IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K., JUDICIAL MEMBER

ITA No.1322/Bang/2019
Assessment year : 2014-15

Bellandur Chikkagurappa Jayaramareddy, No.11, 1st Cross Road, No.11, 1st Cross Road, Mico Layout, BTM II Stage, Bengaluru – 560 076. **PAN: AASPJ 1621N**	Vs.	The Assistant Commissioner of Income Tax, Circle 4(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Parthasarathi, Advocate
Respondent by	:	Dr. Manjunath Karkihalli, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	24.11.2021
Date of Pronouncement	:	05.01.2022

O R D E R

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the CIT(Appeals) dated 29.3.2019 for the assessment year 2014-15 on the following grounds:-

> "1. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in upholding the assessment of capital gains in the relevant year and also the determination of capital gains in the manner he did.
>
> 2. The learned Commissioner (a) ought to have appreciated that the provisions of Sec.2(47)(v) of the IT Act was applicable when the Joint Development Agreement was executed and

registered as on 1.3.2013 wherein the developer was put in possession and consequently all the conditions of Sec. 2(47)(v) of IT Act r.w.s.53A of the Transfer of Property Act had been satisfied and the 'transfer' for the purpose of capital gains has occurred in the FY: 2012-13 related to the assessment year 2013-14 and thus the capital gains was assessable only in the AY: 2013-14.

3. Without prejudice, the learned Commissioner (A) ought to have appreciated that the contemplated transfer u/s.2(47)(v) has occurred on the date of execution of MOU i.e., 8.4.2013 and accordingly the registerable value as on 8.4.2013 alone could be considered for computation of capital gains.

4. The learned Commissioner (A) erred in upholding the value as on 24.2.2014 being the date of registered Deed of Exchange for determination of capital gains.

5. The learned Commissioner (A) ought to have appreciated the value fixed for registration in the case of Exchange Deed was only a notional value for registration purposes and cannot be held to be the actual consideration for transfer of property.

6. The learned Commissioner (A) erred in holding that the MOU having not been registered, the valuation was not required to be determined as on the date of MOU for the purpose of Sec.50C of the Act.

7. The learned Commissioner (A) ought to have appreciated that the MOU though not registered was acted upon and accepted between the parties to the deed as the conditions for agreement to transfer and consequently the same date ought to have been taken for determination of registerable value as provided u/s.50C rws 2(47)(v) of the Act.

8. The learned Commissioner (A) ought to have accepted the submissions of the appellant and ought to have directed the Assessing Authority to determine the registerable value as on 8.4.2013 u/s.50C of the Act for the purpose of determination of capital gains.

9. The learned Commissioner (A) ought to have appreciated the amendment to Sec.50C by insertion of proviso by Finance Act, 2016 is only a clarificatory and was applicable to even to the relevant assessment year and accordingly the value of balance sale consideration as on 8.4.2013 ought to have been adopted for the determination of capital gains.

10. On the facts the learned Commissioner (A) ought to have accepted the submission made by the appellant and ought to have held that no capital gains was liable to be taxed in the relevant year or in the alternative for the purpose of determination of capital gains in the value of sale consideration was liable to be adopted u/s.50C as on 8.4.2013.

11. The learned Commissioner (A) erred in not allowing the cost of improvement claimed by the appellant while computing the capital gains.

12. Without prejudice, the determination of capital gains is excessive, arbitrary and unreasonable and liable to be reduced substantially.

13. The learned Commissioner (A) erred in levying the interest u/s.234B and 234D of the Act.

14. For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed."

2. At the time of hearing, ground Nos. 1 & 2 were not pressed and the same are dismissed accordingly.

3. Grounds No.3 to 10 are inter-related on the issue whether the CIT(Appeals) was right in holding that amendment to section 50C of the Income-tax Act, 1961 [the Act] which was introduced w.e.f. AY 2007-08 was applicable retrospectively for AY 2014-15 when the language used in the proviso does not indicate that it was inserted as a clarification.

4. The facts of the case are that the assessee, an individual, for the impugned year, filed his return of income on 30.07.2014 declaring a total income of Rs.2,02,59,920/-. In the return, he declared income from Capital gains on transfer of land to the tune of Rs.1,95,75,979/-. The case of the appellant was selected for scrutiny and assessment u/s.143(3) was concluded on 21.7.2016 declining to accept the capital gains declared by the assessee and determined the same at Rs.8,85,77,941.

5. The assessee along with his family members inherited an immovable property bearing Sy.No.22/2A measuring 2 acres and Sy.No.22/ lE of 1 Acre 22 Guntas by way of Partition Deed dated 01.11.1983. The assessee further purchased land measuring 22 Guntas at Sy.No.33/ 1, situated at Kaikondarahalli Village, Varthurhobli, Bangalore East Taluk, on 17.03.1986. The total extent of land held by the assessee and his family members were 4 acres and 04 guntas.

6. By way of partition deed dated 24/03/2011 the assessee and his son have been allotted 2 Acres of land i.e., 1 Acre each for the assessee and his son situated at Sy. No.22/2A at Kaikondahalli Village, Bangalore. The assessee was also owning 22 Guntas which was purchased by him situated at Sy No.33/1 at Kaikondahalli Village, Bangalore. The entire extent of 2 Acres and 22 Guntas is hereinafter referred to as "Property A". The assessee was owning and entitled for 1 Acre and 22 Guntas out of the scheduled "Property A".

7. The assessee and his family members collectively entered into a registered Joint Development Agreement dated 01-03-2013 with BREN CORPORATION (hereinafter referred to as "Developer") for an extent of 3 Acres and 22 Guntas out of which 2 Acres and 22 guntas owned by the assessee and his son at Sy No.22/2A and the balance of 1 Acre of his daughters. The assessee also executed a registered General Power of

Attorney dated 01-03-2013 in favour of the Developer for the purpose of development on the said land. The Developer commenced the construction of the built-up area on obtaining necessary approvals. The GPA executed in favour of the Developer empowered the Developer to enter into Agreement to Sell or Part with the built-up area falling to the share of the Developer.

8. The Developer owned a Commercial Building generally known as BREN ZION (hereinafter referred to as Property 'B)', situated at Varthur Road, White-field sub-division, Mahadevapura, Bangalore measuring 1,61,503 square feet of built-up area and 87,120 square feet of land. The Developer had let-out the commercial property referred supra on lease to M/s. Trent Hypermarket Limited and M/s. Trent Limited and had received a refundable lease deposit of Rs. 19,69,00,000/-.

9. The assessee, before the completion of construction of the super built-up area in the Property 'A', entered into a Memorandum of Understanding (MOU) dated 08-04-2013 with the Developer. The sum and substance of MOU was that the assessee would transfer the entire portion of the Property 'A' in exchange of the entire portion of the Property B'.

10. According to the terms and conditions of the MOU, the land offered for JDA measuring 3 Acres 22 Guntas was amended to be 1 Acre and 22 Guntas and the assessee and his son agreed to execute a Deed of Exchange conveying the Property 'A' in favour of the developer including the balance 2 Acres to be utilized by the Developer as he deems fit, in exchange of the Property 'B' being the Commercial Property referred above. As agreed under the MOU, and further as a mark of performance of the agreed contract, the assessee and his son executed a registered Deed of exchange dated 24-02-2014 conveying the Property 'A' in favour of the Developer and in return, the Developer conveyed the Property 'B' to the

assessee and his son. Property 'A' and 'B' were exchanged after payment of stamp duty on an assessable value of Rs.54,00,00,000/-. In accordance with the guideline value for the purpose of stamp duty, the Developer deducted tax at source under Section 194-IA of the Act to the tune of Rs.54,00,000/- at the rate of 1%. The above narrated facts are not disputed by the AO.

11. The assessee while filing the return of income has computed the capital gains by taking guideline value as on 8.4.2013 being the Date of MOU in respect of Property -A" as sale consideration and determined the capital gains at Rs.1,95,75,979.

12. The AO during the course of assessment proceedings, issued show-cause notice to the assessee asking to show-cause as to why the amount assessed for the purposes of stamp duty be considered as Sale Consideration for the purposes of computation of capital gains under the Act and also why the date of transfer be considered to be 24-02-2014 instead of 08-04-2013. The assessee in response submitted that the method and manner of computation of capital gains as declared by him was correct and complete. In a nut-shell, the submissions made are as under:-

(i) On execution of the JDA dated 01-03-2013, the Appellant transferred 62% of 1 Acre out of the Property 'A' to the Developer by virtue of operation of Section 53-A of the Transfer of Property Act, 1882 read with Section 2(47)(v) of the Act and to such extent income ought to have been assessed in the AY 2013-14.

(ii) Alternatively, the date of transfer of Property is to be considered as on 08-04-2013 being the date of MOU as the Developer was put in possession of the Property 'A' and the guidance value of

Property 'A' is to be considered as sale consideration for computation of capital gains.

(iii) Alternatively, since the delivery of possession was complete on 08-04¬2013, the date of transfer of property is to be considered as on 08-04¬2013 being the date of MOU and the guidance value of Property S' as on 08-04-2013 is to be considered as sale consideration after deducting an amount of Rs. 14,00,00,000/- paid by the appellant and Rs.19,69,00,000/- lease deposit considering the amendment made to the provisions of Section 50C by the Finance Act, 2016.

(iv) The cost of acquisition and improvement is to be considered judiciously.

13. It was submitted that an advance of Rs.2,50,00,000/- was already paid by cheque and liability to the extent of Rs. 19,69,00,000/- was taken over as on the date of MOU and hence the guidance value as on the date of MOU is the criteria for computing long term capital gains and not the stamp duty value as on the date of the exchange deed.

14. The ld. AR submitted that the AO, without considering the merits involved in the submissions of the assessee has framed the assessment in the following manner:-

(i) The date of JDA cannot be considered as date of transfer since, by virtue of JDA, the Appellant allowed only conditional and permissive possession not covered under the provisions of Section 2(47)(v) of the Act.

(ii) That the date of transfer of asset i.e., the date of transfer of Property 'A' is the date of exchange Deed i.e., 24-02-2014 and not the date of MOU and the FMV of Property 'B' is to

be considered as sale consideration for the purpose of computation of capital gains.

