

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 897 of 2015**

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

Versus

SHRI RAJABHAI LUMBHABHAI HADIYA....Opponent(s)

Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 01/12/2015

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This tax appeal is preferred against the order of the Income Tax Appellate Tribunal dated 30.04.2015 raising the following question, for our consideration:

(A) *Whether, on the facts and in the circumstances of the case and in law, the ITAT was right in ignoring the fact that as per provisions of section 50-C (2)(b) of the Act, the matter should not have been referred by CIT(A) for valuation as the assessee had already challenged the Juntry Value assessable by the Stamp Valuation authority, before the Nayab Collector and in that case, further reference to valuation is prohibited as per the Act and value determined by Nayab Collector has to be adopted as full value of consideration ?”*

2. The issue pertains to valuation of immovable property sold by the assessee during the previous year, relevant assessment year 2007-2008, for sale consideration of Rs.47 lakhs. Sub-Registrar of Stamp Duty, however, valued the asset in question at Rs.3.4 crore (rounded off). Assessee carried this valuation in appeal before the Deputy Collector, Stamp Duties. Deputy Collector valued the property at Rs.1.33 crore (rounded off). Assessing Officer adopted such value of Rs.1.33 crore as sale consideration for computation of capital gain.

3. Assessee carried the matter in appeal. At the instance of the assessee, CIT (A) called for valuation report of the property from the department valuer who opined that value of the property on the date of sale was Rs.71.98 lakh (rounded off). CIT(A) accepted such valuation for the purpose of capital gain in the hands of the assessee and granted relief accordingly. The Department, however, carried the issue in appeal before the Tribunal contending that the valuation of the Deputy Collector, Stamp Duties should be adopted. The Tribunal rejected the appeal of the Revenue in the following terms:

"6. The contention of the DR is that where the value of the property made by the stamp valuation authority is higher than the value of the property determined by the departmental valuer, then the higher value should be adopted for the purpose of working out the capital gain of the assessee, and therefore, the CIT was not

justified in directing the AO to adopt the valuation made by the departmental valuer at Rs.71,98,300/- which was lower than the value of the property determined by the stamp duty authority at Rs.3,34,63,125/-.

7. We find that the order of the CIT(A) is supported by the order of this Bench of the Tribunal in the case of ITO v. Shri Bhartbhai Kalyanbhai Malvia in ITA No.2227/Ahd/2011 order dated 10.4.2015 wherein the Tribunal at para-19 held as under:

“10. We find that section 50C(2) provides that where the assessee claimed before the AO that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property, on the date of transfer, the AO may refer the valuation of the capital asset to the valuation officer, in such a situation, the lower of value determined by the departmental valuation officer and stamp duty valuation officer shall be considered as consideration accruing to the assessee. Since it has not been disputed by the DR that the value of the property determined by the DVO was lower than the value determined by the stamp duty valuation officer, therefore, we find that there is no infirmity in the order of the CIT(A) in directing the AO to adopt the value determined by the departmental valuation officer, as sale consideration of the property for computing the capital gains in the hands of the assessee. Therefore, we dismiss this ground of appeal of the Revenue.”

4. Having heard learned counsel Mr.Sudhir Mehta for the Revenue and having perused the documents on record, we see no error in the decision of the Tribunal. Section 50-C of the Income-tax Act pertains to special provisions for full value of consideration in certain cases, relevant portion of which reads as under:

“50-C. (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 subsection 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 16A, clause (i) of sub-section (1) and sub-sections (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 (27 of 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.

(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.

5. It can thus be seen that in view of sub-section (1) of section 50-C, in case of capital asset being land or building for which consideration is received as a result of transfer by the assessee and such consideration is less than the value adopted or assessed or assessable by the stamp valuation authority of the State Government for the purpose of payment of stamp duty, valuation so adopted, assessed or assessable would be deemed to be the full value of the consideration received or accrued for the purpose of computing capital gains. Under clauses (a) and (b) of sub-section (2) of section 50-C, however, assessee has a right to ascertain before the Assessing Officer that the value adopted or assessed by the stamp valuation authority exceeds the fair market value as on the date of transfer upon which the Assessing Officer would refer the valuation of the capital asset to the Valuation Officer. Under sub-section (3) of section 50-C, where the value ascertained by the Valuation Officer exceeds the value adopted, assessed or assessable by the stamp valuation authority, the latter, i.e. the valuation of the stamp valuation authority, would be taken as the full value of the consideration for the purpose of computing capital gain. In other words, the valuation of the property adopted by the Stamp Duty authority of the State would be deemed to be the full value of the consideration for the purpose of computing capital gain. However, in case the assessee challenges such valuation before the Assessing Officer and the Assessing Officer calls for the valuation report from the Valuation Officer and the

valuation adopted by the Valuation Officer exceeds the value adopted by the State Stamp Duty Authority, it would be the valuation of such stamp duty authority which would prevail for the purpose of computing capital gain. The Revenue intends to contend to the contrary which is simply not born out from the statutory provisions noticed.

6. In the result, there is no error in the view taken by the Tribunal. The Tax Appeal is, therefore, dismissed.

(AKIL KURESHI, J.)

(MOHINDER PAL, J.)

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