

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.401/SRT/2019

(निर्धारणवर्ष / Assessment Year: (2012-13)

(Virtual Court Hearing)

Divyangana H. Parmar, Ground Floor, Divyankinj, Station Road, Bhilad, Vapi.	Vs.	The ACIT, Vapi.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACVPP5311Q		
(Assessee)		(Respondent)

Assessee by : Shri Haridas Bhat, AR

Revenue by : Ms Anupama Singla, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 28/03/2022

घोषणाकीतारीख/Date of Pronouncement: 29/03/2022

आदेश / O R D E R

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

Captioned appeal filed by the assessee pertaining to assessment year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Valsad [in short “the ld. CIT(A)”] in Appeal No. CIT(A)/VLS/SAS/300/17-18 dated 23.05.2019, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax, Act, 1961 (hereinafter referred to as “the Act”) dated 18.02.2015.

2. When this appeal was called out for hearing, learned counsel for the assessee invited our attention to the order dated 12.07.2017, passed by the Division Bench of the Tribunal in assessee’s group case in ITA No.2912/AHD/2016 for the AY.2012-13 on identical and similar facts, whereby the issue relating to determination of index cost of acquisition for computing long term capital gain (LTCG), has been discussed and adjudicated in favour of assessee. The learned counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of the Tribunal, a copy of which was also placed before the Bench.

3. Learned Departmental Representative (ld. DR) for the Revenue, nevertheless relied upon the orders of the authorities below.

4. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in assessee's group case (sister case, Co-owner) vide order dated 12.07.2017. In this order, the Tribunal has *inter alia* observed as follows:

"5. During the course of hearing, it was brought to our notice that the Hon'ble jurisdictional High Court in a number of decisions has propounded that the AO has no power to make reference to the DVO for the transaction which have been executed before 1.7.2012. Reference is made to the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan, 45 taxmann.com 356 (Guj) and CIT Vs. Manulaben M. Unadkat, 55 taxmann.com 62 (Guj). On the strength of this decision, it was contended that reference under section 55A(a) can be made to the DVO by the AO if the AO is of the opinion that value so claimed by the assessee is less than its fair market value. The discussion made by the Hon'ble Gujarat High Court in the case of Gauranginiben S. Shodhan reads asunder:

"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". The 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 Valuers 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 Hiraben Jayantilal Shah vs. Income-tax Officer and another reported in [2009] 310 ITR 31(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."

17. In the result, we see no reason to interfere. However, we have given our independent reasons and should not be seen to have confirmed the reasonings adopted by the Tribunal in the impugned judgment. Tax Appeal is dismissed."

6. In the case of CIT Vs. Manulaben M. Unadkat (supra) the Hon'ble High Court has recorded the following findings:

"5. We have heard learned advocates for both the parties and perused the material on record. While deciding the Appeal, the Tribunal in paragraph No.6 of its order observed as under:-

"6. We have duly considered the rival contentions. A reference to the Valuation Officer is to be made under section 55A of the Act. Clause(A) of Section 55A has a bearing on making such a reference. It reads as under:

"55.A. 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 less than its fair market value;

The provision specifically provides that if the Assessing Officer is of the opinion that the value disclosed by the assessee is less than the fair market value only, then he can make a reference to the DVO, Now the moot question is as to how the opinion is to be formed by the Assessing Officer. Whether this opinion is subjective or guided by some judicious actions. The formation of opinion should have rational connection with the material brought on record. It should not be based on extraneous or irrelevant reasons. In the present case, the Assessing Officer before making a reference to the Valuation Officer has not brought anything on the record indicating that the assessee has disclosed lesser sale price. There is nothing on the record which can suggest to ignore

the report of the registered valuer and to adopt the report of the Valuation Officer. Both these persons are technical persons and before accepting the evidence of an expert, there should be corroboration of some other material. Taking into consideration the overall facts and circumstances of the case, we are of the opinion that the ld Assessing Officer ought to have not made a reference to the DVO for determination of the fair market value of the property in dispute. The report of the DVO alone is not sufficient for estimating the capital gains at Rs.12,28,907/-."

6. In view of the above, we are in complete agreement with the view taken by the Tribunal. The Tribunal has given cogent and convincing reasons in arriving at the conclusion. Therefore, the present appeal is dismissed. Accordingly, the question posed in this appeal is answered in favour of the assessee and against the revenue."

7. In the present case though the AO has not specifically made reference to the DVO, but he called for information about sale instance in that area at the relevant point of time. We have perused the finding of the ld. Revenue authorities. It is pertinent to observe that evidence collected by the AO relates to nearby village viz. Kharadpada. Even if the AO has power to call for such report, then at least he ought to have collected data of similarly situated land, if any available. He cannot compare rates of land of adjoining area, when the assessee has alleged that her land was situated on the road-side, in other words, the assessee has pleaded that the land sold by her was abutting to the main land of Bhilad-Naroli Road which connects NH. No.8 Road and Silvassa city. Thus, this land had more potentiality than the one compared by the AO. If that information is excluded, then there is nothing with the AO to suggest that cost of acquisition taken, by the assessee is on the higher side. Claim of the assessee is supported by certificate of an expert who is a Government registered valuer, He has inspected site, and thereafter gave his opinion. His report cannot be brushed aside without any other rebuttable evidence, Therefore, we allow the appeal of the assessee and direct the AO to compute long term capital gain on transfer of non-agriculture land by the assessee after taking into consider the cost of acquisition at the rate of Rs.120/- per sq. meter as on 1.4.1981."

5. As the issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench, in assessee's group case and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Co-ordinate Bench (supra). We find no reason to interfere in the said order of the Co-ordinate Bench, therefore, respectfully following the judgment of the Coordinate Bench in assessee's group case, we delete the addition of Rs.15,12,042/-.

6. In the result, the appeal filed by the assessee is allowed.

Order is pronounced in the open court on 29/03/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 29/03/2022

SAMANTA

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

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat