

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND  
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.824/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

ACIT, Circle-2, Pune	Vs.	Vilas Dashrath Balwadkar House No.329, Near Laxmi Mata Temple, Balewadi, Pune-411045 PAN: APPPB1117B
Appellant		Respondent

ITA No.931/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Vilas Dashrath Balwadkar House No.329, Near Laxmi Mata Temple, Balewadi, Pune-411045 PAN: APPPB1117B	Vs.	ACIT, Circle-2, Pune
Appellant		Respondent

ITA No.932/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Prakash Dashrath Balwadkar House No.329, Near Laxmi Mata Temple, Balewadi, Pune-411045 PAN: APPPB1116A	Vs.	ACIT, Circle-2, Pune
Appellant		Respondent



(A)-3/Cir-2,Pn/134/2017-18/1 and PN/CIT(A)-3/Cir-2,Pn/132/2017-18/3; respectively. Relevant assessment year herein is assessment year 2014-15 and proceedings are u/s 143(3) of the Income Tax Act, 1961, in short 'the Act'.

Heard all the assesseees through their counsel Shri Deepak Sasar and the departmental represented by Shri M.G. Jasanani/DR.

2. The Revenue appeal ITA No.824/PUN/2019 raises the foregoing substantive grounds:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the reference made to the DVO is invalid by relying on the judgment of the Hon'ble Bombay High Court delivered in the case of CIT vs Pooja Prints 360 ITR 697 [2014], which relate to sec 55A and A.Y. 2006-07. Whereas, in present case reference was made under sec 142A for A.Y. 2014-15.*
2. *The appellant prays that the order of Ld. CIT(A) be held to be bad in law and be quashed and that of the Assessing Officer be restored.*

3. The assesseees three appeals on the other hand plead the following identical substantive grounds:

- 1) *The Ld. CIT(A)-3 has erred in confirming the Assessing Officer's action of not considering the claim of the assessee that no cost of acquisition of Capital Assets, hence no capital gain.*
- 2) *The Ld. CIT(A)-3 has erred in confirming the Assessing Officer's action of not considering the time limit for completion of assessment u/s 153 of the act.*

- 3) *The Ld. CIT(A)-3 has erred in confirming the Assessing Officer's action of not considering the time limit for receipt of valuation report u/s 142A of the act.*
- 4) *The Ld. CIT(A)-3 has erred in confirming the Assessing Officer's action of not considering the stock in trade was done in 01/04/2010 i.e. F.Y. 2010-11 and hence it is deemed reopening of assessment under disguise.*
- 5) *The Ld. CIT(A)-3 has erred in confirming the Assessing Officer's action of not intimating regarding conversion of limited scrutiny into complete scrutiny. Hence assessment order is liable to cancel and principle of Natural Justice is not followed.*

4. There is hardly any dispute between the parties that all the foregoing issues have arisen on account of these assessees having sold their stock-in-trade land in survey No.38, Hissa No.1, Village Balewadi, Tal. Haveli, Dist Pune. There is further no issue between the parties that the foregoing land(s) formed subject matter of a joint venture development agreement dated 23.12.2010 followed by commencement of development work thereupon in financial year 2012-13 finally culminating in the assessees having offered long term capital gains involving varying sum(s). The Assessing Officer appears to have taken up CASS scrutiny(ies) to frame all three impugned assessments making long term capital gains addition in these three assessees' hands after making section 142A reference to the DVO on 07.12.2016. We next note that

these assessee preferred their as many separate appeals before the CIT(A) wherein he has rejected their five substantive issues to the extent pleaded in their respective grounds herein and decided the validity of reference made to the DVO against the department in light of hon'ble Bombay high court's decision in Pooja Prints case (supra).

This leaves all these four parties aggrieved.

5. We proceed to decide these three assessee identical five substantive grounds in this factual backdrop. Learned counsel's first and foremost argument is that there is no cost of acquisition at all regarding the asset in issue and therefore, the same ought to have been adopted at nil than 12% allegedly paid by the owner / their predecessor. The CIT(A) has discussed the entire issue as follows:

*“5.3. **DECISION** :- The submissions of the appellant and the material on record have been considered.*

*5.4. On this issue, the appellant has stated that there is an inherent limitation in concept of capital asset. This limitation is that the liability to tax on capital gain would arise in respect of only those capital assets in the acquisition of which an element of cost is etc actually present or capable of being reckoned and not in respect of those capital asset in the acquisition of which the element of cost is altogether inconceivable. The appellant has relied upon several case laws. The appellant raised this issue before the AO vide letter dated 28-08-2017. (Page 44 of paperbook).*

5.5. However, in the submission, the appellant has himself narrated history of the property. The relevant portion is reproduced below –

*“The said property Survey No.38, Hissa No.1, Village Balewadi, Tal. Haveli, Dist Pune was in the name of Kondiba Rama Balwadkar and his name was mutated on 7/12 extract since 1954, above his name the name of Government was mentioned vide Mutation Entry No.716. There was KUL namely Mr. Gangaram Vitu Balwadkar, which was mutated vide Mutation Entry 583 dated 05/08/1954. The said KUL had not been in possession for 2 years, hence his name as KUL was removed from the 7/12 extract vide M.E. No.653 dated 26/06/1957.*

*The said property was Class II, Inam Class 6B of the Maharashtra Land Revenue Code, 1960 and the tenure is to be cleared by paying the necessary charges as Nazrana to Government of Kondi Rama Balwadkar shows name was mutated vide M.E. No.716. The said property was of Patil Inam Class 6B, and was termed as Khalsa, vide order of Mamlatdar Saheb Haveli vide order No.WTN/WS/2052/62 dated 13/12/1962 and order No.WTN/WS/655/63 dated 31/07/1963. The possession holder has to pay 12% of the price as value to the Government and hence the name was recorded on the 7/12 extract below the name of the Government M.E. No.793 states that the said owner has paid the 12% charges to Government and got the property re-granted on New tenure vide order of Mamlatdar Sir, bearing order No.P.S.R.B./2/69.”*

*In the above submission, the appellant has himself that the possession holder (Kondi Rama Balwadkar was required to pay 12% of the price as value to the Government and hence his name was recorded on the 7/12 extract below the name of the Government. M.E. No. 793 states that the said owner has paid the 12% charges to Government and got the property re-granted on New tenure vide order of Mamlatdar Sir, bearing order No. P.S.R.B./ 2/69. Thus, the owner has paid an amount of 12%. Exact amount paid should be in knowledge of the appellant. Under these circumstances, the amount of 12% paid by the owner becomes the cost of acquisition and the appellant cannot argue that cost of acquisition is not ascertainable. As the cost of the asset under consideration is ascertainable, the case laws relied upon the appellant do inapplicable to the appellant. Accordingly, Ground No 1 of the appellant is DISMSSED.”*

6. We find no substance in the learned counsel's foregoing arguments as this is an instance of perfection of title by the assessee's predecessor in interest by paying 12% charges to the government; which in turn, would result in acquisition of absolute title on government land. Learned counsel could hardly dispute that his predecessor-in-interest only enjoyed possession than having title of this land earlier. We conclude in this factual backdrop that the learned lower authorities have rightly rejected the assessee's contention of nil cost of acquisition in the given facts and circumstances. This identical and first & foremost ground is rejected all these appeals.

7. The assessee's next ground is regarding validity of impugned assessments which have been claimed to be barred by limitation. The CIT(A)'s identical detailed discussion on the instant issue reads as follows:

*“7.3. DECISION :- The submissions of the appellant and the material on record have been considered.*

*7.4. On this issue, the appellant has stated that for A.Y. 2014-15 the notice u/s 143(2) of the Act was issued on 31/8/2015 and assessment was completed on 31/8/2017. The appellant argued that as per the provision of section 153 of the Act the time limit for completion of the assessment for assessment year 2014-15 is within the 21 months from the end of the assessment year. In our case the 21 months was expired*

on 31/12/2016. So the assessment order should have been completed on or before 31/12/2016.

7.5. The submission of the appellant has been considered. As per explanation 1 clause (iv) of the explanation to section 153 of the Act mentions the exclusion in computing the period of limitation that the period commencing from the date of which the assessing officer make a reference to the valuation officer under sub section of section 142A and ending with the date on which the report of valuation officer is received by assessing officer. In the case of the appellant the reference was made to the departmental valuation officer on 07/12/2016 and the report was received on 11/07/2017. Thus, on the date of referring the matter to the DVO, the AO was left with 24 days to pass the order. So as per the provisions of Explanation 1 clause (iv), the AO was left with 24 days after receipt of the report of the DVO. However, there is another provision in the Sec 153 of the Act which reads as given below:

***Provided*** that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (1),(1A), (1B), (2), (2A) and (4) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period ***shall be extended to sixty days*** and the aforesaid period of limitation shall be deemed to be extended accordingly:]

Thus, as per above proviso, the time available with the AO was 60 days after receipt of the DVO report. The DVO report is dated 11-07-2017 Even if it is assumed that the report of the DVO was received by the AO on 11-07-2017 itself, the time limit for completion of the assessment order was 09-Sept-2017. The AO completed the assessment on 31-08-2017. So, the assessment was completed well within the time allowed as per the provisions of the Sec 153 of the Act.

The appellant has also alleged that in order to avoid the limitation period of 21 months the assessing officer, has hurriedly referred the matter to the Departmental Valuation Officer and bought the time to that extent. However, on the basis of elaborate facts discussed earlier, I do not agree with the allegation of the appellant, Ground No 3 of the appellant is **DISMISSED.**”

8. Suffice to say, it has come on record that the Assessing Officer had made section 142A reference to the DVO and the time limit in submission of such a report of valuation is further extended to 60 days in light of foregoing statutory proviso (supra). We thus reject the assessee's instant second substantive ground as well.

9. The assessee's third ground also follows suit in very terms since learned counsel could hardly pinpoint any statutory provision applicable in the given facts and circumstances which could lead us to the conclusion that the DVO report itself was time barred. Ordered accordingly.

10. Coming to the assessee's fourth substantive ground that the land in issue stood converted into stock-in-trade and the learned lower authorities ought to have initiated section 147/148 reopening mechanism we hardly see any merit therein since the chargeability of capital gains to tax u/s 45(1) in an instance of a capital asset converted to stock-in-trade arises only in the year of transfer of the asset under sub-section (2) thereof. We make it clear that these assessee's have transferred their respective shares in the land in

financial year 2013-14 relevant to the impugned assessment year 2014-15 wherein the learned lower authorities have framed the respective assessments. We thus reject the assessee's instant fourth substantive ground as well.

11. The assessee's identical last substantive grievance is that the learned lower authorities have erred in law and on facts in converting the limited scrutiny to a complete one. We note herein as well from a perusal of page 26 in ITA No.933/PUN/2019 that the reason of scrutiny selection was "non corporate assessee having income to business to which section 44AB applies". Learned counsel could hardly dispute that these assessee's have transferred their stock-in-trade (supra) as non corporate assessee's resulting in business income. We thus reject the assessee's instant last substantive ground as well. This is indeed coupled with the fact that the Assessing Officer(s) had converted this limited scrutiny to complete one as per CBDT Instruction No.20/2015 after obtaining the PCIT-2, Pune's prior approval. This identical fifth substantive ground is also rejected in all these three appeals therefore. So is

the outcome of these three assessee's as many appeals ITA Nos.931 to 933/PUN/2019.

12. This leaves us with the Revenue appeal ITA No.824/PUN/2019 wherein the CIT(A) has held the impugned reference as barred by law as follows:

*“6.3 **DECISION:-** The observations of the AO, submissions of the appellant and the material on record have been considered.*

*6.4 On this issue, the relevant facts are that the appellant adopted the value of the capital asset as on 01-04-1981 and as on 01-04-2010 on the basis of Registered Valuer Report. However, the AO was not satisfied and referred the property to the DVO u/s 142A of the Act for valuation as on 01-04-1981 and as on 01-04-2010. The AO adopted valuation as 01-04-1981 and as on 01-04-2010 as per DVO report and made adjustments to long term capital gains and consequently to business profits.*

*6.5. The submission of the appellant is that the reference was made u/s 142A of the Act whereas the valuation as on 01/04/1981 should have been referred u/s 55A of the Act. The appellant has further argued that the reference to the valuation officer u/s 55A of the Act was valid only after 01/07/2012 where the amendment was made with respect to the valuation claimed by the assessee was higher than the valuation determined by the Departmental Valuation Officer. No reference is valid before 1/7/2012 when valuation claimed by the assessee is more than valuation determined by the Departmental Valuation officer. In our case the assessee has adopted valuation at the Rate of Rs.300/- per Sq.Meter which is higher than valuation determined by District Valuation Officer which was Rs. 202.90/- per S-q.Meter. Similarly the fair market value is determined as on 01/04/2010 and the amendment to the Income Tax Act is made on 01/7/2012 and amendment is prospective in the nature. Hence there was no jurisdiction to the assessing officer to refer the matter to the valuation officer. The appellant also argued, without prejudice to above submission, that the reference for assessment year 2014-15 is invalid reference u/s 142A of the Act as on the book of the statute the*

*section 142A was amended w.e.f. 1/10/2014 i.e. it is applicable for AY. 2015-16 by Finance Act No.2 of 2014.*

*6.6. The appellant relied upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs Pooja Prints 360 ITR 697 (2014). In the case of Pooja Prints (Supra), the assessee adopted the value of his property at Rs.35.99 lakhs as a fair market value as on 1-4-1981 on the basis of a valuation report. The Assessing Officer was of the view that the value of property at Rs.35.99 lakhs as adopted by the assessee was high considering the fact that it was purchased at a consideration of Rs.1.45 lakh only 15 months earlier. Therefore, the Assessing Officer referred the issue of valuation to the Departmental Valuation Officer who valued the property at Rs.6.68 lakhs as on 1-4-1981 and the indexed cost at Rs.33.20 lakhs. Consequently, the Assessing Officer by his Assessment Order enhanced the capital gain of the appellant from Rs.11.20 lakhs to Rs.1.61 Crores. On appeal the Commissioner (Appeals) dismissed the appeal of the assessee. On second appeal, the Tribunal held that in view of section 55A(a), it was not permissible for the Assessing Officer to make a reference to the Departmental Valuation Officer for the purpose of valuation, as the value of the property declared by the assessee was not less than its fair market value. On these facts, the Hon'ble Bombay High Court held as given below:*

*"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." Thus, the Hon'ble High Court held 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 and that 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" has not been given retrospective effect by the Parliament. 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.*

*6.7. Following the decision in the case of Pooja Prints (Supra), Hon'ble ITAT Pune decided on similar lines in the case of Anjali Bharat Kabra Vs ITO [2016] 75 taxmann.com 5. In this case, the assessee sold lands in 2009 for Rs. 1.11 crore. The value assessed by the stamp valuation authority for the purpose of stamp duty was Rs.1,99,57,350. The assessee objected for adopting the value of consideration as per stamp valuation authority. The Assessing Officer made a reference to the DVO. The DVO valued property in 2009 at Rs. 2.30 crore. He also determined the fair market value as on 1-4-1981 at Rs. 2.04 lakh while the assessee took value ascertained by the Registered valuer as on 1-4-1981 at Rs. 19.29 lakhs. The assessee explained that the said property was under litigation which depreciated its market value. The Assessing Officer rejected the claim of assessee and applied the provision of section 50C(3) to recompute the income from long-term capital gains by taking the sale value at Rs. 1.99 crore and fair market value as on 1-4-1981 at Rs. 2.04 lakhs. On appeal, the Commissioner (Appeals) affirmed the order of Assessing Officer. On these facts, the Hon'ble ITAT Pune Held as given below:*

*"13. The issue which arises before us is that whether any reference could be made to the DVO to determine the Fair Market Value at value which was lesser than the value declared by the assessee, while computing the income from long term capital gains. The objection raised by the assessee was against the reference to DVO under section 55A of the Act to determine*

