IN THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai

Before Shri Ramit Kochar, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.370/Mum/2018
(Assessment Year: 2014-15)

Shri Kishore Hira Bhandari Kishore Bhandari Chawl, Behind Mamta Medical Store, Marve Road, Malad (West), Mumbai – 400064	Vs.	I.T.O 30(2)(1) Mumbai

PAN – AAIPB1107H

(Appellant) **(Respondent)**

Appellant by: Shri Anil Thakrar, A.R
Respondent by: Shri Manoj Kumar Singh, D.R
Date of Hearing: 14.05.2019
Date of Pronouncement: 06.06.2019

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-41, Mumbai, dated 07.11.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'IT. Act'), dated 22.12.2016. The assessee has assailed the order passed by the CIT(A) on the following grounds of appeal before us :

"1. The Ld. AO as well as CIT(A) erred in treating the amount of Rs.2,67,740/- as income from other sources whereas the said amount represents agriculture income.

2. The Ld CIT(A) erred in confirming the action of AO in treating the amount of Rs.3,84,33,378/- as gain on sale of ancestral agricultural land.

3. The Ld. CIT (A) is also erred in considering agricultural land as capital asset within the meaning of Sec 2(14) of the Income Tax Act, 1961.

4. *The Ld. AO as well as CIT(A) erred in calculating the Capital gain on sale of agricultural/ND land, also undivided and disputed land in the year under consideration, as the Agreement for Sale was done on 27.8.2009 i.e. in the AY 2010-11 & not in AY 2014-15.*

5. *Without prejudice to the above, the Ld. AO as well as CIT(A) erred in not referring the matter to the Valuation officer, which may please be allowed.*

6. *Without prejudice to the above, the Ld. AO as well as CIT(A) erred in considering the Market value as per provisions of Sec. 50C in the AY 2014-15, whereas the Agreement for Sale was entered in the AY 2010-11 & valuation, if at all to be adopted, may be adopted of AY 2010-11 instead of AY 2014-15.*

7. *Further without prejudice to the above, you are requested to allow the deduction U/s 54 of the Income Tax Act for Purchase of Residential House which was not claimed because of the fact that there was no capital gain on sale of agricultural land.*

8. *Your Honors are requested to allow the claim of the Appellant accordingly.*

9. *The Appellant craves leave to add, amend, alter, or delete any of the above ground/s."*

2. Briefly stated, the assessee who is a labour contractor had e-filed his return of income for A.Y. 2014-15 on 22.08.2014, declaring total income of Rs.2,67,740/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the I.T Act.

3. During the course of the asse sment proceedings it was observed by the A.O that the assessee had sold urban agricultural land vide a 'sale deed', dated 28.06.2013 for a consideration of Rs.1,65,00,000/-. On the basis of an unsubstantiated claim, it was submitted by the assessee that the aforesaid agricultural land was co-owned by 5 persons in equal share. The assessee despite specific directions by the A.O failed to place on record the copy of the purchase deed on the pretext that the same was an ancestral property. Further, on a perusal of the 'sale deed' it was noticed by the A.O that the assessee was in receipt of an amount of Rs.1,09,00,000/- (out of the total sale proceeds of Rs.1,65,00,000/-) on the sale of the aforesaid property. Accordingly, the share of the assessee in the aforementioned property was worked out by the A.O at 66.06% i.e on a pro rata basis of the amount of sale consideration received by him. It was observed by the A.O that the reserve price of the aforesaid property as per the stamp

valuation authority as was discernible from the 'sale deed' was Rs.5,81,79,500/-. Accordingly, the A.O called upon the assessee to explain as to why the capital gain on the sale of the aforementioned property may not be worked out as per Sec.50C of the I.T Act. As the assessee failed to put forth any explanation, therefore, the A.O worked out the long term capital gain (for short 'LTCG') in the hands of the assessee as per Sec. 50C of the I-T Act. Further, as the assessee did not place on record the copy of the purchase deed, therefore, the A.O worked out the share of the LTCG in the hands of the assessee at 66.06% of the deemed sale consideration under Sec. 50C of Rs. 5,81,79,500/-. Accordingly, the A.O worked out the LTCG in the hands of the assessee at Rs.3,84,33,378/- (i.e 66.06% of Rs. 5,81,79,500/-) and assessed his income at Rs. 3,87,01,120/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). During the course of the appel ate proceedings, it was claimed by the assessee that as the agricultural land was a rural agricultural land, hence, the same was not a capital asset under Sec. 2(14) of the I-T Act. However, the CIT(A) observing that as the agricultural land was situated within the jurisdiction of a sub-urban district which had a population of 93,32,481 according to the 2011 census, thus, concluded that the claim of the assessee that the land under consideration was a rural agricultural land was incorrect and did not merit acceptance. Apart there from, it was claimed by the assessee that he was eligible for claim of deduction under Sec.54F. However, the said contention of the assessee was also declined by the appellate authority for three reasons viz. (i) that, the land under consideration could not be termed as agricultural land; (ii) that, the assessee had also not demonstrated that any agricultural land was purchased by him by utilising the proceeds of the sale of the impugned land within a period of 2 years; and (iii) that, the assessee had also not raised any

claim of deduction under Sec.54B either in the return of income or during the course of the assessment proceedings. Accordingly, the CIT(A) not finding favour with the contentions advanced by the assessee upheld the order of the A.O and dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted, that as instructed, the grounds of appeal No. 1 & 3 were not being pressed by him. Accordingly, as per the concession of the ld. A.R the **Grounds of appeal No. 1 & 3** are dismissed as not pressed. The ld. A.R drew our attention to the 'sale deed', dated 28.06.2013 and submitted tha the same was a disputed property co-owned by 5 persons. It was submitted by the ld. A.R that the assessee along with the other co-owners had entered into an 'agreement to sell', dated 27.08.2009, to sell the aforementioned property for a consideration of Rs.1,65,00,000/-. In order to fortify his aforesaid contention the ld. A.R took us through the relevant extract of the 'sale deed' (Page 53) of the assesses 'Paper book' (for short 'APB'), which substantiated the fact that the assessee along with the other co-owners had entered into an 'agreement to sell', dated 27.08.2009 with the purchaser of the property. Further, the ld. A.R took us through a general "Power of Attorney" (for short 'POA') dated 27.08.2009 that was given by the assessee along with the other 4 co-owners to two directors of the purchaser company i.e M/s Kavir & Rambha Properties Pvt. ltd. It was submitted by the ld. A.R that a reference of the 'agreement to sell', dated 27.08.2009 was found mentioned in the said POA. Apart there from, the ld. A.R took us through Page 3 of the POA, which revealed that on payment of the full sale consideration the possession of the property was to be delivered to the aforementioned purchaser. The ld. A.R took us through the details of the sale

consideration which was received by the assessee and the remaining 4 co-owners from the aforementioned purchaser company. On a perusal of the details of the sale consideration received by the assessee, it stood revealed that out of his total share of Rs.1,09,00,000/- an amount aggregating to Rs.14 lac was received by him up to the date of the 'agreement to sell' i.e 27.08.2009. As regards the balance amount, the same was received over the period spread over from F.Y 2009-10 till F.Y 2013-14. Further, the ld. A.R also placed on record a copy of an unregistered 'agreement to sell', dated 26.05.2009. On the basis of the aforesaid facts, it was the claim of the ld. A.R that as the transfer of the property under consideration had taken place in the year 2009, therefore, the reserve price for the purpose of computing the deemed capital gain under Sec. 50C was to be computed in context of that as was available at the time of executing the aforesaid 'agreement to sell', dated 27.08.2009. Apart there from, it was submitted by the ld. A.R that as the assessee had vide an 'agreement', dated 10.07.2013 made an investment towards purchase of a residential property that was to be constructed, therefore, it was entitled for deduction under Sec.54F to the extent of the investment so made. The ld. A.R admitted that the fact that the property under consideration was not a rural agricultural land was accepted by him. It was further submitted by him that the genuineness of the 'agreement to sell', dated 27.08.2009 had not been doubted by the lower authorities. The ld. A.R submitted that the 'Fair Market Value' (for short 'FMV') of the property under consideration was worked out on the basis of a 'Valuation report', dated 18.02.2018 by a registered valuer at Rs.1,36,32,710/- (Page 25 to 30 of APB). It was submitted by him that the said valuation report was furnished in the course of the appellate proceedings with the CIT(A). The ld. A.R in order to support his claim towards deduction under Sec.54F relied on the order of the ITAT, Hyderabad in the case of Sri Manohar Reddy

Basani Vs. ITO Ward-9(1) Hyderabad (ITA No. 1307/Hyd/2017, dated 30.05.2018). On the basis of the aforesaid order, it was submitted by the ld. A.R that as observed by the Tribunal, in case the A.O while framing the assessment for the first time considers the assessing of the income of the assessee under the head 'capital gains', then, the assessee would be well within his right to claim deduction under Sec. 54F for the first time in the course of the proceedings before him. Further, the ld. A.R relied on the order of the ITAT Ahemdabad, SMC Bench, in the case of Dharam Shibhai Sonani Vs. ACIT (ITA No. 1237/Ahd/2013). The ld. A.R drawing support from the aforesaid order, submitted, that it was observed by the Tribunal that in a case where the sale consideration is fixed at the time when the 'agreement to sell' is entered into, then, the adoption of the stamp duty valuation as on the date of execution of the 'sale deed' would be devoid of any rational basis as there would be a considerable gap between the date of 'agreement to sell' and that of the execution of the 'sale deed'.

6. Per contra, the ld. Departmental Representative (for short 'D.R') submitted that as the assessee had not furnished any copy of the 'agreement to sell', dated 27.08.2009 in the course of the assessment proceedings, therefore, the cognizance of the same could not be taken in the course of the proceedings before the second appellate authority. It was submitted by the ld. D.R, that as the assessee had not made any request for referring its case to the 'valuation cell' as per the 'first proviso' of Sec.50C, therefore, the lower authorities had rightly worked out the LTCG by invoking the said statutory provision. It was submitted by the ld. A.R that the LTCG as per Sec. 50C was to be worked out as on the date of the execution of the 'sale deed'. Lastly, it was averred by the ld. D.R that in the absence of any claim for deduction under Sec. 54F having been raised by the assessee before

the lower authorities, the same did not merit acceptance at the stage of the appellate proceedings.

7. The ld. A.R rebutting the aforesaid contention of the counsel for the revenue, submitted, that a reference of the 'agreement to sell', dated 27.08.2009 was clearly made in the 'sale deed', dated 28.06.2013. In order to fortify his aforesaid contention the ld. A.R drew our attention to the relevant extract of the 'sale deed', dated 28.06.2013 at Page 53 of APB. It was further submitted by the ld. A.R, that as was discernible from a perusal of the 'sale deed', dated 28.06.2013 at Page 65 of APB the property under consideration was situated in a no development zone in a village. In order to support his aforesaid contention the ld. A.R drew our atten ion to the sanction of the revised development plan of municipal corporation of Greater Mumbai, dated 20.04.2013, which revealed that the Village Malvani where the property of the assessee was situated was within the no development zone (Page 99 of APB).

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record Admittedly, the property that was sold by the assessee at Village: Malawani, Talluka Borivali, is a non-rural agricultural land. As is discernible from the registered 'sale deed', dated 28.06.2013, the assessee had by way of an unregistered 'agreement to sell', dated 27.08.2009 agreed to sell the aforementioned property for a total consideration of Rs.1,65,00,000/-. Further, as claimed by the assessee by drawing support from a general 'POA', dated 27.08.2009, the possession of the property was to be delivered to the purchaser company on payment of full sale consideration. Apart there from, it is the claim of the assessee that payments aggregating to Rs.14 lac were received by account payee cheques from the purchaser

company towards his share of the sale consideration up to the date of execution of the 'agreement to sell', dated 27.08.2009. It is a matter of fact that the copy of the 'agreement to sell' dated 27.08.2009 which therein envisaged the sale of the property under consideration by the assessee to M/s Karvir and Rambhiya Properties Pvt. Ltd. was not filed before the lower authorities. However, at the same time, we also cannot remain oblivious of the fact that a specific reference to the aforesaid 'agreement to sell', dated 27.08.2009 finds a specific mention in the registered 'sale deed', dated 28.06.2013, which forms part of the records of the lower authorities. Accordingly, in our considered view, the fact, that the assessee along with other 4 co-owners had agreed to sell the property under consideration vide an 'agreement to sell', dated 27.08.2009 is clearly discernible from the records which were available before the lower authorities. We thus in the backdrop of the aforesaid facts admit the 'agreement to sell', dated 27.08.2009 which though had been filed by the assessee for the very first time before us.

9. We find that the controversy involved in the present case revolves around three aspects viz. (i). that, as to whether the quantification of the LTCG on the sale of the property under consideration as per the deeming provisions of Sec.50C of the I-T Act was to be done as per the 'reserve price' applicable on the date of execution of the 'agreement to sell', dated 27.08.2009; (ii). that, as to whether the lower authorities are right in adopting the 'cost of acquisition' of the property claimed by the assessee to be an ancestral property at Rs. Nil for computing the LTCG on the sale of the same; and (iii). that, as to whether the assesses entitlement towards claim of deduction u/s 54F raised for the first time in his appeal before us merits acceptance.

10. We shall first advert to the claim of the assessee that for the purpose of quantification of the LTCG as per the deeming provisions of Sec.50C, the reserve price applicable on the date of execution of the 'agreement to sell', dated 27.08.2009 was to be considered, and not that as was available on the date of execution of the 'sale deed', dated 28.06.2013. As observed by us hereinabove, the assessee in support of his aforesaid claim had relied on the order of the **ITAT Ahemdabad, SMC Bench** in the case of **Dharam Shibhai Sonani Vs. ACIT (ITA No. 1237/Ahd/2013)ITAT, Ahemdabad**. As claimed by the assessee, the amount of the sale consideration for the property under consideration was fixed by him with the purchaser i.e M/s Karvir and Rambhiya Properties Pvt. Ltd., as per the 'agreement to sell', dated 27.08.2009 i.e much prior to the execution of the 'sale deed' dated 28.06.2013.

11. We shall for the purpose of answering the controversy before us, therein deliberate on Sec. 50C of the I-T Act. The legislature in all its wisdom, had vide the Finance Act, 2016 w.e.f 01.04.2017 inserted the following two *provisos* to Sec. 50C :

> **"Provided** that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:
>
> **Provided further** that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer. "

The purpose of the aforesaid amendment was explained in the Memorandum Explaining the Provisions of Finance Bill 2016, as under:

> **"Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property**

> Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building on both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in- trade. It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property. 30 These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years."

We find that as per the aforesaid amendment to Sec. 50C, which provides that subject to satisfaction of certain conditions therein envisaged, where the date of the 'agreement' fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of 'agreement' may be taken for the purpose of computing the full value of consideration for such transfer. Further, we are also persuaded to subscribe to the view taken by the **ITAT Ahemdabad, SMC Bench**, in the case of **Dharam Shibhai Sonani Vs. ACIT (ITA No. 1237/Ahd/2013)ITAT, Ahemdabad**, that though the aforesaid amendment had been introduced only with prospective effect from 1st April 2017, however, as the same was a curative amendment that was made available on the statute to remove an incongruity resulting in undue hardship to the assesses, therefore, the same was to be treated as retrospective in nature, even though it may not state so specifically.

The Tribunal after deliberating at length on the aforesaid amendment that was made available on the statute, had observed as under:

"3.I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

4. The fundamental purpose of introducing section 50C was to counter suppression of sale consideration on sale of immovable properties, and this section was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. This Section provides for a presumption, a rebuttable presumption though-something with which I am not concerned for the time being, that the value, for the purpose of computing stamp duty, adopted by the stamp duty valuation authority represents fair indication of the market price of the property sold. Section 50C(1) provides that, "Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed o asse sable 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". The trouble, howeve , is that while the sale consideration is fixed at the point of time when agreement t sell is entered into, there is sometimes considerable gap in parties agreeing to a t ansac ion (i.e. agreement to sell) and the actual execution of the transaction (i.e. sale deed), and yet, it is the value as on the date of execution of sale deed which is recognized by Section 50C for the purpose of computing the capital gain because that is what is relevant for the purpose of computing stamp duty for registration of sale deed. The very comparison between the value as per sale deed and the value as per stamp duty valuation, accordingly, ceases to be devoid of a rational basis because these two values represent the values at two different points of time. In a situation in which there is significant difference between the point of time when agreement to sell is executed and when the sale deed is executed, therefore, should ideally be between the sale consideration as per registered sale deed, which is fixed by way of the agreement to sell, vis-a-vis the stamp duty valuation as at he point of time when agreement to sell, whereby sale consideration was infact fixed because, if at all any suppression of sale consideration should be assumed, it should be on the basis of stamp duty valuation as at the point of time when the sale consideration was f xed. Income Tax Simplification Committee set up in 2015, headed by Justice R V Easwar- a former judge of Delhi High Court and one of the most illustrious former Presidents of this Tri unal, took note of this incongruity and, in its very first report, observed as follows:

6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERA TION FIXED UNDER AGREEMENT TO SELL

Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority') for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under section 48 of the Income-tax Act.

The scope of section 50C was extended w.e.f. A.Y. 2010-11 to the transaction which were executed through agreement to sell or power of attorney by inserting the word "assessable" alongwith words „the value so adopted or assessed". Hence, section 50C is now also applicable in case of such transfers.

The present provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement. A later similar provision inserted by way of section 43CA does take care of such a situation.

6.2 It is therefore proposed to insert the following provisions in section 50C:

(4) Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in sub- section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(5) The provisions of sub-section (4) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before a date of agreement for transfer of the asset.

5. True to the work ethos of the current Government, it was the first time that within four months of the Tax Simplification Committee being notified, not only the first report of the Committee was submitted, but the Government also walked the talk by ensuring that the several statutory amendments, based on recommendations of this report, were introduced in the Parliament. So far as Section 50 C is concerned, the Finance Act 2016, with effect from 1st April 2017, inserted the following provisos to Section 50C:

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer. ”

6. This amendment was explained, in the Memorandum Explaining the Provisions of Finance Bill 2016, as follows:

Rationalizat on of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property

Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building on both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in- trade. It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property. 30 These amendments are proposed to be made effective

from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years.

7. While the Government has thus recognized the genuine and intended hardship in the cases in which the date of agreement to sell is prior to the date of sale, and introduced welcome amendments to the statue to take the remedial measures, this brings no relief to the assessee before me as the amendment is introduced only with prospective effect from 1st April 2017. There cannot be any dispute that this amendment in the scheme of Section 50C has been made to remove an incongruity, resulting in undue hardship to the assessee, as is evident from the observation in Easwar Committee report to the effect that "The (then prevailing) provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement" recognizing the incongruity that the date agreement of sell has been ignored in the statute even though it was crucial as it was at this point of time that the sale consideration is finalized. The incongruity in the statute was glaring and undue hardship not in dispute. Once it is not in dispute that a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced. In support of this proposition, I find support from Hon'ble Delhi High Court's judgment in the case of CIT Vs Ansal Landmark Township Pvt Ltd [(2015) 377 ITR 635 (Del)], wherein approving the reasoning adopted an order authored by me during my tenure at Agra bench [i..e Rajeev Kumar Agarwal Vs ACIT (2014) 149 ITD 363 (Agra)] which centred on the principle that when legislature is reasonable and compassionate enough to undo the undue hardship caused by the statute "such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically". In this case, it was specifically observed, and it was this observation which was reproduced with approval by Their Lordships, as follows:

> "Now that the legislature has been compassionate enough to cure these shortcomings of provision, and t us obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non-deduction of tax at source by declining the deduction in respect of related payments, even when the correspond ng income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004"

8. Their Lordships were pleased to hold that this reasoning and rationale of this decision "merits acceptance". The same principle, when applied in the present context, leads to the conclusion that the present amendment, being an amendment to remove an apparent incongruity which resulted in undue hardships to the taxpayers, should be treated as retrospective in effect. Quite clearly therefore, even when the statute does not specifically state so, such amendments, in the light of the detailed discussions above, can only be treated as retrospective and effective from the date related statutory provisions was introduced. Viewed thus, the proviso to Section 50 C should also be treated as curative in nature and with retrospective effect from 1st April 2003, i.e. the date effective from which Section 50C was introduced. While the Government must be complimented for the unparalleled swiftness with which the Easwar Committee recommendations, as accepted by the Government, were implemented, I, as a judicial officer, would think this was still one step short of what ought to have been done inasmuch as the amendment, in tune with the judge made law, ought to have been effective from the date on which the related legal provisions

were introduced. As I say so, in addition to the reasoning given earlier in this order, I may also refer to the observations of Hon'ble Supreme Court, the case of CIT Vs Alom Extrusion Ltd [(2009) 319 ITR 306 SC)], to the following effect:

> *"Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by the Parliament only w.e.f. 1st April, 2004, would become curative in nature, hence, it would apply retrospectively w.e.f. 1st April, 1988 (i.e. the date on which the related legal provision was introduced). Secondly, it may be noted that, in the case of Allied Motors (P) Ltd. Etc. vs. CIT (1997) 139 CTR (SC) 364: (1997) 224 ITR 677 (SC), the scheme of s. 43B of the Act came to be examined. In that case, the question which arose for determination was, whether sales-tax collected by the assessee and paid after the end of the relevant previous year but within the time allowed under the relevant sales-tax law should be disallowed under s. 43B of the Act while computing the business income of the previous year? That was a case which related to asst. yr. 1984-85. The relevant accounting period ended on 30th June, 1983. The ITO disallowed the deduction claimed by the assessee which was on account of sales-tax collected by the assessee for the last quarter of the relevant accounting year. The deduction was disallowed under s. 43B which, as stated above, was inserted w.e.f. 1 st April, 1984. It is also relevant to note that the first proviso which came into force w.e.f. 1st April, 1988 was not on the statute book when the assessments were made in the case of Allied Motors (P) Ltd. Etc. (supra). However, the assessee contended that even though the first proviso came to be inserted w.e f. 1st April, 1988, it was entitled to the benefit of that proviso because it operated retrospectively from 1 st April, 1984, when s. 43B stood inserted. This is how the question of retrospectivity arose in Allied Motors (P) Ltd. Etc. (supra). This Court, in Allied Motors (P) Ltd. Etc. (supra) held that when a proviso is inserted to remedy unintended consequences and to make the section workable, a proviso which supplies an obvious omission in the section and which proviso is required to be read into the section to give the section a reasonable interpretation, it could be read retrospective in operation, particularly to give effect to the section as a whole. Accordingly, this Court, in Allied Motors (P) Ltd. Etc. (supra), held that the first proviso was cu ative in nature, hence, retrospective in operation w.e.f. 1st April, 1988. It is important to note once again that, by Finance Act, 2003, not only the second proviso is deleted but even the first proviso is sought to be amended by bringing about an uniformity in tax, duty, cess and fee on the one hand vis-a-vis contributions to welfare funds of employee(s) on the other. This is one more reason why we hold that the Finance Act, 2003, is retrospective in operation. Moreover, the judgment in Allied Motors (P) Ltd. Etc. (supra) is delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that Finance Act, 2003, will operate retrospectively w.e.f. 1st April, 1988 (when the first proviso stood inse ted). Lastly, we may point out the hardship and the invidious discrimination which would be caused to the assessee(s) if the contention of the Department is to be accepted that Finance Act, 2003, to the above extent, operated prospectively. Take an example—in the present case, the respondents have deposited the contributions with the R.P.F.C. after 31st March (end of accounting year) but before filing of the Returns under the IT Act and the date of payment falls after the due date under the Employees' Provident Fund Act, they will be denied deduction for all times. In view of the second proviso, which stood on the statute book at the relevant time, each of such assessee(s) would not be entitled to deduction under s. 43B of the Act for all times. They would lose the benefit of deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right upto 1st April, 2004, and who pays the contribution after 1st April, 2004, would get the benefit of deduction under s. 43B of the Act. In our view, therefore, Finance Act, 2003, to the extent indicated above, should be read as retrospective. It would, therefore, operate from 1st April, 1988, when the first proviso was introduced. It is true that the Parliament has explicitly stated that Finance Act, 2003, will operate w.e.f. 1st April, 2004. However, the matter before us involves the principle of construction to be placed on the provisions of Finance Act, 2003.*

> 9. So far as the amendment to Section 50C being retrospective in effect is concerned, there is no doubt about the legal position. I hold the provisos to Section 50C being effective from 1st April 2003. This is precisely what the learned counsel has prayed for. In his detailed written submissions, he has made out of a strong case for the amendment to Section 50C being treated as retrospective and with effect from 1st April 2003. The plea of the assessee is indeed well taken and deserves acceptance. What follows is this. The matter will now go back to the Assessing Officer. In case he finds that a registered agreement to sell, as claimed by the assessee, was actually executed on 29.6.2005 and the partial sale consideration was received through banking channels, the Assessing Officer, so far as computation of capital gains is concerned, will adopt stamp duty valuation, as on 29.6.2005, of the property sold as it existed at that point of time. In case the assessee is not content with this value being adopted under section 50C, he will be at liberty to seek the matter being referred to the DVO for valuation, again as on 29.6.2005, of the said property. As a corollary thereto, the subsequent developments in respect of the property sold (e.g. the conversion of use of land) are to be ignored. It is on this basis that the capital gains will be recomputed. With these directions, the matter stands restored to the file of the Assessing Officer for adjudication de novo, after giving an opportunity of hearing to the assessee and by way of a speaking order. I order so."

12. On the basis of our aforesaid observations, we are of the considered view that apparently the claim of the assessee that for the purpose of determining the LTCG as per the deeming provisions of Sec. 50C, the 'reserve price' of the property was to be taken as that which was applicable on 27.08.2009 i.e the date on which the 'agreement to sell' was executed, merits acceptance. As is discernible from the records, the requisite conditions envisaged in the *provisos* to Sec. 50C appears to have been satisfied by the assessee viz. (i). that, the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the property are not the same; and (ii). that, part of the sale consideration as claimed by the assessee was received by the assessee by way of account payee cheques, on and before the date of the agreement for transfer. However, at the same time, we also cannot remain oblivious of the fact that the 'agreement to sell', dated 27.08.2009 was never filed by the assessee in the course of the proceedings before the lower authorities, and was in fact furnished for the very first time before us. Accordingly, in all fairness, we are of the considered view that the matter requires to be restored to the file of the A.O, who shall remain at a liberty to verify the veracity of the 'agreement to sell', dated 27.08.2009, as well as the claim raised by the assessee on the basis of the same to bring its case within the

realm of the *provisos* to Sec. 50C. In case, the A.O is satisfied with the genuineness of the 'agreement to sell', and the claim raised by the assessee on the basis of the same are found to be in order, then, he shall redetermine the LTCG in the hands of the assessee u/s 50C in terms of our aforesaid observations.

13. Also, we find that the assessee had raised a claim towards his entitlement for claim of deduction under Sec. 54F in respect of an investment that was made by him towards purchase of a property, vide a registered agreement dated 10.07.2013. Again, we may herein observe that the said claim was never raised by the assessee before the lower authorities. The assessee in support of his aforesaid entitlement towards deduction under Sec.54F had placed on record the copy of the 'purchase deed', dated 10.07.2013. Admittedly, an A.O in the backdrop of the judgment of the **Hon'ble Supreme Court** in the case of **Goetze (India) Ltd. Vs. CIT (2006) 284 ITR 323 (SC)**, is not vested with any powers to entertain a claim for deduction/relief raised by the assessee, except for those raised either in his original return of income or through a revised return. However, we are of the considered view that as observed by the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Pruthvi Broker and Share Holders Ltd (2012) 349 ITR 0336 (Bom)**, no such restriction is placed on the appellate authorities for entertaining an additional claim of the assessee. Accordingly, we restore the matter to the file of the A.O, with a direction to him to consider the said claim of the assessee in the course of the 'set aside' proceedings. Needless to say, the A.O shall in the course of the 'set aside' proceedings afford a reasonable opportunity of being heard to the assessee, who shall remain at a liberty to substantiate his aforesaid claim of deduction on the basis of supporting documentary evidence.

14. Insofar the claim of the assessee that the lower authorities had erred in not allowing deduction of the 'cost of acquisition' of the property while computing the LTCG on the sale of the property under consideration is concerned, we find ourselves to be in agreement with the said contention. Admittedly, the assessee had failed to place on record the copy of the 'purchase deed' which would had supported the 'cost of acquisition' of the property under consideration. It is the claim of the assessee that the property under consideration was an ancestral property that was acquired by him alongwith the other four co-owners prior to 01.04.1981. Accordingly, the assessee has before us relied on a 'Valuation report' of a government approved valuer as per which the 'Fair Market Value' of the property under consideration on 01.04.1981 u/s 55(2)(b)(ii) is stated to be Rs. 1,68,807/-. As the said 'valuation report', dated 18.02.2018 was not filed with the A.O in the course of the assessment proceedings, therefore we restore the issue as regards determination of the 'cost of acquisition' of the property to his file. The A.O shall in the course of the 'set aside' proceedings remain at a liberty to verify the 'cost of acquisition' of the property under consideration. Needles to say, the assessee shall be afforded a reasonable opportunity of being heard and therein substantiate his aforesaid claim in the course of the 'set aside' proceedings.

13. The appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 06/06/2019.

Sd/-	Sd/-
(Ramit Kochar)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 06.06.2019
Ps. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**