

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

आयकर अपील सं./ITA No.96/SRT/2018

निर्धारण वर्ष/Assessment Year: (2013-14)

(Physical Hearing)

Gunvantlal Maganlal Naik, C/o. Bipinbhai M. Naik, Near Aahirwad, Nr. Cricket Ground, At. Chhapra, Navsari – 396445.	Vs.	The ITO, Ward-2, Navsari.
(Appellant)		(Respondent)
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: APIPN3403R		

Appellant by	Shri Sapnesh Sheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	03/03/2023
Date of Pronouncement	21/03/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2013-14, 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/187/16-17/1858, dated 03.01.2018, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 31.03.2016.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case and in law, the ld. CIT (A), Valsad has erred in partly upholding the addition of Rs.56,55,041/- under the head Long Term Capital Gains made by AO.

2. On the facts and in the circumstances of the case and in law, the ld. CIT (A), Valsad has erred in determining the value of Land at Rs.69/- per sq.mtr. as of 01/04/1981 being the average amount of valuation made by DVO and by Shri Ramesh Jain, Government approved valuer of Agricultural Land.

3. On the facts and in the circumstances of the case and in law, the ld. CIT (A), Valsad has erred in ignoring the value of Land as of 01/04/1981 at Rs.175/- per

sq.mtr., determined in the valuation report given by Mr.P.K.Desai, a Government Approved Valuer, duly adopted by assessee while filing return of income.

4. Without prejudice to above mentioned ground No.3, on the facts and in the circumstances of the case and in law, the Id. CIT (A), Valsad has erred in not considering the value of Land as of 01/04/1981 at Rs.135/- per sq.mtr., as provided in the valuation report submitted by Shri Ramesh Jain, a Government Approved Valuer of Agricultural Land.

5. On the facts and in the circumstances of the case and in law, the Id. CIT (A), Valsad has erred in partly upholding the addition of Rs.56,55,041/- out of total addition of Rs.91,68,824/- made by AO.

6. On the facts and in the circumstances of the case and in law, the Id. CIT (A), Valsad was not justified in re-computing taxable Long Term Capital Gain after taking the average of values submitted by DVO and Govt. Approved Valuers, of captioned properties as of 01/04/1981 at Rs.69/- per square meter as against Valuation of Rs.135/- per sq.mtr. and Rs.175/- per sq.mtr. evaluated/ determined by Government Approved Valuers Mr.Ramesh Jain and Mr.P.K.Desai respectively.

7. For various reasons and on different grounds, the partial addition of Rs.56,55,041/- made by the AO and upheld by the Learned CIT(A) Valsad, deserves to be deleted.

8. The above Grounds of Appeal are without prejudice to and are independent of each other.

9. Your Assessee craves, leave to amend, alter, delete and /or add to foregoing Grounds of Appeal any time before the appeal is decided.”

3. Succinct facts are that assessee has filed return of income on 24.07.2013 declaring the total income of Rs.32,56,850/- including Capital Gain of Rs.31,84,832/- for assessment year 2013-14. The return of income was processed by the Department under section 143(1) of the Act, accepting returned income. Thereafter, case was selected for scrutiny, therefore statutory notice u/s 143(2) was issued on 30.09.2014, which was duly served upon the Assessee. Thereafter notice u/s 142(1) of the Act along with detailed questionnaire was issued. In response to the above notice and questionnaire, the assessee submitted required details. The reply and explanation filed by assessee were examined by the assessing officer. The Assessing Officer noted that during the year under consideration, the assessee has sold immovable property of urban agricultural land and derives income from capital gain of Rs.31,84,852/- after consideration of indexation cost on the basis of report of Govt. approved Valuer. The assessee is

NRI staying at Arizona, USA since many years. The assessee did not maintain the books of account, however copy of bank account of Bank of Baroda NRO A/c Vide A/c no.0254010000557 was submitted by assessee. During the course of scrutiny assessment it is noticed that the assessee has sold an Agricultural land situated at Kharvasa, Sub dist. Choriyashi Dist. Surat Revenue survey No.97 Block No.118 and document was registered at the jantry value of Rs.3,01,50,000/- and paid Stamp duty of Rs.14,77,500/-. In his regard the share of the assessee turns into 1/4th at Rs.75,37,500/-. On verification of return of income filed by the assessee, it was noticed by AO that the assessee has shown purchase value on the basis of valuation report, cost of the property is at Rs.10,97,731/- as on 01.04.1981. The assessee has claimed indexed cost of acquisition at Rs.94,12,668/- at a very higher side as compared to the market value. Therefore, a show cause notice was issued to the assessee, which is reproduced as under:

“In connection with the assessment proceedings for the assessment year 2013-14, you had sale two agricultural lands situated at Block No.118 & Block No.123, at Kharvasa, Tal. Choryashi Dist. Surat at the cost of Rs.3,01,50,000/- and Rs.2,00,00,000/- respectively with 4 co-owners.

2. In this case you have submitted valuer report for the market value as on 01.04.1981 at the cost of Rs.175/- per. Sq. mt. It is very higher rate, therefore the rate of nearby land situated reported by departmental valuer Rs.3.44 per sq. mtr therefore as per the value noticed, your land valuation comes to Rs.86,313/- (25091 sq. mtr X Rs.3.44), therefore in your case admissible value will be Rs.21,578 x 852 index = Rs.1,83,844/- only whereas you have claimed at Rs.93,52,668/-, which is higher side and not acceptable.

Estimated Market Value	As on	Declared Value
Rs.21578/-	01/04/1981	Rs.93,52,668/-

You are therefore requested to show cause as to why the Long Term Capital Gain arise on this account of an amount of Rs.91,68,824/- should not be added to your total income and taxed as per provisions of income-tax Act.”

4. In response to the above show cause notice, the assessee has filed reply on 31.03.2016. However, Assessing Officer has rejected the contention of the assessee and observed that one has to obtain value of land situated nearly the alleged land in question. As per the valuation obtained by AO, the value per sq. mtr. comes to Rs.3.44 only whereas the assessee has taken the value at Rs.175/- per sq. mtr. Therefore, assessing officer noted that cost of acquisition shown by

the assessee is on higher side, that is, the assessee has shown higher value to suppress the capital gain arising out of sale consideration. Therefore, the difference between the values as obtained by Assessing Officer and as shown by the assessee, was added to the total income. The working of the same is as under:

<i>I. As per prevailing market value</i>	: $Rs.3.44 \times 25091 = 86,313/-$
<i>II. Indexation cost of property as on 1.4.1981</i>	: $Rs.21578 \times 852/100 = 1,83,844/-$
<i>III. Therefore, the difference comes to</i>	: Rs.91,68,824/- (Rs.93,52,668 – 1,83,844)

5. The Assessing Officer has also referred the case to the department valuation Cell for revaluation of the property as on 01.04.1981. However, report was not received till date of assessment. The assessment was getting barred by limitation on 31.03.2016, the valuation report was not received, therefore, Assessing Officer made addition of an amount of Rs.91,68,824/- and added to the total income of the assessee.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly allowed the appeal of the assessee. The ld CIT(A) observed that both the DVO valuation as well as Government approved valuations are nothing but estimation of value as on specific date, it will be reasonable and justified if the average of two rates are taken as fair market value of the said land as on 01.04.1981. This view is supported by the findings of Hon'ble ITAT Mumbai in the case of Vijaykumar M. Shah vs DCIT (ITA No.457 & 552/Mum dated 26.02.2009) as well as jurisdictional ITAT Ahmedabad in the case of Rajesh R. Parikh (HUF) vs ITO (ITA o.1578/AHD/2011 dated 30.09.2015). Thus, FMV of land vide RS No.118/97 will be Rs.69 (Rs.135 + 2.55/2) and FMV of land vide Rs no.123/103/1 will be Rs.69 (Rs.135 + 3.44/2). Accordingly, the ld CIT(A) directed the assessing officer to recompute capital gain on sale of land by taking fair market value of land at Rs.69 per. Sq. mtr, as against Rs.3.44 per sq. mtr. taken in the assessment order. This way, ld CIT(A) partly allowed the appeal of the assessee.

7. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before us.

8. Shri Sapnesh Sheth, Learned Counsel for the assessee, pleads that in assessee's case the fair market value, as on 01.04.1981 is in dispute. The assessing officer took the fair market value as on 01.04.1981 at Rs.3.44 per square meter. On appeal by the assessee, the ld CIT(A) took the fair market value as on 01.04.1981 at Rs. 69 per square meter. Even the assessee is not satisfied about the fair market value adopted by ld CIT(A), at Rs. 69 per square meter. The ld Counsel submitted that as per valuation report of Government approved valuer Shri Ramesh Jain wherein the FMV as on 01.04.1981 was derived at Rs.135 per sq. meter. The another Government approved valuer, Shri P. K. Desai, calculated the FMV of the land as on 01.04.1981 at Rs. 175 per sq. meter. The FMV adopted by ld CIT(A) at Rs. 69 per sq. meter is very lower side as compared to value declared by above these two valuers at Rs. 135 and Rs.175 per sq. meter. Therefore, ld Counsel contended that FMV as on 01.04.1981 should be somewhere between Rs.135 per sq. meter and Rs.175 per sq. meter.

9. The Ld. Counsel further submitted that assessee has furnished valuation report of two registered valuers who have valued the property at Rs.175 and Rs.135 per sq. meter respectively and the report of the registered valuer should not be ignored and for that ld. Counsel relied on various decisions. The Ld. Counsel took us through the valuation report of the registered valuer which is placed at paper book page no.45 and contended that registered valuer has considered the sale instances and has considered the nature and size of the land and the other characteristic of the land, such as, whether land is fertile and on the land there is a co-owner/bore, water connection and land is fertile land on which sugar cane, rice and ground nut are being grown by the farmers. The land is nearby the fully developed area of Surat. Therefore, Ld. Counsel contended that considering the conditions of land and the situation of the land and the fact that such land in future may be converted into non-agricultural activities, the FMV determined by ld CIT(A) is lower side. The land is having regular shape and easily approachable for all type of services, transportation, and it is suitable for seasonal crops etc. The Ld.

Counsel also submitted that Assessing Officer did not highlight any mistake in the valuation report of registered valuers, therefore without pointing out the mistake in both the valuation reports, the department cannot adopt fair market value in an arbitrary manner at Rs.69 per square meter, therefore average price as on 01.04.1981 determined by the Ld. CIT(A) at the rate of Rs.69 per square meter is very lower side and it should be Rs.135 per square meter.

10. The Ld. Counsel further submitted that in case of co-owner, (Hansaben Gunvantlal Naik), the department had accepted the valuation adopted by them. The co-owner has filed an income tax return which is placed at paper book page no.145. The computation of total income shown by the co-owner has also getting reflected in page no.146 of paper book. The capital gain computed by co-owner by taking the fair market value of the registered valuer at the rate of Rs.175 per square meter, is placed at paper book page no.147. The Ld. Counsel also took us through the computation of capital gain made by another co-owner of the land, Mr. Manojkumar Gunvantlal Naik, wherein the co-owner has taken an indexed cost of acquisition at the rate of Rs.175 per square meter which is placed at paper book page no.150, therefore, Ld. Counsel contended that assessee should not be treated differently, and value adopted by registered valuer should be considered.