*the fair market value as on 01.04.1981. Under the pre-amended provisions of section 55A of the Act with a view to ascertain the fair market value of a capital asset, the Assessing Officer is empowered to refer the valuation of capital asset to a Valuation Officer under clause (a) in case where the value of an asset as claimed by the assessee is in accordance with estimate made by the registered valuer and where the Assessing Officer was of the opinion that the value so claimed is less than its market value. Clause (b) refers to cases which were other than clause (a) i.e. where the value of an asset declared by the assessee was not in accordance with the report of a Registered Valuer. In the facts or present case, the assessee had declared the fair market value as on 01.04.1981 on the basis of Registered Valuer Report and the same is undisputed, hence, in the present case, provisions of clause (a) to section 55A of the Act are attracted. The pre-amended provisions of said clause very clearly provided that a reference could be made to the valuation officer only in cases where the Assessing Officer was of the opinion that the value so claimed by the assessee was less than its fair market value. In the instant case, the Registered Valuer had worked out the value of property at Rs. 19,29,500/-, whereas the DVO has worked out the value of property at Rs.2,04,000/-. Consequently, where the value as determined by the DVO was lesser than the value as declared by the assessee as on 01.04.1981, then the reference to the DVO under section 55A of the Act is not warranted. In this regard, we find support from the ratio laid down by the Hon'ble Bombay High Court in Puja Prints case (supra), wherein it has been held that where the Assessing Officer referred the issue of valuation to the DVO only because in his view, the valuation of the property as on 01.04.1981 as made by the respondent assessee was higher than the fair market value, thus, in such cases, invocation of section 55A of the Act was not justified. The Hon'ble High Court further held that the amendment to section 55A of the Act in 2012 was made effective from 01.07.2012 and hence, was to be applied prospectively. It was further held that where the issue was covered by section 55A [clause (a)] of the Act, resort could not be made to the residuary clause provided in section 55A(b)(ii) of the Act. The CBDT circular dated 25.11.1972 was held to be not applicable. Following the above said proposition as laid down by the jurisdictional High Court and applying the same to the facts of the present case, in the instant case also, reference was made to the valuation officer in order to determine the fair market value as on 01.04.1981 on the pretext that the fair*

*market value as declared by the assessee which was backed by Registered Valuer Report, was higher, which is not correct.*

*14. The issue raised in the present appeal is squarely covered by the ratio laid down by the Hon'ble Bombay High Court in Puja Prints case (supra) and following the same parity of reasoning, we find no merit in determination of Fair Market Value as on 01.04.1981 by the DVO than the value as declared by the assessee as on 01.04.1981 applied for determining the income from capital gains in the hands of assessee. Reversing the order of CIT (A), the additional ground of appeal raised by the assessee is allowed."*

*6.8. The appellant also relied upon the decision of the Hon'ble ITAT Pune in the case of Shri Maruti G Thopte Vs ITO in ITA No. 863/PUN/2017 dated 05-01-2018. In this case, the assessee filed his return of income for AY. 2010-11 on 30.03.2012 declaring total taxable income of Rs.59,019/-. Thereafter, notice u/s 148 of the Act was issued on 25.03.2013. In response to the notice, assessee filed revised return of income on 12.03.2014 declaring total income of Rs.1,87,987/-. Thereafter, the assessment was framed u/s 143(3) of the Act vide order dt.28.03.2014 and the total income was determined at Rs.71,93,380/-. During the course of assessment proceedings AO noticed that assessee had sold ancestral immovable properties along with his three brothers for a total consideration of Rs.12,56,00,000/- and assessee's share was 1/4th in the property. On the basis of Valuation Report dt. 29.03.2012 of Shri S.P. Tayawade Patil, the Government Approved Valuer, Sangli, the assessee while calculating the long term capital gain had adopted the cost of acquisition of the immovable property at Rs.1,15,99,280/- as on 01.04.1981. The AO was of the view that the cost of acquisition adopted by the assessee was excessive and hence not acceptable. He referred the matter to the District Valuation Officer (DVO) for the valuation of the property. The DVO vide order dt.07.02.2014 passed u/s 55A r.w.s. 16A(5) of the Wealth Tax Act, 1957 determined the fair market value of the property at Rs.51,000/- and accordingly, the assessee's share was worked out at Rs.12,750/- (1/4th of Rs.51,000/-). AO on the basis of report of DVO considered the cost of acquisition of the property at Rs.12,750/-. Thereafter, the assessment was framed u/s 143(3) of the Act vide order dt.28.03.2014 and the total income was determined at Rs.71,93,380/-. Thus, the amendment to the Sec 55A of the Act was made w.e.f. 01-07-2012 and the reference to DVO was made after this date (as the notice u/s 148 of the Act was issued on 25.03.2013). The CIT(A) confirmed the addition made by the AO saying that sec. 55A is a procedural section and any amendment to the procedural section is*

*applicable from the date of amendment. It has no relevance to the assessment year. However, the Hon'ble ITAT Pune relied upon the decision of the Hon'ble Bombay High Court in case of Pooja Prints (Supra) and held as under:*

