) of the Act very clearly at the relevant time provided that a reference could be made to the Departmental Valuation Officer only when the value adopted by the assessee was less than the fair market value. In the present case, it is an undisputed position that the value adopted by the respondent assessee of the property at Rs.35.99 lakhs was much more than the fair market value of Rs.6.68 lakhs even as determined by the Departmental Valuation Officer. In fact, the Assessing Officer referred the issue of valuation to the Departmental Valuation Officer only because in his view the valuation of the property as on 1981 as made by the respondent-assessee was higher than the fair market value. In the aforesaid circumstances, the invocation of Section 55A(a) of the Act is not justified.*

*8. The contention of the revenue that in view of the amendment to Section 55A(a) of the Act in 2012 by which the words "is less than the fair market value" is substituted by the words "is at variance with its fair market value" is clarifactory and should be given retrospective effect. This submission is in face of the fact that the 2012 amendment was made effective only from 1 July 2012. The Parliament has not given retrospective effect to the amendment. Therefore, the law to be applied in the present case is Section 55A(a) of the Act as existing during the period relevant to the Assessment Year 2006-07. At the relevant time, very clearly reference could be made to Departmental Valuation Officer only if the value declared by the assessee is in the opinion of Assessing Officer less than its fair market value.*

*9. The contention of the revenue that the reference to the Departmental Valuation Officer by the Assessing Officer is sustainable in view of Section 55A(a) (ii) of the Act is not acceptable. This is for the reason that Section*

*55A(b) of the Act very clearly states that it would apply in any other case i.e. a case not covered by Section 55A(a) of the Act. In this case, it is an undisputable position that the issue is covered by Section 55A(a) of the Act. Therefore, resort*

*cannot be had to the residuary clause provided in Section 55A(b)(ii) of the Act. In view of the above, the CBDT Circular dated 25 November 1972 can have no application in the face of the clear position in law. This is so as the understanding of the statutory provisions by the revenue as found in Circular issued by the CBDT is not binding upon the assessee and it is open to an assessee to contend to the contrary.*

*10. The contention of the revenue that the Assessing Officer is entitled to refer the issue of valuation of the property to the Departmental Valuation Officer in exercise of its power under Sections 131, 133(6) and 142(2) of the Act is entirely based upon the decision of the Guwahati High Court in Smt. Amiya Bala Paul (supra). However, the Apex Court in Smt. Amiya Bala Paul (supra) has reversed the decision of the Guwahati High Court and held that if the power to refer any dispute with regard to the valuation of the property was already available under Sections 131(1), 136(6) and 142(2) of the Act, there was no need to specifically empower the Assessing Officer to do so in circumstances specified under Section 55A of the Act. It further held that when a specific provision under which the reference can be made to the Departmental Valuation Officer is available, there is no occasion for the Assessing Officer to invoke the general powers of enquiry.*

*In view of the above and particularly in view of clear provisions of law as existing during the period relevant to Assessment Year 2006-07, we are of the view that questions (a) and (b) do not raise any substantial question of law.”*

18. We now refer to the Hon'ble Gujarat High Court decision in case of CIT vs. Gauranginiben S. Shodhan Indl. [2014] 224 Taxman 253 (Gujarat) wherein it was held section 55A as it stood at the relevant time, has to be seen and emphasis was laid on the period of the transaction and where the transaction was for the period prior to 1.7.2012, amended provisions were held not applicable. The findings of the Hon'ble High Court are 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". This 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] 310 ITR 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."*

