आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'D' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.No.2944/Chny/2017**

(निर्धारणवर्ष / Assessment Year: 2013-14)

Mrs. S.Bhuvaneswari Hallmark Towers, 4th floor, 550 (Old No.136) TTK Road, Alwarpet, Chennai-600 018.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-1(2) Chennai.
PAN: AADPB 1269K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. R.Sivaraman, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. R.Anita, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	21.10.2021
घोषणाकीतारीख /Date of Pronouncement	:	27.10.2021

आदेश / O R D E R

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order passed by the learned CIT(A)-1, Chennai dated 27.09.2017 and pertains to assessment year 2013-14.

2. The assessee has raised following grounds of appeal:-

"1. The order of Learned CIT(A) dated 27.09.2017 for the Assessment year 2013-l4 is contrary to the facts and circumstances of the case and is opposed to the principles of equity, justice and fair play.

2. The Learned CIT(A) erred in making an addition amounting to Rs. 2,67,34750/- by invoking the provisions of Section 50C of the Income Tax Act, 1961 with respect to the vacant agricultural land sold by the Appellant during the impugned AY 2013-14.

3. The Learned CIT(A) is wrong in law in making the addition amounting to Rs.2,67,34,750/- under Section 50C of the Act without considering the guideline rate of the vacant agricultural land prevailing as on the date of agreement to sell dated 09.02.2012.

4. The Learned CIT(A) ought to have appreciated that the proviso enacted to Section50C by the Finance Act, 2016 w.e.f. 01.04.2017 is curative in nature and thereforehas to be applied retrospectively in the case of the Appellant for the impugned AY 2013-14.

5. The Learned CIT(A) ought to have considered the provisions entailed under Section43CA(3) and (4) of the Act which would squarely apply in the case of the Appellant.

On the strength of the abovementioned grounds and such other grounds that may be submitted before or at the time of hearing of the Appeal, the Hon'ble ITAT may be pleased to set aside the order of the CIT(A) dated 27.09.2017 and thus render justice."

3. Brief facts of the case are that the assessee is an individual filed his return of income for assessment year 2013-14 on 05.08.2013 admitting total income of Rs.4,65,94,980/-. During the year under consideration, the assessee had sold a piece of agricultural land situated at Shortium Village, Kanathur Reddy Kuppam, Chengalpet District, Kancheepuram for a consideration of Rs.5,10,00,000/- as per sale agreement dated 09.02.2012 and received advance sale consideration of Rs.1.00 crore through bank. The said property was registered in favour of the buyer by executing sale deed in May, 2012 for consideration of Rs.5,10,00,000/-. However, guideline value of property as on date of sale deed was at Rs.7,76,70,000/-. The assessee has computed long term capital gain derived from sale of property by adopting sale consideration

ofRs.5,10,00,000/-. During the course of assessment proceedings, the Assessing Officer, however, not convinced with long term capital gain computed by the assessee by adopting sale consideration as shown in sale agreement. Thus, he has adopted guideline value fixed for payment of stamp duty by the State Government authorities by invoking provisions of section 50C of the Income Tax Act, 1961, and determined long term capital gain by adopting deemed sale consideration at Rs.7,76,70,000/- and made addition of Rs.2,67,34,750/- to the total income. The relevant findings of the Assessing Officer are as under:-

> *"It is mentioned in the sale deed that the sold property of the land is vacant Agricultural land. However the sold property is not an Agricultural land for the following reasons.*
>
> *(a) As on 01/04/2012, there was a revision in the Guide Line Value on the sold lands. The Guide Line Value per acre was abolished and it was valued in Square Feet only. The rate per Sq.Ft is Rs.2,100/-. When the lands are valued in Square Feet and not in Acre, then the sold lands was not an Agricultural Land. It is pertinent to note that in the records of Registration Department the land situated in the Survey no. 103/1, New survey no. 103/30 at Kanathur Reddy Kuppam is classified as Residential Class I - Type I,*
> *which is reproduced as below:*