15. The assessing authority has concluded that the guideline value of the property should be taken only on the date of registration of the exchange deed and not on the date of MOU which was not registered. He had referred to several cases to suggest that the JDA executed cannot be considered to be the date of transfer and the capital gains cannot be shifted to AY 2013-14.

16. Aggrieved, the assessee filed appeal before the CIT(Appeals). It was submitted that the capital gains had arisen in 2 years as follows:-

Particulars	Date of transfer	A.Y.	Remarks	Sale consideration to be adopted
62% of the undivided share out of 1 Acre in Property 'A' offered for Joint Development	1.3.2013	2013-14	Deemed transfer by virtue of section 2(47)(v)	Guidance value of 1 acre out of Property A to the extent of 62% as on 1.3.2013.
Appellant's portion of the undivided share in Property 'A'	8.4.2013	2014-15	Date of MOU will be date of transfer by reason of actual possession.	Guidance value of Property 'A' to the extent of assessee's share.

17. On execution of the JDA, such transaction is exigible to capital gains by operation of Section 2(47)(v) of the Act read with 53A of the Transfer of Act. 1882 as all the conditions laid down therein stands fulfilled.

18. The Developer has started construction which itself is self-explanatory that the was acted upon. Under Section 2(47)(v), any transaction involving allowing possession to be taken over or retained in

part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act would come the ambit of Sec 2(47)(v). That, in order to attract Sec 53A the following conditiions need to be fulfilled.

(i) There should be a contract for consideration;

(ii) It should be in writing; it should be signed by the transferor;

(iii) It should pertain to transfer of immovable property;

(iv) The transferee should have taken possession of the properly;

(v) The transferee should be ready and willing to perform his part of the contract.

19. The ld. AR submitted in the instant case, all the above are fulfilled to the extent of developer's share in Property 'A'. That even arrangements confirming privileges of ownership without transfer of title would fall under Section 2(47)(v). The assessee had made all arrangements to convey the Property 'A' to the Developer and consequentially, the 'transfer' has been effected in the AY 2013-14.

20. Reliance is placed on the decision of the Hon'ble Jurisdictional High Court in the case of *Dr. T K Dayalu Vs. CIT reported in 202 Taxman 531/60 DTR 403*. The Hon'ble High Court has followed the decision of the Mumbai High Court in the case of *Chaturbhuj Dwarkadas Kapadia vs. CIT*.

21. The Bangalore Tribunal in the following cases has held that the transfer happens as on the date of JDA since the owner contracts to transfer the land to the developer and that the owner actually puts the developer in possession consequentially attracts the provisions of sub-clause (v) of sub-section 47 (v) of Section 2:-

(i) ACIT Vs. M/s. Shankar Vittal Motor Co. Ltd in ITA No. 35/Bang/2015.

(ii) N G Chandra Reddy (HUF) Vs. DCIT in ITA No. 390/Bang/2015.

22. The ld. AR submitted that the AO ought to have adhered to judicial propriety by following the decisions of the Hon'ble High Court and jurisdictional Tribunal. Therefore, the transfer of developer's share in the Property 'A' is made during the AY 2013-14 and is to be taxed accordingly.

23. Further thereto, when the transfer of developer's share has happened in AY 2013-14, the sale consideration is to be adopted considering the guidance value of land as on 01-03-2013 (i.e., the date of JDA) following the decision of the Tribunal referred to supra.

24. Without prejudice to the submissions made above, it is submitted that the date of MOU is to be regarded as date of transfer due to the following reasons:-

(i) The Appellant has factually put the Developer in possession of the land attracting the provisions of Section 2(47)(v).

(ii) The Appellant has contracted in writing by way of a Memorandum of Understanding dated 08-04-2013 to convey the property to the developer.

25. The AO in his order has not disputed about the Developer being in possession of Property 'A'. He has only stated that the possession given by virtue of JDA is conditional and permissive. Assuming for argument sake, possession was permissive, by execution of MOU, the conditions agreed initially stands vitiated and the conditions laid out in the MOU would come into operation. As agreed under the MOU, the Developer was put in

possession of *A. as a part performance of the entire contract to transfer the property in favour of the Developer.

26. The AO has also held that the contract of conveyance by way of MOU will not hold water as it is not registered as per the requirements of 17 of the Registrations Act, 1908 and any conveyance of immovable property has to be effected only by way of registered document.

27. It is submitted that for the purposes of income-tax, a capital asset is said to been transferred when a person does any of the acts prescribed under the of Section 2(47) of the Act. If a person is put in possession of any immovable property, then such action would be regarded as transfer, regardless of the transfer of title deeds by way of a conveyance deed under any other law. The requirement of registration under the registrations Act and under the Transfer of Property Act, 1882 is only a procedural requirement.

28. The Hon'ble Punjab & Harayana High Court in the case of *Sukhwinder Kaur Vs. Amar Singh AIR 2012 P&H 166 PLR 241* has observed that "as an agreement to sell does not create a right, title or interest to the property, hence an agreement not required to be registered and the same is an admissible as evidence in a suit for specific performance of the contract".

29. Also, the Hon'ble Supreme Court in the case of *S.Kadevi vs. V.R.Somasundaram _:13 (4) MPHT* has held in Para 11, 12 and 16 of the said decision in particular, which reads thus:-

> "11. The main provision in Section 49 provides that any document which :s required to be registered, if not registered, shall not affect any =movable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an

unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in rice as evidence of a contract in a suit for specific performance of contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement sale under the proviso to Section 49 of 1908 Act.

12. Recently in the case of K.B. Saha and Sons Private Limited v. Consultant Limited!, this Court noticed the follorth7g--a:ernent of Mulla in his Indian Registration Act, 7th Edition, at page 189:-

> " .... The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it ..."

This Court then culled out the following principles:-

> "1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
>
> 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.

> 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
>
> 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.
>
> 5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."
>
> To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.
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> ……..
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> 16. The argument of learned counsel for the respondents with regard to Section 3(b) of 1963 Act is noted to be rejected. We fail to understand how the said provision helps the respondents as the said provision provides that nothing in 1963 Act shall be deemed to affect the operation of 1908 Act, on documents. By admission of an unregistered sale deed in evidence in a suit for specific performance as evidence of contract, none of the provisions of 1908 Act is affected; rather court acts in consonance with proviso appended to Section 49 of 1908 Act."

30. The Hon'ble Supreme Court has opined that when an unregistered document is tendered in evidence, not as evidence of a completed sale, but as proof of an agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Sec.49 of the Act of 1908. The Hon'ble Apex Court went on to observe that admission of an unregistered sale deed by the Court in such cases would be in consonance with the proviso appended to Sec.49 of the Act of 1908.

31. The ITAT Kolkata in ITA No.1356/Kol/2017 has followed the Supreme Court judgment and allowed the appeal of the assessee:-

32. In view thereof, the MOU, which contracted to transfer the property, was an agreement to sell which need not be registered as contemplated by the learned assessing officer under the facts and circumstances of the case. Further, it is not disputed by the AO that the Developer was not in possession of the property. In these circumstances, all the conditions laid down in Section 53-A of the Transfer of property Act stands fulfilled along with the conditions of registration which the Hon'ble court has held it to be procedural. Due to all the legal elucidations made, it was prayed to hold that the transfer of Property 'A' has been effected on the date of MOU i.e., 08-04-2013 and the computation of capital gains is to made accordingly.

33. In fact the very fact that at the time of MOU the assessee has undertaken to absorbed liability of Rs.19,69,00,000/- payable by the transferee and out of the consideration payable of Rs.14 crore, Rs.2.5 crore had already been paid which would go to show that the MOU had been acted upon to justify the application of Sec.53A of the Transfer of Property Act r.w.s. 2(47)(v) of the I.T .Act. Further, the first proviso to Sec.50C(1) of the Act would support the case of the assessee. Though the proviso was inserted by the Finance Act, 2016 with effect from 1.4.2017, it is only clarificatory in nature.

34. Assuming for argument sake though not conceding, if the date of transfer is considered to be the date of exchange deed, in such circumstances, the MOU would nonetheless be regarded as Agreement to Sell. The value or FMV as on Agreement to Sell (MOU in the instant case) is to be adopted and not the deed of sale (Exchange deed in the instant case). This is due to the reason that the assessee already contracted to transfer and the FMV is reasonably arrived at on such date. Unless there is

a revision in the sale price originally agreed, there would be no extra benefit that the assessee would be deriving from transfer of the asset. The amendment made to the provisions of Section 50C of the Act by the Finance Act, 2016 by insertion of proviso clarifies and fortifies the contentions of the Appellant. The relevant portion of the law is reproduced below:-

> Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of capital asset are not the same, the value adopted or assessed or assessable by stamp valuation authority of 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 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.

35. It is submitted that the above amendment made by the Finance Act is curative in nature and would apply retrospectively from the date of insertion of the main section of 50C. Further, the first as well as the second proviso applies to the instant case being (i) the date of registration is different from that of the agreement and (ii) the appellant has made part payments by the modes specified before the specified date.

36. In this regard, reliance is placed on the decision of the Tribunal of Vizag in the case of *Chalasani Naga Ratna Kumari Vs. ITO* vide order dated 23-12-2016 which has upheld the above ratio. The relevant observations of the tribunal are noted below:-

> "A proviso to Section 50C of the Act has been inserted to resolve genuine hardship, in the case. The said proviso to Section 50C has been examined by the coordinate bench of ITAT, Ahmedabad bench in the case of Dharma Sibai Sonani Vs. DCIT in ITA No.

> 1237/ Ahd/ 2013 dated 30-09-2016 and held that the proviso to Section 50C of the Act is curative in nature and intended to remove an undue hardship to the assessee and accordingly given retrospective effect from 01-04-2003 i.e., the date effective from which Section 50C was introduced."

37. Especially when the genuineness of the MOU cannot be doubted, in fact the date of exchange it is clearly observed that the execution of the Exchange Deed is in pursuance of the MOU executed by the parties. Thus, the genuineness of the MOU is not challenged by the assessing authority. The mere fact that the said MOU was unregistered was of no consequence to apply the proviso to Sec.50C when there is adequate proof for the performance in pursuance of the MOU. As stated earlier the unregistered agreement was permissible to consider as an evidence with the performance in pursuance of the agreement has been established when the agreement i.e., MOU which has also been considered in the Exchange Deed executed later it is clearly show that the agreement was in existence between the parties as on the date should be MOU i.e., 8.4.2013. In the circumstances, the proviso to Sec.50C is applicable even for the relevant year. In addition to the judgment of the ITAT, Vishakapatnam referred to supra the following judgments also supports the case of the assessee.

38. The ITAT, Bangalore has considered this issue in the case of N A Haris vs. Addl. CIT [188 ITD 517, Bangalore]. Similar ratio has been laid down by the ITAT, Ahmedabad in the case of Smt. Kundanben Ambalal Shah vs. ITO. The Hon'ble High Court Madras in the case of *CIT vs. Sri. Vummudi Amarendran* - TCA. No.329 of 2020 dt.28.09.202D has held that the provisions Sec.50C is retrospective.

39. Thus. The ld. AR submitted that the guideline value to be adopted for determination of capital gains should be as on the date of MOU i.e., 8.4.2013. In the circumstances, it is submitted that the capital gains on

exchange of the property is determinable only for the AY 2014-15 and the value or the transaction is required to be determine only in accordance with the guideline value as on 8.4.2013 for the purpose of computation of capital gains and the assessee having been adopted the same, the impugned addition is liable to be deleted.

40. The ld. DR submitted that the proviso is in force from 1.4.2017 and the assessee's case belongs to AY 2014-15. The contention is that 2nd proviso has to be fulfilled, the 1st proviso is applicable. The assessee received nothing on the payments mentioned therein as on the date of MoU from the buyer, therefore 1st proviso does not apply to this case. Section 50C is applicable in special cases as a reading of the section suggests. It is attracted when the considered received or accruing as a result of transfer by assessee of a capital asset is less than the value adopted by any authority of State Govt. In assessee's case, the sale consideration is more than the value adopted by the authority of State Govt. and therefore, the section is not applicable in the facts of the case. The contention that consideration for the said property is not determinable is absolutely untenable. The consideration was mentioned at Rs.54 crores. According to the ld. DR, there was no evidence to the effect that the assessee has paid any consideration vide MoU dated 8.4.2013. He relied on the orders of lower authorities.

41. We have heard both the parties and perused the material on record. In this case, the following facts are important for adjudicating the issue:-

i. The acquisition of a part of the property was through partition deed dated 01.11.1983 including land at Survey No. 22/1E, 22/2A at Kaikondarahalli Village, Varthur Hobli, Bangalore East Taluk.

ii. The assessee further received properties vide partition deed dated 24.03.2011 which include 50% of the land at

Survey No. 22/2A at Kaikondarahalli Village, Varthur Hobli, Bangalore East Taluk, measuring about two acres.

iii. The assessee purchased on 17,03.1986, 22 guntas of land at Survey No. 33/1 at Kaikondarahalli Village, Varthur Hobli, Bangalore East Taluk.

iv. The assessee entered, along with his Son, B J Ravichandra; into the JDA of the properties at Survey No. 22/2A and 33/1 at Kaikondarahalli Village, Varthur Hobli, Bangalore East Taluk (hereinafter together referred to as schedule A property) for developing a residential apartment project with a Developer named Bren Corporation.

v. The assessee contends by mentioning sub-clause 1 of clause 2 of the JDA that the possession had been taken by the Developer as on the date of the JDA i.e. 01.03.2013.

vi. The assessee contends that he subsequently negotiated with the developer and on mutual agreement; they modified the contract i.e. the JDA. The Developer owned property named Bren Zion at Municipal No 2530/Survey No 42/5/Municiple No 21 of Munnekolalu in Varthur Road, Whitefield Sub-division, Mahadevapura Range, Bangalore measuring about site of 87,120 sq ft and building (thereafter together referred to as Schedule)3 property). The contract was modified by way of entering into a MoU dated 08.04.2013 whereby it was agreed between the parties thereto that schedule A and schedule B properties would be exchanged in accordance with the terms agreed upon in the MoU.

vii. The assessee contends that deemed transfer has taken place on the date of MoU as per Section 2(47) of the Act. The assessee quoted provisions of Section 53A of the Transfer of Property Act, 1882 to reiterate his contention that the deemed transfer of Schedule A property has taken place on the date of MoU i.e. 08.04.2013.

viii. The assessee contends that properties having been exchanged, the consideration for the same has be based

upon the fair market value, which may be decided as per the guidance value determined by the State Government/Stamp Authorities for the purpose of registration of the properties. The assessee argues that the guidance value for Schedule A property was much less than that for Schedule B property.

ix. The assessee therefore contends that guidance value for schedule A property as on 08.04.2013 is the value to be considered while computing the capital gains arising out of the transfer of the said property; which is 5,73,75,000. His share of it, is about k3,48,75,000.

x. The assessee contends that since the deemed transfer of schedule A property has taken place on 08.04.2013, the revision of guideline values effected on 12.08.2013 by the State Government resulted in guideline value of schedule B-property to rise to 54,00,00,000 and accordingly stamp duty, registration and TDS was done for the transfer taking 54,00,00,000 as consideration. The date of execution of exchange deed has no relevance in respect of schedule A property as deemed transfer of schedule A property has taken place on the date of execution of MoU.

42. Now the contention of the ld. AR is that deemed transfer has taken place on the date of MoU i.e., 8.4.2013 as per section 2(47) of the Act. As such, the guidance value as it stood on the date of MoU i.e. 8.4.2013 has to be considered for determining the sale consideration and the revised guidelines value effected on 12.8.2013 by the State Govt. cannot be considered on the basis of which the JDA was entered. The contention of the ld. DR is that there was no evidence to suggest that the assessee has satisfied the condition laid down in 2nd proviso to section 50C of the Act that there was no payment of any consideration vide MoU dated 8.4.2013, as such it cannot be applied and this came into effect from 1.4.2017 and the assessee's case is relating to AY 2014-15.

43. Now the first issue before us is whether the 1st proviso to section 50C is prospective or retrospective. Section 50C(1) reads as under:-

> "50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :
>
> Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:
>
> 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 39[or through such other electronic mode as may be prescribed40], on or before the date of the agreement for transfer:
>
> Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and 41[ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration."

44. The legislature took note of the fact that there are different situations where sale agreements are entered into between the parties for an agreed sale consideration and paid a part of sale consideration as advance and the agreement was put in writing and sale deed is to be considered on a subsequent date, so there was amendment to section 50C of the Act.

45. In the present case, the JDA was executed on 1.3.2013. MoU was entered on 8.4.2013. The guidelines value was revised on 12.8.2013. According to the assessee, transfer took place on the date of JDA on 1.3.2013 and the relevant value as on the date of JDA or the date of MoU to be applied, instead of applying guidelines value on 12.8.2013 in view of the proviso to section 50C(1) of the Act.

46. Proviso to section 50C(1) deals with cases where the date of agreement fixing the amount for consideration and the date of registration for transfer of capital asset are not the same. The value adopted or assessed or assessable by the stamp valuation authority on the date of agreement to be taken for the purposes of computing full value of consideration for such transfer. This amendment by insertion of proviso seeks to relieve the assessee from undue hardship. This was considered by the Madras High Court in *CIT v. Vummudi Amarendran, 429 ITR 97 (Mad)* wherein it was held as under:-

> "11. The Hon'ble Supreme Court in CIT v. Calcutta Export Co. [2018] 93 taxmann.com 51/255 Taxman 293/404 ITR 654, considered the question as to whether the amendment made by the Finance Act 2010 to Proviso of Section 40(a)(ia) of the Act is curative in nature and it has to given retrospective operation from the date of insertion of the said proviso i.e., with effect from Assessment Year 2005-06. It was pointed out that the purpose of the amendment made by the Finance Act 2010 is to solve the anomalies with the instrument of section 40(a)(ia) of the Act, caused to the bona fide tax payer. It was further held that the amendment even if not given any operation retrospectively, may not materially to be of consequence to the Revenue when the tax rates are stable and uniform or in cases of big assesses having substantial turnover and equally huge expenses and necessary cushion to absorb the effect; however a marginal and medium tax payer who work at low gross product rate and when expenditure becomes subject matter of an order under section 40(a)(ia) is substantial, can suffer severe adverse consequence if the amendment made in 2010 is not given retrospective operation

i.e., from the date of substitution of the provision. Thus, the amendment made by the Finance Act 2010 being curative in nature was held to be retrospective in operation. In the above decision, the Hon'ble Supreme Court took note of the fact that the statutory amendment was being made to remove undue hardship to the assessee or held to be retrospective.

12. The Hon'ble Supreme Court in Kolkata Export Company took note of the earlier decisions on the same issue in the case of Allied Motors (P.) Ltd. v. CIT [1997] 91 Taxman 205/224 ITR 677, Whirlpool of India Ltd. v. CIT [2000] 245 ITR 3, CIT v. Amrit Banaspati Co. Ltd. [2002] 123 Taxman 74/255 ITR 117 (SC) and CIT v. Alom Enterprises [2009] 185 Taxman 416/319 ITR 306 and held that the new proviso should be given retrospective effect from the insertion on the ground that the proviso was added to remedy unintended consequences and supply an obvious omission. The proviso ensured reasonable interpretation and retrospective effect would serve the object behind the enactment. Thus by taking note of the above decisions, we have no hesitation to hold that the proviso to Section 50C(1) of the Act should be taken to be retrospective from the date when the proviso exists. The CIT(A) while allowing the assessee's appeal vide order dated 25-7-2019, took note of the submissions made by the assessee wherein they placed reliance on the decision of the Ahmadabad Bench of the Tribunal in the case of Dharamshibhai Sonani v. Asstt. CIT [2016] 75 taxmann.com 141/161 ITD 627, order of the Delhi Bench of the ITAT in the case of Income tax Officer v. Modipon Ltd. [2015] 57 taxmann.com 360/154 ITD 369.

13. On a reading of the order passed by the CIT(A), it is interesting to note the report submitted by the Income-tax Simplification Committee set up in 2015, headed by a Former Judge of the High Court, Delhi.