*"We thus find that Hon'ble jurisdictional High Court has held that amendment to Proviso of Sec.55A(a) is applicable only w.e.f. 01.07.2012 and has no retrospective effect. Before us, Revenue has not placed any contrary binding decision in its support. We therefore relying on the aforesaid decision of Hon'ble Bombay High Court in the case of Puja Prints (supra) are of the view that in the present case, AO was not justified in making a reference to the DVO. We therefore set aside the order of AO and thus the grounds of the assessee are allowed."*

*6.9. Thus, the ratio of above decisions is that amendment even to procedural section is to be applied on a date after the procedural section comes into effect. Following the ratio of the above judicial pronouncements as on the On the lines of Sec 55A of the Act, Sec 142A of the Act also gives authority to AO to refer an asset, property or investment to DVO for the purpose of estimating fair market value. The Sec 142A of the Act came in to effect from 01-10-2014. In the instant case, the calculation of capital gains is done on the date of conversion of capital asset into stock in trade on 01-04-2010. Before 01-10-2014 (i.e. as on 01-04-2010) the Sec 142A of the Act read as under:*

***[Estimate by Valuation Officer in certain cases.***

***142A. (1) For the purposes of making an assessment or reassessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B [or fair market value of any property referred to in sub-section (2) of section 56] is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.***

***(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).***

*(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment:*

***Provided** that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.*

*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).] Thus, before 01-10-2014, the use of Sec 142A of the Act was limited to Sec 69, 69A, 69B and 56(2) of the Act which is not the case of the appellant. In view of the above facts and judicial pronouncements of jurisdictional Bombay High Court and jurisdictional ITAT Pune, it is held that reference could not be made to DVO for valuation of property u/s 142A of the Act on a date prior to 01-10-2014. Accordingly, Ground No 2 of the appellant is ALLOWED."*

13. Mr. Sasar vehemently supported the CIT(A)'s detailed discussion. His case is that section 55A stood amended w.e.f. 01.07.2012 (supra) whereas the first assessee herein Mr. Vilas Dasrath Balwadkar had converted his agricultural lands to stock-in-trade very well before that i.e. w.e.f. 01.04.2010. He argued in light of hon'ble Bombay high court Pooja Prints (supra) that the amendment to section 55A(a) is not retrospective but carries prospective effect only.

14. We have given our thoughtful consideration to the vehement rival stands and find no merit in assessee's arguments. We wish to clarify here at the cost of repetition that this is an instance of assessee having converted his agricultural lands to stock-in-trade as on 01.04.2010 followed by transfer thereof in the impugned assessment year giving rise to chargeability of income tax provisions in the latter assessment year 2014-15 in light of section 45(2) of the Act (supra). That being the case, we fail to understand as to how the amended proviso w.e.f. 01.07.2012 would not be applicable in assessment year 2014-15. We further deem it appropriate to observe that section 55A; even if it is held to be applicable herein, would come into play for the computation of assessee's capital gains as on the date of conversion coming to 01.04.2010 whereas the correct corresponding statutory provision applicable as in the instant case is section 142A(1) only. That being the case, we conclude that the CIT(A) has erred in treating the impugned section 142A(1) reference as not maintainable by drawing analogy from amended proviso to section 55A(a) which itself is not applicable. We thus reverse the learned CIT(A)'s order as well as the findings herein to this limited extent and restore the

Revenue's instant sole substantive ground back to him for his fresh appropriate adjudication as per law. The Revenue's appeal ITA No.824/PUN/2019 succeeds for statistical purposes.

No other ground or argument has been raised before us.

Identical delay of 16 days in filing these three assessee's appeals ITA Nos.931 to 933/PUN/2019 stand condoned for the reasons stated in their respective condonation petitions.

15. To sum up, the Revenue's appeal ITA No.824/PUN/2019 is allowed for statistical purposes and these three assessee's appeals ITA Nos.931 to 933/PUN/2019 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on 28<sup>th</sup> July, 2022.

Sd/-  
**(DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 28<sup>th</sup> July, 2022

*GCVSR*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-3, Pune
4. The Pr.CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /  
DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	14-07-2022	Sr.PS
2.	Draft placed before author	27-07-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		