

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 499/Ahd/2018
(Assessment Year: 2013-14)

Income-Tax Officer, Ward-3(3)(12), Ahmedabad	Vs.	Late Shri Cawas Darasha Karaka, Legal Heir M/s. Cawas Karaka Trust, 22, Teen Murti Bungalows, Nr. Devang Bungalows, Thaltej, Ahmedabad-380054 [PAN : AGSPK 9616 L]
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh H. Parmar, ARs
Respondent by:	Adjournment application filed

Date of Hearing	12.03.2025
Date of Pronouncement	08.04.2025

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal has been filed by the Revenue against the order of the learned Commissioner of Income-tax (Appeals)-3, Ahmedabad (in short 'the CIT(A)') dated 26.12.2017 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for Assessment Year (AY) 2013-14.

2. The Revenue has taken following grounds of appeal:-

"1. The Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.4,40,00,000/- without appreciating the provisions of section 55(2)(a)(ii) of the Act.

- 2-

2. The Ld.CIT(A) has erred in law and on facts in deleting the addition u/s 69A made by the A.O. of Rs. 61,32,000/- without appreciating the fact that the assessee had not furnished any evidences in support of the deposition of the same."

2. The brief facts of the case are that the assessee filed his return of income on 31.03.2024 for the year under consideration at Rs.49,13,080/-. The case of the assessee was selected for scrutiny assessment through 'CASS' and subsequently the assessment u/s 143(3) of the Act was completed on 29.02.2016, by making various additions, including an amount of Rs.4,40,00,000/- towards Long Term Capital Gain and Rs.61,32,400/- u/s 69A of the Act towards the unexplained deposits in the savings bank account of the assessee.

3. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the Ld. CIT(A) who deleted the aforesaid two additions made by the Assessing Officer.

4. Aggrieved by the order of the Ld. CIT(A) deleting the additions made by the Assessing Officer, the Revenue is now in appeal before us.

Issue No. 1. - Deletion of addition on account of LTCG u/s 55(2)(a)(ii)

5. The relevant facts relating to this issue are that the Assessing Officer made addition of Long Term Capital Gain of Rs.4,40,00,000 on the ground that the assessee had transferred only tenancy right which was acquired without any costs. It was held by the Assessing Officer that since the tenancy right was acquired without any cost, the 'NIL' cost of acquisition should be considered while calculating the capital gain from the transfer of the leasehold right in the land. On appeal before the Ld. CIT(A), the Ld.

CIT(A) deleted the addition made by the Assessing Officer, holding that the claim of the assessee was as per the provisions of the Act.

6. Before us, Ld. DR submitted that the cost of acquisition in the hands of the assessee would be that of the forefathers by virtue of section 49(1) (iii) (a) providing that where capital assets become property of the assessee by succession, inheritance or devolution, cost of acquisition of the assets deemed to be the cost at which the previous owner of acquired the property. He also submitted that, in the instant case, nowhere in any of the lease deed, it was mentioned that the assessee's father had paid any consideration while getting the leasehold right on the property nor it is mentioned that the assessee's father had paid Rs. 3000/- in 1944 and merely on the basis of affidavit dated 21.06.2016 submitted by the assessee after 72 years, it cannot be said that Rs. 3000/- was actually paid by the assessee's father for the waiver of right especially when the same is not also mentioned in the lease deed executed by the assessee and M/s. Picker's Ltd. Therefore, the cost would be NIL in the hands of the previous lessee so also in the hands of the present lessee.

6.1 The Ld. DR also argued that the cost of acquisition in the hands of the assessee would be that of the forefathers by virtue of section 49(1) (iii) (a) providing that where capital assets become property of the assessee by succession, inheritance or devolution, cost of acquisition of the assets deemed to be the cost at which the previous owner of acquired the property.

6.2 The Ld. DR further submitted that the lease-hold rights in the land in question of the assessee has to be determined in accordance with the provision of section 48 of the Act if not, under section 55(2)(a) of the act and in accordance to the well-established principle for valuation of fair market value" of such lease hold rights of the assessee, is by capitalizing the "net annual income" of the land of certain number of years purchase in accordance with the prevailing rate of interest and by deducting the annual rent payable to the lesser out of the total income of the assessee by valuing "fair market value" of the land as on 1.4.1981 as observed in the judgement rendered by the Hon'ble ITAT Ahmedabad Bench in the case of M/s Natraj Vs DCIT in ITA No.3063/Ahd/2010. He also argued that the Assessing Officer thoroughly examined all clauses of lease deed no. 4847 of 5th October 1932 and also examined deed no. 4645 executed between assessee's father and M/s. Picker's Ltd for lease rent of Rs 600/- p.a. He submitted that the Assessing Officer has also examined deed no 4644 which was stated to be executed between assessee's father and the landlord and it was found that deed of assignment of lease dated 01.05.2012 clearly shows that deed no. 4644 was executed between assessee's father and M/s. Picker's Ltd and was not at all executed between assessee's father and the landlord and nothing was mentioned in the said deed about the payment of Rs 3000/- to get waiver of right to sub lease without landlord's consent.

6.3 Reliance was placed on the following judgements:

1. DCIT vs Tejinder Singh Hon'ble ITAT, Kol. in 19 taxmann.com 4(Kol.) [2012]
2. Vijay P. Karnik vs. Income Tax Officer, Ward-19(2)(2), Mumbai, Hon'ble ITAT, Mumbai in 37 taxmann.com 48 (Mumbai) [2013]

3. ACC Ltd vs District Valuation Officer, High Court of Delhi 21 taxmann.com 488 (Delhi) [2012]

4. Natraj vs DCIT, Circle-10, Ahmedabad, Hon'ble ITAT, A Bench, Ahmedabad in ITA no. 3063/Ahd/2010.

It is therefore urged by the Ld. DR that the order of the Assessing Officer be upheld and that of Ld. CIT(A) be set aside.

6.4 For the sake of ready reference, the submission of the ld. Addl. CIT(DR), Shri B.P. Srivastava are reproduced as under:-

"1. It is most humbly submitted that the assessee's father Shri Darlsha Curestji Karaka had acquired the property under consideration on lease. The term lease is not defined anywhere in the act. Its meaning, therefore, has to be ascertained from the Transfer of Property Act, 1882 which defines word 'lease'. Section 105 of 1882 Act defines a lease of immovable property as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transfer by the transferee, who accepts the transfer on such terms.

2. It is most humbly submitted that the land admeasuring 3 acres and 33 gunthas was demised by the said Bai Mahalaxmi daughter of Nathalpl Bapuji on perpetual lease for the period of 999 years. The possession of land held by the assessee's father was merely on leasehold rights which was further inherited by the assessee and the same can further be verified from the lease deed executed between the assessee and the Picker's Limited as it is clearly stated therein that the rights of under-lessor (assessee) were assigned to the under-lessee (Picker's Limited) for the full enjoyment is subject to the condition that the payment of rent of Rs. 607/- should be made to the heirs and legal representative of the said land provided at page 7 of lease deed dated 01.05.2012 which clearly demonstrates the property is a lease hold property and that there is a scope for the held lessor to re-entei4 to the property if the rent is not paid Thus, a lease of the property, even though it is a perpetual lease, is a subordinate right to the right of the ownership of the property.

3. It is further most humbly submitted that the cost of acquisition in the hands of the assessee would be that of the forefathers by virtue of section 49(1) (iii) (a) providing that where capital assets become property of the assessee by succession, inheritance or devolution, cost of acquisition of the assets deemed to be the cost at which the previous owner of acquired the property.

4. It is most humbly submitted that in the instant case, nowhere in any of the lease deed, it is mentioned that the assessee's father had paid any consideration while getting the leasehold right on the property nor it is mentioned that the assessee's father had paid Rs. 3000/- in 1944 and merely on the basis of affidavit dated 21.06.2016 submitted by the assessee after 72 years, it cannot be said that Rs. 3000/- was actually paid by the assessee's father for the waiver of right especially when the same is not also mentioned in the lease deed executed by the assessee and picker's Ltd. Therefore, the cost would be NIL in the hands of the previous lessee so also in the hands of the present lessee.

1. Thus, it is most humbly submitted that Ld. CIT (A) had grossly erred in observing that the assessee's father had paid Rs. 3000/- for the waiver of right which construed as Cost of Acquisition when no cost of acquisition was incurred by the assessee's father as per terms and conditions of the registered lease deed and in not observing that no cost of acquisition was incurred by the assessee as per the terms and conditions of the registered lease deed of 1932 and therefore in accordance with the provision of section 55(2)(a)(ii) of the Act, the cost of acquisition has to be taken at NIL.

2. In para 3.3 (page 9), the CIT (A) has given a finding as under:
"Appellant gas stated in the reply dated 16.11.2017 that the land in question has been leased for 999 years. Appellant has submitted affidavit to the Department Valuation Officer in which appellant had stated about the payment of Rs. 3000/- in the year 1944 to the landlord for claiming waiver of right from the landlord by his father Shri Darsha Karaka which was not considered by the Assessing Officer while passing the order. The rights in the property have flown to the appellant from father Shri Darsha Karaka. The AO stated these facts in the assessment order but inclined to say that the assignor was the father of the appellant and assignee M/s. Pickers Limited Os per clauses of deed executed on 29.07.1955. Different causes of deed Sr. no. 4044 have been discussed in detail in assessment order. On the view of the above, it is clear that the Appellant has paid Rs. 3000/- for waiver of the right and so the cost pf acquisition cannot be considered as "Nil". Affidavit if on record and the contents of the said affidavit have remained uncontroverted. The same was not disproved or found to be false. If that be so Hon'ble Gujarat

High Coup in the case of Glass Line Equipment 253 ITR 454 has held that when affidavit was not controverted it has to be taken accepted."

5.3 *The above finding given by the CIT(A) is not found justified. Initially, he admitted that there is no new evidence. Further, he held that the appellant had paid Rs. 3000/- for waiver of the right as per the affidavit. Here, it is relevant to mention that Rs. 300/- was stated to be paid by the appellant's father Shri Darasha Karaka in 1944. There are no corroborative evidence to this effect that this consideration was actually paid. Secondly, the affidavit was filed on 21.01.2016 and the appellant expired on 07.01.2017, so it is a matter of 72 years back when the appellant was only 8 years old in 1944. How can anyone be so specific about payment of Rs. 3000/- by his father in 1944 in cash? Therefore, the affidavit filed after the span of 72 years have no legal validity and it is a mere self-serving evidence. It is also mind boggling to note as to why there is no mention of payment of Rs. 3000/- in deed no. 4645 and 4644 which were executed in 1944. This clearly proves that no such payment was made by appellant's father for waiver of taking permission from landlord for further sub-leasing. The CIT(A) has not appreciated the legal value of affidavit and too in absence of any corroborative evidence.*

5.4 *The CIT (A) has stated in para 3.3 (page 9 of the order) "Affidavit if on record and the contents of the said affidavit have remained uncontroverted. The same was not disproved or found to be false". But the fact is that neither the AO nor the DVO has accepted the validity of affidavit. Therefore, it is wrong to conclude by the CIT (A) that contents of the said affidavit have remained uncontroverted.*

6. *It is further most humbly submitted that from the lease deed dated 01.05.2012, it is observed from the clause provided at page 7 therein that the land admeasuring 3 acres and 33 gunthas was demised by the said Bai Mahalaxmi daughter of Nathalal Bapuji unto the assessee allowing the full compensation by the government in case the portion being acquired by the government, municipality or any local) bodies which clearly represents that all the building and structure put up by the lessee on the said land remain the property of the lessee only. Therefore, the cost of construction of Structures could not be attributed to the cost of taking land on lease especially when the cost of its usage was collected by the lessee from the under-lespee.*

7. *Notwithstanding to the above, the Ld. AO subject to the option to substitute the market value as on 1-4-1981 as given under section 55(2), referred the matter to DVO u/s 55A to determine the market value for knowing the actual cost of acquisition as on that day as the Ld. AO is of opinion that value as per registered valuer was higher than market value*

- 8-

especially when assessee was having only lease hold right for a long period of 999 years in the land, and the approved valuer submitted the valuation report considering the property under individual ownership of the assessee as stated in Form 0-1.

8. Thus, it is most humbly submitted that Ld. CIT (A) had grossly erred in considering the valuation report submitted by the assessee and in not observing that there is the need of making suitable deduction on account of assessee's right in the land being only that of "lessee" for 999 years and the assessee not being owner thereof.

8.1 Further, the finding of the CIT (A) on page 10 that provisions of section 55A have been amended by Finance Act, 2012 w.e.f. 01.07.2012 and therefore, this amended provisions are not applicable to the appellant's case for the year under consideration as the transaction had happened before 01.07.2012. Here again, the observation of CIT(A) is wrong and misleading. The DVO reference was made in 2015 and 40 applied the statute as it existed on the reference date i.e. 2015. So, the valuation report shows that the value shown was at variance with its fair market value. Here the date of transfer is not relevant but the date of reference is relevant and therefore, the observation of CIT (A) clearly appears incorrect and against the law.

8.2 In page 14, the CIT (A) held that long tenancy of 999 years is as good as ownership of asset as has been accepted in the many judicial pronouncement. However; no authorities have been quoted by the CIT (A) as to how much inference was drawn. Further, no specific case laws have been cited in support of above observation of the CIT (A). Therefore, again there appears incorrect understanding of the law| at the end of the CIT (A).

9. Hence, the Ld. CIT (A) should consider the market value derived by the DVO as cost of acquisition on that date as the Ld. AO had allowed as deduction with benefits of indexation cost of the assessee.

10. It is most humbly submitted that there is nothing in section 55A which debars the Assessing Officer from making reference to the DVO. In support of this, I would like to rely upon the judgment rendered by the Hon'ble ITAT Mumbai Bench in the case of Vijay P. Karnik Vs. Income Tax Officer, Ward 19(2)(2). The relevant extract of the judgement is reproduced herein for the kind consideration of your honour.

"There is nothing in section 55A which debars the Assessing Officer from making reference under clause (b) even when registered valuers report has been filed. In cases where registered valuer's report has been filed, reference under clause (a) of section 55A can be made if

the Assessing Officer finds the valuation lower than the market value. In any other case, clause (b) is applicable. Therefore, it is clear that clause (b) applies in situations where either no registered valuer report has been filed or where the registered valuer report has been filed, the value determined is higher than the market value. Thus, in case, the Assessing Officer is of the opinion that the value as per the registered valuer was higher than the market value, he could make reference under section 55A (b) ii). Therefore, following the judgment of the High Court of Delhi in case of ACC Ltd. v. DVO [2012] 21 taxmann.com 488/208 Taxman 397 (Delhi) it is to be held that the reference made by the Assessing Officer to the DVO on the facts of the case is justified and I order of the Commissioner (Appeals) on this point is, therefore, upheld under clause (b) even when registered valuer's report has, been filed."

(Copy of the order passed by the Hon'ble ITAT Mumbai Bench in the case of Vijay P. Karnik Vs. Income Tax Officer, Ward 19(2)(2) and the Hon'ble Delhi Court in the case of ACC Ltd. Vs. DVO is attached hereto and annexed as Annexure A & B respectively).

11. *Without prejudice to the above, it is humbly submitted that the leasehold rights in the land in question of the assessee, has to be determined in accordance with the provision of section 48 of the Act if not, under section 55(2)(a) of the act and in accordance to the well-established principle for valuation of fair market value" of such lease hold rights of the assessee, is by capitalizing the "net annual income" of the land of certain number of years purchase in accordance with the prevailing rate of interest and by deducting the annual rent payable to the lesser out of the total income of the assessee by valuing "fair market value" of the land as on 1.4.1081 as clearly observed in the judgement rendered by the Hon'ble ITAT Ahmedabad Bench in the case of M/ s Natraj Vs DCIT, ITA No.3063/Ahd/2010. (Copy of judgement rendered by Hon'ble ITAT Bench Ahmedabad in the case of M/s Natraj Vs. DC IT is; attached hereto and annexed as Annexure - C).*

12. *However, no such exercise was undertaken by the assessee. Therefore, the Ld. CIT (A) has grossly erred in considering the valuation report submitted by the assessee in toto.*

13. *Finally, the AO has been highly painstaking during the entire assessment proceedings and have considered all documents and materials submitted and gathered. The AO thoroughly examined all clauses of lease deed no. 4847 of 5th October 1932. Further, the AO also examined deed no 4645 executed between assessee's father and the picker's Ltd for lease rent of Rs 600/- p.a. Furthermore, the AO also examined deed no 4644 stated to*

- 10-

be executed between assessee's father and the landlord. Here it is clarified that the AO found that deed of assignment of lease dated 01.05.2012, clearly shows that deed no 4644 was executed between assessee's father and the picker's Ltd and was not at 011 executed between assessee's father and the landlord and nothing was mentioned in the said deed about the payment of Rs 3000/- to get waiver of right to sub lease without landlord's consent.

14. Hence, the undersigned heavily rely upon the finding of the AO given in para 4.1 to para 4.10 of the order. Further, the undersigned also rely upon the alternative finding of the AO given in para 4.11 to para 4.16 of the order. It is therefore, humbly prayed that the order of CIT(A) may kindly be set-aside and the order of the AO may kindly be upheld.

Submitted for kind perusal and consideration.

Yours faithfully,

Sd/-

(B.P. Srivastava)

Addl. Commissioner of Income-tax, ITAT, Bench-A, Ahmedabad."

7. Rebutting the arguments of Ld. DR, the Ld. AR submitted as under:-

- "Assessee's father" (deceased Darsha Curestji Karaka) had acquired " leasehold rights in perpetuity" in a land bearing Survey No.681, Moje Asarva, Dist. Ahmedabad from Bai Mahalaxmi vide deed dated 05.10.1932 without any cost.
- The leasehold rights acquired by assessee's father had flown to the "assessee" after the death of assessee's father. Assessee transferred such "leasehold rights in perpetuity" vide deed dtd. 01.05.2012 for a total consideration of Rs. 4,40,00,000/-.
- Assessing Officer was of the view that cost of acquisition of such leasehold rights has to be taken at "Nil" in view of S.55(2)(a)(ii). Hence, vide SCN dated 16.02.2016, assessee was called upon to show cause as to why total sale consideration of Rs.4,40,00,000/-

- 11-

received towards assignment of lease should not be taxed as capital gain after taking cost of acquisition at Rs.Nil.

- Attention was invited to following two deeds executed on 29.07.1944 wherein assessee's father was a party.
 - Deed No.4644 dated 29.07.1944 between assessee's father and landlord of the land in question for waiver of the requirement of taking written permission from the landlord for sub-leasing or selling the leasehold land held in perpetuity. Assessee's father had paid a sum of Rs. 3,000/- in the year 1944 to the landlord in order to get such waiver from the landlord.
 - Deed No.4645 dated 29.07.1944 between assessee's father and M/s Pickers Ltd. in respect of leasing the land in question to lessee at a rent of Rs.600/- per year.
 - Thus, it is clear that assessee's father had paid consideration for the leasehold rights in the land in question (i.e. Rs. 3,000/- in year 1944). Hence, assessee was justified in availing benefit of indexation of cost of acquisition of leasehold rights in perpetuity.
 - "Leasehold rights" were "in perpetuity" (an undisputed fact). It is well settled that "leasehold rights in perpetuity" are equivalent to "ownership rights" and cannot be equated "tenancy rights". Hence, "market value of land as at 01.04.1981" has to be adopted and considered for the purposes of indexation.
 - However, AO took a view that cost of acquisition of leasehold rights has to be taken as Nil. Consequently, AO treated the entire sale consideration of Rs.4,40,00,000/- as Long Term Capital Gain ("LTCCG" for short).

- Without prejudice, AO also made following observations:
 - AO further made reference to DVO u/s 55A pursuant to which, DVO determined FMV as at 01.04.1981 at Rs. 285.52/- per sq. meters;
 - Based on such rate, cost of 4000 sq. meters of land as at 01.04.1981 was worked out at Rs.11,42,080/- and Indexed cost of such land was worked out at Rs.97,30,521/-.
 - Consequently, LTCG was determined by AO at Rs.3,42,69,479/-(Rs.4,40,00,000/- minus Rs.97,30,521/-).
 - Since AO had added entire sale consideration by Rs.4,40,00,000/- as LTCG, no separate addition of Rs. 3,42,69,479/- was made.
- CIT(A) deleted the impugned addition on both the counts discussed by AO. Hence, revenue is in appeal before Hon'ble the ITAT.
- Factum of payment of Rs.3,000/- by assessee's father to the landlord in the year 1944 is duly supported by assessee's "affidavit", AO has not brought on record anything to dislodge the contents of such affidavit:
- Assessee had "leasehold rights in perpetuity" for a period of "999 years" on the land in question which are equivalent to "ownership rights Reliance is placed on following decisions:
 - ITO vs. Arvind Jobanputra - ITA 7160/Mum/2008;
 - N. Ramaswamy vs. ITO - (2020) 180 ITD 702 (Chennai).
- Assessee had submitted "affidavit to DVO" wherein it was categorically stated that assessee's father had paid Rs.3,000/-

- 13-

in the year 1944 to landlord for claiming waiver of right from the landlord. However, the said affidavit was not considered by AO while passing the assessment order.

- AO has not brought on record anything to even remotely demonstrate that the contents of the said affidavit are false. Accordingly, contents of the said affidavit have remained uncontroverted.
- It is well settled that “contents of the affidavit cannot be ignored unless proved to the contrary”. Reliance is placed on the decision in the case of “Glass line equipment vs. CIT-253ITR 454 (Guj)”.
- In any case, Deed No.4644 (w.r.t. payment of Rs.3,000/- in the year 1944) is a “registered deed” and hence, AO could have very well issued notice u/s 133(6) to the ‘Sub-registrar ’ and called for copy of the said deed. However, AO did not choose to do so for reasons best known to him.
- Leasehold rights in question have flown to the assessee from his father. Therefore, consideration paid by “assessee’s father” for acquiring such rights is to be treated as “cost of acquisition” in assessee’s hands in view of S.49(1).
- Since the property was acquired prior to 01.04.1981, “FM Vas at 01.04.1981 ” will have to be considered instead of “actual cost of acquisition”.
- Assessee submitted valuation report from a Government Registered Valuer dated 17.01.2014 whereby, FMV of property in question as at 01.04.1981 was determined at Rs.52,80,000/-. Assessee had adopted cost of acquisition at Rs.52,00,000/- (i.e. lower than Rs.52,80,000/- being FMV as per valuation report) consequent to which, indexed cost

~~- 14 -~~

worked out to Rs.4,43,04,000/-. Thus, net LTCCG was declared at Rs.(-)3,04,000/-.

- Thus, computation of capital gain by assessee is in accordance with the Act. Hence, CIT(A) has rightly deleted the impugned addition of Rs.4,40,00,000/-.

- Property was transferred on "01.05.2012" and "value as at 01.04.1981 claimed by assessee" was "more" than "FMV as at 01.04.81"; Hence. Assessing Officer could not have made reference to DVO u/s 55A for ascertaining "FMV as at 01.04.1981"; "Amendment to S.55A" w.e.f. "01.07.2012" is not applicable since property was transferred on 01.05.2012 (i.e. prior to amendment):

- S.55A has been amended w.e. f. 01.07.2012 as per which, AO can refer the valuation of capital assets to the valuation officer if the valuation claimed by the assessee is at "variance" with its FMV.

- Prior to such amendment. AO could have referred the case to the valuation officer for valuation of a capital assets only when the value claimed by the assessee is "less " than its FMV.

- Following two dates are material in the present case:
 - 01.05.2012 — Date of transfer of property in question;
 - 01.07.2012 - Date with effect from which S.55A has been amended.

- Since 'transfer' took place 'prior to 01.07.2012', AO could not have referred valuation of the underlying capital assets to DVO since the valuation claimed by assessee as at 01.04.1981 is "more" than FMV. Reliance is placed on:

- 15-

- DCIT vs Vinod Harilal Mehta - ITA 2945/Ahd/2013;
- CIT vs. Gauranginiben S. Shodhan - (2014) 367 ITR 238 (Guj);
- CIT vs. Puja Prints - (2014) 360 ITR 697 (Bom);

- Thus, reference to DVO is invalid and hence, FMV adopted by assessee cannot be disturbed. Even on that count, CIT(A) has rightly held that even the addition of Rs.3,42,69,479/- cannot be made by AO.

8. We have heard the rival contentions and perused the material available on record. The following facts emanate:-

- i. The assessee transferred leasehold rights for a consideration of Rs.4,40,00,000/-
- ii. The assessee adopted rate of land @ Rs.1320 per Sq. Mtr. as on 01.04.1981. Thus the total cost of acquisition is computed at Rs.52,00,000/- .
- iii. The index cost of acquisition was Rs.4,43,04,000/-.
- iv. The Assessing Officer considered cost of acquisition as NIL.
- v. The date of transfer was 01.05.2012.
- vi. The Assessing Officer referred the issue to the DVO to determine cost as on 01.04.1981, who determined the cost at Rs.285/- per sq. mtr. against the cost adopted by the assessee at Rs.1320 per sq. mtr.
- vii. Provision of Section 55A reads as under:-

“5A. 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 per centage 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 section 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).]

viii. *Substituted for "**is less than its fair market value**" by the Finance Act, 2012, **w.e.f. 1-7-2012.**

Since the provisions of Act do not support the action of the Assessing Officer to refer the matter to the DVO, the appeal of the Revenue is liable to be dismissed. We decline to interfere with the order of the Ld. CIT(A) in this regard and this ground of appeal raised by the Revenue is dismissed.

Issue No. 2. - Deletion of addition of Rs.61,32,000/- u/s 69A of the Act

9. The Assessing Officer observed that funds aggregating to Rs.61,32,400/- had been deposited in the savings bank account held by the assessee. The Assessing Officer, therefore, called upon the assessee to show cause as to why such sum should not be treated as unexplained money and added as income u/s 69A of the Act. Since no satisfactory reply was filed by the assessee, the Assessing Officer made addition of Rs.61,32,400/- by treating such deposits as unexplained. On appeal before the Ld. CIT(A), he deleted the impugned addition, after considering the submissions as well as documentary evidences placed on record. Even before us, the assessee has placed reliance on the documentary evidences submitted in the form of Annexure-A (paper-book), which is reproduced hereunder for the sake of reference:-

Sr. No.	Date	Amount (Rs.)	Source of funds credited in bank	Documentary evidences
1	05.05.2012	Rs.3,89,700/-	Consideration received on sale of shares as follows received from "Vinodkumar S. Patel": <ul style="list-style-type: none"> ➤ 2557 equity shares (q. Rs. 100/-each : Rs.2,55,700/- ➤ 1340 preference shares @ 100/- each : <u>Rs. 1,34,000/-</u> <li style="text-align: right;">Total <u>Rs.3,89,700/-</u> 	Receipt - Pg.18 of PB B/s. of Co.- Pg.32 of PB B/s. of Co. - Pg.33 of PB
2	05.05.2012	Rs. 1,35,000/-	Consideration received on sale of shares as follows received from "Rasikbhai V. Patel": <ul style="list-style-type: none"> ➤ 900 equity shares @ Rs. 100/-each : Rs.90,000/- ➤ 450 preference shares @ 100/- each : <u>Rs.45,000/-</u> <li style="text-align: right;">Total <u>Rs. 1,35,000/-</u> 	Receipt - Pg.19 of PB B/s. of Co.- Pg.32 of PB B/s. of Co.- Pg.33 of PB
3	05.05.2012	Rs.54,72,700/-	<ul style="list-style-type: none"> ● Assessee had received back deposit of Rs.54,72,700/- earlier given to M/s Pickers Ltd. ● Balance sheet of M/s Pickers Ltd. is at 31.03.2012 and 31.03.2013 clearly indicated that assessee had given unsecured loan of Rs.54,72,700/- to M/s Pickers Ltd.. ● Thus, assessee has received back such loan from M/s. Pickers Ltd. during the year under consideration. 	B/s of Co.- Pgs. 13-14 of PB Receipt - Pg.20 of P/B
4	05.05.2012	Rs. 1,35,000/-	Consideration received on sale of shares as follows received from "Bhavesh T. Patel": <ul style="list-style-type: none"> ➤ 900 equity shares @ Rs. 100/-each : Rs.90,000/- ➤ 450 preference shares @ 100/- each : <u>Rs.45,000/-</u> <li style="text-align: right;">Total <u>Rs. 1,35,000/-</u> 	Receipt - Pg.21 of PB B/s. of Co.- Pg.32 of PB B/s. of Co.- Pg.33 of PB
	Total	Rs.61,32,400/-		

- 18-

In view of the above, we find that the Ld. CIT(A) has correctly deleted the impugned addition, as the source of the deposits has been adequately explained. Accordingly, we see no reason to interfere with the order of the Ld. CIT(A), and it is hereby upheld.

10. In the result, the appeal of the Revenue is dismissed.

The order is pronounced in the open Court on 08.04.2025

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Sd/-

**(DR. B.R.R. KUMAR)
VICE-PRESIDENT**

Ahmedabad; Dated 08/04/2025

btk

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad