

AO should adopt report of Valuation Officer even if its valuation is lesser than that adopted by Stamp Authority

Summary – The High Court of Gujarat in a recent case of Ravjibhai Nagjibhai Thesia., (the Assessee) held that Assessing Officer is to compute capital gain taking value given by Valuation Officer under section 50C, even though it is lesser than value adopted by stamp valuation Authority

Facts

- The assessee sold his land and claimed that the stamp value of such property as assessed by the Stamp Valuation Authority was higher than the consideration received by the assessee.
- The assessment was reopened on the ground that the assessee had earned higher capital gain than shown and thus, the issue involved escapement of income as per the provisions of section 50C. He, accordingly, treated the difference between the stamp value of the land and the price at which the land was sold by the assessee as undisclosed income.
- On appeal, the Commissioner (Appeals) found that the assessee had raised a dispute before the Assessing Officer with regard to the valuation made by the Stamp Valuation Authority in terms of section 50C(2). Pursuant thereto, the Assessing Officer referred the matter for valuation to the Departmental Valuation Officer. The Assessing Officer had received the report of the Valuation Officer before passing the assessment order, however he ignored the same and determined the sale price on the basis of the valuation made by the Stamp Valuation Authority. Thus, the Commissioner (Appeals) held that since in view of section 50C Valuation made by the Valuation Officer was much less than that by the Stamp Valuation Authority; he directed the Assessing Officer to compute the capital gain according to the value given by the Valuation Officer.
- On appeal by the revenue, the Tribunal affirmed the order of the Commissioner (Appeals)
- On second appeal before the High Court:

Held

- Section 50C(1) 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.
- Section 50C(2), 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 further provides that 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, 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 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 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 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.