

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 199/Srt/2020 (Assessment Year: 2016-17)
(Physical hearing)

The Wagra Taluka Co-operative Marketing & Processing Society Limited, At & Post:Wagra, Taluka- Wagra, District - Bharuch (Gujarat). M. No. 8128950676 e.mail: mrmconsultants@yahoo.com PAN: AAAAT 2404 N	Vs.	I.T.O. Ward 1(5), Bharuch.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Krutarth Desai, Adv. With Ms. Disha Kharod, CA
Department represented by	Shri J.K. Chandnani, Sr.DR
Date of hearing	24/06/2022
Date of pronouncement	12/09/2022

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Vadodara (in short, the Id. CIT(A) dated 11/02/2020 for the Assessment year 2016-17. The assessee has raised following grounds of appeal:

- "1. The assessment order and the first appellate order itself is bad in law, without appreciation of facts and legal position and nonest and bad in facts and therefore, the order deserves to be quashed and set aside.*
- 2. The appellant submits that, the assessment order and the first appellate order has been passed without appreciating the material available on record, without appreciation of*

facts and legal position and therefore, deserves to be quashed and set aside in the interest of justice.

3. *The learned assessing officer and the learned Commissioner of Income Tax (Appeals)-3 have erred in appreciating the factual matrix of the case and legal position as decided by the Hon'ble Income Tax Appellate Tribunal, Ahmedabad in the case of Dasrath Patel Vs DCIT (2020) 116 taxmann.com 229 and therefore, the assessment order and demand raised and subsequently confirmed deserves to be quashed and set aside in the interest of justice.*
4. *The learned first appellate authority has misdirected itself in appreciating the submission made by the appellant and has not appreciated the factual matrix of the case and applicable legal position and therefore the order passed by the learned assessing officer and learned Commissioner of Income Tax (Appeals)-3 deserves to be quashed and set aside in the interest of justice.*
5. *The appellant craves for leave to add or amend or alter or modify any of the grounds of appeal in the interest of justice."*

2. Brief facts of the case are that the assessee is a Cooperative Society, filed its return of income for the assessment year (AY) -2016-17, declaring NIL income. The case of assessee was selected for limited scrutiny to examine the capital gain on sale of property. During the assessment, the Assessing officer noted that the assessee had sold a piece of land admeasuring 7.50 acres out of survey No. 720 situated at Vahiyal, Wagra Taluka on 29/05/2015 vide sale deed No. 1525/1/12/2015 for a consideration of Rs. 77,00,786/-. The assessee had purchased the said property as on 04/8/1965. For the purpose of computation of capital gain, the assessee

adopted the value of asset (property) as on 01/4/1981 at Rs. 7,35,000/- on the basis of valuation of Government registered valuer. The Government registered valuer suggested the value of land @ Rs. 25.60 per square meter, on the basis of which the assessee worked out the indexation cost at Rs. 77,45,350/-. The asset was sold at Rs. 77,00,786/-, thus, the assessee computed capital gain at Rs. Nill. The Assessing officer made reference to the Departmental Valuation Officer (DVO) on 20/11/2018. The report of DVO was not received till the time of passing assessment order. The Assessing officer noted that the case was going to be time barred, accordingly, the assessment order was passed subject to modification on receipt of valuation report of DVO, Vadodara. The Assessing officer straightway computed long term capital gain of Rs. 77,00,786/- while passing the assessment order on 26/12/2018. The Assessing officer received valuation report of DVO on 22/1/2019. The DVO valued the asset (property) at Rs. 6,00,600/- i.e @ Rs. 21/- per square meter. On the basis of report of DVO, the Assessing officer rectified the assessment order and computed long term capital gain at Rs. 12,08,300/- in the following manner:

Sale Consideration	Rs. 77,00,786/-
Less: Index Cost of Acquisition (600600 * 1081/100)	Rs. 64,92,486/-
Total Long Term Capital Gain	Rs. 12,08,300/-

3. The assessing officer made addition of long-term capital (LTCG) of Rs. 12,08,300/- while passing rectification order under section 154 dated 27.02.2019. Aggrieved by the additions of long term capital gain, worked out in rectification order dated 27/2/2019, the assessee filed appeal before the Id. CIT(A).
4. Before the Id. CIT(A), the assessee filed detailed written submissions. The submission of assessee is recorded in para 4 of order of Id. CIT(A). In the written submission, the assessee challenged the validity of reference under Section 142A of the Income Tax Act, 1961 (in short, the Act) as well as report of valuer furnished in terms of Section 55A of the Act by DVO. On the reference under Section 142A, the assessee submitted that prior to insertion of Section 142A, there was no specific provision for reference to DVO for estimating the cost of construction of a property/investment, the Assessing Officer were exercising power of summon under Section 131, survey under Section 133 or power of enquiry under Section 142(1) of the Act. Use of these powers by the Assessing Officer for reference to DVO were questioned before the various judicial forums and High Courts. Various conflicting views were taken for legitimacy of use of such power. Ultimately, the Hon'ble Supreme Court in the case of *Amiya Bala Paul Vs CIT* (2003) 262 ITR 407 has concluded that there is no power to Assessing officer for making such

