

Failure of assessee to disclose capital gains on basis of sec. 50C would invite reassessment

Summary – The High Court of Gujarat in a recent case of Surat District Co-op Milk Producers Union Ltd., (the Assessee) held that where assessee filed its return declaring long term capital gain arising from sale of land, since it did not disclose that section 50C was applied to said sale and higher valuation had been adopted by stamp duty authority, Assessing Officer was justified in initiating reassessment proceedings

Facts

- The assessee-society filed its return declaring *nil* income after claiming deduction under section 80P(2)(d). In the return, the assessee had also declared a long-term capital gain arising out of sale of land.
- The Assessing Officer passed assessment order without any modification in the returned income.
- After expiry of four years from end of relevant year, Assessing Officer initiated reassessment proceedings on two grounds, firstly, assessee had claimed deduction under section 80P without deducting its interest expenses in contravention of provisions of section 80AB and, secondly, even though provisions of section 50C had been invoked in assessee's case and long-term capital gain arising from sale of land had been assessed at higher amount, said fact was not brought to the notice of the Assessing Officer during continuation of assessment proceedings even though specific queries raised by the Assessing Officer in said regard.
- The assessee filed instant petition challenging validity of reassessment proceedings.

Held

- As regards first issue, the ground of Assessing Officer was that assessee had not netted the interest income for deduction under section 80P(2)(d). However, the assessee had filed full details of such interest income along with the return itself along with the interest expenses. If the Assessing Officer was of the view that the same was not in order, he could have disallowed part of the claim. At any rate, this cannot be a ground for reopening the assessment beyond a period of four years since it cannot be stated that the assessee had not disclosed true and full facts.
- The second ground however, needs a close scrutiny. In the reasons recorded, the Assessing Officer is contending that the assessee had sold the land for Rs. 42 lakhs and offered long-term capital gain on such sale value mentioned in the sale deed. He, however, received information from the Stamp Duty Valuation Authority, that the value of said land for the purpose of stamp duty was assessed at Rs. 71.07 lakhs against the jantri value of Rs. 1.42 crores (rounded off). Thus the assessee had suppressed the long-term capital gain under section 50C to the tune of Rs. 29.07 lakhs.
- In background of such ground, one may refer to the materials on record. In the returns, the assessee declared the sale consideration of land at Rs. 42 lakhs. However, it appears that when the document

was presented for registration, the stamp duty authorities had dispute about such valuation. Deputy Collector, Stamp Duty, passed an order assessing the value of land for the purpose of registration at Rs. 71.07 lakhs and demanded the deficient stamp duty of Rs. 2.44 lakhs. This was conveyed to the purchaser of the land by the said order. It appears that upon the purchaser paying the deficient stamp duty as per such order, the document was registered on or around 12-4-2007.

- In terms of sub-section (1) of section 50C, wherever the consideration received or accruing as a result of the transfer of a capital asset, is less than the value adopted or assessed or assessable by valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable would be deemed to be the full value of the consideration received or accruing as a result of transfer. In short, for the purpose of capital gain, it would be the valuation adopted by the stamp valuation authority which would by virtue of such deeming fiction prevail, in case, such valuation is higher than the sale consideration. On the other hand under sub-section (2) of section 50C, it would be open for the assessee to question before the Assessing Officer the valuation adopted by such stamp duty authority.
- Thus, in term of sub-section (1) of section 50C, the assessed value of the land at Rs. 71.07 lakhs by stamp duty authority would be deemed to be full sale consideration and therefore, assessable for capital gain on such basis, unless such valuation is questioned as provided in sub-section (2). The assessee has not resorted to sub-section (2) of section 50C and disputed such valuation before the Assessing Officer. The sole question is, was he guilty of non-declaration of true and full facts since the Tribunal is examining the reopening of assessment beyond a period of four years?
- In this context, the documents on record assume significance. As noted, the stamp duty authority assessed the value of land on 9-4-2007 and registered the document on purchaser paying the deficient stamp duty on 12-4-2007. It was only after that, that during assessment, the Assessing Officer had asked the assessee to supply the details of long-term capital gain under a letter dated 23-11-2007. In reply to such letter, the assessee provided no further information, except for pointing out that the land was sold for Rs. 42 lakhs, by which time, one may recall the revised valuation by the stamp duty authority was already available.
- It is by now settled that the duty to disclose true and full facts not only is at the stage of filing returns, but continues throughout the assessment.
- The contention of the assessee that the Assessing Officer was aware about such difference in two valuations based on the letter dated 28-11-2007 cannot be accepted. The said letter was written not by the Assessing Officer but by the investigation wing of the department which was till then, on *prima facie* information available, was inquiring further in this respect. It was in this background the Assistant Director (Inv.), conveyed to the assessee that the value of the property mentioned in the sale deed is lower than the value adopted by the stamp valuation authority. The assessee was therefore, asked to explain whether capital gain was computed on the basis of section 50C. If yes, the assessee would submit evidence, if no, the assessee to show cause why adverse inference should not be drawn. This letter was received by the assessee on 4-12-2007.

- On 6-12-2007, it appears that the purchaser of the land had in respect to a similar letter from investigation wing contended that the Government approved valuer had assessed rate of land at Rs. 275 per square meter at which the land was sold. It was further pointed out that stamp valuation authority had earlier adopted market value of Rs. 1.42 crores but after objection reduced it to Rs. 71.07 lakhs which would show that no proper parameters had been adopted. As noted, the assessee had also replied separately to the said authority under letter dated 2-1-2008.
- The stand of the assessee in such reply was rather vague and general. The assessee did not deny the higher valuation adopted by the stamp duty authority or application of section 50C but merely generally and vaguely opposed any proposal for action.
- In view of above, assessee failed to discharge duty of true and full disclosure. On said ground, therefore, the notice for reopening is valid.
- The contention of the assessee that the seller had nothing to do with the stamp valuation or payment of stamp duty cannot be accepted. The assessee was vitally affected by the final assessment of stamp duty by the authority before the registration of the document which had a direct bearing on assessee's liability to pay capital gain tax in terms of section 50C. It is not possible to accept the contention of the assessee that it was not aware that the document which was executed had not yet been registered on account of valuation dispute.
- In the result, the petition is dismissed.