
# TT Alert

**May 2023**

## Cost of acquisition under S. 49(1) should not modified due to difference in the valuation

Hon'ble Rajkot Tribunal ('ITAT') in its recent ruling[1] held that the cost of acquisition under S. 49(1) should not modified due to difference in the valuation between Registered Valuer ('RV') and Department Valuation Officer ('DVO'), if the difference is not substantial

### Background

- Bhavinsinh D Vala ('the Assessee') had sold Land during the month of July 2011 i.e. in AY 2012-13 and offered it to tax under the head 'Capital Gains'. The Assessee had inherited the impugned Land from his brother in the year 2008-09, who was in possession of the Land since 1966.

- The fair market value ('FMV') of the Land as per registered valuer was INR 2.47 million whereas the DVO determined value of the Land at INR 2.27 million. The AO gave a finding that the value determined by the DVO was based on scientific, pragmatic and comparable sale instances, therefore he rejected the valuation of the RV.

- The AO re-computed the Capital gains considering the Cost of Land as computed by the DVO under S. 49(1) of the Income tax Act, 1961 ('ITA') and thereafter made addition in the assessment order. However, CIT(A) deleted the addition and aggrieved by the order of CIT(A), the department has preferred an appeal to the ITAT.

[1] *ITA No. 355 & 365/Rjt/2015 in the case of Late Bhavinsinh D Vala v. ACIT, CC-1*

## ITAT Decision

- The Assessee contended that the difference in the valuation determined by the two different valuers was only 8% which was very negligible and should be ignored as both the valuations were based on estimate only.

- CIT(A) in his order held that considering no substantial difference in the valuation by both the valuers, the Assessee should be given the benefit of quantum of difference which was less than 10%.

- ITAT in its order said that the valuation undeniably is only a fair estimation of the value of Land as on a particular date and the same is determined by various different methodologies, assumptions and estimations. In such case, the difference can be safely ignored, and it can be said that both the valuations arrive at the same cost of acquisition.

- ITAT upheld the decision of CIT(A) and found that the difference of 8% was immaterial so as require any substitution of the valuation of the RV with that of the DVO.

## Key Takeaways

The recent ruling by the ITAT provides clarity that the cost of acquisition as provided under S. 49(1) of the ITA is not required to be modified if the difference between the valuation determined by the RV and DVO is not substantial / material.

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