

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO.413 of 2016**

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PR. COMMISSIONER OF INCOME TAX-3....Appellant(s)

Versus

RAVJIBHAI NAGJIBHAI THESIA....Opponent(s)

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Appearance:

MR SUDHIR M MEHTA, SR. STANDING COUNSEL for the Appellant(s)
No.1

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CORAM: **HONOURABLE MS. JUSTICE HARSHA DEVANI**

and

HONOURABLE MR. JUSTICE G.R.UDHWANI

Date : 02/05/2016

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE HARSHA DEVANI)

1. By this appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the appellant - revenue has challenged the order dated 18th November, 2015 passed by the Income Tax Appellate Tribunal, Ahmedabad 'B' Bench (hereinafter referred to as "the Tribunal") in ITA No.1164/Ahd/2012 by proposing the following question, stated to be a substantial question of law:-

[A] *"Whether on the facts and circumstances of the case and in law, the ITAT was right in ignoring the provisions of Sec. 50C(2)(b) of the Act as per which reference to Valuation Officer is not allowed by the AO if valuation of Stamp Valuation Authority is disputed before Revision Authority of Stamp Value organization and therefore whether ITAT was right in directing AO to adopt the value as per report of Valuation Officer which is obtained against the provisions of law?"*

2. The assessment year is 2006-07 and the relevant accounting period is the previous year that ended on 31st March, 2006.

3. The respondent – assessee sold his lands bearing Survey Nos.602, 686, 688 and 689 at Adajan, Surat city for a consideration of Rs.16,00,000/-. The Stamp Valuation Authority had assessed the stamp value of such property at Rs.2,33,70,600/-. The Assessing Officer, therefore, reopened the assessment by recording the following reasons:-

“Information was received by this office that the land sold by the assessee at Adajan survey no.602, 686, 688 & 689 at Adajan, Surat City, for Rs.16,00,000/- was valued for the purpose of levy of stamp duty by the Stamp Valuation Authority, at Rs.2,33,70,600/-. Thus the assessee was found to have earned capital gain at Rs.2,17,70,600/- as per the provisions of section 50C of the I.T. Act, the same amount was found to be the undisclosed income of the assessee for the assessment year 2006-07. Thus the issue involves escapement of income as per the provisions of section 50C of the I.T. Act.”

The Assessing Officer was of the view that the valuation of the Stamp Valuation Authority constitutes sufficient material evidence available on record as regards the value of the asset. He, accordingly, treated the difference between the stamp valuation of the land and the price at which the land was sold by the assessee as undisclosed income in the hands of the assessee (Rs.2,33,70,600 – Rs.16,00,000 = Rs.2,17,70,600/-). The assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) who found that at the request of the assessee, the Assessing Officer, during the course of assessment proceedings had referred the matter for

valuation to the Departmental Valuation Officer who had determined the price of the land at Rs.24,15,000/-. However, the same was received by the Income Tax Officer before the order was received by the assessee, but after the date of the assessment order. The Commissioner (Appeals) was of the view that the Assessing Officer was not justified in adding the differential value based on the value of stamp duty valuation when the matter had been referred by him to the DVO for valuation. According to the Commissioner (Appeals), section 50C of the Act is very clear that the value for the purpose of that section shall be the value as adopted by the Stamp Valuation Authority or the Valuation Officer whichever is lower. In the present case, the valuation of the DVO is Rs.24,15,000/-. According to the provisions of the Act, the Assessing Officer cannot disregard the value determined by the DVO under section 50C(2) of the Act read with section 16A of the Wealth Tax Act and proceed to compute capital gain in accordance with the value determined by the Stamp Valuation Authority. According to the Commissioner (Appeals), if the value determined by the DVO is lower than the value adopted, assessed or assessable by the Stamp Valuation Authority, the value so estimated under sub-section (2) shall be binding on the Assessing Officer. He, accordingly, directed the Assessing Officer to compute the capital gain taking the value given by the DVO which was less than the value adopted by the Stamp Valuation Authority. The Revenue carried the matter in appeal before the Tribunal which agreed with the view adopted by the Commissioner (Appeals) and dismissed the appeal.

4. Mr. Sudhir Mehta, learned senior standing counsel for the appellant referred to the provisions of section 50C of

the Act to point out that under sub-section (2) thereof, the Assessing Officer can refer the valuation of the capital asset to a Valuation Officer provided the assessee claims before the Assessing Officer that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer and the value so adopted or assessable by the Stamp Valuation Authority under sub-section (1) has not been disputed in any appeal or revision or no reference had been made before any other authority, court or the High Court. It was pointed out that it is an admitted position that the respondent assessee had disputed the value adopted by the Stamp Valuation Authority in appeal before the higher authority. In these circumstances, it was not permissible to make a reference under sub-section (2) of section 50C to the Valuation Officer. It was submitted that in view of the fact that reference made to the DVO was not in consonance with the provisions of section 50C(2) of the Act, the Commissioner (Appeals) as well as the Tribunal were not justified in directing that the value of the land be computed in terms of the valuation made by the DVO.

5. The facts as emerging from the record reveal that before the Assessing Officer, the assessee had raised a dispute with regard to the valuation made by the Stamp Valuation Authority under clause (a) of sub-section (2) of section 50C of the Act. Pursuant thereto, the Assessing Officer referred the matter for valuation to the Departmental Valuation Officer. However, without waiting for the report of the Departmental Valuation Officer, the Assessing Officer passed an assessment order by treating the difference between the stamp valuation

of the land and the sale price disclosed by the assessee as the undisclosed income in the hands of the assessee. As can be seen from the findings recorded by the Commissioner (Appeals), pursuant to the reference made by the Assessing Officer, the Departmental Valuation Officer had valued the lands at Rs.24,15,000/-. However, such report had been received by the office of the Assessing Officer before the assessment order was received by the assessee but after the date of the assessment order. Before the Commissioner (Appeals), on behalf of the assessee, it was pointed out that pursuant to the request made by the assessee, the Assessing Officer had, by a letter dated 13th December, 2011, referred the case to the Assistant Valuation Officer and had also noted that the appeal filed by the assessee before the revisional authority was merely and only restricted for the purpose of stamp duty. It was contended by the assessee that despite the reference having been made to the Departmental Valuation Officer for valuation, the Assessing Officer without waiting for the report or either ignoring the report of the Departmental Valuation Officer had passed the assessment order and determined the sale price on the basis of the valuation made by the Stamp Valuation Authority. Thus, the Assessing Officer, despite being aware of the fact that the assessee had made a reference against the valuation made by the Stamp Valuation Authority to the higher authority, was of the view that the same was only for the purpose of stamp duty and had made a reference to the Departmental Valuation Officer. However, without waiting for the report of the Departmental Valuation Officer, the Assessing Officer had proceeded to pass the assessment order. The Commissioner (Appeals) has held that in view of the provisions of section 50C of the Act, once a

reference is made to the Departmental Valuation Officer, the value for the purpose of the section shall be the value as adopted by the Stamp Valuation Authority or the DVO, whichever is lower. Having regard to the fact that the valuation in the present case as made by the Departmental Valuation Officer was Rs.24,15,000/- which was much less than the valuation made by the Stamp Valuation Authority, the Commissioner (Appeals) directed the Assessing Officer to compute the capital gains taking the value given by the Departmental Valuation Officer

6. The Tribunal, in the impugned order, has concurred with the findings recorded by the Commissioner (Appeals) by placing reliance upon a decision of the Allahabad High Court in the case of **C.I.T. v. Dr. Indra Swaroop Bhatnagar**, for the proposition that a DVO's valuation under section 50C(2) binds an Assessing Officer.

7. Section 50C of the Act, as it stood at the relevant time reads thus:

50-C. Special provision for full value of consideration in certain cases.—(1) *Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.*

(2) *Without prejudice to the provisions of sub-section (1), where—*

- (a) *the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*
- (b) *the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court;*

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of Section 16-A, clause (i) of sub-section (1) and sub-sections (6) and (7) of Section 23-A, sub-section (5) of Section 24, Section 34-AA, Section 35 and Section 37 of the Wealth Tax Act, 1957, shall, with 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 16-A of that Act.

Explanation.—For the purposes of this section “Valuation Officer” shall have the same meaning as in clause (r) of Section 2 of the Wealth Tax Act, 1957.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

8. Thus, sub-section (1) of section 50C of the Act envisages a situation where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of the State Government (hereafter referred to as the ‘stamp valuation authority’) for the purpose of payment of stamp duty in respect of such

transfer. In such a situation, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. Sub-section (2) of section 50C of the Act, however, without prejudice to the provisions of sub-section (1) provides for a situation where the assessee claims before the Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of the transfer; and where the value so adopted or assessed has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court, then in such a situation the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer. Sub-section (2) of section 50C of the Act further provides that where any such reference is made, the provisions of sub-section (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-section (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth Tax Act, 1957, shall, with 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. At this juncture it may be apposite to refer to the provisions of section 16A of the Wealth Tax Act, 1957 to the extent they are relevant for the present purpose. Sub-section (1) of section 16A of the Wealth Tax Act provides for making reference to the Valuation Officer. Sub-sections (2) to (5) of section 16A provide for the mode and manner in which the value of an asset is to be estimated. Sub-section (6) of section 16A of the Wealth Tax Act provides that on receipt of an order under sub-section (3) or sub-section (5) from the Valuation

Officer, the Assessing Officer shall, so far as valuation of the asset in question is concerned, proceed to complete the assessment in conformity with the estimate of the Valuation Officer. Accordingly, once a reference is made under section 50C of the Act to the Valuation Officer for valuation of the capital asset, the Assessing Officer is obliged to complete the assessment in conformity with the estimate made by the Valuation Officer pursuant to such reference made by him. In the facts of the present case, the Valuation Officer has estimated the value of the capital asset at a lower amount than the value adopted or assessed by the stamp valuation authority. In terms of sub-section (2) of section 50C of the Act, it is such valuation which is required to be taken into consideration for the purposes of assessment. In the light of the above discussion, while not agreeing fully with the reasoning adopted by the Commissioner (Appeals), in the facts and circumstances of this case, this court is in agreement with the final conclusion arrived at by the Commissioner (Appeals) as well as by the Tribunal.

9. Another aspect of the matter is that the proposed question, for the first time, has been raised before this court and there is no material on the record to indicate that the same was ever raised before the Tribunal. Under the circumstances, the proposed question does not arise out of the impugned order passed by the Tribunal.

10. For the foregoing reasons, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to a question of law, much less, a substantial question of law, warranting interference.

The appeal, therefore, fails and is accordingly dismissed.

(Harsha Devani, J.)

(G.R. Udhwani, J.)

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