reference to DVO for valuation of investment for assessment purpose. Thereafter, vide Finance Act, 2004, a new Section 142A was inserted with retrospective effect from November, 1972 to neutralize the decision passed in *Amiya Bala Paul Vs CIT* (supra). As per Section 142A introduced by the Finance Act, 2004, the Assessing officer can refer the issue of Valuation Officer to make the estimate of value of any investment referred to in Section 69 or 69B of the Act. Therefore, Section 142A has given power to Assessing officer to refer the matter to DVO for the purpose of estimating the value of any investment for making assessment subject to certain conditions. The assessee further contended that where the investment in the form of asset or otherwise mentioned in the books of account and valuation thereof has been disputed then reference under Section 142A can be made. Prior to 01/10/2014, there was requirement to reject the books of account to make reference under Section 142A which has been taken away from 2014 by making amendment in Section 142A which requires that even without rejecting the books of account, reference under Section 142A can be made. Reliance was made on the decision of Delhi Tribunal in the case of *Westland Buildtech (P) Ltd. Vs ITO* 76 taxmann.com 142 (Delhi Trib). On the basis of such assertion, the assessee contended that when there is no cogent material available with the Assessing officer about the requirement of Section 69, reference

under Section 142A cannot be made as has been held by the Hon'ble Gujarat High Court in the case of Anand Banwarilal Adhukia Vs DCIT (2016) 75 taxmann.com 301 (Guj). The assessee stated that after amendment from 01/10/2014, a condition to reject the books of account which was made to nullify the judgement of Hon'ble Supreme Court that the assessment or reassessment, reference can be made under Section 142A of the Act without rejecting the books of account but in order to make reference under Section 142A, valuation must be with regard to property, asset, investment as stated in the provisions of Section 69 and 69B of the Act. On the basis of such contention, the assessee submitted that operation of Section 142A is limited to the provisions of Section 69, 69B and 56(2) of the Act. The Assessing Officer initiated proceedings under Section 142A with respect to immovable property for which provisions of Section 69, 69B are not applicable and therefore, reference for the referred immovable property under Section 142 is totally uncalled for and deserve to be quashed. On the second objection about the report of DVO furnished under the provisions of Section 55A of the Act, the assessee stated that the reference was made under Section 142A and the DVO has furnished his report under Section 55A of the Act. Once, reference itself is bad and nonest because the asset is a capital asset and not hit by Section 69 and 69B or Section 56(2) of the Act, the report of

DVO is not valid. The Assessing Officer has not brought anything on record to suggest the valuation adopted by assessee is at variance with fair market value prevailing at that point of time i.e. on 01/4/1981, therefore, no reference at all as required even under Section 55A can be made. Reliance was made on the decision of Hon'ble Gujarat High Court in the case of CIT Vs Manjulaben M Unadkat (2015) 55 taxmann.com 62 (Guj).

5. The Id. CIT(A) after considering the contents of assessment order and submission of assessee, not accepted the submission of assessee and upheld the order of Assessing officer by taking a view that the decisions relied by the assessee are prior to the amendment in section 142A. After the amendment in section 142A, the assessing officer may, for the purpose of making assessment or re-assessment require the valuation officer to the estimate of the value of any investment in any bullion, jewellery or fair market of value of the property. And on receipt of report of the valuer the assessing officer may give opportunity to the assessee of being heard, take in to account such report, for the purpose of assessment or re-assessment. Thus, as per amended section 142A, the assessing officer is not required to record any satisfaction about the correctness or completeness of accounts. Hence, the assessing officer need not record any reason for making reference to the valuation officer

and his power is extended to any asset, property or investment. And thereby rejected the submissions of the assessee. On the objection of assessee that reference was made under section 142A and the assessing officer took the cognizance of report of DVO under section 55A, the Id CIT(A) held that DVO furnished his report after considering all the factors and used 'comparable sales instances' method to arrive at the value of property as on 01.04.1981, which has been accepted by the assessing officer in computing capital gain. The Id CIT(A) held that reference under section 142A is perfectly as per law.

6. On the ground that section 55A is not applicable, the Id CIT(A) held that the assessee on the one hand agitating that section 55A is not applicable and other hand contended that reference to DVO should have been made under section 55A, thus, the stand of the assessee is contradictory. On the reliance of decision of Hon'ble Gujarat High Court in Manjulaben Unadkat (supra) the Id CIT(A) held that in the said decision it was held that the assessing officer has not brought anything on record indication that the assessee has disclosed lesser sale price and there is nothing on record to suggest ignoring the registered valuer report, therefore, the reference to valuation officer under section 55A was not justified, however, in the present case the assessee is insisting that assessing officer cannot refer the case to valuation under section 142A. The

decision in the said case was rendered in respect of sale took place on 12.10/1994 and section 55A(a) was amended from 01.07.2012, wherein the phrase "*is less than its fair market value*" was replaced by "*is at variance with its fair market value*". On the above observation the Id CIT(A) upheld the applicability of section 55A on the facts of the present case and upheld the additions. The other objections of the assessee that no opportunity of being heard was given before making reference to DVO was also rejected by holding that objections of the assessee was considered by the DVO before furnishing his report. Further aggrieved the assessee has filed present appeal before this Tribunal.

7. We have considered the submissions of the learned authorised representative (AR) of the assessee and the learned senior departmental representative (Sr DR) for the revenue. The Id AR for the assessee submits that the reference made by assessing officer under Section 142A was not valid. Once the reference under Section 142A was not valid the report filed by DVO itself not valid. The Id AR for the assessee submitted that power to make reference by assessing officer is restricted to the matters related to section 69, 69A or 69B and the subject matter in the present case is understatement in the value of investment acquired during the year, reference under section 142A was not valid. The Id AR for the assessee also retreated all the submissions as made in writing before Id

CIT(A). To support his submissions, the Id AR for the assessee also relied on the decision of Tribunal in Dasrathbhai Patel Vs DCIT (2022) 116 taxmann.com 229 (Ahd-Trib)/ 182 ITD 327 (Ahd-Trib). The Id AR for the assessee carried us through the entire decision in Dasrathbhai Patel Vs DCIT (supra) and would submit that the report of DVO, furnished under section 55A cannot be applied and the same is liable to be ignored in absence of valid reference to DVO.

8. On the other hand, the Id Sr DR for the revenue supported the order of the lower authorities. The Id Sr DR for the revenue further submits that the Id CIT(A) in para -6 & 7 of his order has categorically held that the DVO has given his furnished his report under section 55A and has considered all the objections of the assessee. The assessing officer in the assessment order has clearly recorded that he is not satisfied with the estimation of fair market value adopted by the assessee on the basis of report of the registered valuer.
9. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. We have also deliberated on the various case laws relied by the lower authorities as well as by Id AR for the assessee during his submissions. Though, the assessee has raised multiple grounds of appeal, however, the issue involves in the present appeal is very limited that is, what should be the

fair market value of the asset as on 01.04.1981 as the assessee has acquired the said asset on 04.08.1965. We find that neither the assessing officer try to find out the cost of actual purchase nor the assessee voluntarily disclosed such acquisition cost. We are conscious of the fact that if the asset was acquired prior to 01.04.1981, the base price as on 01.04.1981 has to be adopted for computation of long-term capital gain. However, such inquiry by assessing officer or voluntary discloser by assessee could ascertain whether the value of asset suggested by Government approved valuer as on 01.04.1981 was lower or higher than the actual cost of acquisition in 1965. Before, adverting to the various objections legal or factual raised by Id AR for the assessee on the reference to DVO for ascertaining the fair market value as on 01.04.1981, let us examine the facts viz-a viz the cost adopted by the assessee and the cost of asset suggested by DVO.

10. We find that there is no dispute about the area of the land. In the sale deed the area of land is clearly mentioned as of 28,600 square meter. The DVO in its report has also mentioned the area of land as 28,600 square meter and adopted the rate @ Rs. 21/- per square meter on the basis of three sale instances of land situated in Wagra admeasuring 159.42, 88.63 & 126.90 square meter sold @ Rs. 31.36/-, 11.27/- & 23.90/- respectively, which are sold in and around April or May 1981. The DVO

has adopted the average of above three comparable and suggested the value @ Rs. 21/- per square meter. Though, the DVO has mentioned in its report that while taking the sale instances the factors affecting the land rates such as size, shape, situation, location, utility, specification, long time future prospect and PUC were considered and average value of three instances @ Rs. 21/- per square meter was suggest. We find that no details of various factors considered by DVO is mentioned in his report. And all the factors are mentioned just to fulfil the requirement of contents of report. Similarly, we have also perused the report of registered valuer who suggested the value of land @ Rs. 98,000/- per acre and arrived at the value of asset at Rs. 7,35,000/-. No factors affecting the land rates such as size, shape, situation or location is mentioned in his report. Now, before us, we find two expert reports about the valuation of the same land, however, on their perusal we find that there is very minor difference of rates in both reports. The DVO has referred three sale instances which are with regards to small pieces of land, but the size of land under dispute is very large comparative to the comparable. However, to cut short the dispute, if we take the average of comparable No. 1 & 3, and excluded comparable No. 2 for the reasons of its size, which is otherwise on very low side i.e Rs. 11/- per square meter, the average of remaining two comparable comes to Rs. 27.49/-. The assessee has already adopted the

rate at Rs. 25.69/- per square meter, which is reasonable and acceptable to us. Considering the facts that we have accepted the rate @ Rs. 25.69 per square meter, therefore, all the submissions of Id AR on legal or factual issues have become academic. In the result, the grounds of appeal raised by the assessee are allowed.

11. In the result, this appeal of assessee is allowed.

Order pronounced in the open court on 12th September, 2022 in open court and result was also placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 12/09/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat