

Reserved On : 24/06/2026

Pronounced On : 08/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.19363 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

Sd/-

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Sd/-

Approved for Reporting	Yes	No
	✓	

LATE PADMABEN ZINABHAI TRIVEDI

Versus

INCOME TAX OFFICER

Appearance:

MR TUSHAR HEMANI, SENIOR ADVOCATE, with MS VAIBHAVI K PARIKH(3238) for the Petitioner

MR RUTVIJ R PATEL(10615) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

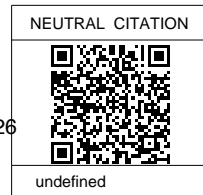
CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. By way of this writ petition, the petitioner has challenged the notice dated 30.03.2017 issued by the respondent authority under Section 148 of the Income Tax Act, 1961 (for short 'the Act') seeking to re-open the assessment for the Assessment Year (A.Y.) 2010-11.

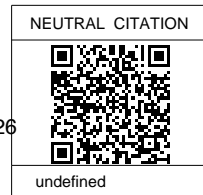
FACTS OF THE CASE

2. The petitioner, during the year under consideration, sold a parcel of land bearing Revenue Survey No. 285, admeasuring 13,626 sq. mtrs. out of total area of 20,200 sq. mtrs., situated at village Bhimpore, Nani Daman to M/s.Perfect Filaments Pvt. Ltd. for a total consideration of Rs.92,65,680/- vide registered sale deed executed on 24.06.2009. Since, the petitioner owned such



property even prior to 01.04.1981, the petitioner obtained a valuation report dated 11.11.2009 from a registered valuer, wherein the fair market value of such property as on 01.04.1981 was worked out at Rs.11,03,000/- (based on Rs.81/-per sq. mtr.). Thereafter, the petitioner filed return of income for the year under consideration on 23.08.2010 declaring total income at Rs.24,31,170/- including Long Term Capital Gain of Rs.22,94,720/- on sale of the said land. The petitioner, unfortunately passed away on 21.05.2012. After a period of four years from the end of the relevant A.Y. the respondent issued the impugned notice dated 30.03.2017 under Section 148 of the Act. The petitioner, vide letter dated 17.07.2017, requested the respondent to treat the original return of income as return filed in response to the Notice issued under Section 148 of the Act. The respondent, vide letter dated 17.05.2017, supplied copy of the reasons recorded for reopening. Thereafter, the petitioner raised objections against reopening contending that there is no escapement of income chargeable to tax and accordingly, the respondent was requested to drop the reassessment proceedings. However, respondent disposed of the objections vide order dated 15.09.2017 and held that the reopening of assessment is valid.

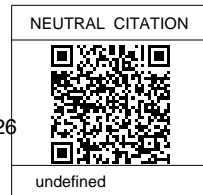
3. Thus, it is contended that the department lacked the authority to issue the Notice dated 30.03.2017 post amendment since as per the decision of the Bombay High Court in the case of CIT vs. Puja Prints, 2014 360 ITR 697 (Bom.) the 2012 amendment was only made effect from 01.07.2012 and the parliament has not given the retrospective effect and hence the provision of Section 55A(a) of the Act, will not apply to the transaction amendment. In the present case, the valuation of the



sale transaction was done in the year 2009 vide sale deed dated 24.06.2009.

SUBMISSION ON BEHALF OF THE PETITIONER :

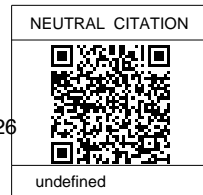
4. Learned Senior Advocate Mr.Tushar Hemani for the petitioner has submitted that reference to a Valuation Officer is governed by the provision of Section 55A of the Act. There was an amendment to Section 55A of the Act, brought in by the Finance Act 2012 with effect from 01.07.2012, whereby the words "*is less than its fair market value*", as appearing in Clause (a) of Section 55A of the Act were substituted by the words "*is at variance with its fair market value*". Thus, for the period prior to 01.07.2012 an Assessing Officer can make reference to the Valuation Officer for the purpose of valuation of the fair market value of an asset only if he is of the opinion that the value declared by the concerned assessee is less than the fair market value of the asset. It is submitted that in the present case, the fair market value adopted by the petitioner is based on the report of the registered valuer which is Rs.81/- per sq. mtr. which is higher than the value of Rs.1/- per sq. mtr. as worked out by the respondent authority. It is further asserted that the period under consideration falls prior to 01.07.2012. Therefore, the reference to the Valuation Officer in the present case is not tenable in the eye of law. In absence of any such reference, the value declared by the petitioner on the basis of the opinion of a Valuer cannot be disturbed by the respondent. It is further submitted that the issue is squarely covered in favour of the petitioner in the case of Hiaben Jayantilal Shah vs. Income Tax Officer, (2009) 310 ITR 31 (Guj.), wherein it is held that no fault



can be found with the petitioner's working of capital gain, hence, it cannot be said that an income chargeable to tax has escaped assessment.

