

Reassessment was valid if assessee sold property in co-ownership but failed to file ITR to declare capital gains

Summary – The High Court of Gujarat in a recent case of Mona Mahesh Bhojani, (the Assessee) held that where during assessment of one of co-partner of assessee, it was found that assessee had sold a residential property in Joint ownership and received sale consideration but had not filed return declaring such capital gain which was liable to be taxed, re-opening was justified

Facts

- During the course of assessment proceeding of one of the co-partner of assessee it was found that the assessee had sold residential property inclusive of plot of land and building constructed thereon in joint ownership. The assessee had not filed return of income declaring capital gain on the sale proceedings received which was liable to tax.
- On verification of the sale deed, it was found that the assessee executed the sale deed for a sale consideration of Rs. 2.37 crore and had paid stamp duty of Rs. 16.60 lakhs. However, in the assessment of co-partner of assessee, the sale value of the said property was adopted at Rs. 3.37 crores (as determined by the sub-registrar). Hence, the sale consideration received by the assessee works out to Rs. 1.68 crores (Rs. 3.37 crores at the rate of 50 per cent). In view of the above, the Assessing Officer held that the income chargeable to tax had escaped assessment. Thus, the reopening notice under section 148 was issued.
- In instant appeal, the assessee contended that the Assessing Officer had adopted a figure of Rs. 3.37 crores as the actual sale consideration going by the assessment of the co-owner alone. In his case the issue was in appeal. Further, considering the assessee share being half of the sale consideration of Rs. 2.37 crores (as indicated in the sale deed) the income of the assessee would be below taxable limit and, therefore, the assessee was not required to file any return at all. Thus, re-opening was unjustified.

Held

- At this stage, it is neither possible nor necessary to enter into arena of what would be the outcome of the proposed assessment which is initiated by the Assessing Officer by issuing impugned notice. Going by the primary facts, one cannot come to the conclusion that the reasons recorded by the Assessing Officer lacked validity so as to prevent even the assessment to be made. As is well settled, as long as the Assessing Officer had tangible material at his command to form a *bona fide* belief that income chargeable to tax has escaped assessment, the Court would not interfere with the formation of such belief unless it is shown to be wholly perverse. The primary facts noticed are that even as per the assessee, the property in question was sold for a consideration of Rs.2.37 crores and the assessee would receive 50 per cent share out of such sale proceed. The other connected fact is that adopting valuation for the purpose of stamp duty upon presentation of the document for

registration, in case of co owner, the assessing authority has assessed the sale consideration for the purpose of capital gain to Rs.3.37 crores.

- Considering such facts, it is found that the notice for reopening requires any interference in exercise of writ jurisdiction.