

(1993) 09 GUJ CK 0045

In the Gujarat High Court

Case No : Special Civil Application No. 1987 of 1974

M.V. Shah, Official Liquidator, Anant Mills Ltd.

APPELLANT

Vs

U.J. Matain and Another

RESPONDENT

Date of Decision : 20-09-1993

Acts Referred:

Income Tax Act, 1961 — Section 55A

Citation : (1994) 117 CTR 170 : (1994) 209 ITR 568

Hon'ble Judges : G.T. Nanavati, J;B.C. Patel, J

Bench : Division Bench

Advocate : B.R. Shah, for the Appellant; M.J. Thakore, for the Respondent

Judgement

G.T. Nanavati, J.—Anant Mills Limited was ordered to be wound up by this court in 1970 and the official liquidator was appointed as a provisional liquidator for taking over possession of the assets of Anant Mills Limited. The official liquidator after obtaining the court's sanction, invited offers for sale of the properties of the company and, ultimately, this court accepted the offer made by P.R. Damani, whereby he had offered to purchase the properties of the company for Rs. 34,00,011. For the purpose of conveying the land, this court apportioned the price and the value of the land to be conveyed to P.R. Damani was fixed at Rs. 15,00,000. The official liquidator executed the conveyance deed on March 30, 1973. He then filed the return of income for the assessment year 1973-74 for the purpose of ascertaining whether any capital gains had arisen as a result of transfer of the said land in favour of P.R. Damani. He also obtained a valuation report of a registered valuer and made a claim in accordance with the estimate made by the registered valuer. The Income Tax Officer, respondent No. 2 vide his letter dated December 18, 1973, informed the petitioner-official liquidator that on the basis of the valuation of the land as on January 1, 1954, in accordance with the valuation report was on a very high side, having regard to the sales which had taken place on January 1, 1954. The second respondent informed the petitioner that he was of the opinion that the valuation of the land as on January

1, 1954, could not have been more than Rs. 4 per sq. yard as against the valuation of Rs.12 per sq. yard claimed by the petitioner. The petitioner was called upon to furnish particulars and materials in support of his claim which he did. But the second respondent was not satisfied with the said material and made a reference to the District Valuation Officer, respondent No.1 u/s 55A of the Act. A preliminary objection was raised before respondent No. 1 that no reference could have been made u/s 55A of the Act when the Income Tax Officer was of the opinion that the value claimed by the assessee was more than the fair market value and that he could have made a reference only if the Income Tax Officer was of the opinion that the valuation claimed by the assessee was less than the fair market value, as, in this case, the valuation made by the petitioner was supported by the estimate of the registered valuer. This objection was overruled by the first respondent on the ground that once the reference is made he has to determine the fair market value. Overruling that objection, the first respondent proceeded further with determination of the fair market value and ultimately by his order dated March 28, 1974, determined the fair market value of the land in question at Rs. 4 per sq. yard. This order and also the action of the respondent No. 2 in making a reference to the first respondent, are challenged in this petition.

2. A preliminary objection has been raised by learned counsel for the respondents that against the order passed by the District Valuation Officer, the petitioner can prefer an appeal and, therefore, as the assessee has an alternative remedy available to him, this court should refuse to grant the reliefs claimed in this petition and the petitioner should be relegated to the ordinary remedy under the statute.

3. This petition was admitted in 1974. This court thought it fit to issue rule even though it was open to the petitioner to file an appeal under the Act. For that reason and also because the action which is challenged in this petition is challenged on the ground that it was without any authority of law, it will not be proper for this court now, after the lapse of so many years, to dismiss the petition on that ground and direct the petitioner to follow the remedy under the Act. We, therefore, reject this contention raised on behalf of the respondent.

4. Mr. Shah, learned counsel for the petitioner, submitted that u/s 55A of the Act, the second respondent could have made the reference to the District Valuation Officer only if he was of the opinion that the value claimed by the assessee on the basis of the estimate made by the registered valuer was less than its fair market value. In this case, the opinion which has been recorded by the Income Tax Officer is that the value claimed by the assessee is more than fair market value. Therefore, in this case, no reference could have been made by the Income Tax Officer to the District Valuation Officer,. He also submitted that clause (b) of section 55A can have no application in this case as clause (b) would apply in cases where the value claimed by the assessee is not supported or is not in accordance with the estimate made by the registered valuer. He submitted that

the words "in any other case" appearing in clause (b) would mean cases other than those where the value of the asset as claimed by the assessee is in accordance with the estimate made by the registered valuer. Therefore, in all cases, where the value of the asset as claimed by the assessee is in accordance with the estimate made by the registered valuer, only clause (a) would be attracted and not clause (b).

5. On the other hand,. it was contended by learned counsel for the Revenue that section 55A makes a distinction between cases in which the valuation stated by the assessee is based on valuation by a registered valuer and all other cases in which it is not so. He submitted that in cases where the assessee opted for valuation of the land by a registered valuer as on January 1, 1954, the fair market value as claimed by him may be higher than its actual fair market value and in that case, the provisions of section 55A(a) and (b) (ii) will have no application but that would certainly be covered by section 55A(b) (ii). He submitted that clause (b) would include all cases other than cases where the valuation of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer and the Assessing Officer is of the opinion that the claim is more than the fair market value. He further submitted that in this case, really sub-clause (ii) of clause (b) of section 55A is attracted and, therefore, the Income Tax Officer rightly made a reference to the Valuation Officer for determining the fair market value of the land in question.

6. It would have been necessary for us to consider whether the interpretation put on behalf of the Revenue is correct and we would have been required to determine the scope and ambit of section 55A and particularly clause (b) of that section, but for the fact that even if we were to accept the interpretation suggested by the Revenue, the impugned order passed by the Income Tax Officer is required to be stayed.

7. Assuming that clause (b) (ii) applies to a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer but the Assessing Officer is of the opinion that the valuation is less than the fair market value, we cannot justify the action of the second respondent in view of the facts and circumstances of the present case. Reference under clause (b) (ii) could have been made if the Income Tax Officer was of the opinion that having regard to the nature of the asset and other relevant circumstances, it was necessary so to do. In this case, as pointed out above, the asset is a piece of land. Therefore, there is nothing special about the nature of the asset which could have justified the Income Tax Officer to make a reference to the Valuation Officer. No other relevant circumstances could be pointed out by the Valuation Officer in his affidavit or by the respondents in any other manner in justification of the action of respondent No. 2. The only reason that we find from the material on record is that in the opinion of the Income Tax Officer, the fair market value of the land in question as on January 1, 1954, was about Rs. 4 per sq. yard. Again, the material disclosed that the said opinion was formed by the Income Tax

Officer on the basis of sale instances and other data relating to sales in that locality. Thus, in this case, the Income Tax Officer had reached the opinion on the ground that it was necessary to make a reference because of the special nature of the asset involved. It may also be stated that the Income Tax Officer has not filed any reply even though his action has been challenged as without any authority of law. The only reason which is given for making the reference is that the Income Tax Officer was of the opinion that the value of the property as on January 1, 1954, was about Rs. 4 per sq. yard and not Rs. 12 per sq. yard. No attempt was made to justify the action of respondent No. 2 under any other provisions of section 55A. We are, therefore, clearly of the opinion that the action of respondent No. 2 in making the reference to respondent No. 1 was not in accordance with law and, therefore, it deserves to be quashed.

8. In the result, we allow this petition. The impugned action of respondent No. 2 in making the reference and the order passed by the respondent No. 1 as a consequence thereof are quashed and set aside and we direct the Income Tax Officer to proceed further with the matter in accordance with law. Rule is made absolute accordingly. No order as to costs.