14. Mr. T. Ravikumar, learned Senior Standing Counsel is right in a submission that this report is not binding or cannot be taken to have a statutory force. Nevertheless Simplification Committee was consisted of experts in the field of taxation and it would be worthwhile and interesting to note as to why they have considered the insertion of the proviso to section 50(C) of the Act should be held to be retrospective; In the report there is an extract

of Memorandum explaining provisions of Finance Bill 2016 which reads 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. 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."

15. Taking note of the above Memorandum, it was pointed out that once 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. The report also referred to the decision in the case of Alom Enterprises (supra).

16. Reverting back to the decisions relied on by the Revenue, the decision in Bagri Impex (P.) Ltd. (supra) is distinguishable on facts as the assessee therein contended that the date of agreement should be taken as date on which the property was transferred by bringing the same within the ambit of section 2(47) of the Act, which is not the case before us. In Ambattur Clothing Co. Ltd. (supra), the assessee contended that since the buyer wanted the Sale Deed to be released after registration, they had paid stamp duty as per the guideline value which is higher than the sale consideration agreed to be paid on the instruments. This explanation offered by the assessee was found to be factually incorrect and rejected and in the background of the said facts, the Hon'ble Supreme Court observes that the Assessing Officer was justified in treating the value adopted by the stamp valuation authority as the deemed sale consideration, received/accruing as a result of transfer.

17. On going through the facts of the case on hand, we find that no such observation was made by the Assessing Officer. The assessee's consistent case was that the sale consideration agreed to be paid to him by the purchaser was Rs. 19 crores and Rs. 6 crores was received as advance on the date of entering into the Agreement for Sale. However, the Assessing Officer disbelieved the same and applied the guideline value at Rs. 27 crores on the date when the Sale Deed was executed and registered. Therefore, in our considered view, the decision in Ambattur Clothing Co. Ltd. (supra) cannot be applied with the facts and circumstances of the case on hand.

18. Mr. T. Ravikumar, learned counsel is right in a submission that the observations made by the Tribunal qua the decision of the Hon'ble Supreme Court in Vatika Township (supra) is incorrect. In fact we find that the Tribunal did not assign any reasons as to why the decision in Vatika Township do not apply to the facts of the case. In fact the decision in Vatika Town Ship should be referred for the purpose as to when a Statute can be treated to be clarificatory and when not?. The legal principle laid down therein ought to have been taken note of by the Tribunal. Therefore, the Tribunal may not be fully right in stating that the judgment in Vatika Township (supra) will not be applicable to the facts as the judgment needs to be looked into to consider the legal principle

of retrospectivity, retro activity or perspectivity. In any event, the ultimate conclusion arrived at by the Tribunal confirming the above order passed by the CIT(A) cannot be found faulted with."

47. In the present case, admittedly there was MoU dated 8.4.2013 as per which payment has been made as follows:-

"WHEREAS the members of the First Party are not able to derive any income of whatsoever nature from the Schedule 'A' Property and they are not equipped with any experience in developing the Schedule 'A' Property or have command over funds for such large development and hence are on look out for disposal of the same to intending buyers And utilise from the proceeds realized by sale thereof for buying a commercial property yielding periodical income and also acquire certain apartments for their beneficial use and enjoyment. The Second Party is in the filed of Real Estate development of Properties and is on look out for suitable property for development of the same into apartment buildings and disposal thereof. The members of First Party having come to know of the said fact approached the Second Party and discussed the exchange and valuation of Schedule 'A' and 'B' Properties and based on discussions offered to transfer Schedule 'A' Property to Second Party and pay Second Party Rs.14,00,00,000/- (Rupees Fourteen Crores Only) in exchange of the Second Party transferring Schedule "B' Property in their favour by assigning liability to refund to the aforesaid Lessees the Refundable Deposit received under lease of Schedule 'B' Property. The Second Party having considered the offer of members of First Party, agreed to exchange Schedule Property as aforesaid.

WHEREAS the parties thus discussed the method and manner of exchanging Schedule 'A', and 'IT Properties with the liability of the deposit to be refunded in terms of the Lease Deed dated 12/09/2012 and the parties have agreed for the following :

WHEREAS the members of the First Party have thus agreed to transfer all their right, title, interest, ownership -and possession in the Schedule 'A' Property to the Second Party free from all encumbrances and in addition thereto pay the Second Party

Rs.14,00,00,000/- (Rupees Fourteen Crores Only) in the form of payment and also undertake the liability of the Second Party to refund to the Lessees under the Lease Deed dated 12/09/2012 the said sum of Rs. 19,69,00,000/- (Rupees Nineteen Crores Sixty Nine Lakhs Only) refundable to them in terms of the said Lease Deed. The Second Party, in consideration of acquiring Schedule 'A' Property in exchange as aforesaid, has agreed to transfer the Property described in Schedule 'B' herein free from all encumbrances with the obligation and liability of Rs.19,69,00,000/-(Rupees Nineteen Crores Sixty Nine Lakhs Only) being the interest free refundable deposit to be refundable to Lessees under Lease Deed dated 12/09/2012 and the aforesaid exchange is based upon the mutually agreed values fixed by the parties to each of the Schedule 'A', and 'B' Properties. In order to equalize the values of the Properties exchanged, the members of the First Party agreed to pay the Second Party Rs.14,00,00,000/- (Rupees Fourteen Crores Only) in the form of payment and undertaken the responsibility to discharge Rs.19,69,00,000/- (Rupees Nineteen Crores Sixty Nine Lakhs Only) to the aforesaid Lessees viz., M/s.Trent Hypermarket Ltd., and M/s.Trent Ltd., in terms of the Lease Deed dated 12/09/2012 and thus the values of the Properties exchanged bear equal values.

WHEREAS in view of the aforesaid agreement reached between the parties, the members of First Party have agreed to transfer Schedule 'A' Property in favour of Second Party by undertaking the liability and responsibility of discharging Rs.19,69,00,000/- (Rupees Nineteen Crores Sixty Nine Lakhs Only) to the Lessees under the Lease Deed dated 12/09/2012 by making the following representations:-

a) that the members of First Party are the sole and absolute owners of the Schedule -A' Property and their title to the Schedule -A' Property is good, marketable and subsisting and that none else have any right, title, interest or share therein and that cost of good title shall be that of members of First Party at all times and Schedule 'A' Property is free from encumbrances and claims including all claims by way of sale, exchange, mortgage, gift, inheritance, trust, possession, easement, lien or otherwise.

b) that the members of First Party have not entered into any agreement or arrangement for sale of the Schedule 'A' Property with anyone else and have not executed any Power of Attorney to deal with the Schedule 'A' Property;

c) that the Schedule 'A' Property is not subject matter of any proceedings and the same is not attached or sold or sought to be sold in whole or in portions in any Court or other Civil or Revenue or other proceedings and not subject to any attachment by the process of the courts or in the possession or custody by any Receiver, Judicial or Revenue Court or any officer thereof;

d) that members of First Party do not have any pending liabilities with regard to income tax, wealth tax, gift tax or any other tax which would affect their title to the Schedule 'A' Property;

e) that there are no easements, quasi-easements, restrictive covenants or other rights or servitudes running with Schedule 'A' Property which will affect the right, title, interest and ownership in Schedule 'A' Property or peaceful enjoyment of the same;

f) that the members of First Party have not received any notice of acquisition or requisition from the Government or other authorities including from the Bangalore Development Authority or from any other authorities and the Schedule 'A' Property is not being acquired under the provisions of any act and the Schedule 'A' Property is free from all such proceedings;

g) that there are no tenancy claims in respect of the Schedule -A' Property under the Karnataka Land Reforms Act, 1961;

h) that the members of First Party do not hold land in excess of the Ceiling limit as prescribed under the Karnataka Land Reforms Act;

i) that the Schedule 'A' Property is not a granted land to Schedule Caste and Schedule Tribes and there is no

prohibition or bar or impediment for sale of the Schedule -A' Property to anyone else;

j) that the members of First Party are not restrained, as on date under any statute, law or enactment or any order, verdict or judgment from dealing with or disposing of or parting with possession of the Schedule 'A' Property;

k) that the members of First Party have paid the municipal property taxes, cesses and other statutory charges that have fallen due for payment upto date;

1) that the members of the First Party alone are fully liable and responsible for discharging the liability of Rs.19,69,00,000/- (Rupees Nineteen Crores Sixty Nine Lakhs Only) refundable in terms of the Lease Deed dated 12/09/2012 to M/s.Trent Hypermarket Ltd., and M/s.Trent Ltd., without making the Second Party liable or responsible for the same;

m) that the members of the First Party would on exchange of Schedule 'B' Property comply with the obligations stipulated on the Lessors in the Lease Deed dated 12/09.2012 and promptly and diligently undertake with the said Lessees to refund the deposit aforesaid and sign and execute the required Deed of Attornment/Letters recognizing themselves as the Lessors under the Lease Deed in the place of the Second Party;"

48. There was payment of RS.2,50,00,000 on 23.11.2011 by cheque No.259865 drawn on Vijaya Bank, Sarakki Branch, Bangalore. Being so, the argument of the ld. DR is that MoU is not suggesting any payment so as to apply the proviso to section 50C, thus it is deemed retrospective in nature. In our opinion, as held by the Madras High Court in the case of *Vummudi Amarendran (supra),* proviso to section 50C(1) is retrospective in nature applicable from AY 2014-15. Further part of the consideration has already been passed through MoU as enumerated above. It cannot be said that no consideration is paid on the date of MoU. This finding of the

lower authorities is not proper. Accordingly, we hold that proviso to section 50C(1) by the Finance Act, 2016 is retrospective and also the assessee proved that the 2nd proviso to section 50C(1) is satisfied since the assessee has paid a part of sale consideration on the date of such MoU dated 8.4.2013. In view of this, we hold that the guidance value has to be computed as prevailing on the date of MoU dated 8.4.2013.

49. Accordingly, the appeal of the assessee is allowed.

Pronounced in the open court on this 5th day of January, 2022.

Sd/-	Sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 5th January, 2022.

/*Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.