Zone : CHENNAI SRO THIRUPORUR Village : KANATHUR REDDYKUPPAM

SURVEY NO	GUIDELINE VALUE	GUIDELINE VALUE (IN METRIC)	CLASSIFICATION
103/1	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/10	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/11	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/12	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/13	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/14	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/15	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/16	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/17	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/18	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/19	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/1A1A1A	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A1A1B	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A1A1C	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A1A1D	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A1A2	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A1A3	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A1AB	2100/Sq.Ft	22605/Sq.Mt	Residential Class I Type - I
103/1A1B	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A1C	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1A2	2100/Acre	22605/Hect.	Residential Class I Type - I
103/1B	-	-	Govt. Others
103/2	-	-	Govt. Others
103/20	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/21	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/22	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/23	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/24	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/25	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/26	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/27	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/28	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/29	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/30	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/31	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I

103/32	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/33	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/34	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/35	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/36	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/37	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/38	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/39	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/3A	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/3A1	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/3A2	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/3A3	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/3A4	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/3B	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I
103/3C	2100/Sq.Ft.	22605/Sq.Mt.	Residential Class I Type - I

(b) Similarly, the sold lands is situated at Shortium Village,Kanathur Reddy Kuppam, Chengalput District, Kancheepuram has been with in the 8 km distance ftom the extended corporation of Chennai. Hence, it looses the value of Agricultural land.

In the sale transactions entered by the assessee, the value assessed by the State Government for purpose of payment of stamp duty in respect of the sale is higher than the sale consideration stated to be received. Hence the market value is deemed to be the full, value of consideration received or accrued as a result of such transaction.

Accordingly, taking into considerations of The Stamp Value Authorities who have adopted the value of the above property at Rs. 7,77,34,750/-. (in the Annexure IA, the State Government Authority for Registration purpose has arrived the value of Rs. 7,77,34,750/- by determining the land value as Rs.7,77,34,750 and Rs.30,000/- as Building Value of 300 Sq.Ft.)

In view of the above, as per the materials available on record and also after discussing the same with the assessee's representative, the assessment is completed by invoking the provisions of section 5CC of the I.T. Act 1961."

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has challenged recomputation of long term capital gain by invoking provisions of section 50C(1) of the Income Tax Act, 1961 on the ground that as per proviso inserted to section 50C by the Finance Act, 2016 w.e.f 01.04.2017, value of property as per sale agreement should be taken for computing capital gain. The assessee further contended that when the property was sold by entering into agreement of sale, guideline value of property fixed by the authorities for payment of stamp duty was less than consideration agreed for transfer of property. However, guideline value has been subsequently revised by the authorities w.e.f. 01.04.2012, i.e. subsequent to agreement of sale and thus, value fixed by the authorities subsequent to date of agreement to sale cannot be adopted for computing long term capital gain.

5. The learned CIT(A), after considering relevant submissions of the assessee and also relied upon certain judicial precedents, including decision of the Hon'ble Supreme

Court in the case of Allied Motors Pvt.Ltd. vs. CIT 224 ITR 677 observed that the proviso inserted to section 50C by the Finance Act, 2016 w.e.f 01.04.2017 does not operate retrospectively with effect from insertion of the provisions of Section 50C and thus, rejected arguments of the assessee and upheld additions made by the Assessing Officer for recomputation of long term capital gain from sale of property. The learned CIT(A) has also discussed issue in light of agreement to sale between parties and sale deed for conveyance title of the property and observed that sale agreement by the assessee with different person and sale deed was executed in favour of person other than the person agreed to buy property and thus, it is not a case of the assessee that there was sale agreement between the parties fixing consideration for transfer of property before enhancement of guideline value by the authorities and accordingly, opined that assessee's case does not fall within the provisions of section 50C of the Income Tax Act, 1961. The relevant findings of the learned CIT(A) are as under:-

> *" 4. The first issue relates to application of s.50C in respect of the sale of land on which long term capital gain of Rs.4.10 crores have been disclosed by the appellant in its return of income. The appellant had entered into an agreement for sale*

on 09.02.2012 with one Mr. Mohamed Jabir for the sale of vacant land situated at Kanathur Radikuppam village for an agreed consideration of Rs.5. 10 crores. The appellant also received an advance of Rs. 1 crore on 08.02.2012 and further amount aggregating to Rs.3 crores upto 31.03.2012. According to the appellant, the guideline value of the property on the date of the agreement to sell, i.e. 09.02.20 12 was Rs.1.24 crores whereas the appellant has agreed to sell the property at R.5.10 crores. The guideline value was, however, revised on 01.04.2012 wherein value per acre was abolished and value per sq.ft. was determined at Rs.7.76 crores. The property was registered through a registered document on 7th May 2012. The Assessing Officer has concluded that the guideline value applicable on the date of the sale deed alone is to be considered which is determined at Rs.7.76 crores against the sale consideration of Rs.5. 10 crores applicable on the date of agreement to sell. Accordingly, addition of Rs.2.67 crores has been made by the Assessing Officer.

5. In the course of appeal, the appellant submitted that the guideline value on the date of the agreement should be considered and not on the date of registration. The appellant further submitted that she had entered into an agreement to sell on 09.02.2012 and had received a consideration of Rs. 1 crore on the same date. Major part of the consideration, i.e. Rs.3 crores was also received before 31.03.2012. Therefore, according to the appellant the transaction has to be evaluated in terms of guideline value on the date of agreement to sell and not on the basis of guideline value on the date of sale deed. In this regard, the appellant has further placed reliance upon the amendment to S.50C by the Finance Act, 2016 whereby a proviso has been introduced to the said section which provides that where the date of agreement fixing the consideration and the date of registration for the transfer of capital asset are not the same, the stamp duty valuation as on the date of agreement may be taken into account u/s.50C if the consideration or a part thereof has been received through an account payee cheque on or before the date of agreement.

6. The appellant's contentions are examined. Firstly it is observed that the agreement to sell dated 19.02.2012 is between the appellant Mrs. S. Bhuvaneshwari and one Mr. Mohammed Zabir. On the other hand, the sale deed registered on 07.05.2012 is between the appellant and Ms. Mariam Mehmood, Mrs. Thiaka Sithi Aliya and Mr. Mohamed Zabir. Thus the parties with whom the agreement to sell was entered into and the parties between whom the sale deed is entered

into are different. For this reason alone the agreement to sell cannot be taken as the basis for the sale because the actual sale is registered in the name of three persons out of which two are not party to the original agreement to sell.

7. Be that as it may, the provisions of section 50C are unambiguous and it specifically provides that the value adopted by any authority for the purpose of payment of stamp duty should be the value of full sale consideration in respect of a transfer of capital asset being land or building or both. Thus, the section does not give any scope for considering any other value other than the value that is assessed for the purpose of stamp duty valuation. In this case, the sale deed clearly discloses the value of the property at Rs.7,76,70,000/-. In view of the same, there is no scope to consider any other valuation that may have prevailed on the date of agreement to sell.

8. As regards the appellant's reliance upon the proviso enacted to the section by the Finance Act, 2016, it is held that the said proviso is applicable w.e.f.0 1.04.2017 i.e. A.Y. 2017-18 onwards. The proviso reads as follows:

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 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 agreement for transfer.

Reference is made to the Memorandum to the Finance Act, 2016 introducing the proviso. The same is reproduced below for ready reference:

29.1 Section 50C of the Income-tax Act provides that in case of transfer of a capital asset being land or building or both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duly shall be taken as the full value of consideration for the purposes of computation of capital gains. This provision does not provide any relief where the seller has entered into an agreement to sell the properly 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 income-tax Act i.e. when an immovable property is sold as stock-in-trade.

29.2 Section 50C of the Income-tax Act has been amended so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable properly 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 has been further provided 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.

29.3 Applicability: This amendment takes effect from 1st of April, 2017 and will, accordingly, apply from assessment year 2017-18 and subsequent assessment years.

The appellant, however, seeks to give a retrospective effect to the proviso contrary to the specific mandate of the legislature at the time of enacting the proviso.

9. The true nature of a proviso and the principles applicable for the interpretation of the same have been considered by the Honble Supreme Court in the case of S. Sundaram Pillai & Others vs. V.R. Pattabiraman & Others (1985) 1 SCC 591. The relevant part is extracted here:

31. In the case of Local Government Board v. South Stonehand Union, Lord Macnaghten made the following observation:

I think the proviso is a qualification of the preceding enactment, which is expressed in terms too general to be quite accurate.

32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahratta Railway Co. Ltd. V. Bezwada Municipality, Lord Macmillan observed thus:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case.

33. The above case was approved by this Court in C.I.T. v. Indo Mercantile Bank Ltd. Where Kapur, J. Held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuerji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sirtha, Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as slating a general rule.

10. Applying these principles to the proviso inserted by the Finance Act of 2016, it is observed that the proviso lays down an exception to the general rule contained in the sub-section (1) of sec. 50C. Section 50C(1) provides that where a capital asset in the nature of land or building is transferred and the value of consideration received by the assessee is less than the value assessed or assessable for the purposes of stamp duty, such value assessed or assessable for stamp duty should be adopted for the purpose of section 48. This is the general rule applicable to all sale transactions of land and building. The proviso contains an exception to this rule wherein it talks of those transfers of land and building where the date of agreement fixing the amount of consideration and the date of registration are not the same and the consideration for the transaction has been received by way of an account payee cheque or through electronic mode on or before the date of agreement. In such cases, the proviso enacts that the stamp value on the date of agreement may be taken as full consideration. The language of main section is unambiguous and deals with all cases as a general rule wherein the sale consideration should be substituted by the stamp valuation as on the date of registration. Only in the exceptions covered by the proviso, the stamp valuation on the date of agreement to sell can be taken. The proviso is neither in the nature of an explanation nor is it clarificatory of the main section.

11. The Hon'ble Supreme Court in the case of Allied Motors P. Ltd. Vs. CIT 224 ITR 677 had the occasion to consider whether the 1st proviso to section 43B could have retrospective effect. The Hon'ble Supreme Court held that the proviso supplies an obvious omission and but for this proviso the ambit of section 43B becomes unduly wide bringing within its scope those payments which were never intended to be disallowed. The Court went on to hold that a proviso which is inserted to remedy

unintended consequences and make the provision workable, a proviso which supplies an obvious omission in the section required to be treated as retrospective so that a reasonable interpretation can be given to the section as a whole. In this case, however, sub-section (1) of section 50C is clear and unambiguous and cannot be regarded as unworkable or resulting in unintended consequences. The proviso is also not intended to remove any obvious omission or make the section workable. The proviso constitutes a conscious amendment to carve out an exception to the main rule only when certain conditions are fulfilled. The proviso has the effect of giving an entirely different treatment to the exceptions covered by it. Therefore, it cannot be said that it supplies any obvious omission to the main section.

12. The Madras High Court in the case of CIT vs. Sugantha Ravindran 352 ITR 488 had the occasion to consider whether the insertion of the words or assessable' in section 50C through the Finance Act, 2009, w.e.f 01.10.2009, can have application with respect to earlier periods viz. A.Y. 2005-06. At paragraph 10 the High Court has held that the word 'or assessable' included in section 50C w.e.f. 01.10.2009 is neither a clarification nor an explanation to the already existing provision. The High Court has held that the amendment has the effect of including a new class of transactions within the ambit of section 50C, namely transfer of property without or before registration. Hence, the High Court held that the said amendment could not have retrospective effect.

