IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER

I.T.A. No. 64/Ahd/2018
(Assessment Year: 2011-12)

Ramesh Govindbhai Patel Near Gor No Kuvo, Maninagar East, Ahmedabad-380008	Vs.	ITO Ward-6(1)(3), Narayan Chambers, Ahmedabad
PAN No. ACJ PP1 082 C		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Parin Shah, AR
Respondent by :	Shri Dilip Kumar, Sr. D.R.

Date of Hearing	05.03.2020
Date of Pronouncement	28.07.2020

O R D E R

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 16.10.2017 passed by the Commissioner of Income Tax (Appeals) –6, Ahmedabad, arising out of the order dated 13.12.2016 passed by the ITO, Ward 6(1)(3), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2011-12.

2. The brief facts relating to the case is this that the assessee has sold immovable property on 20.04.2010 lying and situated at Survey No. 570 (T.P. No. 72 and Final T. P. No. 44/01) being Registration No. 10577 in the capacity of constituted attorney on the basis of an agreement entered into by and between the original owners (seven in numbers) on 21.12.1996 with one

Govindbhai Hirjibhai Patel being the father of the appellant for a consideration of Rs. 2,37,500/-.

3. The consideration of Rs. 2,37,500/- was also paid on the date of agreement. Subsequently on 11.10.2010 the property was registered in favour of the Govindbhai Hirjibhai Patel through the Constituted Attorney being Rameshbhai G Patel, the assessee herein, the son of the said Govindbhai Hirjibhai Patel, the purchaser, on behalf of the vendors; however, the vendors signed in that particular deed of registration as the confirming parties. It is pertinent to mention that the Power of Attorney under which the assessee before us has been given the authenticity to sign on behalf of the vendors executed on 06.07.1997 is appearing at Page 40 to 47 of the Paper Book filed before us. It is also a fact that on the date of registration on 11.10.2010 the value of consideration was decided at Rs. 3,00,000/-. The stamp duty paid was of Rs. 2,53,000/-. On the other hand, in terms of the stamp duty valuation, the value of the land was determined at Rs. 51,63,265/-.

4. The AO adopted the value of sale consideration at Rs. 51,62,265/- and made addition of the balance amount. Such addition was further been confirmed by the First Appellate Authority. Hence, the instant appeal before us.

5. (i) The case of the assessee is this that the Revenue has not considered the amendment by introduction of Proviso to Sec. 50C Finance Act, 2016 in its proper perspective; it is curative in nature and applies retrospectively and accordingly stamp duty valuation on the date of agreement to sale is required to be considered while determining consideration as per deeming fiction under Section 50C of the Act.

(ii) Section 50C applies to the seller of the land and not to the power of attorney holder/constituted attorney of the transaction in question.

(iii) The addition of Rs. 3,00,000/- in the hands of the assessee under the head capital gain is wrong since the appellant is only the constituted attorney to sign the document on behalf of the owners of the property by virtue of the power of attorney executed on 06.07.1997.

(iv) The Ld. CIT(A) ought to have referred the matter to the DVO for determining the Fair Market Value of the land and ought not relied upon the value determined by stamp duty authority for the purpose of payment of stamp duty on the transfer of immovable property.

6. During the assessment proceeding though the assessee mentioned about the Banakhat (the agreement for sale dated 12.12.1996) and power of attorney executed in favour of the assessee dated 06.07.1996 to act on behalf of the vendors of the property, those documents were not found on record by the Ld. AO and thus finally being not convinced with the plea of the assessee that the original consideration was though of Rs. 2,37,500/- as per the agreement subsequently modified to the extent of Rs. 3,00,000/- on 12.12.1996 and finally which stamp duty of Rs. 2,53,000/- was paid, applying the provision of Sec. 50C determined the value of the property on the basis of Fair Market Value at Rs. 51,63,265/- thereby making addition of the balance amount of Rs. 3,00,000/-. In appeal the Ld. CIT(A) while confirming the addition observed that the appellant became the de-facto owner of the land by virtue of the power of attorney given by the original owners on 06.07.1997. Such formation of opinion is on the basis of this particular fact that the appellant signed the deed

of sale as the seller, while the original owners had signed as confirming parties. Further that the Ld. CIT(A) rejected the argument of the assessee that the Jantri Value for the purpose of payment of stamp duty adopted by stamp duty authority cannot be considered conclusive, in the absence of any cogent material evidencing that appellant has not received the consideration as per the Jantri Value and not as mentioned in the sale deed.

7. The Ld. Counsel appearing that the assessee vehemently argued the matter in favour of his case. The crux of the argument is this that assessee since only signed the deed of sale on behalf of the vendors by virtue of the power of attorney executed on 06.07.1996, he legally cannot be considered as the vendor and addition as capital gain in his hand is not sustainable. Further that the valuation as per the said agreement ought to have been considered instead of Fair Market Value on the basis of the Stamp Duty mentioned and not referring the matter to the DVO for determination of the market price of the property in question is also a deviation from the specified law.

8. On the other hand, the Ld. DR relied upon the orders passed by the authorities below.

9. We have heard the respective parties, we have also perused the relevant materials available on record.

10. It is a fact that by executing the power of attorney as on 06.07.1997 by the vendors of the property in question, the appellant had been given the right to undertake signatures confirmations and registration of agreement etc. on behalf of the vendors, meaning thereby the assessee has the right to put his signatures in the capacity of the vendors and not in his personal capacity.

Authority to sign the instrument on behalf of the vendors does not devolve any special power on the constituted attorney to act as an owner in his personal capacity. Thus the assessee cannot be said to be the actual owner of the property in the absence of any consideration received and enjoyed by him in respect of such transaction. In a deed of sale, the person who confirms such transaction with a further assurance of relinquishing his interest in the property, if any, is set to be the confirming party. Singularly, the conduct of putting signatures by the vendors in the deed of conveyance is nothing but an assurance of relinquishment of their rights, if any, in the property in question. The basic object behind this is to avoid any sort of further litigation. In this particular case though the original vendors initially executed and power of attorney in favour of the assessee to transfer the property on behalf of those vendors in favour of the purchaser, subsequently signing the instrument as 'confirming party' does not give any scope to draw any inference otherwise as explained hereinabove. Such signature made by the original vendors as confirming parties does not make the instrument either bad in law or questionable in any count. Their status remained same; neither it changes the status of the assessee; so as to raise the question as to whether he has acted as the original owner or on behalf of the original owners.

11. On the other hand, the stamp duty of Rs. 53,33,000/- was paid as per valuation made by the registration authority but the same cannot be considered as the final valuation of the property in terms of the specific rules laid down by the amended provision of the 50C of the Act. Unless the case is referred to the DVO for valuation, the valuation of the property should be restricted to the consideration mentioned in the agreement of sale and not to the valuation adopted by any other authority on the date of registration subject to certain

consideration which were fulfilled herein. When the date of agreement fixing the amount of consideration and the date of registration of the property being the capital asset is different, the value adopted by the stamp valuation authority on the date of agreement be taken for the purposes of computing full value of consideration of such transfer. In the case in hand, the valuation of property on the basis of the stamp duty valuation as on the date of registration has been determined without referring the matter before the DVO for valuation which ought to have been done by the Revenue; addition made mainly on the valuation assessed by the stamp duty authority is, thus, not permissible.

On this issue we have considered the judgment relied upon the by the Ld. AR passed in the Co-ordinate Bench in the matter of Amitkumar Ambalal (HUF) vs. ACIT in ITA No. 3353/Ahd/2014 for A.Y. 2009-10. While dealing with the identical issue the Hon'ble Tribunal has been pleased to observe as follows:-

> *"3. When this appeal was called out for hearing, learned counsel for the assessee submitted that the short issue that he would like to pursue in this appeal is that the stamp duty valuation for the purpose of adopting value of consideration under section 50C should be as on the date on which the agreement to sale was entered into and not the date on which the transactions actually took place. Learned counsel submitted that the relevant date for ascertaining whether or not the sale consideration is suppressed is the date on which an agreement was entered into. In support of this proposition, he invites our attention to a decision of Ahmedabad SMC bench in the case of Dharamshibhai Sonani vs. ACIT (ITA No.1237/Ahd/2013; order dated 30.09.2016) which, inter alia, observes as follows:*
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> *"[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-à-vis the stamp duty valuation as at the point of time when agreement to sell, whereby sale consideration was in fact 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 Incometax 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 (http://indiabudget.nic.in/ub2016- 17/memo/mem1.pdf), 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 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 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 assessees 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 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. 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. 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 1st 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 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. 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 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 an opportunity of hearing to the assessee and by way of a speaking order. I order so."

4. Learned counsel then also invites our attention to a decision of Hon'ble Allahabad High Court in the case of CIT vs Shimbhu Mehra, [2016] 65 taxmann.com 142 (Allahabad), in support of the same proposition. Learned Counsel then invites our attention to the copy of the agreement to sale which is placed at page nos. 1-8 of

the paper book as also the copy of the sale deed which is placed at page nos. 9-30 of the paper-book. Learned counsel further points out that the dates on which relevant payments are made are clearly set out in the sale deed at internal page no.12, which are in accordance with the agreement to sale. Learned counsel thus contends that the bonafides of the agreement to sale, in the light of the dates on which the payments are made, cannot be doubted. On the strength of this submission, we are urged to remit this issue to the file of the Assessing Officer with the direction that the stamp duty valuation as on the date on which the agreement to sale was entered into should be taken for the purposes of application of section 50C and not the date on which the sale deed was actually executed.

5. Learned Departmental Representative, on the other hand, relies upon the orders of the authorities below and submits that the provisions of the statute are clear and unambiguous inasmuch as the relevant date for the purpose of section 50C stamp duty value is the date on which the sale deed is entered into.

6. Having heard the rival contentions and having perused the material on record, we find that the issue in appeal is squarely covered by the Tribunal's decision in the case of Dharamshibhai Sonani (supra), which has been subsequently followed by large number of division bench of this Tribunal. As rightly held by the Tribunal in the case of Dharamshibhai Sonani (supra), the amendment brought about by Finance Act, 2016, providing 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", is retrospective in effect and applies from 1 st April 2003. The detailed reasons for coming to this conclusion are already set out in the extract from the Tribunal's decision quoted earlier in this order.

7. In view of these discussions and bearing in mind entirety of the case, we are of the considered view that the plea of the learned counsel indeed merits acceptance. We, therefore, deem it fit and proper to remit the issue to the file of the Assessing Officer for adjudication de novo in the light of observations above and the legal position set out in Dharamshibhai Sonani (supra). Ordered, accordingly.

8. In the result, appeal is allowed for statistical purposes. Pronounced in the open Court today on this 30th day of November, 2017."

Thus, it appears from the Act as well as from the judgment as above that when the date of agreement fixing the amount of consideration and the date of registration of the property being the capital asset is different, the matter should be referred to the DVO by the Ld. AO for determination of the valuation as on the date of agreement keeping in view the provision of Sec. 50C of the Act instead of that as we find in the case in hand the Revenue has

assessed the valuation of the property on the basis of the valuation so assessed by the Stamp Duty Authority and the difference amount has been added to the total income of the assessee which in our considered view is not permissible in law. We, therefore, following the ratio laid down of the above judgment do not hesitate to quash the order impugned and we delete the addition made thereof. Hence, assessee's appeal is allowed.

12. In the result, assessee's appeal is allowed.

13. Before parting we would like to make certain observation relating to the issue cropped up under present scenario of Covid-19 pandemic as to whether when the hearing of the matter was concluded on 05.03.2020 the order can be pronounced today i.e. on 27.07.2020. The issue has already been discussed by the Co-ordinate Bench in the case of DCIT vs. JSW Ltd. (ITA Nos. 6264 & 6103/Mum/2018) pronounced on 14.05.2020 in the light of which it is well within the time limit permitted under Rule 34(5) of the Appellate Tribunal Rules, 1963 in view of the following observations made therein:

"7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 8th January 2020, this order thereon is being pronounced today on the day of 14th May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:

(5) The pronouncement may be in any of the following manners :—

(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.

(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.

(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily (emphasis supplied by us now) be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board.

8. Quite clearly, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble jurisdictional High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein Their Lordships had, inter alia, directed that “We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the Benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile(emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”. In the ruled so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the

passing of this order, beyond ninety days, was necessitated by any "extraordinary" circumstances.

9. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon'ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial wok all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that "In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15days after the lifting of lockdown". Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, "It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate

shall be added and time shall stand extended accordingly", and also observed that "arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020". It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the corona virus "should be considered a case of natural calamity and FMC (i.e. force majeure clause) may be invoked, wherever considered appropriate, following the due procedure…". The term 'force majeure' has been defined in Black's Law Dictionary, as 'an event or effect that can be neither anticipated nor controlled' When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an "ordinary" period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented

disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed "while calculating the time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly". The extraordinary steps taken suo motu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to re-fix the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case."

14. On the basis of the observation made in the aforesaid judgment we exclude the period of lockdown while computing the limitation provided under

Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963. Order is, thus, pronounced in the open court.

15. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on	**28/07/2020**

Sd/-	Sd/-
(WASEEM AHMED)	(Ms. MADHUMITA ROY)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 28/07/2020

TANMAY, Sr. PS *TRUE COPY*

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad