

IN THE INCOME TAX APPELATE TRIBUNAL
 DELHI BENCH "B": NEW DELHI
 BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
 AND
 SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No. 2213/DEL/2018 AY: 2012-13		
DHARA SINGH C/O RUPINDER KUMAR AGGARWAL, ADVOCATE, AB-1A/22, SECTOR-51, NOIDA -201301 (PAN: CZJPS0155A)	Vs.	ITO, WARD 1(2), GHAZIABAD UTTAR PRADESH
(ASSESSEE)		(RESPONDENT)

Assessee by : Sh. Gautam Jain, Adv., Sh.
 Piyush Kr. Kamal, Adv. &
 Sh. Lalit Mohan, Adv.)
 Department by : Sh. V.K. Jiwani, Sr. DR

ORDER

PER H.S. SIDHU, JM

This appeal filed by the assessee is directed against the order passed by the Ld. CIT(A), 2, Noida on 23.1.2018 in relation to the assessment year 2012-13 on the following grounds:-

- 1 That the learned Commissioner of Income Tax (Appeals) 2, Noida has erred

both in law and on fact in upholding the initiation of proceedings under section 147 of the Act and completion of assessment under section 147/143(3) of the Act which were both without jurisdiction and deserved to be quashed as such.

2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that in absence of service of notice under section 148 of the Act, there was no valid assumption of jurisdiction to frame the impugned assessment under section 147/143(3) of the Act.

2.1 That the finding of the learned Commissioner of Income Tax (Appeals) that notice under section 148 of the Act was issued and served on the assessee on the address available on records is factually incorrect, legally misconceived particularly when assessee had furnished an affidavit denying service of notice under section 148 of the Act and also the revenue had brought no material on record to establish the valid service of notice under section 148 of the Act on the assessee and hence the edifice of the entire proceedings is not in accordance with law and thus untenable.

3 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in failing to appreciate that there was no "reason to believe" that income of the assessee had escaped assessment for the instant assessment year.

3.1 That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that initiation of proceedings was on the ground that income of Rs. 2,04,99,000/- had escaped assessment on the ground that the assessee had sold immoveable property for Rs. 3,73,01,000/- and circle rate was of Rs. 5,78,00,000/- which is based on factual and legal misconception in as much as the aforesaid sale had been made in pursuance to registered agreement to sell dated 15.5.2008 and since on the date of agreement to sell the circle rate was 3500/- per sq. mtr. and actual rate was 4,662/- per sq. mtr, which is more than the circle rate, the assumption that income has escaped assessment on account of difference in circle rate and sale price was factually incorrect, legally misconceived and untenable.

4 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the computation of long term capital gain by adopting full value of consideration at Rs. 9,40,70,000/- u/s 50C read with section 48 of the Act, ignoring the value mentioned in registered agreement of sale.

5 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in denying the claim of deduction of Rs. 30,07,824/- u/s 54F of the Act.

6 That the learned Commissioner Income Tax (Appeals) has further erred both in law

and on facts in upholding the levy of interest u/s 234B of the Act, and u/s 234C of the Act which are not leviable on the facts of the instant case

It is therefore, prayed that it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It be further held disallowances made and upheld by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the assessee be allowed.

2. The brief facts of the case are that in the instant case notice was issued u/s 148 of the Income Tax Act (hereinafter referred as the Act) on the basis of AIR information that assessee sold immovable property at less than the circle rate; and the difference of chargeable to tax under the head capital gain. No compliance was made during the assessment proceedings and assessment was framed ex-parte vide order dated 31.3.2016 by bringing to tax an income under the head short term capital gain on sale of land u/s 50C read with section 48 of the Act and assessed the income of the assessee at Rs. 8,44,70,000/- u/s. 144/147 of the Act,

3 Against the assessment order, the assessee appealed before the CIT(A) and challenged the action u/s 148 of the

Act both on the ground of service of notice u/s 148 of the Act and on the ground that since section 50C of the Act is not applicable notice was not valid. Apart from the above it was also submitted that the AO incorrectly invoked section 50C of the Act by overlooking the registered agreement to sell. Further claim was also made u/s 54F of the Act. IN this regard, Remand report was obtained by the Ld. CIT(A) and on consideration of rejoinder submission the Ld. CIT(A) admitted the additional evidences but upheld the action u/s 148 of the Act and also invocation of section 50C of the Act vide order dated 23.1.2018 by partly allowing the appeal of the assessee. Aggrieved with the impugned order, the assessee has preferred this appeal.

4 Grounds 1 to 3 are inter-related and relate to validity of notice u/s 148 of the Act and assessment framed u/s 147/143(3) of the Act.

5 During the hearing, Ld. Counsel of the assessee primarily contended that assumption of jurisdiction u/s 147 of the Act is bad in law since the income escaping assessment had been arrived at Rs. 2,04,99,000/- by invoking section 50C of the Act which is inapplicable on the facts of the assessee. It was submitted that AO in the remand report dated 29.11.2017 had accepted that on the date of agreement the rate per sq. meter comes to Rs.

4662/- whereas the circle rate at that point of time was Rs. 3500/- per sq. meter and therefore circle rate on the date of sale deed had no application. It was further submitted that the issue is covered by the various decisions wherein it has been held that circle rate on the date of registered agreement to sell is to be considered and not the circle rate on the date of sale deed for the purpose of section 50C of the Act. Reliance was placed on the following judgments:

- i) 169 ITD 639 (All) Hari Mohan Das Tandon (HUF) v. PCIT*
- ii) 236 Taxman 561 (All) CIT v. Shimbu Mehra*
- iii) ITA No. 268/2015 dated 28.10.2015 (All) Pr. CIIT v. M/s Pandit Ranglal Trust*
- iv) ITA No. 12/Vizag/2009 dated 22.6.2010 M/s Lahiri Promoters v. ACIT*
- v) 168 TTJ 480 (Del)ITO v. Modipon Ltd.*
- vi) ITA No. 1521/D/2012 dated 27.11.2015 ACIT v. M/s Uttrakahand Construction Co. (P) Ltd.*
- vii) ITA No. 3354/Ahd/2014 dated 30.11.2017 Smt. Kundanben Ambhai Shah v. ITO*
- viii) 79 taxmann.com 104(Vizag) Smt. Chalasani Naga Ratna Kumari v. ITO*

- ix) 161 ITD 627 (Ahd) Dharamhibhai Sonani v. ACIT*
- x) 7 ITR (Trib) 146 (Ahd) Kaushik Sureshbhai Reshamwala v. ITO*
- xi) ITA No. 5578/D/2014M/s Jai Laxmi Developers (P) Ltd. v. DCIT*
- xii) ITA No. 3353/Ahd/2014 dated 29.11.2017 Amitkumar Ambalal (HUF) v. ACIT*

6 Apart from the above support was drawn from amendment made by Finance Act, 2016 by inserting a proviso to section 50C(1) of the Act and it was contended that the aforesaid proviso as has been held to be retrospective w.e.f. 1.4.2003 in the following decisions:

- i) 169 ITD 639 (All) Hari Mohan Das Tandon (HUF) v. PCIT*
- ii) 161 ITD 627 (Ahd) Dharamhibhai Sonani v. ACIT*
- iii) ITA No. 5578/D/2014 M/s Jai Laxmi Developers (P) Ltd. v. DCIT*
- iv) ITA No. 3354/Ahd/2014 dated 30.11.2017 Smt. Kundanben Ambhai Shah v. ITO*

v) *ITA No. 3353/Ahd/2014 dated 29.11.2017 Amitkumar Ambalal (HUF) v. ACIT*

7 Having regard to the above, the submission of the assessee was that since the solitary basis adopted to initiate proceedings u/s 147 of the Act was that, consideration received as a result of the transfer by assessee of capital asset, being land, is less than the value adopted or assessed for the purpose of payment of stamp duty in respect of such transfer is not tenable in view of the statutory/judicial position no valid assessment could be framed. It was submitted that there was no "reasons to believe" that income of the assessee had escaped assessment u/s 147 of the Act for the instant assessment year. Reliance was also placed on the following judgments:

i) *336 ITR 136 (Del) M/s Ranbaxy Laboratories Ltd. v. CIT*

ii) *331 ITR 236 (Bom) CIT v. M/s Jet Airways (I) Ltd.*

iii) *354 ITR 549 (Del) CIT v. Cheil Communication India (P) Ltd.*

iv) *306 ITR 343 (Raj) CIT v. Shri Ram Sing*

v) *341 ITR 240 (Del) CIT v. Software Consultants*

- vi) *355 ITR 172 (Guj) CIT v. Mohmed Juned Dadani*
- vii) *394 ITR 733 (Mad Martech Peripherals (P) Ltd. v. DIT)*

8 It was also submitted that action u/s 147 has been taken mechanically on the basis of AIR information and based on non application of mind and, therefore the proceedings are without jurisdiction. Reference was made to communication dated 13.8.2014 prior to issue of notice u/s 148 of the Act and response thereto assessee has duly submitted his reply dated 8.9.2014. It was submitted that AIR information alone cannot be ground to reopen proceedings u/s 147 of the Act. Lastly it was submitted that in absence of valid service notice u/s 148 of the Act, even otherwise action u/s 148 of the Act was bad in law. It was submitted that affidavit denying service of notice have been placed on record and there was no evidence in the shape of postal receipt to establish the valid service of notice u/s 148 of the Act.

9 On the other hand, the Id. DR had relied upon the orders of the authorities below and requested that contention of the assessee be rejected.

10 We have heard both the parties and perused the records, especially the orders of the authorities below and the case laws referred by the Id. Counsel of the assessee. We find that in this case notice dated 7.1.2015 u/s 148 of the Act was issued after recording following reasons:

"05.01.2015 On the basis of information u/s 50C received, it is noticed that Sh. Dhara Singh has sold immovable property, the details of transfer of capital assets is as under:-

Descripti on of property	Transfer (Sale Price)	Market Value	Difference
Khasra No. 1135	3,73,01,0 00	5,78,00,0 00	2,04,99,0 00

As can be seen from the above immovable property was sold for Rs. 3,73,01,000/- but the value of the properties was assessed for Rs. 5,78,00,000/- for the purpose of payment of Stamp Duty. Thus, the value of the said property comes to Rs. 5,78,00,000/- which is deemed to be full value for the purpose of section 48 of the I.T. Act. In

accordance with the provisions of 50C the difference of Rs. 2,04,99,000/- is chargeable to tax under the held capital Gain.

On the basis of the information in my possession, I have reasons to believe that the difference of transfer of capital assets of Rs. 2,04,99,000/- and the same is chargeable to tax as escaped assessment within the meaning of section 147 of the Income Tax Act, 1961. Hence notice u/s 148 of the Act, is hereby issued."

A.O."

11 On perusal of the aforesaid reasons it is apparent that immovable property was sold by the assessee and the Assessing officer on the basis thereof formed an opinion that since the market value as per circle rate on the date of sale deed was Rs. 5,78,00,000/- as against the actual sale consideration of Rs. 3,73,01,000/-, the income of Rs. 2,04,99,000/- had escaped assessment in accordance with provision of section 50C. The assessee has pointed out that prior to the registered sale deed executed on 24.6.2011 assessee had done a registered agreement of sell on 15.5.2008. It was submitted that at the time of agreement to sell the circle rate of the property was Rs. 3500/- per sq. mtrs for the area sold by the assessee; whereas the actual

rate on which agreement was made was Rs. 4662.62/- per sq. mtr., which is more than the circle rate prevailing as on date of sale agreement. It was further submitted that as full sale consideration was not received by the assessee at the time of agreement and developers required some time to make full payment as it involved heavy amount but the assessee was bound by the registered agreement to sale for receipt and payment for the sale of land, the registered sale deed was executed by the both the parties on 24.6.2011 and on this date the circle was increased to Rs. 7225/- sq. mtrs from Rs. 3500/- per sq. mtr. and therefore it was submitted that AO was wrong in applying the circle rate at the time of sale deed execution instead of circle rate at the time of execution of registered agreement to sell. The AO in the remand report dated 29.11.2017 accepted the above claim of the assessee and stated as under:

“Though the sale consideration received by the assessee was lesser, but as per provisions of section 50C, the sale consideration is deemed to be the value on which duty was payable/paid. Hence its salable value was correctly taken at Rs. 9,40,70,000/-. The assessee has further submitted that the agreement to sale of

property was entered on 15.5.2008 for Rs. 6,07,08,000/- and thus on the date of agreement the rate per sq. meter comes to Rs. 4662/- whereas the circle rate at that point of time was Rs. 3500/- per sq. meter. In this regard the assessee also furnished photo copies of prevailing circle rates. Though these arguments and copies of documents were not before the AO while completing the assessment u/s 144 of the Act and are not to be admitted under rule 46A, yet the submissions made regarding applicability of section 50C can be admitted, if considered appropriate by your honor."

12 The Ld. CIT(A) despite having admitted the additional evidences under Rule 46A of the Income Tax Rules, 1962 against which conclusion there is no appeal by revenue did not give effect to the above acceptance of claim by the assessing authority. In the above factual back drop the position that emerges as under:

Particulars	Date	Circle rate
Registered agreement to sell	15.5.2008	Rs. 3500/- per sq. mtr.
Sale deed	24.6.2011	Rs. 7225/- per sq. mtr.

Actual consideration		Rs. 4662/- per sq. mtr.
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13 The claim of the assessee is that actual consideration is higher than the circle rate applicable on the date of registered agreement to sell and therefore circle rate on the date of sale deed has no application. Reference has been made that in pursuance to the agreement to sell dated 15.5.2008 consideration of Rs. 45 lacs was received on 16.5.2008 by account payee cheques and Rs. 5 lacs in cash. The fact of agreement to sell dated 15.5.2008 and the aforesaid advance payment of Rs. 50 lacs duly find recorded in the sale deed. The jurisdictional High Court in the case of CIT v. Shimbu Mehra 236 Taxman 561 (All) following the judgment of Apex Court in the case of Sanjeev Lal v. CIT 365 ITR 225 has held that the moment an agreement to sell is executed between the parties and part consideration is received, the transfer for the purpose of section 50C takes place and computation under section 48 will start accordingly and it was held therein as under:

“14. In the light of the aforesaid provision, it is apparently clear that the moment an agreement to sell is executed between the parties and part consideration is received, the transfer for the purpose of Section 50C of the Act takes places and computation under

Section 48 of the Act will start accordingly, for the purpose of calculating the capital gains under Section 45 of the Act. From the aforesaid, it is apparently clear that the transfer of the property took place in the year 2001 when the provision of Section 50C of the Act was not in existence. Consequently, the Assessing Officer was not justified in making the reassessment and computing the capital gains by invoking the provision of Section 50C of the Act, which was clearly not applicable in the assessee's case."

14 Infact following the above judgment, Coordinate Bench in the case of Hari Mohan Das Tandon (HUF) v. PCIT 169 ITD 639 (All) has held as under:

"10. Considering the facts of the case and material on record, it is clear that there was an Agreement to Sale between Assessee-HUF and Shri Shanti Bhushan in September, 1966, whereby, the purchaser agreed to purchase the property for Rs. 1 lakh and paid earnest money of Rs.5000 through cheque. It is, therefore, established on record that the

purchaser has entered into an Agreement to Sale to purchase the property for a sum of Rs. 1 lakh in September, 1966 but due to litigation in Civil Court, the Sale Deed was executed later on 29.11.2010. Therefore, both the above judgments in the case of Sanjeev Lal (supra), clearly applicable to the facts and circumstances of the case and the Date of Agreement to Sale to be taken as Date of Transfer of Original Asset. On peculiar facts of the case, the sale deed dated 29.11.2010 as per provisions of Law for calculating long term capital gains shall have to be considered as executed on September 1966. Thus, the provisions of Section 50C of the I.T. Act which were not applicable in that year could not be invoked against the assessee."

15 Moreover in the above decision it was noted that proviso of section 50 of the Act has been inserted into the Act w.e.f. 1.4.2017 and provides as under:

"Provided that where date of agreement fixing the amount for 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 Stamp Valuation Authority on the date of the agreement may be taken for the purpose of computing full value of consideration for such transfer."

16 The aforesaid proviso has been held to be retrospective in effect in the aforesaid decision in the case of Hari Mohan Das Tandon (HUF) v. PCIT (supra). It was held therein as under:

"10.2 The ITAT, Ahmedabad Bench in the case of Dharamshibhai Sonani (supra), considered the proviso to Section 50C of the I.T. Act, being retrospective in effect and is effective from 01.04.2003. The order of the Tribunal in paras 3 to 10 are reproduced 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 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". The trouble, however, is that while the sale consideration is fixed at the point of time when agreement to sell is entered into, there is sometimes considerable gap in parties agreeing to a transaction (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 the 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 fixed. 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 Tribunal, took note of this incongruity and, in its very first report (<http://taxsimplification.in/REPORT.pdf>).

observed as follows

6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERATION 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" along with 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 50C 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 apart 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:

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 and 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. 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.

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 statute 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 v. 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 v. 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 thus 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 assesseees for non-deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding 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 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 50C 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 v. Alom Extrusion Ltd. [(2009) 319 ITR 306], 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. v. 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 1st 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. (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 1st April, 1984, when s. 43B stood inserted. This is how the question of retrospectivity arose in Allied Motors (P.) Ltd. (supra). This Court, in Allied Motors (P.) Ltd. (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. (supra), held that the first proviso was curative 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. (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 inserted). 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 5" opportunity of hearing to the assessee and by way of a speaking order. I order so.