13. The amendment inserting the proviso to section 50C relied upon by the appellant is also in the same category as the amendment considered by the Madras High Court in the case of R. Sugantha Ravindran (supra). The section as originally enacted was applicable to all sale transactions where the conveyance was executed through registered documents. In all such cases, the stamp duty value was deemed to be the sale consideration. The amendment in 2009 adding the words "or assessable" had the effect of bringing within the ambit of the section transactions of sale that were effected without registration. In case of such transactions, the value of the property is the notional stamp duty value assessable if a registered document had been executed on the same date when the agreement fixing the sale consideration is entered into. The section therefore envisages two types of situations. One where there is a transfer of property through a registered document in which case the stamp duty valuation as applicable for the document is to be adopted. The second category considered by the section consists of transactions which are

effected without any registration. In those cases the valuation is a notional valuation of the stamp duty that would have been payable if the transaction had been registered. The 2016 amendment envisages yet another category of transactions in respect of which a further exception is being made. The proviso deals with transactions of sale through duly registered document on a date different from the date when the agreement fixing the sale consideration (agreement to sell) is entered into, and a part of the consideration has been received on the date of such agreement to sell through banking channels. In respect of such transactions, the proviso enacts that the stamp duty value on the date of agreement: to sell will be considered. This is at variance with the main section. Such a transaction would have been subjected to value as on the date of registration, prior to 2016. Now the value to be taken is as on the date of agreement. The proviso no doubt does not bring into the ambit of section 50C any transaction that was not earlier covered by the section. However, the proviso definitely changes the basis of determining the sale consideration under the said section which constitutes a marked departure from the main section. It has application only in those cases that fulfils certain conditions such as receipt of sale consideration through banking channels or by digital mode on or before the date of agreement to sell. Further, it is also possible that the stamp duty valuation on the date of registration may be lower than the valuation prevailing on the date of agreement to sell. Therefore, the section can operate to the prejudice of the tax payer also in certain situations. Just as the Hon'ble Madras High Court held that the 2009 amendment cannot have retrospective effect as it brought to tax a new class of transactions, the 2016 amendment also cannot have retrospective effect as it changes the basis of determining the consideration in respect of certain specified category of transactions.

14. For all these reasons, it is held that the proviso cannot have retrospective effect. Respectfully following the principles laid down by the Hon'ble jurisdictional High Court in the case of R. Sugantha Ravindran, it is held that the proviso inserted w.e.f. 01.04.2017 does not have application during the relevant previous year. Absent the proviso, the language of the section is unambiguous and does not permit any alternate interpretation.

15. Further, in this case, as pointed out in para 6, the registered sale deed is between the appellant as vendor and 3 persons as buyers. There is no agreement to sell between the appellant and these 3 persons. So this is a case where there is only a sale deed that has been registered without a

corresponding agreement to sell between the same parties. Therefore, the appellant's case does not fall within the proviso. For all these reasons, this ground of appeal is dismissed."

6. The learned A.R for the assessee submitted that the learned CIT(A) has erred in confirming additions made by the Assessing Officer towards recomputation of long term capital gain from sale of property by invoking provisions of section 50C(1) of the Income Tax Act, 1961, without appreciating fact that guideline value of property as on date of agreement to sale dated 09.02.2012 is less than agreed consideration fixed for sale of property. The learned A.R further submitted that the learned CIT(A) ought to have appreciated fact that proviso enacted to section 50C by the Finance Act, 2016 w.e.f 01.04.2017 is curative in nature and therefore, has to be applied retrospectively, in view of the decision of the Hon'ble Madras High Court in the case of CIT Vs.Vummudi Amarendran (2020) 120 taxmann.com 171 (Mad). The learned A.R further referring to sale agreement, sale deed between parties and Registration (Tamil Nadu Amendment) Act, 2012, submitted that the Assessing Officer as well as learned CIT(A) have mainly gone on the basis of non-registration of sale agreement to make additions towards capital gain by adopting guideline

value of property as on the date of registration without appreciating fact that registration of document conferring right and title of property was made mandatory by an amendment to the Act with effect from October, 2012 and thus, prior to said date, registration of any document was not necessary. Further, the learned CIT(A) has gone to observe that sale agreement was entered into with different person and sale deed was executed in favour of person other than the agreed person, without appreciating fact that the assessee has agreed to sell property to Mr.Mohamed Zabeer and said property has been registered in the name of his Mother and sister. Therefore, for that reason he cannot said that there is no agreement to sale between the parties. The assessee has entered into sale agreement fixing consideration for sale of property and said agreement was subsequently effected into by registering property in favour of the buyer and thus, consideration fixed as on date of agreement should be considered for the purpose of determination of full value of consideration.

7. The learned D.R., on the other hand, strongly supporting order of the learned CIT(A) submitted that the learned CIT(A)

has brought out clear facts to the effect that agreement to sell is with one person and sale deed was with another person and thus, benefit of proviso to section 50C(1) cannot be given and hence, there is no error in the reasons given by the learned CIT(A) to sustain additions made by the Assessing Officer and his order should be upheld.

8. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We have also carefully considered case laws cited by both the sides. The undisputed facts are that the assessee has entered into agreement to sell on 09.02.2012 for sale of agricultural property for consideration of Rs.5,10,00,000/- and had received an advance of Rs.1.00 crore on 09.02.2012 by cheque. The said sale agreement was given effect by entering into registered sale deed on 07.05.2012 for consideration of Rs.5,10,00,000/-. As per sale deed, entire sale consideration of Rs.5,10,00,000/- has been received by cheque. The assessee has computed long term capital gain by adopting sale consideration as shown in sale deed, whereas the Assessing Officer has adopted sale consideration as per guideline value

fixed by State Government authorities for payment of stamp duty as on the date of registration of sale deed. The assessee claimed that guideline value of property as on date of agreement of sale was less than agreed sale consideration for sale of property. The assessee further claimed that guideline value of property has been revised w.e.f 01.04.2012, as per which value of the property has been assessed for the purpose of payment of stamp duty, which is more than agreed consideration for sale of property and thus, argued that as per the proviso to section 50C(1), where date of agreement fixing amount of consideration and date of registration for transfer of capital asset are not same, value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purpose of computing full value of consideration for such transfer. Since, the assessee has fixed consideration for transfer of property by entering into sale agreement on 09.02.2012, subsequent guideline value of the property as on date of registration of property cannot be adopted for computing full value of consideration.

9. We have given our thoughtful consideration to the arguments advanced by the learned A.R for the assessee in light of reasons given by the Assessing Officer and we ourselves do not subscribe to the reasons given by the Assessing Officer as well as learned CIT(A) to adopt guideline value of property fixed by the State Govt. for payment of stamp duty as on date of registration of sale deed for simple reason that when the assessee has entered into sale agreement fixing amount of consideration for transfer of property, guideline value of property fixed by the authorities for payment of stamp duty was less than agreed consideration shown in sale agreement. Further, guideline value of property has been revised w.e.f. 01.04.2012 (subsequent to the date of sale agreement i.e.,09.02.2012), as per which guideline value of property has been revised to Rs.7,76,70,000/-. Therefore, under these facts, one has to examine, whether the Assessing Officer is right in adopting guideline value fixed by the authorities for payment of stamp duty as on date of registration of property, as against agreed consideration between the parties. The provisions of section 50C(1) deals with deemed consideration to be adopted for computation of capital gain

derived from sale of property, as per which, if consideration fixed for sale of property is less than guideline value fixed by authorities for payment of stamp duty, then guideline value as on date of registration of the property shall be adopted as full value of consideration. Further, a proviso to section 50C(1) has been enacted by the Finance Act, 2016 w.e.f 01.04.2017, as per which where date of agreement fixing amount of consideration and date of registration for transfer of capital asset are not same, value adopted or assessed or assessable by the stamp duty valuation authorities on date of agreement may be taken for the purpose of computing full value of the consideration for such transfer. The proviso further provided 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 agreement for transfer. Though, the proviso to section 50C(1) was inserted by the Finance Act, 2016 w.e.f 01.04.2017, but various Courts have considered the proviso and held that proviso inserted to section 50C(1) by the Finance Act, 2016 w.e.f 01.04.2017 seeks to relieve assessee

from undue hardship and thus, should be taken to be effective from date when main provisions introduced. The Hon'ble Madras High Court in the case of CIT Vs.Vummudi Amarendran (2020) 429 ITR 97 (Mad) has considered an identical issue and held that proviso to section 50C(1) should be taken to be effective from date when provison was introduced. The ITAT., Ahmedabad Benches in the case of Dharamshibhai Sonani Vs. ACIT (2016) 75 taxmann.com 141 (Ahd) had considered an identical issue and held that once statutory amendment is made to remove undue hardship to the assessee and or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law containing such undue hardship was introduced. From the above, it is very clear that although proviso was made applicable by the Finance Act, 2016 w.e.f 01.04.2017, but various courts have clearly held that said proviso was curative in nature and thus, applicable retrospectively with effect from the date main provision was inserted in the statute. If you go by said analogy, then, as per the proviso where date of agreement and date of registration for transfer of property are not the same, then value adopted or assessed or assessable by the stamp valuation authority on

the date of agreement to be taken for the purpose of computing full value of consideration, provided such consideration or part thereof was paid by cheque or through banking channel.

10. In this case, as per agreement between parties, the assessee had entered into sale agreement with one Mr. Mohamed Zabeer on 09.02.2012 and fixed sale consideration of Rs.5,10,00,000/- and had also received advance of Rs.1.00 crore by cheque. The property has been subsequently registered in favour of Mrs. Maryam Mahmood and Mrs. Thaika Sithi Aliya, sister and Mother of Mr. Mohamed Zabeer for a consideration of Rs.5,10,00,000/-. The guideline value of property as on the date of agreement to sell was less than agreed consideration of Rs.5,10,00,000/-. Therefore, we are of the considered view that for the purpose of computation of long term capital gain agreed consideration shown in sale agreement between parties should be considered, irrespective of fact that guideline value of property as on date of registration of property was more than agreed sale consideration. Insofar as, allegation of the learned CIT(A) regarding agreement to sale and registered sale deed with

different persons, we are of the considered view that in the present case agreement was with one Mr. Mohamed Zabeer and sale deed was executed in favour of Mrs. Maryam Mahmood and Mrs.Thaika Sithi Aliya, sister and Mother of purchaser of property and hence, it does not in any way take away right of the assessee to get benefit of proviso to section 50C(1) of the Income Tax Act, 1961. Further, insofar as observations of the learned CIT(A) with regard to non-registration of sale agreement, it is very clear from the Registration (Tamil Nadu Amendment) Act, 2012, any instruments of agreement relating to sale of immovable property registration was made mandatory from October, 2012. Therefore, for non-registration of sale agreement, more particularly when the assessee has subsequently acted upon such sale agreement, benefit cannot be denied to the assessee.

11. In this view of the matter and considering facts & circumstances of the case, we are of the considered view that the Assessing Officer as well as learned CIT(A) has erred in recomputing long term capital gain by adopting full value of

consideration by invoking provisions of section 50C(1) of the Act and further, adopting guideline value of property as on date of registration of property, even though the assessee has fixed consideration for transfer of property by entering into an agreement to sell. Hence, we direct the Assessing Officer to adopt sale consideration for transfer of property as agreed between the parties in sale agreement dated 09.02.2012.

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

Order pronounced in the open court on 27th October, 2021

Sd/-	Sd/-
(वी.दुर्गा राव)	**(जी. मंजुनाथ)**
(V.Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 27th October, 2021
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant 2. Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.