IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
(Virtual Court Hearing)

BEFORE SHRI PAWAN SINGH (JUDICIAL MEMBER) AND
Dr. Arjun Lal Saini (ACCOUNTANT MEMBER)

ITA No. 138/SRT/2017
Assessment Year: 2012-13

Shree Jayantibhai Chimanbhai Patel, 1, Gandhi Street, At Gavior, Taluko Choriyasi, Surat-395007 **PAN No. BAAPP 9997 A**	Vs.	Income Tax Officer Ward-2(3)(2), Room No. 615, Aayakar Bhavan, Majuragate, Surat-395001
Appellant		**Respondent**

ITA No. 139/SRT/2017
Assessment Year: 2012-13

Shree Balubhai Chimanbhai Patel, NearHanuman Sheri, At Gavior Gam, Magdalla, Surat-395007 **PAN No. BEXPP 8382 J**	Vs.	Income Tax Officer Ward-2(3)(2), Room No. 615, Aayakar Bhavan, Majuragate, Surat-395001
Appellant		**Respondent**

Assessee by	:	Mr. Rajesh Upadhay, AR
Revenue by	:	Mr. B.P.K. Panda, Sr. DR
	:	
Date of Hearing	:	03/06/2021
Date of pronouncement	:	30/06/2021

ORDER

PER PAWAN SINGH, J.M.

1. These two appeals by two different assessee are directed against the order of ld. Commissioner of Income Tax (Appeals)-1, Surat [hereinafter referred to as "ld. CIT(A)] of even dated 03.07.2017. In both the appeals, the facts are common, the parties have raised

certain common grounds of appeal, therefore, with the consent of parties, both the appeals were clubbed, heard and are decided by a consolidated order. For appreciation of facts, with the consent of parties, the Appeal in ITA No. 138/SRT/2017 is treated as lead case. The assessee has raised the following grounds of appeal: .

(1) On facts and circumstances of the appellant's case as well as in law, learned CIT(A)-I, Surat has erred in sustaining the action of the AO for making addition of Rs.22,34,938/- by rejecting registered valuer's report for determining cost of acquisition of land as on 01.04.1981 at Rs. 185/- and Rs. 200/- per sq. Mt. as against cost determined by RVO at Rs. 300/- per sq. Mt.

(2) On facts and circumstances of the appellant's case as well as in law, learned CIT(A)-I, Surat has erred in dismissing appellants claim u/s 54B of the act on incorrect ground that the assessee has not pressed the said ground during appellate proceedings..

2. The assessee has raised following additional ground of appeal;

"That on facts and in law, the Ld. CIT(A) as well as the A.O. has erred in computing LTCG by taking FMV as on 01.04.1981 on the basis of DVO report ignoring the statutory position of law that reference to DVO u/s 55A is not valid prior to 01.07.2013."

3. Perusal of record shows that the appeal is filed after 29 days of prescribed period of limitation. The assessee has filed application dated 25.09.2017 for condonation of delay, supported by affidavit of assessee. In the application, the applicant/ assessee has contended that ld. CIT(A) passed order on 03.07.2017, which

was collected by the accountant on 05.07.2017. However, the appeal was filed on 26.09.2017, thus assessee was delayed of 29 days in filing appeal before the Tribunal.

4. The Ld. AR of the assessee submitted that the accountant who has concluded the order from the office and Ld. CIT(A) could not supplied the order of Ld. CIT(A) to the assessee or to the present authorised representative (AR) for filing the appeal before this Tribunal. The accountant was not well versed within technicalities of limitation as he was busy in other statutory compliance of GST or Income Tax. The Ld. AR for the assessee submits though the appeal was filed immediately on receipt of the order from accountant before ore this Tribunal. However, there is delay of 29 days in filing appeal. The Ld. AR submits that in filing appeal in time before the Tribunal was not intentional or deliberate. The assessee would not get any benefit in filing the appeal related to. The Ld. AR submits that a liberal view may be taken and the delay in filing appeal and the delay may be condoned.

5. On the other hand, the Ld. Departmental Representative (DR) for the Revenue submits that the application is not supported with the affidavit of accountant or the present AR for assessee. The

assessee has not explained the delay properly in filing this appeal. The Ld. DR for the revenue submits that the assessee has taken a casual approach and the application for condonation may be rejected.

6. We have considered the rival submissions of the parties considering the fact that the delay in filing appeal before the Tribunal is neither intentional nor deliberate but due to the fault and casual approach of the accountant of assessee. Further the assessee will not get any benefit in filing the appeal belatedly. Therefore, considering the facts that when technical considerations are pitted against the substantial justice, the cause of justice must be prevail. Moreover, there is a small delay of 29 days, therefore, considering the contents of the application for condonation of delay and the submissions of Ld. AR of the assessee, the delay in filing appeal before the Tribunal is condoned.

7. Brief facts of the case are that the assessee filed his return of income for assessment year 2012-13 declaring taxable income of Rs.48,290/-. In the computation of income the assessee has shown agriculture income of Rs.1,97,350/-. Initially, the return of income was processed and accepted u/s 142(1). Thereafter, the

case was selected for scrutiny during. During the scrutiny assessment, the Assessing Officer (AO) noted the assessee along with his six co-owner sold in property out of R.S./Block No. 272/2, 272/3 & 283 at Moje Gavier Surat for a consideration of Rs.6,17,36,500/-. The AO on further verification of fact noted that the assessee while calculating the capital gain on the sale of the said property and adopted Rs.300 per sq. mtr for the purpose of indexation cost as on 01.04.1981. The assessee adopted the value on the basis of valuation report on Shri P.K. Desai Registered valuer of Ahmedabad. The AO collected the sale instances from Sub-Registrar office in the year 1981 and took his view land rate of similar land in the year 1981 were Rs.94.45/- per sq. mtr only.

8. The AO on the basis of aforesaid discrepancies issued show cause notice dated 21.01.2015 as to why the value shown by assessee should not be rejected and the value on the basis of sale instances collected from the Sub-Registrar office should not be applied. The assessee filed its reply and stated that ITO Ward-2(3)(1) has already referred the matter to DVO in another co-owner's case of the above sold land. The AO recorded the assessee filed valuation report on 26.03.2015, The AO suggested the fair market value@ 200 per sq. mtr. in respect of R.S./Block No. 272/2, 272/3 and Rs.

185 per sq. mtr in respect of block No. 283 and accordingly on the basis of valuation suggested by DVO. On the basis of report of DVO, the Assessing Officer worked out the indexation cost of acquisition of entire property at Rs. 336,66,688/- and the assesse being owner of 1/7th share is of Rs.42,88,750/-. Though objected for estimation made by DVO. However, the assessee made further prayed for allowing the claim of deduction under section 54B and 54F in respect of newly constructed house property and for purchase of anther agriculture land. The AO rejected the claim of deduction under section 54B and 54F on the ground that no such claim was raised in return of income and that the land sold was not been used for agriculture land in in last two years immediately from the sale of land. The A.O. made addition of long term capital gain of Rs. 22,34,944/-.

9. Aggrieved by the action of AO, the assessee filed appeal before CIT(A). Before CIT(A), the assessee filed detailed written submission, the submission of the assessee in referred para 5 of order of CIT(A). Before Ld. CIT(A), the assessee contended that the assessee adopted value of land as on 01.04.1981 @ Rs. 300 per sq. mtr on the basis of valuation report of Government approved valuer. The Government approved valuer report was

based on legal and sound principles, whereas, the Assessing Officer collected sale instances for Sub-Registrar office in the year 1981 and adopted value @ 94.45 per sq. mtr only. On the basis of discrepancies, the Assessing Officer should show cause notice as to why the value @ 94.45 sq. mtr should not be adopted in this case. In the reply to the show cause notice, the assessee stated that the case of another co-owners the ITO Ward 2(3)(1) has already referred the matter to the DVO. After receiving valuation report of DVO, the assessee filed submission before Assessing Officer on 26.03.2015 and furnished revised working of capital gain after taking into account the value adopted by DVO Surat. The assessee also requested the Assessing Officer, that the assessee has made claim of deduction under section 54B and 54F on purchase of another agriculture land and making investment in residential house. The assessee further stated that the Assessing Officer repudiated the claims of deductions on the ground that no such claim was made in the return of income. The assesse further stated that addition of long term capital gain made by AO is without appreciating the fact and adopting value of land as on 01.04.1981 @ Rs. 185 per sq. mtr Block No. 283 and @ 200 per sq. mtr in R.S./Block No. 272/2, 272/3 it is quite

justifiable. There is no much difference in the location as well as other factor effecting value of land. All three lands were allotted in the same range and all lands were agriculture land and the factors affecting the value of land was same. Therefore, there was no reason to the Assessing Officer to discriminate the value of these units. The AO has valued claim much lower rate and that the arbitrary determined the value of non-agriculture land.

10. The Ld. CIT(A) after considering the submission of assessee rejected the contention of the assessee for accepting the value suggested by Government approved valuer for adopting market value as on 01.04.1981 @ 300 sq. mtr on the ground mentioned at para 6.2 of the order and approved the value suggested by DVO. However, the Ld. CIT(A) on the claim of deduction under section 54F and 54B sought the remand report from assessing officer, vide order dated 18.05.2017. The AO furnished the remand eport dated 13.06.2017. Copy of remand report was furnished to the assessee for his comment. The AO in his remand reported assessee has not furnished any documentary evidence for purchase of new property or purchase of plot. The assessee has not filed any evidence regarding construction of house nor any receipt regarding construction, was contract labour, bricks

etc. pollution under certificate (PUC), furnished. The assessee only provided measurement sheet on which no name of contractor is mentioned.

11. The assessee in its objection stated that the assessee is holding property No. 87A-01-4551-0-001 and furnished the copy of assessment notice of Surat Municipal Corporation (SMC) dated 04.03.2013 and contended that the assessee demolished the own structure and new residence/construction on the same place. Therefore, the SMC revised property tax, after completion of the procedure, the said from new residence. Regarding the discrepancies in the electricity connection the assessee submitted that it is a number of new connection. Against the objection of AO, assessee has not purchased new property the assessee sated that he constructed new structure after demolishing the earlier structure. The Ld. CIT(A) after considering the contention of the assessee held that during the appellate proceedings, the assessee not press the claim of deduction under section 54B, therefore, the said claim treated as dismissed. However, with regard the other deduction under section 54F, the Ld. CIT(A) concluded that the assessee furnished the copy of bill of construction along with labour construction, inspection by SMC initially on 02.03.2013

and other evidences allowed the deduction under section 54F and directed the AO to recompute the long term capital gain. Aggrieved by the order of Ld. CIT(A), the assessee has filed present appeal before us.

12. We have heard the submission of Ld. AR of the assessee and Ld. Departmental Representative (DR) of the Revenue and perused the order of lower authorities. The Ld. AR of the assessee submits that assessee has raised additional ground of appeal. The fact relating to additional ground of appeal is emanating from the record of lower authorities no new facts shall require to be brought on record. The Ld. AR submits that assessee has sold the land prior to 01.07.2012 and the amended provision of section 55A (a) is not applicable on the transaction of sale of land, which is the bone of contention in the present appeal. The Ld. AR submits that the ground of appeal raised by assessee is purely legal in nature. The assessee is entitled to raise additional account of appeal as per the decision of Hon'ble Supreme Court in National Thermal Power Corporation (NTPC) v. CIT 229 ITR 383 and Jute Corporation of India Ltd. v. CIT 187 ITR 688.

13. On merit, the Ld. AR of the assessee submits that the assessee while calculating long term capital gain adopted the fair market

value as suggested by Government approved value @ Rs. 300 per sq. mtr as on 01.04.1981. The AO adopted the value suggested by DVO @ 180 per sq. mtr for one part of land and Rs.200 per sq. Mtr on other part of the property. The Ld. AR submits that he has raised from the legal contention that while adopting the value of asset fair market value. The amendment of section 55A(a) substitution of the word " is at variance with *fair market value"* were inserted in the Income Tax Act w.e.f. 01.07.2012 and the same is not applicable on the facts of the present case. The AO before applying rate suggested by DVO hsas to form an opinion that fair market value adopted by the assessee is not a fair value. The amendment so made in the Statute is not applicable for the assessment year under consideration. Therefore, the value suggested by DVO and adopted by AO has no merit. To support his submission, the Ld. AR of the assessee relied upon the decision of Tribunal in Jagrutiben V. Patel v. ITO in ITA No. 650 & 651/Ahd/2017 dated 27.11.2020. The Ld. AR for the assessee to strengthened his submission also relied upon the decision of Hon'ble Gujarat High Court in CIT v. CIT v/s 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 submits

that the decision of jurisdictional High Court and has been followed in number of decisions. The Ld. AR for the assessee submits that since the amended provision of section 55A is not applicable on the transaction undertaken by assessee. Therefore, the addition made by AO and upheld by Ld. CIT(A) are liable to be rejected.

14. On the other hand, the Ld. DR of the Revenue supported the order of lower authorities. The Ld. DR further submits that the assessee during the assessment proceedings requested for valuation suggested by DVO in his co-owner's case. Now he cannot object or call the action of A.O. into question. The assessee is estopped from raising further objection against his own stand before the AO. The Ld. DR for the Revenue further submits that as per section 115 of Evidence Act, the assessee has estopped from objecting of report of DVO. The Ld. DR for revenue further submits that assessee is also stopped from making additional claim which was not claimed earlier. On merit, the Ld. DR for the revenue submits that report of Government approved valuer is made, there is no basis. The so-called valuation report is arbitrary baseless thus the AO rejected the valuation report and adopted the departmental valuation report. Thus, the ratio of case law

relied by the assessee are not applicable. The Ld. DR for the revenue submits that valuation report is dated 03.08.2012 which is after the cut of date on 01.07.2012. Therefore, case law relied on assessee or not applicable. The Ld. DR for the revenue finally submits that the case the case law in Jagrutiben V. Patel (supra) wherein the observation of Bench that "revenue is unable to produce any material to controvert the aforesaid finding of the Co-ordinate Bench". The Ld. DR furnished raised new point in his written note dated 02.06.2021.

15. We have considered the rival submissions of the parties and has gone through the orders of authorities below. We find that the assessee has raised additional ground of appeal. The assessee has challenged the validity of reference to DVO under section 55A, being not proper and valid for the transaction prior to the date of 01.07.2013, which is the date of amendment in section 55A. We find that no new facts are required to be brought on record for adjudication on this ground of appeal. All facts are emanating from assessment order or order of first appellate authority for adjudication of additional ground of appeal. Considering the decision of Hon'ble Supreme Court in National Thermal Power

Corporation (supra) and Jute Corporate India Ltd. (supra) we admit the additional ground of appeal for adjudication.

16. We find that there is no dispute that assessee while computing the capital gain adopted fair market value on the basis of Government approved value @ 300 per sq. mtr in respect of all 3 parcels of land. The AO adopted value suggested by DVO in assessee's own case @ Rs.185 per sq. mtr part of land and @ 200 per sq. mtr with regard to other part of land. We find that before the Tribunal the assessee has raised additional ground of appeal which is purely legal in nature. The Ld. AR for the assessee submits that the assessee vide adopting value of asset on higher rate than the fair market value and the amendment made in section 55A w.e.f. 01.07.2012 is not applicable. The Ld. AR for the assessee also relied upon the decision of Co-ordinate Bench and Hon'ble Bombay High in Pooja Prints (supra) and Jurisdictional High Court in CIT Vs Gaurngiben S Shodhan (supra) wherein it was held that the amended provision of section 55A is not retrospective. Further, we find that in similar said of fact this combination in Jagrutiben V. Patel (supra) from points the following order. Considering the aforesaid factual and legal discussion and keeping in view the binding decision of

jurisdictional High Court in Jagrutiben V. Patel (supra) Hon'ble Bombay High in Pooja Prints (supra) that amended provision of section 55A is not applicable on the transaction made prior to 01.07.2012. We have further noted that on similar set of fact, in Ranchodbhai C Patel in ITA No. 821/AHD/2016, this combination 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 1st 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 1st July 2012 and the same is not applicable retrospectively, further the assessing officer has to form an opinion that fair market value as on1st 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 ection 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 statue 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 statue 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 then 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 then 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 then 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". Thesituation 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 onthe 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.xxxxxxxxxx
20 xxxxxxxxxx
21 xxxxxxxxxx
22 xxxxxxxxxx

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."

17. We further find, similar order was passed in Nanubhai Ahir Vs ITO (ITA No. 2289/AHD/2016. Thus, considering the aforesaid factual and legal discussion and keeping in view the binding decision of jurisdictional High Court in Gauranginiben S. Sodhan (supra) and Hon'ble Bombay High Court in CIT vs Pooja Prints (supra) and decision of this combination as referred above

and respectively following the same, the additional ground of appeal raised by assessee is allowed.

18. So far as objections of the Ld. DR for the revenue is concern that the assessee is estopped as per section 115 of Evidence Act, from objecting of report of DVO, we may note that there is no estoppel against the law. No tax can be levied without the authority of law as mandated under Article 265 of the Constitution of India. As we have already held that amended provision of section 55A is not applicable on the transaction made prior to 01.07.2012 therefore, the stand taken by assessee will not come in his way for seeking relief, which is purely based on legal premises.

19. Considering the fact that we have allowed the additional grounds of appeal therefore, adjudication on primary grounds of appeal raised by assessee have become academic.

20. In the result, the appeal of the assessee is allowed.

ITA No. 139/SRT/2018 By Bablubhai Chimanbhai Patel

21. As noted above, the assessee has raised identical grounds of appeal as raised in assessee's co-owner case in ITA No 138/SRT/2018, which we have already allowed and therefore, the consistency this appeal is also allowed with similar observation.

22. In the result both the appeals are allowed.

Order pronounced on 30th June 2021 by placing the result on the notice board

Sd/-	Sd/-
(DR. ARJUN LAL SAINI)	(PAWAN SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai;
Dated: 30/06/2021
Rahul Sharma, Sr. P.S. (on tour)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Sr. Private Secretary)
ITAT, Surat