11. On the other hand, Learned Departmental Representative (Ld. DR) for the Revenue submitted that Ld. CIT(A) has given enough relief to the assessee and adopted the fair market value at Rs.69 per square meter as compared to Rs.3.44 per square meter adopted by the Assessing Officer, therefore the assessee does not deserve further more relief. The Ld. CIT(A) has considered entire factors and situation of land and arrived at the fair average value as on 01.04.1981 at Rs.69 per square meter. The Ld. DR also submitted that the valuation report of the registered valuer of the assessee should not be relied. The assessee submitted the valuation report of two registered valuers and in both the cases, the registered valuer has taken the fair market value as on 01.04.1981 at very higher side. Therefore, Ld.DR contended that fair market value at Rs.69 per square meter sustained by the Ld. CIT(A) should be upheld and assessee's appeal should be dismissed.

12. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We do not agree with the argument of Id Counsel to the effect that in case of assessee's co-owner the FMV as on 01.04.1981 was accepted at Rs.175 per sq. meter. We note that in case of assessee's co-owner, there was no scrutiny assessment under section 143(3) of the Act, hence there is no opinion of the assessing officer. Therefore, return of income accepted by the Department under section 143(1) of the Act, in case of assessee's co-owner, cannot be accepted to determine FMV as on 01.04.1981, therefore arguments advanced by Id Counsel is hereby rejected.

13. We that the AO has calculated long term capital gain on sale of two pieces of land by applying the fair market value of the said land as on 01.04.1981 at Rs. 3.44 per sq. mtr. as against the assessee's claim of fair market value of the said land as on 01.04.1981 at Rs. 175 per sq. mtr. The AO has also mentioned in the assessment order that a reference was made to the DVO for valuation of property as on 01.04.1981 but the DVO's report was not received till the time barring date of assessment order on 31.03.2016. Thus, the AO worked out fair market value of the said land as on 01.04.1981 based on the sale instances of that period received from the sub-registrar's office. During the course of appellate proceedings, the DVO's report was received which has been forwarded by the AO in response to remand sought on the issue of DVO's report status. In the remand report dated 06.08.2017, the AO has stressed that as per sec. 50C of the Act the AO was bound to consider the DVO's report. On the other hand, the assessee has filed copy of objection letter dated 09.08.2017 filed before the AO against the fair market value as on 01.04.1981 derived by the DVO and pointed out several objections in the said letter. **The assessee had filed before Id CIT(A) another valuation report of Government approved valuer Shri Ramesh Jain wherein the FMV as on 01.04.1981 was derived at Rs.135 per sq. mtr.** In the remand proceeding, the assessee has also requested the AO to send the matter of valuation to the DVO once again for reconsideration in the light of the objections pointed out in the letter

dated 09.08.2017. However, the AO did not refer the issue for reconsideration of the DVO. **After going through the report of Government approved valuer Shri P. K. Desai calculating the FMV of the land as on 01.04.1981 at Rs. 175 per sq. mtr,** the Id CIT(A) observed that Shri P. K. Desai had calculated fair market value of the land on the basis of gold price fluctuation on 01.04.1981 to 31.03.2013 which is rightly rejected by the AO as the agriculture land and gold are two different assets class. Further, Shri Desai did not bring out the sale instances available for nearby properties as has been done by another Government approved valuer Shri Ramesh Jain. Thus, Id CIT(A) observed that the initial fair market value at Rs.175 per sq. mtr. as on 01.04.1981 is rightly rejectable and same has been done by the AO.

14. As regards the assessee's contention for acceptance of the computation of FMV of Rs.135 per sq. mtr. by Shri Ramesh Jain (Valuer) which is based on the comparable sale instances, the AO has stated in the remand report that he is bound to follow the DVO's report of Rs.2.55 per sq. mtr & Rs.3.14 per sq. mtr. After going through the DVO's report, the Id CIT(A) noted that the DVO has already considered the valuation report of Ramesh Jain and it was clearly pointed out that the FMV worked out at Rs.135 per sq. mtr. by Shri Ramesh Jain was based on sale instances were away from vicinity of the land under consideration and were for the areas like Udhna and Bhestan which were within the boundary of Surat City. Considering this specific findings of the DVO in his report, the valuation rate of Shri Ramesh Jain was also not acceptable as such. Further, the DVO report working of FMV at Rs.2.55 per sq. mtr for land vide RS no. 118/79 Kharwasa and Rs.3.14 per sq. mtr. for land vide RS No.123/103/1 Kharwasa was based on the comparable sale instances of agriculture land of Kharwasa with large areas from 3000 sq. mtr to 22,000 per sq. mtr. as is the case with the assessee's land area – 15075 per sq. mtr. and 10016 sq. mtr. Thus, apparently the DVO's report takes into account FMV calculation based on sale instances of comparable agriculture land of equivalent sizes and nearby areas. However, the DVO's valuation does not take into account the following objection of the assessee as pointed out vide letter dated 09.08.2017 at the time of remand proceedings.

