आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri K. Narasimha Chary, Judicial Member

ITA No.138/Hyd/2023		
Assessment Year: 2013-14		
Smt. Anupama Krishna Rao Premaraju Hyderabad PAN:GCZPP2622A	Vs.	Income Tax Officer (International Taxation)-1 Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri K.A. Sai Prasad, CA	
Revenue by:	Shri K Madhusudan, CIT(DR)	
Date of hearing:	29/08/2023	
Date of pronouncement:	31/08/2023	

ORDER

Per R.K. Panda, Vice-President

This appeal filed by the assessee is directed against the order dated 28.01.2023 of the Assessing Officer passed u/s 147 r.w.s. 144 of the I.T. Act, 1961 for the A.Y.2013-14.

2. Facts of the case, in brief, are that the assessee is a Non-resident Individual. It was seen as per information available that the assessee has accrued income on account of capital gains which has escaped assessment within the meaning of section 147 of the I.T. Act, 1961. Therefore, the Assessing Officer, after recording reasons as per provisions of section 147 of the I.T. Act issued notice u/s 148 dated 30.03.2021. However, there was no response from the side of the assessee to the notice.

Subsequently, notices issued by the Assessing Officer u/s 142(1) also remained uncompiled with. In view of the above the Assessing Officer proceeded to complete the assessment u/s 147 r.w.s. 144 of the I.T. Act.

3. During the course of assessement proceedings, the Assessing Officer noted that information was received from the I & CI Wing of the Department for the financial year 2012-13 that the assessee along with another person has sold immovable property being House on Plot No.18 comprising of ground floor having built up area of 2590 sft admeasuring 585.55 sq.yards equivalent to 489.52 sq.meters in Survey No.74/9 situated in the layout of Sevamandal Society (Shantiniketan) Mahendra Hills, East Maredpally, Secunderabad Cantonment for a total sale consideration of Rs.22,00,000/- as against the SRO value of Rs.1,07,93,300/-. He noted that the assessee became the owner of the property by virtue of inheritance in the year 1987 after the death of her mother Smt. P. Uma Rani on 30.09.1997 along with her father Sri Premmaraju Venkata Krishna Rao. Smt. P. Uma Rani (assessee's mother) originally purchased the property under a sale deed bearing document No.`560 of 1986 dated 14.08.1986 duly registered in the office of SRO Maredpally, Secunderabad. He observed that the assessee and her father Shri Premmaraju Venkata Krishna Rao sold the property vide sale deed No. 3139/2012 dated 05.11.2012 registered at the Registrar of Hyderabad to Sri Dhanthuri Pandariunath and Smt. Dhanthuri Kasthurinath. Various link documents prior to her inheritance are mentioned in the recitals. Since the link documents are not available on record, therefore, the details of cost of acquisition as well as cost of construction/improvement etc., are not available on record. Since the recorded sale consideration is Rs.22.00 lakhs

and the SRO value is Rs.1,07,93,300/-, the Assessing Officer invoked the provisions of section 50C and determined the assessee's share being 50% of the SRO value at Rs.53,96,650/- which is thedeemed sale consideration in the hands of the assessee for the purpose of capital gain computation. In absence of any compliance from the side of the assessee, the Assessing Officer completed the assessment u/s 144 r.w.s. 147 of the Act determining the long- term capital gain in the hands of the assessee at Rs.41,35,125/-.

4. Since the assessee is an NRI and as per the provisions of section 144C(15), the Assessing Officer issued a draft assessment order. The assessee filed objections before the DRP vide application dated 19.5.2022. However, the DRP upheld the proposed addition made by the Assessing Officer but gave direction to the Assessing Officer to allow indexed cost of acquisition while computing the capital gains. The Assessing Officer accordingly, after allowing the indexed cost of acquisition, made addition of Rs.27,86,328/- in the hands of the assessee.

