

## **No reassessment after 4 years if all material facts were disclosed by assessee during original assessment**

**Summary – The High Court of Gujarat in a recent case of Bhagirathbhai Manubhai Baldha (Pithavadiwala), (the Assessee) held that where AO having completed scrutiny assessment, sought to reopen assessment on ground that assessee had entered into transactions of sale and purchase of agricultural land which were not declared, in view of fact that assessee had disclosed all relevant facts relating to said transactions in course of assessment itself, impugned reassessment proceedings deserved to be set aside**

### **Facts**

- For the relevant year, the assessee filed its return declaring certain taxable income. During scrutiny assessment the assessee's transactions of sale and purchase of certain agriculture lands came-up for consideration and eventually Assessing Officer passed the order of assessment under section 143(3) assessing income at Rs. 3.17 crores.
- Subsequently, the Assessing Officer sought to reopen assessment on two grounds, firstly, the assessee had purchased agricultural land in village 'P' which was not reflected in the balance sheet or 'profit and loss account and thereby attracting the provisions of section 69. Another reason for reopening of assessment was that assessee had sold a piece of land in village 'K' and sale consideration shown in respect of same was less than value adopted by stamp valuation authority which attracted provision of section 50C.
- The assessee's objections to reopening of assessment were rejected.
- On Writ:

### **Held**

- The Assessing Officer has referred to two separate and distinct grounds. The first ground relates to the assessee's purchase of agriculture land situated at Village. According to the Assessing Officer, the land was purchased for a total sale consideration of Rs. 1.09 crores (rounded off). The assessee had 50 per cent share in the land. His investment was, therefore, to the tune of Rs. 54.95 lakhs (rounded off) which was not reflected in his books of account or profit and loss account. This was thus assessee's unexplained investment and had to be taxed under section 69.
- In the order of assessment dated 30-3-2015, the Assessing Officer made no addition on this ground, however, without citing any reasons or even mentioning these transactions. Be that as it may, the revenue cannot get away from the fact that the entire transaction was scrutinized by the Assessing Officer from very same angle of possible applicability of section 69. When the Assessing Officer called upon the assessee to explain this aspect, the assessee had conveyed that the land was actually purchased by the firm in which, he is a partner and this detail was reflected in the firm's accounts as work-in-progress in the balance sheet. Upon being satisfied by such an explanation, the

Assessing Officer made no addition in the order of assessment. It is true that he neither gave any reason for this action nor even referred to this transaction in the order of assessment. This however would not be of any importance, as long as the Assessing Officer noticed the transaction, raised queries and elicited response from the assessee during the original assessment. He would be stated to have formed an opinion whether such opinion was reflected in his final order of assessment or not.

- Same is the case with the second ground cited by the Assessing Officer in the reasons recorded. According to the Assessing Officer since the assessee had sold certain agriculture land at Village 'K' at a declared sale consideration which was lesser than the stamp duty valuation, the difference was taxable in the hands of the assessee as his capital gain in terms of section 50C.
- The final order of assessment that the Assessing Officer passed once again he had made no addition without citing any reasons. It can be seen that during the original assessment proceedings, Assessing Officer was acutely conscious of the fact that the assessee had sold certain agriculture land situated in the village 'K' at the sale consideration shown in the registered document was less than the valuation adopted by the Stamp Valuation Authority for registering the sale deed and that the possibility of application of section 50C would arise. He therefore, asked the assessee to explain these aspects. The assessee's explanation was that he had no reason. Any amount in addition to what was actually stated in the sale deed, he was not aware about the stamp valuation procedure and lastly, he contended that he would invoke the provisions of section 50C(2).
- Under such provision, an assessee disputing the stamp valuation of any sale deed could call upon the Assessing Officer to make reference to the DVO to ascertain the value of the capital asset. Be that as it may, the Assessing Officer did not make any additions in the order of assessment. Thus, silently accepting the assessee's representation it was thereafter not open for him to rake up the same issue through the process of reopening of assessment.
- Under the circumstances, the petition is allowed. The impugned notice seeking to reopen assessment is set aside.