(a) The assessee has pointed out during the periods around 01.04.1981, there was no concept of jantry and sale documents were made as per will and whims of the purchaser and seller so as to save the stamp duty fees. This led to substantial undervaluation of sales transactions which are not reflected in the DVO's report valuation based purely on sale instances.

(b) Even the Income tax rate was very high around 80% and this also was one of the factor in under-stated value of sales transactions.

(c) The assessee has argued that the rate of agriculture land at Rs.2.55 per sq. mtr, and 3.14 per sq. mtr, computed by the DVO will appreciate of Rs. 59 per sq. mtr. and Rs. 73 per sq. mtr. at the appreciation rate of 10% per annum as on 31.03.2013. But the Government jantry rate as on 31.03.2013 was Rs. 1450 per sq. mtr. indicating thereby that the valuation of land as on 01.04.1981 is highly unreasonable. Similar Situation is found when the valuation rate as on 01.04.1981 is multiplied by inflation index of given by Income tax Act.

(d) The assessee also objected to the DVO's remark that the property is having agriculture potential only as on today on the ground that the property has good NA potential as well as development potential.

15. The Ld CIT(A) noted that objections pointed out by the assessee is not out rightly rejectable as these were actual prevailing situations which needed to be factored in by the valuers valuing the FMV rate as on 01.04.1981. Thus, the DVO's valuation rate of Rs.2.55 per sq. mtr. & Rs.3.14 per sq. mtr. shows one extreme of vacation whereas the valuation rate of Shri Ramesh Jain (Government approved valuer) indicate another extreme of valuation. DVO's valuation rate is based on actual sale instances of agriculture land and keeping in mind the fact that these lands are still under agriculture user only. On the other extreme, the valuation rate of Shri Ramesh Jain is based on sale instances of developed N.A Plots with very small areas and pertaining also to faraway places like Udhna & Bhestan (within Surat city). Both these rates independently do not indicate the valuation rate near to the actual realistic situation. As both the DVO valuation as well as Government approved valuations are nothing but estimation of value as on

specific date, it will be reasonable and justified if the average of two rates are taken as fair market value of the said land as on 01.04.1981. This way Id CIT(A) took the average rate of FMV of land vide RS No.118/97 will be Rs.69 (Rs.135 + 2.55/2) and FMV of land vide Rs no.123/103/1 will be Rs.69 (Rs.135 + 3.14/2).

16. We note that average FMV as on 01.04.1981 determined by Id CIT(A) is still lower side therefore, considering the facts of the assessee as narrated above, the FMV of land as on 01.04.1981 should be adopted at Rs.90 per sq. meter. We note that determination of fair market value as on 01.04.1981, after all, is an estimate only and therefore we are of the view that ends of justice would be met, if a rate of Rs.90 per sq. meter is adopted as fair market value as on 01.04.1981 for the purpose of indexed cost of acquisition, as the same would take care of the inconsistencies between DVO report and report of registered valuers of the assessee. Therefore, we direct the assessing officer to recompute capital gain on sale of land by taking fair market value of land at Rs.90 per. Sq. meter, as on 01.04.1981, for the purpose of indexation.

17. In the result, appeal filed by the Assessee is partly allowed.

Order pronounced on 21/03/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सुरत /Surat

दिनांक/ Date: 21/03/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat