

HC justified reassessment as WDV of land shown in books of account was lesser than amount shown in ITR

Summary – The High Court of Bombay in a recent case of J.B. Amin & Brothers (HUF), (the Assessee) held that where opening WDV of land was shown by assessee at lesser amount in its statement of fixed accounts but, while filling return of income, assessee had shown cost of land at much higher amount, reassessment was justified

Facts

- A land was purchased by late SBA at Rs. 1.80 lakhs. After demise of SBA the property was inherited and belonged to the assessee (HUF). The value of the property had been shown in the books of account maintained by the assessee at Rs. 1.80 lakhs. The assessee alienated the land along with superstructure standing thereon for consideration of Rs. 18 crores. The consideration, in respect of the land, was stated to be Rs. 16 crores. The assessee filed return of income wherein this transaction was duly disclosed. According to the assessee, it was permissible under section 55(2)(b)(ii) to compute market value of the property, which was assessed at Rs. 2 crores, to be cost of acquisition. The computation of long-term gain and indexation was made considering the aforesaid market value.
- The Assistant Commissioner issued notice under section 148 against assessee which recorded that the assessee had offered long-term capital gain to the tune of Rs. 3.31 crores on the land sold for consideration of Rs. 16 crores. He noted that on perusal of the books of account/balance sheet, it was seen that the opening WDV of the land as on 1-4-2009 was shown at Rs. 1.80 lakhs in the statement of fixed assets. The assessee, while filing return of income, showed cost of the land as Rs. 2 crores instead of Rs. 1.80 lakhs (book value). According to the department, in view of section 49(1)(iii)(a), cost of acquisition of the said land should be deemed to be the cost for which previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case might be. It was also recorded in the notice that the assessee had wrongly taken cost of acquisition of the said land at Rs. 2 crores, being the market value based on valuation report prepared by SBS, Chartered Engineer and Government Registered Valuer and after indexation, the effective cost reduced from sale consideration was Rs. 12.68 crores. Thus, the assessee had wrongly taken market value instead of considering cost of acquisition reflected from its books of account. The department believed that the income had escaped within the meaning of section 147.
- The revenue passed an reassessment order and held that the market value estimated by the assessee was incorrect and that only cost of acquisition could be computed for capital gain. There were guidelines for valuation of immovable properties, issued in the year 2009 by the Directorate of Income-tax, which must be followed by the approved valuer and Income-tax Department. Even the basis for showing higher valuation, being the report of the approved valuer, was also not free from flaws and lacunae. The department, therefore, held that the assessee could not take umbrage of section 55(2)(ii). Fair market value shown by the assessee, on the basis of report of the valuer, could

not be accepted and the valuation arrived at by the valuer was 100 per cent higher than the actual market rate.

- In instant writ petition, the assessee contended that the department proposed to proceed further with the action on new and distinct ground than the reason originally recorded by the department. The assessee prayed to quash and set aside the order passed by the revenue. The assessee contended that it was the option of the assessee either to compute capital gain based upon market value of the asset and it might not be essential for the assessee to consider the capital cost incurred by the previous owner or fair market value of the asset. The assessee contended that recording of reasons was the basic thing and no notice could be entertained founded upon extraneous ground not communicated to the assessee under the notice or in the disclosure made by the department after receiving notice by the assessee calling upon the department to supply reasons for arriving at the conclusion and before directing the assessee to file return of income.

Held

- It appears to be the contention of the department that since the assessee has demonstrated book value of the property at Rs. 1.80 lakhs and has assessed income for several years by showing book value of the property, as specified above, the conduct of the petitioner, according to respondent-department, amounts to estoppel and it would not be open for the petitioner to contend that he has a choice either to make computation on the basis of market value or on the basis of cost of the property to the previous owner.
- In the instant matter, according to the petitioner, a new ground has been excavated by the department for supporting notice under section 148 and in fact no such disclosure was made by the Assessing Officer while reason for his belief was supplied by the Income-tax Department.
- The respondent-department has invited attention to communication where under reasons for reopening of assessment under section 148 were communicated to the petitioner. It is the contention of the department that the objection to the valuation report prepared by SBS, Chartered Engineer and Government Valuer, for the said land at the rate of Rs. 2 crores has been recorded in the communication setting out reasons for reopening of assessment under section 148 by the Assistant Commissioner. Since there is already a disclosure in respect of disagreement of the department to the valuation report prepared by SBS, Chartered Engineer & Government Valuer, it is the reason supporting issuance of notice under section 147 and there is no question of any new reason being introduced. The reason is already recorded in the order disclosing the reasons and as such, objection of the petitioner to the notice, does not deserve to be considered.
- The petitioner contends that ground of erroneous valuation has been introduced for the first time in the order and there is no notice to the petitioner in that regard. It is basically the contention of the petitioner that there is no reference to erroneous valuation by the approved valuer in the statement of reasons for reopening assessment, provided by the department. The contention does not appear to be correct. In the penultimate paragraph of the reasons for reopening of assessment supplied by the respondent it is recorded that the assessee has wrongly taken the cost of acquisition of the said land at Rs. 2 crores, being the market value based on valuation report prepared by the SBS,

Chartered Engineer Government registered valuer and after indexation the effective cost reduced from sale consideration was Rs. 12.68 crores giving rise to LTCG of Rs. 3.31 crores.

- There is a clearcut mention in the reasons for reassessment that the assessee had wrongly taken cost of the land, being the market value based on the valuation report of SBS, Chartered Engineer & Government approved valuer, it was not open for the assessee to contend that the assessee was taken by surprise and that the notice has been confirmed or that the order rejecting the objection, raised by the assessee, recorded extraneous consideration. In fact, the reasons recorded in the order while rejecting the objection raised by the petitioner cannot be said to be extraneous since the reference in respect of the grounds does appear in the reasons for reopening assessment, communicated.
- The respondent, contends that a plain reading of *Explanation 3* to section 147 clearly depicts that the Assessing Officer has power to make additions even on the ground on which reassessment notice might not have been issued during reassessment proceedings, but he arrives at a conclusion that such other income has escaped assessment which comes to his notice during course of proceedings for reassessment under section 148. The provision nowhere postulates or contemplates that it is only when there is some addition on the ground on which reassessment had been initiated, that the Assessing Officer can make additions on any other ground on the basis of which income may have escaped assessment.
- In the instant matter, such contingency has not arisen and no such conclusion in respect of some other escaped income has been noticed by the Assessing Officer during the course of proceeding for re-assessment.
- Even holding the challenge to be maintainable, since it is observed that the objection raised by the petitioner is devoid of substance and that there was very much reference to the objection in the communication indicating 'reasons for belief', issued by department and that no new material or ground had been introduced in the final order and that the petitioner had not been taken to surprise, one does not find any reason to cause interference in the instant matter.