

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 167 of 2003

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE K.J.THAKER

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
- =====

C.I.T.....Appellant(s)

Versus

MANJULABEN M. UNADKAT....Opponent(s)

Appearance:

MR PRANAV G DESAI, ADVOCATE for the Appellant(s) No. 1

MR TUSHAR P HEMANI, ADVOCATE for the Opponent(s) No. 1

MS VAIBHAVI K PARIKH, ADVOCATE for the Opponent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**

and

HONOURABLE MR.JUSTICE K.J.THAKER

Date : 14/11/2014

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this appeal, the Revenue has challenged the order dated 31.12.2002 passed by the Income Tax Appellate Tribunal, Rajkot (for short "the ITAT") in ITA No.551(RJT.)/2002.

2. While admitting this appeal on 09.09.2003, the Court had formulated the following substantial question of law:-

" Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the Assessing Officer ought not to have made reference to the departmental valuation officer for determination of fair market value of the property under Section 55-A (a) of the Income Tax Act, 1961"?

3. The facts in brief are that the assessee-respondent herein was the owner of the property situated at plot No.9, Shakti Housing Society, Vidyanagar, Bhavnagar. It was acquired by the assessee on 01.04.1981. The value of the property at that time was taken at Rs.3,91,000/-. The assessee sold this property on 12.10.1994 for Rs.9,51,000/-. At the time of disposal, Tax Clearance Certificate was obtained u/s 230(A)(i) of the IT Act. The assessing Officer referred the matter for valuation of the property to

the valuation cell. The Valuation Officer determined the value of the property as on the date of sale at Rs.15,52,800/- and the fair market value of the property as on 01.04.1981 at Rs.1,62,700/-. On the basis of the said report the Assessing Officer issued Notice under Section 148 of the Act and finalized the assessment u/s 143(3) read with Section 147 of the Act at Rs.12,33,907. Against the same, the assessee filed an appeal before the CIT(Appeals). The CIT(A) upheld the order of the Assessing Officer. Against the said order, the assessee filed an appeal before the ITAT. The Tribunal allowed the appeal of the assessee. Hence, this appeal by the revenue.

4. Learned advocate for the appellant has invited our attention to a decision in the case of **Hiaben Jayantilal Shah V. Income Tax Officer**, reported in [2009] 310, ITR 31=[2009] 181 TAX.man 191(Guj.) and submitted that the issue involved in this appeal is squarely covered by the aforesaid decision. Paragraphs 27 and 28 of the above decision reads as under:-

27. The record of the petition does not indicate as to what was the opinion formed by the Assessing Officer before making reference to the DVO. It is only from the undated communication of the DVO that one gathers that the valuer has undertaken estimation of the fair market value of the property as on 1.4.1981 and 28.12.1995. However, in the affidavit-in-reply the Assessing Officer himself states to ascertain the fair market value of the property, a

reference was made by this office to the Valuation Officer on 26.04.1996, since according to this office, the value declared by the assessee as on the date of execution and registration of the sale deed was lower by more than 25 per cent. The petitioner filed a return on 27.8.1996, for the assessment year 1996-97 and the fair market value as on 1.4.1981 was shown at Rs.6,25,000/-. The capital gain was worked out at Rs.17,43,750/- taking the sale value of the property at Rs.17,50,000/- as per the banakhat dated 29.11.1994. In the above background of the it is humbly submitted that since the capital gain is required to be worked out on the fair market value of the property on the date of the sale deed, respondent no.1 has acted within jurisdiction for making reference to the value officer under the provisions of Section 55A of the Act.

14. Therefore, it is apparent that the Assessing Officer had, at no point of time, formed an opinion that the fair market value, in substitution of the cost of acquisition, as claimed by the assessee was required to be disturbed because prescribed parameters were fulfilled. In fact, as can be seen from the affidavit-in-reply the only ground on which reference was made to the valuation officer was that the value declared by the assessee as on the date of the execution and registration of the sale deed was lower by more than 25 per cent. There is no provision in the act which permits the Assessing Officer to disturb the sale consideration, at least Section 55A of the cannot be invoked for the said purpose"

5. We have heard learned advocates for both the parties and perused the material on record. While deciding the Appeal, the Tribunal in paragraph No.6 of its order observed as under:-

"6. We have duly considered the rival contentions. A reference to the Valuation Officer is to be made under section 155A of the Act. Clause(A) of Section 55A has a bearing on making such a reference. It reads as under:

"55.A. 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 less than its fair market value;

The provision specifically provides that if the Assessing Officer is of the opinion that the value disclosed by the assessee is less than the fair market value only, then he can make a reference to the DVO. Now the moot question is as to how the opinion is to be formed by the Assessing Officer. Whether this opinion is subjective or guided by some judicious actions. The formation of opinion should have rational connection with the material brought on record. It should not be based on extraneous or irrelevant reasons. In the present case, the Assessing Officer before making a reference to the Valuation Officer has not brought anything on the record indicating that the assessee has disclosed lesser sale price. There is nothing on the record which can suggest to ignore the report of the registered valuer and to adopt the report of the Valuation Officer. Both these persons are technical persons and before accepting the evidence of

an expert, there should be corroboration of some other material. Taking into consideration the overall facts and circumstances of the case, we are of the opinion that the ld. Assessing Officer ought to have not made a reference to the DVO for determination of the fair market value of the property in dispute. The report of the DVO alone is not sufficient for estimating the capital gains at Rs.12,28,907/-."

6. In view of the above, we are in complete agreement with the view taken by the Tribunal. The Tribunal has given cogent and convincing reasons in arriving at the conclusion. Therefore, the present appeal is dismissed. Accordingly, the question posed in this appeal is answered in favour of the assessee and against the revenue.

(K.S.JHAVERI, J.)

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THE HIGH COURT
OF GUJARAT

(K.J.THAKER, J)

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