

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" B " BENCH, AHMEDABAD**  
 (CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

Sl. No(s)	ITA No(s)	Asset. Year(s)	Appeal(s) by	
			Appellant	Respondent
1.	143/Ahd/2019	2010-11	Shri Apurva Narendra Patel, 255, Nathamukhis Bunglow, Anand Chowk, kokhara Gam, Ahmedabad.  <b>PAN No. AGCPP7272M</b>	Income Tax Officer, Ward-6(1)(4), Ahmedabad.
2.	142/Ahd/2019	2010-11	Meenaben Narendrabhai Patel, 255, Nathamukhis Bunglow, Anand Chowk, Kokhara Gam, Ahmedabad.  <b>PAN No.AQGPP1762L</b>	Income Tax Officer, Ward-6(1)(4), Ahmedabad.
3.	144/Ahd/2019	2010-11	Mitesh Narendrabhai Patel, 255, Nathamukhis Bunglow, Anand Chowk, Kokhara Gam, Ahmedabad.  <b>PAN No.AQGPP1777K</b>	Income Tax Officer, Ward-6(1)(4), Ahmedabad.

<b>(Applicant)</b>	<b>(Respondent)</b>
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Assessee by :	Shri Chetan Agarwal, A.R
Revenue by :	Shri R.R.Makwana, Sr.D.R

सुनवाई की तारीख / **Date of Hearing** : **06/05/2021**  
 घोषणा की तारीख / **Date of Pronouncement:** **23/06/2021**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeals have been filed at the instance of the different Assessee against the separate orders of the Learned Commissioner of Income

Tax(Appeals) Ahmedabad (in short "Ld. CIT(A)") arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment year 2010-11.

2. At the outset, it was noted that there was the delay in filing the appeals by all the assessee for **253 days**. In the condonation petition, it was explained that Id. CIT(A) orders in all three cases were received on 28/03/2018 and the same were handed over to Jinesh Shah, C.A of Shah Teelani and Associates for filing the appeals before the Hon'ble ITAT, Ahmedabad. However, appeals were not filed before the ITAT Ahmedabad Bench due to the mistakes and lapses on the part of Jinesh Shah, C.A of Shah Teelani and Assosicates. Hence, the assessee changed the authorized representative and appointed C.A. Shri Chetan L. Agarwal for filing appeals which had been filed on 04/02/2019, causing delay of 253 days in all three cases. The assessee submitted that there was no ill motive behind for not filing appeal in time. In this regard, he has also filed an affidavit dated 02/07/2020 stating the above reasons and requested to condone the delay which occurred due to administrative lapse on the part of his representative. At the time of hearing, the Id. DR left the issue for condoning the delay at the discretion of the Bench.

3. In view of the above, we notice that assessee had sufficient reason for not filing the said appeals before the ITAT, Ahmedabad Benches within the time prescribed. Therefore, we condone the delay of 253 days and proceed to adjudicate the appeals on merits.

**First we take up ITA No. 143/AHD/2019, an appeal by the assessee**

4. The assessee has raised the following grounds of appeal:

*Ld.CIT(A) erred in law and well as on facts in confiring addition made by AO of Rs.1,52,96,645/- by replacing cost of acquisition based on valuation report of registered valuer as 01/04/1981 by arbitrary figure.*

4.1 Assessee has also raised following additional grounds of appeal:

1. *Ld.AO erred in law as well as on fact in computing 100% LTCG in appellants hand on sale of land in which appellant had only 25% share, especially when assessment of other co-owners was made accepting respective share of capital gain in their individual hands.*

2. *Ld. AO erred in law as well as on fact in assuming jurisdictional and passing order u/s.143(3) r.w.s 147 without issuing mandatory notice u/s.143(2) of the Act.*

5. At the time of hearing, Ld. Counsel for the assessee submitted that he has been instructed by the assessee not to press additional ground No. 2 of the appeal. Therefore, the same is dismissed as not pressed.

6. The interconnected issue raised by the assessee in ground no. 1 and additional ground no. 1 is that the learned CIT (A) erred in confirming the addition made by the AO for ₹ 1,52,96,645.00 under the head capital gain by ignoring the cost of acquisition declared as on 1 April 1981 in the valuation report as well as the share in the property.