(10) As I part with the matter, I may make one more observation. The amendment in Section 50C was brought in to provide relief to the assessee in a situation in which the stamp duty valuation of a property has risen between the date of execution of agreement to sell and execution of sale deed, as is the norm rather than exception, but the real estate market is now traversing through a difficult phase and there can be situations in - there is a fall in the stamp duty valuation rates with the passage of time. Such as that on has actually arisen in many places in the country, such as in 'Gurgaon (<http://hindustantimes.com/gurgaon/for-the-first->

time-circle-rates-educed-in-gurgaon/storv-cip6e72TeGS9H5jJIALAGP. html), New Delhi ([http:// www. delhismartcities.com/ blogs/ high-circle-rates-causing-slump-reality-reduce-delhi-government](http://www.delhismartcities.com/blogs/high-circle-rates-causing-slump-reality-reduce-delhi-government)), and even in Dehradun (Uttarakhand) ([http:// www. tribuneindia. com/ news/uttarakhand/ relief-to-property-buyers-as-circle-rates-cut-50-pc/247805.html](http://www.tribuneindia.com/news/uttarakhand/relief-to-property-buyers-as-circle-rates-cut-50-pc/247805.html) and some other places. It is therefore possible that, at first sight, first proviso to Section 50C may seem to work to the disadvantage of the assessee in certain situation in the event of the word 'may' being construed as mandatory in application, but then one cannot be oblivious to the fact that this proviso states that "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 (emphasis supplied)" making it clearly optional to the assessee, and that, in any event, what has been brought by the lawmakers as a measure of relief to the taxpayers cannot be construed as resulting in

a higher tax burden on the taxpayers. Of course, assuming that my understanding of this statutory provision is in harmony with the legislative intention, insertion of words "at the option of the assessee" between "stamp valuation authority on the date of agreement may" and "be taken for the purposes of computing full value of consideration for such transfer", in first proviso to Section 50C(1), could have made the legal provision even more unambiguous.'

10.3 The above decision would also support the case of the assessee that sale consideration as per Agreement to Sale shall have to be considered, which, in this case was Rs. 1 lakh and was effective in September, 1966. Therefore, the provisions of Section 50C would not apply in the case of the assessee in assessment year under appeal"

17 Having regard to the above statutory/judicial position and the remand report of the AO whereby he has accepted that circle rate on the date of registered agreement to sell was relevant for the purpose of section 50C and not the circle rate on the date of sale deed, it is held that reasons to

believe that income had escaped assessment on account of section 50C of the Act is not based on correct interpretation and application of section 50C of the Act. Accordingly we hold that there was no "reasons to believe" that income of the assessee had escaped assessment u/s 147 of the Act for the instant assessment year. One of the contention raised before us that in absence of service of notice under section 148 of the Act, there was no valid assumption of jurisdiction to frame the impugned assessment under section 147/143(3) of the Act. We find merit in the same that since assessee had furnished an affidavit denying service of notice under section 148 of the Act and revenue had brought no material on record to establish the valid service of notice under section 148 of the Act on the assessee and hence the edifice of the entire proceedings is not in accordance with law and thus untenable.

18 Apart from the above what also emerges that since there is no addition is tenable on account of the reasons for reopening, which were recorded before issue of notice under section 148 of the Act, the assessment framed would also otherwise to fail. Similar issue had arisen in the case of *Ranbaxy Laboratories Ltd. v. CIT* 336 ITR 136 (Del). In the said case, the Division Bench had also examined Explanation 3 to Section 147, which was inserted by Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1989.

Reference was made to the decision of the Bombay High Court in CIT v. Jet Airways (I) Ltd., 331 ITR 236 in which it has been held as under:

"The effect of section 147 as it now stands after the amendment of 2009 can, therefore, be summarised as follows : (i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year ; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section."

19 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we are of the considered view that proceedings initiated by invoking the provisions of section 147 of the Act by the AO and upheld by the Ld. CIT(A) are nonest in law and without jurisdiction, hence, the re-assessment is quashed. Since we have already quashed the re-assessment, the other grounds

have become academic and are therefore not adjudicated and accordingly, the assessee's appeal is allowed.

20 In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced on 20-07-2018.

Sd/-

**[T.S. KAPOOR]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 20/07/2018

SR Bhatnagar

Copy forwarded to: -

1. Assessee
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches

