

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 1204 of 2018

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PRINCIPAL COMMISSIONER OF INCOME TAX-4

Versus

LATE SHANTABEN P. PATEL, L/H GOVINDBHAI P. PATEL

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Appearance:

MRS MAUNA M BHATT(174) for the PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 08/10/2018

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal dated 02.04.2018.

2. The following question has been presented for our consideration;

“Whether the Appellate Tribunal has erred on the facts and in law in deleting the addition of Rs.13,97,290/- made on account of Long Term Capital Gains?”

3. The issue pertains to the Assessment Year 2011-12 and touches the authority of the

Assessing Officer to make a reference to the District Valuation Officer for determining the fair market value of the assets as on 01.04.1981.

4. In this context, the Tribunal had relied on the decision of this Court in the case of *Commissioner of Income-Tax v. Gauranginiben S. Shodhan* reported in [2014] 367 ITR 238. In the said judgment, the following observations were made;

"15. Coming to the question of reference to the DVO for ascertaining the fair market value as on April 1, 1981, also, we find that such reference was not competent. We have noticed that prior to the amendment in section 55A with effect from July 1, 2012, in a case, the value of the asset claimed by the assessee is in accordance with the estimate made by the registered valuer, if the Assessing Officer was of the opinion that the value so claimed was less than its fair market value as on April 1, 1981. It would not be the case of the Assessing Officer that the value of the asset shown as on April 1, 1981 was less than the fair market value. Such clause, therefore, as it stood at the relevant time, had no application to the valuation as on April 1, 1981. We are conscious that with effect from July 1, 2012, the expression now used in clause (a) of section 55A is "is at variance with its fair market value". The situation may, therefore, be different after July 1, 2012. We are, however, concerned with the period prior thereto. Clause (b) of section 55A is in two parts and permits a reference to the DVO if

the Assessing Officer is of the opinion that (i) the fair market value of the asset exceeds the value of the asset so claimed by the assessee by more than such percentage of the value of the asset 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. Sub-clause (i) of clause (b) also for the same reasons recorded above, would have no bearing on the fair market value as on April 1, 1981. The Assessing Officer had not resorted to sub-clause (ii) of clause (b). In any case, clause (b) would apply where clause (a) does not apply since it starts with the expression "in any other case". In other words, if the assessee has relied upon a registered valuer's report, the Assessing Officer can proceed only under clause (a) and clause (b) would not be applicable."

5. The issue is covered by the decision of this Court. Hence, the Tax Appeal is dismissed.

THE HIGH COURT
OF GUJARAT

(AKIL KURESHI, J)

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(B.N. KARIA, J)

PRAVIN KARUNAN