7. The facts as narrated in the order of the authorities below are that the assessee in the present case is an individual and declared income under the head capital gain and other sources. The assessee in the year under consideration sold a piece of land for an amount of Rs. 2,50,88,000.00 dated 20 April 2009. The assessee has taken the cost of acquisition of the land as on 1-4-1981 based on the valuation report at Rs. 365 per square meter aggregating to Rs. 38,77,395.00 ( 10623 Square Meters X Rs. 365). The assessee further worked out the indexed cost of acquisition of land at Rs. 2,45,05,168.00 only. The assessee also claimed transfer expenses of Rs. 2,57,850.00 on the transfer of such land. The assessee finally computed the long term capital gain at Rs. 3,24,982.00 only.

7.1 However, the AO found that the average rate per square meter based on the valuation report as on 1 April 1981 works out at Rs. 142 only whereas the assessee

has wrongly taken such cost at ₹365 per square meter. Accordingly the AO worked out the indexed cost of acquisition at ₹ 95,33,505.00 only. In view of the above the AO computed the long-term capital gain in the manner as detailed below:

*The long term capital gain is worked out as under:*

<i>Sale consideration</i>		<i>Rs.2,50,88,000/-</i>
<i>Less(i)Indexed cost of acquisition</i>	<i>Rs.95,33,505/-</i>	
<i>(ii) Transfer expenses</i>	<i>Rs.2,50,000/-</i>	
<i>(iii) Indexed cost</i>	<i>Rs.7,850/-</i>	
		<i>Rs.97,91,355/-</i>
<i>Long Term Capital Gain</i>		<i>Rs.1,52,96,645/-</i>

7.2 The aggrieved assessee preferred an appeal to the learned CIT (A). The assessee before the learned CIT (A) submitted that the valuer in his report for valuing the land in dispute as on 1 April 1981 has adopted the basis of increase in the gold price index as decided by the Reserve Bank of India. The valuer in his report has already mentioned that there were not available the specific instances of the sales of land directly comparable to the land in question. The references given by the valuer for the sale of land in his report were not used by him for deciding the value of the land in question as on 1 April 1981. Therefore, the AO erred in referring those instances of the sale of land for deciding the value of the land in question as on 1 April 1981.

7.3 The assessee also submitted that the AO was empowered to refer the matter to the DVO under the provisions of section 55A of the Act for valuing the property in question instead of deciding the value of the property at his own. However, the AO without pointing out any specific defect in the valuation report furnished by the assessee and without referring to the DVO under section 55 A of the Act has valued the property in question as on 1 April 1981 which is against the provisions of law.

7.4 However, the learned CIT (A) disagreed with the contention of the assessee on the reasoning that the AO has adopted only those instances of sales of the lands which were furnished by the valuer in his report. Accordingly there was no reason for the AO to refer the matter to the DVO under section 55A of the Act as claimed by the assessee. Accordingly, the learned CIT (A) disregarded the contention of the assessee and confirmed the order of the AO.

8. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

9. The learned AR before us filed a paper book running from pages 1 to 101 and submitted that the land was valued by the valuer based on the gold price index fixed by the RBI and not on the basis of the sales instances furnished by the valuer in his report. Therefore, the authorities below cannot make the reference to such sales instances for determining the value of the land as on 1 April 1981 without rejecting the basis adopted by the valuer and referring the matter to the DVO under the provisions of section 55A of the Act.

9.1 Furthermore, the assessee has declared the value of the land as on 1-4-1981 based on the valuation report which is higher than the value of the land as worked by the AO. But there was no power to the AO under the statute for the year under consideration to reject such value determined by the registered valuer as on 1<sup>st</sup> April 1981. Therefore the AO was bound to accept the value determined by the registered valuer as on 1<sup>st</sup> April 1981. In this regard, the learned AR relied on the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan Indl reported in 367 ITR 238. The learned AR also drew attention on pages 2 to 11 where the valuation report was placed.

9.2 Besides the above, it was also pointed out that the AO, if not satisfied with the value of the land, can make the reference to the DVO under the provisions of section 55A of the Act but he cannot decided the value at his own.

9.3 The learned AR further submitted that the land in question was jointly held by the assessee along with co-owners being mother and brother namely Smt. Meenaben N. Patel and Shri Mitesh N. Patel. The property being the land admeasuring 10623 square meters was inherited. The ownership of the assessee in the property was limited to the extent of 25% whereas the shares of both the co-owners being the mother and the brother stands at 50% and 25% respectively. The share of the assessee in the sale consideration stood at ₹ 62,72,000.00 only. In this connection the learned AR drew attention on pages 12 to 37 where the sales deed was placed on record. The learned AR also drew our attention on the assessment orders of the co-owners to justify that the capital gain was also assessed in the respective hands with respect to the land in question. The copies of the assessment orders of the co-owners are available on record. Accordingly, the learned AR contended that the entire amount of capital gain cannot be taxed in the hands of the assessee.

10. On the other hand the learned DR vehemently supported the order of the authorities below.

11. We have heard the rival contentions, and the perused the materials available on record. The facts of the case are not in dispute, therefore, we are not inclined to repeat the same for the sake of brevity.

11.1 The 1<sup>st</sup> controversy that arises before us whether the land in question was jointly held by the assessee and therefore the entire amount of capital gain cannot be taxed in the hands of the assessee. In this regard we note that the AO himself in his order has recorded the fact that the assessee was the joint owner in the land

in dispute after making a reference to the sale deed. For this purpose, the relevant observation of the AO reads as under:

*AR of the assessee submitted sale deed of the land executed on 20-4-2009 in the joint name amounting to Rs. 2,50,88,000/-. On the other hand, a copy of same sale deed received from sub registrar, Narol, Ahmedabad in response to letter dated 10/09/2013.*

11.2 The above observation of the AO supports the contention of the assessee that the land in dispute was jointly held. Furthermore, the learned AR has also filed the copy of the sale deed which is available on record and the same was not disputed by the learned DR. Accordingly we hold that, the authorities below erred in taxing the entire amount of capital gain in the hands of the assessee.

11.3 Moving further, we find that the basis adopted by the registered valuer for valuing the property as on 1 April 1981 was the gold rate index fixed by the Reserve Bank of India which was not doubted by the AO. Admittedly, the sales instances were given by the valuer in his report with the remark that these are not comparable and therefore the same cannot be used for valuing the property in question as on 1 April 1981. The relevant observation of the valuer reads as under:

<p><i>Unit value adopted (here registered valuer should discuss in details his approach to the valuation of the land and indicate how he has been arrived at</i></p>	<p><i>1. It is observed that from the statement showing the instances of the sales attached herewith that the sales are very few and found to be undervalued:</i></p> <p><i>2. Hence the area around the land u/r. studied by making local inquiries and inquiries to the concerned Govt. Deptts. / Khatedars of the Village, etc.</i></p> <p><i>3. As the instances of the sales are very few and under valued, the increased trend of the gold prices can provide the basis for fixing the land values in 1981.</i></p> <p><i>The basis for fixing the land rates 1981 the gold price fixed by.; Reserve Bank of India was 167.00 per one gramme. The percentage increase is / was 100. While in 2002, it is/ was Rs. 506.00 per one</i></p>
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	<p><i>gramme &amp; percentage increase is/ was 302.99.</i></p> <p><i>At present i. e. on the date of sale deed executed &amp; registered on April 2009, the price of gold was approx Rs. 1400/- per one gramme. It is approximately 838 times more as compared with/to the price of 1981.</i></p> <p><i>Besides the sale/purchase of gold does not involved any types of speculation. This basis considered to be fair and reasonable transaction. Hence it may be taken into consideration suitably for fixing assessing/estimating land rate suitably</i></p>
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11.4 However, the authorities below without rejecting the basis adopted by the valuer has referred the sales instances for determining the value of the land in question as on 1 April 1981. As such, these sales instances were rejected by the valuer himself and therefore in our considered view the authorities below erred in using these sales instances in valuing the property in question as on 1 April 1981.

11.5 Without prejudice to the above the issue before us also arises for our adjudication whether the AO can substitute the value determined by the registered valuer as on 1<sup>st</sup> April 1981 in the given facts and circumstances. For this purpose we refer to the provisions of section 55A of the Act as applicable for the year under consideration which reads as under:

*[Reference to Valuation Officer.*

*<sup>43</sup>55A. With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter <sup>44</sup>, the <sup>45</sup>[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 <sup>45</sup>[Assessing] Officer is of the opinion that the value so claimed is less than its fair market value ;*

*(b) in any other case, if the <sup>45</sup>[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 <sup>46-47</sup> of the value of the asset as so claimed or by more than such amount <sup>46-47</sup> 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,*

11.6 A plain reading of the above provision reveals that the AO may refer the valuation of capital assets to a valuation officer where he's of the opinion that the value so claimed by the assessee is less than its fair market value. It is an undisputed fact that the assessee did not claim the value of the impugned land as on 1<sup>st</sup> April 1981 which is less than the fair market value. As such the assessee has claimed higher value than the fair market value as per the AO. Thus in our considered view, the AO has no power to substitute the value of capital assets in the given facts and circumstances. Accordingly, the AO cannot substitute the value declared by the assessee as on 1<sup>st</sup> April 1981. In this regard, we draw support and guidance from the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan Indl (*supra*) wherein it was held as under:

**15.** *Coming to the question of reference to DVO for ascertaining the fair market value as on 1.4.1981 also, we find that such reference was not competent. We have noticed that prior to the amendment in section 55A with effect from 1.7.2012 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 1.4.1981. It would not be the case of the Assessing Officer that the value of the asset shown as on 1.4.1981 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 1.4.1981. We are conscious that with effect from 1.7.2012, 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 1.7.2012. We are, however, concerned with the period prior thereto. Clause (b) of section 55A is in two parts and permits a reference to 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 1.4.1981. 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 assessee has relied upon a Registered Valuer's Report, Assessing Officer can proceed only under clause (a) and clause (b) would not be applicable.*

**16.** *In the present case, admittedly the assessee had relied on the estimate made by the Registered Valuer for the purpose of supporting its value of the asset. Any such situation would be governed by clause (a) of section 55A of the Act and the Assessing Officer could not have resorted to clause (b) thereof as held by the*

*Division Bench of this Court in the case of Hiaben Jayantilal Shah v. ITO [2009] 310ITR 31/181 Taxman 191 (Guj.). In the said decision, it was held and observed as under:—*

*"10. Under clause(a) of sec. 55A of the Act under the Assessing Officer is entitled to make the reference to the Valuation Officer in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by the Registered Valuer, if the Assessing Officer is of the opinion that the value so claimed is less than the fair market value. In any other case, as provided under clause(b) of Sec. 55A of the Act, the Assessing Officer has to record an opinion that (i) the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage or by more than such an amount as may be prescribed; or (ii) having regard to the nature of the asset and other relevant circumstances, it is necessary to make such a reference."*

**17.** *In the result, we see no reason to interfere. However, we have given our independent reasons and should not be seen to have confirmed the reasoning adopted by the Tribunal in the impugned judgment. Tax Appeal is dismissed.*

11.7 Thus there remains no ambiguity that there was no power under the statute to the AO to refer the matter to the DVO or to substitute the value of the impugned land as on 1<sup>st</sup> April 1981. Therefore we hold that the AO in the given facts and circumstances cannot substitute the value of the impugned land as on 1<sup>st</sup> April 1981.

11.8 Before parting, we want to make it flawless that there was an amendment under the provisions of section 55A of the Act by the Finance Act 2012 which reads as under:

***[Reference to Valuation Officer.***

***55A.*** *With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter <sup>79</sup>, the <sup>80</sup>[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 <sup>80</sup>[Assessing] Officer is of opinion that the value so claimed <sup>80a</sup>[is at variance with its fair market value];*

*(b) in any other case, if the <sup>80</sup>[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<sup>81</sup> of the value of the asset as so claimed or by more than such amount<sup>81</sup> 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,*

11.9 A plain reading of the above-amended provisions reveals that the AO was given power to refer the matter to the valuation officer if he's of the opinion that the value claimed by the assessee is at variance with the fair market value. Indeed the AO can refer the matter to the valuation officer if registered valuer value the property as on 1<sup>st</sup> April 1981 which is at variance with the fair market value. However such amendment is prospective in nature and therefore the same cannot be applied to the earlier years. In this regard, we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Gauranginiben S. Shodhan Indl (*supra*). The relevant extract of the judgment has already been extracted in the preceding paragraphs.

11.10 As the dispute before us relates to the year prior to the amended provisions of section 55A of the Act which is applicable prospectively. Therefore such amended provisions cannot be applied to the case on hand. Thus we are inclined to reverse the order of the learned CIT-A, and accordingly we direct the AO to delete the addition made by him. Hence the ground of appeal of the **assessee is allowed**.

12. Coming to ITA No. 144/Ahd/2019 for A.Y. 2010-11, the assessee has raised the following grounds of appeal:

1. *Ld.CIT(A) erred in law as well as on fact in confirming addition made by AO of Rs.14,04,542/- by replacing cost of acquisition based on valuation report of registered valuer as on 01.04.1981 by arbitrary figure.*

2. *Ld.CIT(A) erred in law as well as on fact in confirming addition made by AO of Rs.14,04,542/- without considering claim made u/s.54F of the Act.*

*Additional Grounds of appeal*

1. *Ld. AO erred in law as well as on fact in assuming jurisdiction and passing order u/s.143(3) r.w.s 147 without issuing mandatory notice u/s.143(2) of the Act.*

13. The 1<sup>st</sup> issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for ₹ 14,04,542.00 under the head capital gain by ignoring the cost of acquisition declared as on 1 April 1981 in the valuation report.

14. At the outset we note that similar ground was raised by the assessee in the case of Shri Apurva N. Patel bearing ITA No.143/Ahd/2019 corresponding to A.Y. 2010-11 which has been decided in favour of assessee vide paragraph No. 11 of this order. For the detailed discussion please refer the above mentioned paragraph number of this order. Accordingly, we hold that finding given in above paragraphs with regard to ITA No.143/Ahd/2019 will mutatis mutandis apply here in this case also.

15. The 2<sup>nd</sup> issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of the exemption claimed by the assessee for Rs. 9,40,000.00 under section 54F of the Act.

16. At the time of hearing, the Ld. Counsel for the assessee has requested not to press ground No. 2 of the appeal. Therefore, the same is dismissed as not pressed.

17. Coming to ITA No. 142/Ahd/2019 for A.Y. 2010-11, the assessee has raised the following grounds of appeal:

1. *Ld.CIT(A) erred in law as well as on fact in confirming addition made by AO of Rs.27,29,083/- by replacing cost of acquisition based on valuation report of registered valuer as on 01.04.1981 by arbitrary figure.*

2. *Ld.CIT(A) erred in law as well as on fact in confirming addition made by AO of Rs.27,29,083/- without considering claim made u/s.54F of the Act.*

***Additional Grounds of appeal:***

1. *Ld. AO erred in law as well as on fact in assuming jurisdiction and passing order u/s.143(3) r.w.s 147 without issuing mandatory notice u/s.143(2) of the Act.*

18. The issue raised by the assessee in ground no. 1 is that Ld.CIT(A) erred in confirming the addition made by AO for Rs. 27,29,083/- by replacing the cost of acquisition based on valuation report of registered valuer as on 01.04.1981 by arbitrary figure.

19. At the outset we note that similar ground was raised by the assessee in the case of Shri Apurva N. Patel bearing ITA No.143/Ahd/2019 corresponding to A.Y. 2010-11 which has been decided in favour of assessee vide paragraph No. 11 of this order. For detailed discussion please refer the above mentioned paragraph number of this order. Accordingly we hold that finding given in above paragraphs with regard to ITA No.143/Ahd/2019 will mutatis mutandis apply here in this case also.

20. At the time of hearing, the Ld. Counsel for the assessee has requested not to press ground No. 2 as well as additional grounds of appeal. Therefore, the same is dismissed as not pressed.

21. In the combined results, all the three appeals filed by the different assessee are **partly allowed**.

**Order pronounced in the Court on 23/06/2021 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(Tue Copy)**  
23/06/2021