

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
INCOME TAX APPELLATE TRIBUNAL, SURAT
'SMC' BENCH,
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.17/SRT/2022 (AY 2015-16)

(Hearing in Virtual Court)

Kantilal Nagindas Kapadia (HUF) L/h. Nainesh Pravinchandra Gandhi, 3/129, Parsi Sheri, Navapura, Surat-395003 PAN : AABHK 9405 Q	Vs	Income Tax Officer, Ward- 1(2)(2), Aaykar Bhavan Nr. Majura Gate, Opp. New CivilHospital, Surat- 395001
अपीलार्थी/ Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से /Assessee by	Shri Tinish R Mody, C.A
राजस्व की ओर से /Revenue by	Shri J.K. Chandnani, Sr-DR
सुनवाई की तारीख/Date of hearing	18.10.2022
उद्घोषणा की तारीख/Date of pronouncement	14.11.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal under section 253 of Income –tax Act (Act) by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC” or CIT(A)”] dated 29.11.2021, which in turn arises out of an assessment order passed under section 143(3) of Income-Tax Act (Act) dated 29.12.2017 by Assessing Officer / ITO Ward-1(2)(2), Surat for assessment year (AY) 2015-16. The assessee has raised the following grounds of appeal: -

“1. On the facts and circumstances of the case. as well as law on the subject, the learned ITO Ward-1(2)(2), Surat erred in making

*addition of **Rs.7,56,400/-** by estimating the value of land @ Rs.750/- per square meter as on 01-04-1981 instead of adopted by the assessee @Rs. 1,500/- per square meter on the basis of the Valuation Report. Then after order u/s 154 of the Act was passed on the basis of Report of the DVO and thereby assessed income was determined at **Rs.18,28,824/-**.*

2. On the facts and circumstances of the case, as well as law on the subject, the learned ITO Ward-1(2)(2), Surat ought to have accepted the valuation report of the Government approved valuer submitted before him based on sale instances provided by him.

3. On the facts and circumstances of the case, as well as law on the subject, the Learned CIT(A) NFAC Delhi erred in confirming the addition made by the learned A.O on the basis of the Valuation Report of DVO by ignoring the valuation report of the Govt. Approved Valuer.”

2. Brief facts of the case are that assessee is Karta of Hindu Undivided Family (HUF), filed his return of income for assessment year 2015-16 on 22.09.2015 declaring nil income. The case was selected for scrutiny. The case was selected under “limited scrutiny” to verify (i) mismatch in income / capital gain on sale of land or building and (ii) deduction claimed under the head “capital gains”. During assessment, the Assessing Officer noted that assessee derived income from capital gains, interest from saving bank account. To verify the mismatch in income with capital gains and deduction under the head “capital gains”, the Assessing Officer required the assessee to furnish certain details to

substantiate his claim. The assessee filed his reply on 31.01.2017. In the reply, the assessee stated that he has sold built up property (asset) admeasuring 101.17 Square meter situated at 3/129, Parsi Sheri, Navapura, Surat on 16.12.2015 for a sale consideration of Rs.90 lakhs. The property was acquired prior to 01.04.1981 and to ascertain its value, the assessee obtained the report of Government Approved Valuer who has ascertained the value of land as on 01.04.1981 at Rs.3,72,050/-. The Government Approved Valuer, Shri Nikunj M. Choksi estimated the rate of land @ Rs.1500/- per square meter and cost of RCC structure was estimated at Rs.950/- per square meter and for wooden furniture estimated valued at Rs.850/- per square meter. The assessee has earned total capital gains of Rs.51,90,208/- out of which, the assessee has claimed deduction under section 54 of the Act of Rs.36,10,728/- on purchase of one residential house at 12, Vishnodevi Farmville, Sector-C, Block No.583/A, Olpad, Surat and Rs.15,79,480/- was invested in infrastructure bond and claimed deduction under section 54EC. The assessee submitted that he has made total investment of Rs.16 lakhs in specified bond of Rural

Electrification Corporation Limited (REC) for claiming deduction under section 54EC. On the basis of aforesaid explanation, the assessee submitted that effective Long Term Capital Gains for taxation comes to nil.

3. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer was of the view that value of land adopted by assessee @ Rs.1500/- per square meter as on 01.04.1981 seems to be on a higher side. The assessing officer made a reference under section 55A to Departmental Valuation Officer (DVO) of Income Tax Department, Surat for estimation of fair market value of property as on 01.04.1981, vide reference dated 08.09.2017. The Assessing Officer recorded that despite follow up the matter with the office of DVO, Surat from time to time, he has not forwarded his valuation report on the plea that he was holding multiple charges. The assessment was getting time barred on 31.12.2017, thus, he was completed the assessment subject to rectification, as and when report of DVO is receipt. The Assessing Officer also issued noticed under section 133(6) to Sub-Registrar Office, Nanpura, Surat on 09.08.2017 for seeking comparable evidence of instances of surrounding

area, where the property is situated. No sale instances were provided by Sub-Registrar, Nanpura, Surat concerned. The Assessing Officer recorded that assessee provided certain sale instances along with report of Government Approved Valuer who adopted the land rate @ Rs.1500/- per square meter as on 01.04.1981 and such sale instances is recorded by Assessing Officer in **para-4.1** of assessment order, which are reproduced below: -

“4.1 This office had issued enquiry letter u/s 133(6) of the Act to the Sub Registrar office, Nanpura, Surat on 09.08.2017 providing comparable evidences/sale instances of surrounding area of the property in question. The Sub-Registrar, Surat-10, Nanpura, Surat vide his letter dated 10.,08.2017 failed to provide any comparable evidences. However, during the course of hearing, the ae vide letter dated 30.01.2017 has furnished some sale instances along with the valuation report of Shri Nikunj M Choksi, Government approved valuer has adopted the land rate at Rs.1,500/- sq.mtr. As on 01.04.1981 based on the following sale instances:

Sr. No	Regn. No.	Survey No.	Area In sq.mtr	Sale Price	Rate Per sq.mt.	Seller	Buyer
1	3804	3/3000	63.5	8000	125.98	Hashmukhlal Thakordas & Bros	Babubhai Prabhubhai
2	1540	3/1211	59.3	34999	590.20	Shivlal K. Shashiwala	Kanaiyalal N Rana
3	2804	3/4000	173.9	275000	1581.37	Jashuben Ochhavlal	Dushiyant G Patel
4	2422	3/2939	129.5	77499	598.44	Pransukhlal Umedram HUF	Indravadan Champaklal
5	6402	3/4061	56	139999	2499.98	Jayantilal C Sopariwala HUF	Manjulaben MPanwala

6	7596	3/135	54.3	130999	2412.50	Kanchangauri Hiralal	Hashmukhlal J Labha & Others
7	1567	3/3732	44.3	30500	688.48	Vanmalidas N Nathubhai	Gangaram Nathubhai
8	1567	3/3732	23.4	2000	854.70	Vanmalidas N Nathubhai	Gangaram Nathubhai
9	1941	3/799	107	99999	934.57	Abdulhssain Mulla Masabhai	Akil Sheikh Faizulla
10	2706	3/2785	148.6	75000	504.71	Kantilal Maneklal	Mohamad Yasim Pathan
*with construction							

4. The assessing officer after considering the aforesaid comparable excluded sale instances at Sr. No. 3, 5 and 6 and worked out of average rate of remaining property @ Rs.614/- per square meter. However, the Assessing Officer by giving the benefit of value of RCC structure and wooden structure adopted the value of land at Rs.750/- per square meter for the purpose of working of capital gains. The Assessing Officer worked out Long Term Capital Gains of Rs. 59,67,127/- after granting set off of exemption under section 54 F & 54EC, the taxable capital gains of Rs.7,56,399/- was worked out and added to the income of assessee.

5. Aggrieved by the addition of capital gains, the assessee filed appeal before the 1d CIT(A). The appeal of assessee was migrated to NFAC in terms of Notification No.76 of 2020 dated 25.09.2020 issued by Central Board of Direct Taxes. Before

NFAC/CIT(A) the assessee filed detailed written submission. The submission of assessee are recorded in **para-6.2** of the order of NFAC/CIT(A). In the submission, the assessee apart from making his submission, as made before the Assessing Officer, submitted that Assessing Officer has not brought any evidence on record to justify that land rate adopted by assessee was on higher side. The Assessing Officer has mentioned that value of land was adopted at Rs. 1,500/- per square meter seems to be on “higher side”. The Assessing Officer himself was not cited any comparable rates and referred the matter to DVO without any reasoning by simply stating that land rate seems to be on higher side without application of mind. Hence, the reference under section 55A bad in law and without jurisdiction. The rate adopted by assessee on the basis of valuation report of Government Approved Valuer, supported with sale instances should have been accepted. The valuation report of Government Approved Valuer is backed by various sales instances which was ignored by Assessing Officer without bringing anything on record that rate adopted by Government Approved Valuer was on higher side. The report of the DVO was received by

assessee on 02.11.2018, after almost one year of completion of assessment order. The assessee filed his objection. The DVO adopted the rate of land at Rs.880/- per square meter on the basis of three sale instances. Government Approved Valuer prepared his report on the basis of ten sales instances. The DVO has adopted rate of RCC structure of building at Rs.437/- per square meter without any basis, which is erroneous, more particularly which was not disputed by assessing officer as per his finding in **para-4.2** of the assessment order. Rather the Assessing Officer recorded that in the interest of justice and considering the fact that the value of RCC structure and wooden structure have been allowed to the assessee for the purpose of capital gains liability.

6. The Assessing Officer on the basis of DVO's report passed the rectification order under section 154 on 29.08.2019. In the rectification order the assessing officer re-computed total Long Term Capital Gains at Rs. 70,39,552/- by adopting the cost of land at Rs.880/-per square meter and value of structure @ Rs. 437/ per square meter (constructed area 234.37 Sq Mt) thus, worked out total cost of asset at Rs.

1,91,450/- as on 01.04.1981. The assessing officer after granting set off of exemption under section 54F & 54EC calculated capital gain of Rs. 18,28,824/- against the capital gain determined initially in the assessment order at Rs.7,56,400/-, thereby further added capital gain of Rs.10,72,424/-.

7. Against the re-computation of capital gain, the assessee stated that Assessing Officer ought to have adopted value of land at Rs.880/- only and should not have adopted value of structure at Rs.437/- as it was not subject-matter of reference to DVO as such should have accepted the value of structure at Rs.2,20,312/- (Rs. 94,180/- for RCC structure plus Rs.1,25,502/- for wooden structure). The assessee also filed the copy of order rectification order before NFAC. Thus, the assessee also challenged the rectification order along with the revised addition of Long Term Capital Gains. The assessee submitted that he strongly objected to the addition made by Assessing Officer and to consider all the material filed before the NFAC and to delete the addition of long term capital gain.
8. The 1d CIT(A) in NFAC after considering the submission of assessee and the assessment order including the rectification

order and the report of the Government Approved Valuer and the report of DVO held before them the assessee has contested the valuation report in respect of RCC structure wherein DVO has valued the same at Rs.435/- per square meter as against the value of RCC adopted by assessee on the basis of Government Approved Valuer at Rs.650/- per square meter. The Ld. CIT(A) further noted that assessee has not objected the DVO's report regarding valuation of land as on 01.04.1981 at Rs.850/- per square meter though the Government Approved Valuer valued the same at Rs.1,500/- per square meter. The assessee objected the report of DVO on the ground that in the reference under section 55A of the Act the reference was for land as on 01.04.1981 and not for building / RCC structure and such objection of assessee has no force as draft valuation report was already sent to assessee for his comment before submitting final report to Assessing Officer. No objection was raised by assessee at the time of inspection or against the draft valuation report. Secondly, the assessee contended that Assessing Officer has only referred the valuation of land and therefore valuation report of DVO in respect of land and not in respect of RCC structure. The

Ld.CIT(A) held that computation of Long Term Capital Gains made by Assessing Officer for the entire sale of building with land and not only for the land as a separate component, when the reference was made by Assessing Officer for valuation of impugned property to DVO, it does means that valuation only for the land in question, wherein the construction of property situated but also for both land and structure should be valued, which was under consideration of computation of Long Term Capital Gains. Thirdly, the valuation of DVO, on RCC structure at Rs.437/- per square meter thereby stating that valuation of RCC structure approved by Government Approved Valuer at Rs.850/- per square meter should be accepted. The assessee has not questioned the report of DVO on valuation of land. Therefore, the assessee cannot question the valuation of DVO's on one hand for land and regarding valuation of RCC structure on other land. The Assessing Officer in the assessment order itself had specifically in **para-4.1** and **para-4.2** of the assessment order after quoting the sale instances as cited by assessee and his Government Approved Valuer contended that by excluding the sale instances No.3,5 & 6 out of total land instances the average

rate of seven remaining sale instances was at Rs.614/- per square meter. Thus, the objection raised by assessee is without any merit for the reasons that major sale instances reflected the average sale rate of the locality was at Rs.614/- per square meter and not at Rs.850/- per square meter as reported by Government Approved Valuer. Once the Assessing Officer made reference under section 55A, it became the obligation on the Assessing Officer to abide the report of DVO, which has been abided by the Assessing Officer in partial rectification order under section 154 of the Act. With the aforesaid observation and finding of the Ld. CIT (A) upheld the action of Assessing Officer in passing the order under section 154 with regard to the land and the RCC structure. Further aggrieved the assessee has filed present appeal before this Tribunal.

9. I have heard the submission of Ld. Authorized Representative (AR) for the assessee and Ld. Senior Departmental-Representative (Sr-DR) for the Revenue and with their assistance I have also gone through the orders of lower authorities carefully. The Ld. AR for the assessee submits that assessee is Karta of HUF and is a super senior citizen of

85 years old. The assessee sold one built-up residential property admeasuring 101.17 Square meter for sale consideration of Rs.90 lakhs on 16.12.2015. The said residential property was acquired prior to 01.04.1981. The assessee adopted its value at Rs.3,72,050/- as on .1.04.1981 on the basis of report of Shri Nikunj Choksi, Government Approved Valuer. The valuer estimated the rate of land at Rs.1,500/- per square meter and RCC structure was at Rs.950/- per square meter and for wooden structure at Rs.850/- per square meter. The report of Government Approved Valuer is filed on record. On the basis of report of Government Approved Valuer, the index cost of land in structure was arrived at Rs.38 lakhs. The sale consideration of Rs.90 lakhs thus, on the basis of index, the assessee computed Long Term Capital Gains of Rs.52 lakhs. The assessee made investment of Rs.36 lakhs by purchased one residential property on 30.03.2015 of claimed deduction under section 54. The remaining amount of Rs.16 lakhs was invested in infrastructure bonds, thus, the assessee also claimed exemption under section 54EC. Thus the Long Term Capital Gains was worked out as nil. The case of assessee

was selected for scrutiny. During the assessment, the Assessing Officer asked to substantiate the working of capital gains. The assessee furnished copy of valuation report of Government Approved Valuer. The Assessing Officer without having any material in his possession, was of the view that rate adopted by assessee was on higher side. The Assessing Officer made reference to the district valuation office (DVO) for estimation of value of land as on 01.04.1981. The report of valuer was not received till 31.12.2017, therefore the Assessing Officer on the basis of certain sale instances from the Government Approved Valuer adopted rate of Rs.750/- per square meter and worked out capital gains of Rs.59,67,172/-. The Assessing Officer further granting set off of value of investment for the purpose of exemption under section 54 and 54EC, worked taxable Long Term Capital Gains of Rs.7,56,399/-. The report of DVO was received after gap of one year of passing the assessment order. The DVO adopted the rate of land at Rs.880/- per square meter for land and for wooden and RCC structure, at Rs.437/- per square meter on the basis of DVO, the Assessing Officer passed rectification order under section 154 and worked out Long

Term Capital Gains of Rs.70,39,552/- and after granting set off of exemption under section 54 and 54EC worked out Long Term Capital Gains of Rs.18,28,824/-. The Id AR for the assessee submits that assessee also challenged the addition of Long Term Capital Gains added by way of rectification order under section 154 dated 29.05.2019. The Ld. CIT(A) upheld the order of Assessing Officer without appreciation of facts. The case of the assessee was selected for limited scrutiny, thus, there was no need to made reference to DVO. There was no mismatch in the working of the capital gain furnished by the assessee. The assessing officer has not brought any defect in the valuation report of Government approved valuer furnished by the assessee. The assessing officer made reference for estimation of value of land only by holding that benefit of value of RCC and wooden structure has been allowed to the assessee and estimated value of land at Rs. 750/- per square meter. The assessing officer overlooked the report of Government approved valuer, who has given ten sale instances in his report for year 1981, ranging from Rs. 934/- to 2500/- per square meter. The property of the assessee is situated in the posh location and

having commercial value, which is in the vicinity of Jhaveri bazar. The assessee filed his objection against the proposed valuation of DVO, which was not considered properly. The DVO narrated only three instances in his report. Out of which two instances pertains to year 1979. No sale instances of built-up property are narrated by DVO. The DVO adopted rate of land @ Rs. 880/- and for construction @ Rs.437/- per square meter. No bifurcation of wooden structure or RCC was specified. The ld AR for the assessee submits that the lower authorities may be directed to accept the valuation report furnished by the assessee.

10. In the alternative and without prejudice submissions, the ld AR for the assessee submits that having regard to the facts of the case, the bench may estimate the value of land on the basis of report of DVO and Government approved valuer. As the assessing officer has not made any reference about valuation of RCC structure and wooden structure those value may be accepted as it is. To support his submissions, the ld AR for the assessee relied on the decision of division bench of this Tribunal in Dharmendra B Patel Vs DCIT in ITA No. 55/Srt/2018 dated 30.06.2021, wherein the average of DVO

and Government approved valuer report was considered by taking holistic view.

11. On the other hand, the ld DR for the revenue supported the order of ld CIT(A). The ld Sr DR for the revenue submits that all the objection and the submissions of the assessee was considered by ld CIT(A) while passing the impugned order. The assessee has intentionally shown the value of asset at higher side to reduce the value of long term capital gain. The ld CIT(A) discussed the facts in details and after considering the report of DVO given detailed reasoning in para 6.3.4 of his order. The ld CIT(A) in his order clearly held that the cost of entire asset has to be considered for computation of capital gain. The ld Sr DR for the revenue prayed for dismissal of appeal.
12. I have considered the submissions of ld DR for the revenue and have gone through the orders of the lower authorities carefully. I have also deliberated on the valuation report of DVO as well as report of Government approved valuer. The DVO in his report has mentioned three instances. *All the instances are with regard to open land.* Out of three sale instances, two instances relate to year 1979. The DVO has

mentioned the rates of comparable instances of property at Rs. 598/-, Rs, 643/- & Rs. 263/- respectively. *Still the DVO suggested the rate of property under consideration (PUC) at Rs. 880/- per square meter.* I find no logic in suggesting such rate. The DVO has also recorded that railway station and bus stand is only 2.0 to 2.5 Km away. The DVO despite giving such details has not justified the rate suggested at Rs. 880/- per square meter. Thus, in my view such report of DVO does not provide desired result.

13. Now adverting to the report of Government approved valuer namely Nikunj M Choksi. I find that he has referred ten sales instances. All sales instances are of year 1981. The details of all such instances are already recorded in para-3(supra). I further noted that Government approved valuer in his para 5.7 & 5.8 of his report has mentioned that impugned property in surrounded by commercial and residential area. It is also recorded on page 10 of the report that the doors and windows are of wooden. The built in teak polished cupboards are made in walls. The kitchen on first floor is made of marble with shelves and dado up to lintel level. Wooden staircase is also provided to transit to upper level. The property is having good

potential value. The rates of various instances are ranging from Rs. 126/- to 2500/- per square meter. In my view the report of Government approved valuer is based on minute details and supported with various comparable. Still considering the entire facts and circumstances, I find that the value suggested by Government approved valuer is on little higher side. No other cost of improvement is claimed by the assessee. Therefore, considering all the facts, the reports of the Government approved valuer and the instances recorded therein and taking holistic view, I direct the assessing officer to take value of land @ Rs. 1200/- per square meter and the rate of RCC and wooden structure @ 800/- per square meter and to re-compute the capital gain. The assessing officer shall allow the exemption under section 54F & 54EC, which was otherwise not disputed by him during assessment. Considering the facts, that I have given considerable relief in directing the assessing officer to adopt the rate of land and construction, therefore, consideration and adjudication of other submissions of the assessee have become academic. In the result, the grounds of appeal raised by the assessee are partly allowed

14.In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 14/11/2022.

Sd/-
(PAWAN SINGH)

[न्यायिक सदस्य **JUDICIAL MEMBER**]

सूत /Surat, Dated: 14/11/2022

Dkp. Out Sourcing Sr.P.S

Copy to:

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

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By order

Sr.P.S./Assistant Registrar, ITAT, Surat