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

> *"1. The direction of the Ld.DRP-1 and order of the assessing officer dated 28-01 2023are erroneous, and contrary to the law and facts of the case.*
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> *2. The order passed by the learned A.O. u/s 147 rws 144 of the Income tax Act, 1961 is bad in law since the order in pursuance to DRP directions u/s 144C(5) is not passed u/s 144C (13).*
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> *3. The learned DRP-1 failed to appreciate the fact that the transfer of the property got concluded in the previous year relevant to AY 2007-08 itself when the agreement of sale was executed by the appellant's father on 15.06.2006 and*

handed over the possession after receiving the entire consideration of which over 90% is through banking channels.

4. The learned DRP failed to appreciate the facts that capital gain on sale of property falls in AY 2007-08 itself as per the provisions of section 2(47) of the I.T Act and not in the year under consideration.

5. Without causing prejudice to ground nos.2, 3 and 4,the learned DRP-1 failed to appreciate the fact that the proviso to section 50C being beneficial in nature, has retrospective effect and hence the A.O. is not justified in adopting SRO value of Rs. 1,07,93,300/- as sale consideration instead of the actual sale consideration of Rs. 22,00,000 in the computation of capital Gain.

6. The appellant craves leave to add amend or alter any of the above grounds at the time of hearing of the appeal."

6. The learned Counsel for the assessee referring to the agreement of sale dated 15.06.2006 submitted that the property was agreed to be sold for a sale consideration of Rs.22,00,000/- out of which an amount of Rs.20.00 lakhs was received by way of 3 different cheques and an amount of Rs.2.00 lakhs by way of cash. He submitted that due to some litigation, the property could not be sold and vide sale deed dated 7.7.2012, the property was formally sold to Sri Dhanthuri Pandariunath and Smt. Dhanthuri Kasthurinath for a total consideration of Rs.22.00 lakhs which was originally agreed.

6.1 Referring to the copy of the Bank Statement along with the original sale deed, the learned Counsel for the assessee submitted that the cheques were issued originally on 15.06.2006, 15.09.2006 and 15.09.2006 as per the details given below:

a) Rs. 2,00,000/- (Rupees Two Lakhs only) by way of Cheque bearing No. 372562,dated 15.08.2006 drawn on The Karur Vysya Bank Limited, R.P, Road Branch, Secunderabad;

b) Rs. 9,00,00O/- (Rupees Nine Lakhs only) by way of Cheque bearing No. 372563, dated 15.09.2006 drawn on The Karur Vysya Bank Limited, R.P. Road Branch, Secunderabad;

c) Rs. 9,00,000/- (Rupees Nine Lakhs only) by way of Cheque bearing No. 372564, dated 15.09.2006 drawn on The Karur Vysya Bank Limited, R.P. Road Branch, Secunderabad;

6.1.1 He submitted that the above amounts were credited to the Bank Account and the cheques have been duly cleared and reflected in the bank account of the assessee.

6.2 Referring to the provisions of section 50C(1) he submitted that where the date of 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 should be taken as the value. He submitted that in the present case the correct value that has to be adopted is the rate applicable on the date of agreement as against the date of actual sale. Referring to various decisions including the decision of the Hon'ble Madras High Court in the case of CIT vs. Shri Vummundi Amarendran vide TCA No.329 of 2020 order dated 28.9.2020 and the decision of the Delhi Bench of the Tribunal in the case of Amit Bansal vs. ACIT reported in (2019) 174 ITD 349 (Del.), he submitted that the amendment to section 50C(1) introduced by the Finance Act 2015 for determining the full value of consideration is curative in nature and will apply retrospectively.

6.3 The learned Counsel for the assessee also relied on the following decisions:

> *a) Mumbai Bench of the Tribunal in the case of Maria Fernandes Cheryl vs. Income Tax Officer (International Taxation) (2021) 123 taxmann.com 252.*
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> *b) Delhi Bench of the Tribunal in the case of Amrapali Cinema vs. ACIT (2021) 127 taxmann.com 376.*
>
> *c) Ahmedabad Bench of the Tribunal in the case of Ramesh Govindbhai Patel vs. Income Tax Officer (2020) 118 Taxmann.com 201.*

7. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the DRP. He submitted that the assessee in the instant case has sold the immovable property on 5.11.2012 for a consideration of Rs.22.00 lakhs and the SRO value is Rs.1,07,93,300/-. Therefore, the Assessing Officer was fully justified in adopting 50C value at Rs.1,07,93,300/- and after allowing the indexed cost of acquisition has correctly made the addition of Rs.27,86,328/- in the hands of the assessee being her 50% share.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned DRP and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case invoking the provisions of section 50C has made addition of Rs.27,86,328/- in the hands of the assessee being her 50% share on account of sale of the immovable property. While doing so he rejected the claim of the assessee that the property was agreed to be sold at Rs.22.00 lakhs as per the agreement for sale deed dated 15.06.2006 on the ground that the property was finally sold on 5.11.2012 and the SRO value of the property is Rs.1,07,93,300/-. Since the Assessing Officer has not

allowed indexed cost of acquisition due to non-availability of details, the DRP vide order dated 12.12.2022 directed the Assessing Officer to give relief by way of computing the capital gain. It is the submission of the learned Counsel for the assessee that since the property was agreed to be sold for a consideration of Rs.22.00 lakhs as per agreement dated 15.06.2006 and the assessee has received the consideration vide cheques dated 15.06.2006 and 15.09.2006 respectively which is also mentioned in the final sale deed, therefore, the value adopted or assessed or assessable by the Stamp Valuation Authority on the date of agreement has to be taken. It is his submission that the provisions of section 50C(1) inserted by the Finance Act, 2016 w.e.f. 1.4.2017 was curative in nature and will apply retrospectively.

9. We find some force in the above argument of the learned Counsel for the assessee. The provisions of section 50C(1) read as under:

> *(1) 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 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 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.*
>
> *Provided that where the date of 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 (or through such other electronic mode as may be prescribed on or before the date of the agreement for transfer.*

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48 be deemed to be the full value of the consideration."

10. A perusal of the page 3 of the sale deed read as under:

NOW, THEREFORE, THIS DEED OF SALE WITNESSETH AS FOLLOWS :

THAT in pursuance of the aforesaid agreement and in total sale consideration sum of Rs. 22,00,000/-, the VENDEES / PURCHASERS well and truly paid the said agreed total sale consideration sum to the VENDORS / SELLERS in the following manner :

a) Rs. 2,00,000/- (Rupees Two Lakhs only) by way of Cheque bearing No. 372562, dated 15.06.2006 drawn on The Karur Vysya Bank Limited, R.P. Road Branch, Secunderabad;

b) Rs. 9,00,000/- (Rupees Nine Lakhs only) by way of Cheque bearing No. 372563, dated 15.09.2006 drawn on The Karur Vysya Bank Limited, R.P. Road Branch, Secunderabad;

c) Rs. 9,00,000/- (Rupees Nine Lakhs only) by way of Cheque bearing No. 372564, dated 15.09.2006 drawn on The Karur Vysya Bank Limited, R.P. Road Branch, Secunderabad;

d) Rs. 2,00,000/- (Rupees Two Lakhs only) in cash

11. From the bank statement filed by the assessee, we find the above amounts were received by the assessee as per the original sale agreement dated 15.06.2006. It has been held in various decisions that the amendment to section 50C introduced by the Finance Act 2016 for determining the full value of consideration in the case of the immovable property is curative in nature and will apply retrospectively. The Hon'ble Madras High Court in the case of CIT vs. Shri Vummundi Amarendran (Supra) has decided an identical issue and has held that the provisions of section 50C(1) of the Act should be taken to be retrospective from the date when the proviso exists. We find the Delhi Bench of the Tribunal in the case of Amit Bansal vs. ACIT (Supra) while deciding an identical issue has observed as under:

"7. I have considered the rival submissions and perused the orders of the authorities below. The undisputed facts in the instant case are that the assessee has purchased the ITA No.3974/Del/2018 property jointly with Shri Vikas Bansal on 28th July, 2010 for a consideration of Rs.39,33,600/- which was sold on 22nd July, 2011 for a net consideration of Rs.42 lakhs. The assessee had entered into an agreement to sell the property on 25th March, 2011 and taken the part payment of Rs.10 lakhs. It is also an admitted fact that there is no registered conveyance deed. We find the Assessing Officer, relying on the provisions of section 53A and the provisions of section 2(47)(v) of the IT Act, treated the property as a capital asset and treated the profit from sale of such property as short- term capital gain in the hands of the assessee. Further, the Assessing Officer has also invoked the provisions of section 50C and adopted the circle rate of the property as on 22nd July, 2011 at Rs.16,000/- per sq. yard as against the circle rate of 11,000/- as on 25th March, 2011 contended by the assessee and calculated the full value of the consideration at Rs.57,21,600/- as against the actual sale consideration of Rs.42 lakhs. Accordingly, the Assessing Officer made an addition of Rs.7,60,800/- in the hands of the assessee which has been upheld by the CIT(A). It is the submission of the ld. counsel for the assessee that in view of the proviso to section 50C(1) of the IT Act 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 and, thus, the assessee has correctly adopted the rates applicable on the date of the agreement as against the date of actual sale. We find the proviso to section 50C(1) read as under:-

"50C. (1) 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 or assessable 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 :

[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:"

8. The above proviso was inserted by the Finance Act, 2016 w.e.f. 01.04.2017. Therefore, the question that has to be decided is as to whether the above amendment is prospective in nature i.e., will be applicable from A.Y. 2017-18 or is retrospective in nature being curative in nature. We find identical issue had come up before the Ahmedabad Bench of the Tribunal in the case of Dharamshibhai Sonani versus ACIT (supra) where it has been held that amendment to section 50C introduced by the Finance Act, 2016 for determining full value of consideration in the case of involved property is curative in nature and will apply retrospectively. We find following the above decision, the Ahmedabad Bench of the Tribunal in the case of Rahul G. Patel (Supra), held that the proviso to section 50C(1) introduced by the Finance Act, 2016 can be construed as clarificatory in nature and can be applied on pending matters. The various other decisions relied on by the ld. counsel for the assessee also support the case of the assessee that where the date of the agreement fixing the amount of consideration and the date of registration regarding the transfer of the capital asset in question are not the ITA No.3974/Del/2018 same, the value adopted or assessed or assessable by the stamp valuation authority on the date of the agreement is to be taken for the purpose of full value of consideration. I, therefore, accept the argument of the ld. counsel for the assessee in principle and restore the issue to the file

of the Assessing Officer with a direction to verify necessary facts and decide the issue in the light of my above observation directing to adopt the circle rate on the date of agreement to sell in order to compute the consequential capital gain."

12. Since the assessee in the instant case has admittedly received the sale consideration of Rs.22.00 lakhs vide cheques dated 15.06.2006 and 15.09.2006, amounting to Rs.20.00 lakhs and an amount of Rs.2.00 lakhs in cash as per the sale agreement dated 15.06.2006, therefore, in view of the amended provisions of section 50C(1) which according to us is retrospective in nature, the value adopted or assessed or assessable by the Stamp Valuation Authority on the date of agreement has to be taken for the purpose of full value of the consideration. With this observation, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to verify the circle rate on the date of agreement dated 15.06.2006 and adopt the same for the purpose of calculation of the capital gain in the hands of the assessee. The grounds raised by the assessee are accordingly allowed for statistical purposes.

13. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 31st August, 2023.

Sd/-	**Sd/-**
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(R.K. PANDA)** **VICE-PRESIDENT**

Hyderabad, dated 31st August, 2023
Vinodan/sps

Copy to:

S.No	Addresses
1	Smt. Anupama Krishna Rao Premaraju C/o Katrapati & Associates, 1-1-298/B/3, 1st Floor, Ashoknagar, Street No.1, Hyderabad 500020
2	Income Tax Officer (International Taxation)-1 Aayakar Bhavan, Basheerbagh, Hyderabad
3	DRP , Kendriya Sadan, 4th Floor, C Wing, Bengaluru-1
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order