*19. xxxxxxxxxxxx*

*20 xxxxxxxxxxxx*

21 xxxxxxxxxxxx

22 xxxxxxxxxxxx

23. As we have noted above, the Hon'ble Bombay High Court in case of CIT vs. Puja Prints (supra) has held that the Parliament has not given retrospective effect to the amendment and the law to be applied is as existing during the period relevant to the Assessment Year 2006-07. Similarly, the Hon'ble Gujarat High Court in case of CIT vs. Gauranginiben S. Shodhan Indl. (supra) has held that section 55A as it stood at the relevant time, has to be seen and emphasis was laid on the period of the transaction and where the transaction was for the period prior to 1.7.2012, amended provisions were held not applicable. Similarly, in case of Late Shantaben P Patel, Ahmedabad (supra), the Hon'ble Gujarat High Court has reiterated the legal position that for the transaction falling in financial year 2010-11 relevant to AY 2011-12, the matter is covered by the earlier decision in case of Gauranginiben S. Shodhan Indl. (supra). We therefore find that there is convergence of view as evident from these decisions of Hon'ble Bombay and Hon'ble Gujarat High Court that the amendment brought in by the Finance Act, 2012 in section 55A(a) has to be read prospectively and not retrospectively. Secondly, such amendment shall apply to transactions (subject matter of determination of capital gains) which are effected during the period starting on or after 1.07.2012. No contrary High Court decision has been cited before us and in any case, the decision of the Hon'ble Gujarat High Court, being the jurisdictional High Court is binding on us.

24. Further, we find that the Coordinate Benches are also of the consistent view and having been following the legal proposition so laid down by the Hon'ble Bombay and Gujarat High Court. The Coordinate Bench in case of Sonali Roy (supra) drawing support from the decision of the Hon'ble Supreme Court in case of Karimtharuvi Tea Estate (supra) has further clarified that the amendments which are being applicable from any date other than first April of assessment year would be applied from the next Assessment Year. The amendment brought with effect from 01.07.2012 in section 55A would be applicable from the Assessment Year beginning from first April, 2013 i.e. Assessment Year 2013-14 and not applicable to Assessment Year 2012-13.

25. *In light of above discussions, if the facts of the present case are examined, the transaction of sale of land has taken place during the financial year 2011-12 relevant to Assessment year 2012-13, therefore, the amended provisions of section 55A(a) would not be applicable and one shall be guided by the erstwhile provisions of section 55A(a) of the Act.*

26. *In order to refer the matter to the valuation officer as per erstwhile provisions of section 55A(a), in the instant case, there is no dispute that the liability towards the capital gains has arisen during the year as the transfer of the land has happened during the year. There is also no dispute that cost of acquisition as substituted by the assessee with fair market value as on 1.4.1981 is based on and in accordance with the estimate made by the registered valuer. The third condition is that the Assessing Officer should form an opinion that the value so claimed by the assessee is less than its fair market value. Therefore, only in a scenario, the value so claimed by the assessee is less than its fair market value in the opinion of the Assessing officer, the matter can be referred to the valuation officer. In a scenario, where the value so claimed by the assessee is more than its fair market value, the matter couldn't be referred to the valuation officer. In the instant case, the value of the land shown by the assessee as on 1.4.1981 based on the registered valuer report is considered, it would reveal that the same was in fact even higher than the value subsequently determined by the valuation officer and therefore, the Assessing Officer was not empowered to refer the matter to the valuation officer even as per erstwhile provisions of section 55A(a) prior to amendment by the Finance Act, 2012.*

27. *Therefore, without going into the merits of the basis of valuation so adopted by the registered valuer and subsequently by the department's valuation officer, in absence of a valid reference to the valuation officer, the addition so made under the head "long term capital gains" so far as it relates to cost of acquisition as substituted by fair market value as on 1.4.1981 is directed to be deleted. In the result, the appeal of the assessee is allowed."*

10. *Considering the decision of co-ordinate bench of Tribunal on almost similar set of fact while considering the similar contention of assessee in the said held that when the transaction of sale of land was taken during the financial year 2011-12 relevant to the assessment year 2012 -13, the amended*

*provision of section 55A(a) would not be applicable and one shall be guided by the wrest while provision of un-amended section 55 A(a) of the Act. Therefore, respectfully following the same, we allow the ground No. 1 raised by the assessee. No contrary facts or law is brought to our notice to take other view.”*

7. In view of the above factual and legal discussion and keeping in view the consistent decision of Hon’ble Jurisdictional High Court in Gauranginiben S Sodhan (supra) and decision of Hon’ble Bombay High Court in CIT vs. Pooja Prints (supra) and decision of this combination in Ranchodbhai C.Patel vs. ITO and respectively following the same, the grounds of appeal raised by the assessee are allowed.
8. In the result, appeal of the assessee is allowed.

Order announced at the time of hearing of appeal on 19<sup>th</sup> May 2021 in the Virtual Court hearing.

Sd/-

**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 19/05/2021 / SGR

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By order

/ / TRUE COPY / /

Assistant Registrar, ITAT, Surat