4.2 It is submitted that the respondent has worked out the fair market value of the land in question as on 01.04.1981 at Rs.1/- per sq.mtr., on the basis of the details of sale instance of land in the year 1982 received from the office of "Sub-Registrar". According to the information of the Sub-Registrar a land admeasuring 53,700 sq.mtrs was sold in the year 1982 in the village Bhimpore for Rs.60,001/-. Taking into consideration of the cost inflation index for the years 1981 and 1982 was 100 and 109 respectively, the respondent worked out the corresponding value of such land for the year 1981 at Rs.55,046/- [i.e. Rs.60,001 / 109 X100]. Accordingly, the value per sq.mtr. was calculated at Rs.1/- per sq.mtr. i.e. [Rs.55,046 / 53,700 sq.mtrs.]. It is submitted that the respondent has adopted Rs.1/- per sq.mtr. as the fair market value of the land in question as on 01.04.1981 on the basis of the same worked out the alleged escapement of income.

4.3 Learned Senior Advocate Mr.Hemani has submitted that in case the Court is not inclined to accept the aforesaid submissions, the alternative submission about the exercise of jurisdiction by the assessing officer by issuing the notice under section 148 of the Act against a dead person may be examined. It is submitted that the Assessing Officer had issued a Notice in the name of the dead person i.e. Smt. Padmaben Trivedi who had passed away on 21.05.2012 and the respondent had issued notice under Section 148 of the Act in her name on 30.03.2017



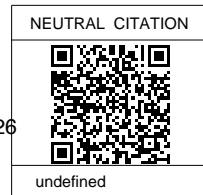
i.e. the very last day of limitation for A.Y 2010-11 which is impermissible.

4.4 In support of his submissions, reliance is placed on the decision of this Court in the case of Chandreshbhai Jayantibhai Patel vs. Income Tax Officer, [2019] 101 taxmann.com 362 (Gujarat), as well as in the decision of Urmilaben Anirudhhasinhji Jadeja vs. Income Tax Officer, [2020] 117 taxmann.com 504 (Gujarat). Thus, it is urged that the writ petition may be allowed by quashing and setting aside the impugned notice.

SUBMISSIONS ON BEHALF OF THE REVENUE :

5. Responding to the aforesaid submissions, learned Senior Standing Counsel Mr. Rutvij Patel, has submitted that as per the decisions of this Court in the cases of **Chandreshbhai Jayantibhai (supra)** and **Urmilaben Jadeja (supra)** the reassessment proceedings cannot be quashed and set aside, even if, the Notice has been issued against a dead person. Since, the petitioner after issuance of notice, had participated in the proceedings by giving the reply in the form of objections dated 17.07.2012. It is submitted that the petitioner in the reply had never objected the reopening of the assessment by contending that the Notice was issued against that person and ultimately, the assessing officer has disposed of objection for reopening of the assessment and conveyed to the present petitioner.

5.1 With regard to the reliance placed by the petitioner on the un-amended provisions of Section 55A of the Act, it is contended that since the amendment under Section 55A(a) of the Act has

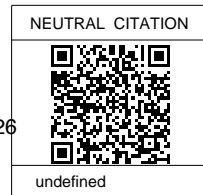


been introduced in the year 2012. The department was well within its jurisdiction to reopen the assessment looking to the computation of capital gain on the said land in question by taking the fair market value as on 01.04.1981 at Rs.81/- per sq.mtr. as against Rs.1/- by the register value. It is submitted that the petitioner had taken fair market value of the land in question at Rs.81/- per sq.mtr., which is higher than Rs.1/- looking to the said instances of the land situated at Bhimpore in the year 1981. Thus, it is urged that the writ petition may not be entertained.

ANALYSIS AND OPINION

6. We have heard the learned advocates appearing for the respective parties and perused the materials on record.

7. We are called upon to examine the validity of the reopening of the assessment for A.Y. 2010-11 by the respondent upon issuance of the impugned Notice under Section 148 of the Act. It is not in dispute that the notice has been issued against a dead person namely, late Smt. Padmaben Jinabhai Trivedi. During the relevant previous year, the deceased had sold the land in question situated at Bhimpore on 24.06.2009 for a consideration of Rs.92,65,680/-, by adopting the fair market value as on 01.04.1981 at Rs.81/- per sq.mtr. based on the Valuation report dated 11.11.2009 issued by the registered valuer. She thereafter filed her return of income on 23.08.2010, declaring long term capital gain of Rs.22,94,720/- she passed away on 21.05.2012 and after a period of five years of her demise, on 30.03.2017 i.e. the very last day of limitation for A.Y 2010-11 the respondent issued a notice in the name of the deceased. The Assessing



Officer on the basis of the sale instance of the year 1981 furnished by the Office of the sub-registrar, reversed calculated the fair market value as on 01.04.1981 at Rs.1/- per sq.mtr. and reduced the cost of acquisition adopted by the assessee and alleged the escapement of long term capital gain of Rs.69,62,580/-. This exercise was done under the provisions of Section 55A(a) of the Act.

8. At this stage, we may refer to the observations of the Division Bench of this Court in the case of **Hiaben Jayantibhai (supra)**, dealing with the operation of the Section 55A of the Act. The same reads thus:

"8. Section 55A of the Act, at the relevant point of time, reads as under :-

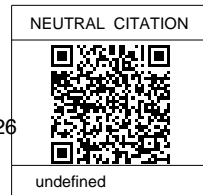
"55A. Reference to Valuation Officer :- With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer-

(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;

(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 percentage 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 164, clauses (he) and (1) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-



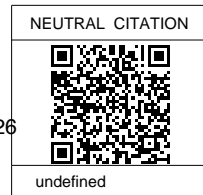
section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that 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)."

9. The concept of fair market value for the purpose of Chapter IV of the Act pertaining to computation of income from capital gain can be found under section 55(2)(b) of the Act, whereunder an assessee has the option to take the actual cost of the acquisition of the asset or the fair market value of the asset on 1-4-1981, for the purpose of sections 48 and 49 of the Act. In other words, for arriving at the taxable figure of capital gain while deducting the cost of acquisition an assessee may adopt the figure of cost of acquisition actually incurred or the fair market value of the property as on 1-4-1981. It is only in this fact situation that, with a view to ascertain the fair market value of the capital asset, the Assessing Officer may refer the valuation of the capital asset to a valuation officer.

10. Under clause (a) of section 55A of the Act, 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 section 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. "

9. The Coordinate Bench, while examining the provisions of clauses of Section 55A of the Act, has held that 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 in

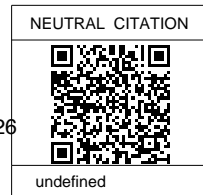


accordance with the estimate made by the register valuer is less than the fair market value. In the present case, it is not in dispute that the deceased assessee had disclosed the fair market value of the land at a higher rate of Rs.81/-, whereas the assessing officer in converse has determined the fair market value at Rs.1/-. Hence, the provisions of Section 55A(a) of the Act will not apply nor the provisions of sub-clause (b) of Section 55A of the Act will get attracted since the fair market value of the land has been determined on the basis of the register valuer report dated 11.11.2009, which is less than the value assessed by the assessing officer.

10. The amendment to Section 55A(a) of the Act introduced vide Finance Act, 2012 w.e.f 01-07-2012, by which the words “*is less than the fair market value*” is substituted by the words “*is at variance with its fair market value*” does not have retrospective effect, since the amendment has been made effective only from 01.07.2012. Thus, the case of the petitioner will be governed by un-amended Section 55A(a) of the Act as existing during the period relevant to the A.Y. 2009/10.

11. At the relevant time, very clearly reference could be made to the Departmental Valuation Officer, only if the value declared by the assessee is in the opinion of Assessing Officer less than its fair market value. This position of law has been specifically held in the case of ***CIT vs. Puja Prints (supra)***, which is as under:

“8. *The contention of the revenue that in view of the amendment to Section 55A(a) of the Act in 2012 by which the words “is less than the fair market value” is substituted by the words “is at variance with its fair market value” is clarifactory*

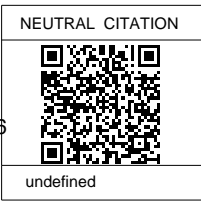


and should be given retrospective effect. This submission is in face of the fact that the 2012 amendment was made effective only from 1 July 2012. The Parliament has not given retrospective effect to the amendment. Therefore, the law to be applied in the present case is Section 55A(a) of the Act as existing during the period relevant to the Assessment Year 2006-07. At the relevant time, very clearly reference could be made to Departmental Valuation Officer only if the value declared by the assessee is in the opinion of Assessing Officer less than its fair market value.

9. *The contention of the revenue that the reference to the Departmental Valuation Officer by the Assessing Officer is sustainable in view of Section 55A(a) (ii) of the Act is not acceptable. This is for the reason that Section 55A(b) of the Act very clearly states that it would apply in any other case i.e. a case not covered by Section 55A(a) of the Act. In this case, it is an undisputable position that the issue is covered by Section 55A(a) of the Act. Therefore, resort cannot be had to the residuary clause provided in Section 55A(b)(ii) of the Act. In view of the above, the CBDT Circular dated 25 November 1972 can have no application in the face of the clear position in law. This is so as the understanding of the statutory provisions by the revenue as found in Circular issued by the CBDT is not binding upon the assessee and it is open to an assessee to contend to the contrary.”*

Hence, amended provisions of Section 55A(a) of the Act are not applicable to the case of the petitioner. Thus, the re-opening of the assessment is required to be quashed and set aside, for the reason that the respondent had failed to appreciate the provision of Section 55A(a) of the Act in light to the market value determined as on 01.04.1981 as per the Registered Valuation Report dated 11.11.2009.

12. As far as the issue of notice having being issued to a dead person, and the effect of responding to the notice by the petitioner, whether can be said to be participation in the proceedings is not delved by this Court, and is left open.



13. In view of the aforesaid, the impugned notice dated 30.03.2017 is hereby quashed and set aside. Accordingly, the writ petition stands **allowed**. Rule is made absolute to the aforesaid extent.

Sd/- .
(A. S. SUPEHIA, J)

Sd/- .
(VAIBHAVI D. NANAVATI, J)

Bhavesh-[PPS] - Radhika/01*