

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

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

ITA No.602/Hyd/2020		
Assessment Year: 2014-15		
Smt. Neela Reddy Moramreddy Garu, Hyderabad PAN:AFAPM7614R	Vs.	Income Tax Officer Ward 14(5) Hyderabad
(Appellant)		(Respondent)
ITA No.3/Hyd/2021		
Assessment Year: 2014-15		
Dy.CIT, Circle 8(1) Hyderabad	Vs.	Smt.Neela Reddy Moramreddy Garu, Hyderabad PAN:AFAPM7614R
(Appellant)		(Respondent)
Assessee by:	Shri K.C. Devdas, CA	
Revenue by:	Shri Rajendra Kumar, DR	
Date of hearing:	09/08/2023	
Date of pronouncement:	19/10/2023	

ORDER

Per R.K. Panda, A.M

ITA 602/Hyd/2020 filed by the assessee and ITA 3/Hyd/2021 filed by the Revenue are cross appeals and are directed against the order dated 21.09.2020 of the learned CIT (A)-6- Hyderabad, relating to A.Y.2014-15. For the sake of convenience, these were heard together and are being disposed of by this common order.

2. There is a delay of 22 days in filing of the appeal by the Revenue for which the Revenue has filed a condonation application along with an affidavit explaining the reasons for such delay. After considering the contents of the condonation application filed along with the affidavit and after hearing both the sides, the delay in filing of the appeal by the Revenue is condoned and the appeal filed by the Revenue is admitted for adjudication.

3. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of trading of shares. She filed her return of income electronically for the A.Y 2014-15 on 28.9.2014 declaring total income of Rs.2,21,25,630/- and agricultural income of Rs.50,000/-. The said return was processed under section 143 (1) of the I.T. Act, 1961 and subsequently, the case was selected for scrutiny under CASS. The Assessing Officer thereafter vide order dated 28.9.2016 passed the order u/s 143(3) of the Act accepting the returned income.

4. Subsequently, it was noticed that the assessee offered Long Term Capital Gain (LTCG) from the sale proceeds of 2.92 acres of land in Sy. No.83/1B to 83/3H in Varadarajapuram, Kanchipuram Distt Chennai which was sold on 28.03.2014 and the same was accepted during the scrutiny assessment. It was noticed from the sale deed that an amount of Rs.3.10 crore was received towards sale proceeds of the said land and the SRO value of the said land was not placed on record. However, the SRO value of the said Survey Numbers was viewed from the Website of the Registration Department of Chennai and it was noticed that the SRO value of the said land was Rs.1005/- per sq.ft. Hence the SRO value of 2.092 acres worked out to Rs.12,78,31,176/-. The Assessing Officer, therefore, issued a letter u/s 133(6) of the Act

to the SRO, Padappal, Tamil Nadu requesting for the guideline value for the Varadharajapuram Village Survey No.83/1A to 83/3H per acre as on 28.03.2014. The SRO vide letter dated 19.7.2018 informed that guideline value for Survey Nos.83/1A & 83/2 is Rs.90,00,000 per acre and that for Sy. Nos. 83/1B, 1C, 1D, 3A, 3B, 3C, 3D, 3E, 3F, 3G & 3H is Rs.1200 per sq. ft. Since there was under assessment for not considering the SRO value on such transfer of land, the Assessing Officer reopened the assessment u/s 147 of the Act after taking due approval from the competent authority as the difference of sale consideration as per the provisions of section 50C of the Act and the sale consideration offered by the assessee was to the tune of Rs.12,16,34,240/-. The Assessing Officer issued a notice u/s 148 of the Act on 2.8.2018. However, the assessee did not respond to the notice issued u/s 148 for which the notice u/s 142(1) of the Act was issued to the assessee. In response to the same, the assessee requested the Assessing Officer to treat the return of income filed u/s 139(1) on 28.09.2014 as return filed in response to notice u/s 148 of the Act. Subsequently, the Assessing Officer issued notice u/s 143(2) of the Act and also a show-cause notice to the assessee asking him to furnish certain details.

5. During the course of assessment proceedings, the Assessing Officer noted that the agricultural land of 8.66 Acres in Varadharajapuram village, Kancheepuram district at Survey No. 72, 73/1A1, 73/2, 74/1, 75, 76, 77/1 to 77/3, 78/1 (part), 83/1B to 83/3H and 84 was agreed to be sold as per MoU entered into with Sri Ramji on 28.05.2010. As per the MoU, the total land agreed to be sold was to an extent of about 8.66 acres and the sale consideration was Rs.9,14,00,000/- which works out to

about Rs.1,05,00,000/- per acre. An advance of Rs.1,00,00,000/- was received.

6. Subsequently, as Sri G. Ramji was unable to fulfill the terms and conditions of the MoU, another MoU dated 16.12.2011 was executed between the assessee, Sri G. Ramji and M/s Tatia Developer Pvt. Ltd. for sale of the properties of 8.66 acres.

7. Out of above land, an extent of 5.74 acres (Survey No. 72, 73/1A1, 73/2 74/1, 75, 76, 77/1 to 77/3, 78/1 (part) and 84) was finally handed over to M/s Tatia Developer Pvt. Ltd. on 10.11.2012 on receipt of sale consideration of Rs.6,05,00,000. The same was offered for taxation in AY 2013-14 corresponding to FY 2012-13 and was accepted by the department u/s 143(1) of the Act.

8. For the remaining extent of 2.92 acres (Survey No. 83/1B to 83/3H), a GPA was executed on 10.01.2013 between the assessee and M/s Tatia Developer Pvt. Ltd. and the property was finally handed over to M/s Tatia Developer Pvt. Ltd. on 28.03.2014 on receipt of sale consideration of Rs.3,10,00,000.

9. During the re-assessment proceedings, the assessee submitted that since the MoU was signed on 16.12.2011 for sale of the property, the said value should be taken as sale consideration. For this purpose, the assessee submitted a letter from the SRO dated 26.03.2018 showing that the guideline value is Rs.3,90,500 per acre for the year 2011. The assessee also submitted a letter from the SRO dated 28.11.2019 showing that the guideline value is Rs.90,000 per cent as on 31.03.2013.

10. The assessee has also submitted that the sale of the land was completed in all respects including issue of GPA before 31.03.2013 and accordingly, the rate applicable for the transaction is the guideline value issued as on 31.03.2013. It was argued that the guideline value issued by the Registration department as on 28.03.2014 @Rs.1200 per sft is applicable for the developed land which is done by the buyer of her land.

11. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made addition of Rs.12,16,34,240/- to the total income of the assessee being the difference in Long-Term Capital Gain by observing as under:

According to the assessee, it is clear that the transaction was finalized on the basis of valid agreements entered by the assessee with prospective buyers on 28.05.2010 and the same was endorsed to M/s. Tatia Developers through another agreement dated 06.12.2011. During the F.Y. 2011-12, the Guideline value of the property was only Rs.90,00,000/- per acre (even as on 31.03.2013). Thereafter, the buyer has developed the properties with its expenditure (as the assessee has not claimed any expenditure on the development of the property). Assessee was nowhere concerned with the development of land. Because of development of some part of the land, status of the land changed from agricultural land to residential land and accordingly the SRO value of the property is increased.

After careful consideration of the submission of the assessee, I am of the opinion that the property was finally handed over to M/s Tatia Developer Pvt. Ltd. on 28.03.2014 on receipt of sale consideration of Rs.3,10,00,000. So it can not be considered that the transaction was finalized on the basis of valid agreements entered by the assessee with prospective buyers on 28.05.2010 and the same was endorsed to M/s. Tatia Developers through another agreement dated 16.12.2011. The said MoU dated 16.12.2011 was neither registered with the registration authorities nor was made on Stamp Paper. Accordingly, it is not at all a legal document.

It is clearly mentioned in the agreement & Final receipt date 28.03.2014 that the First Party (i.e. Smt. Neela Reddy Moramreddy) is in urgent need of money, she has fixed the full sale consideration for the Schedule Property as Rs.3,10,00,000/- and requested the Second Party (i.e. M/s. Tatia Developer Pvt. Ltd and M/s. Tatia Chemical Corporation Pvt. Ltd.) to give the above said amount and the Second Party also accepted to pay the same to the First Party and the Second Party has paid the sum of Rs.3,10,00,000/- to the First Party.

It is also mentioned in the deed that the assessee had handed over the Vacant Possession of the property to the Second Party and also all the original records pertaining to the property.

Apart from the above it is also observed that the assessee has claimed Rs.2,89,400/- towards development expenses, while calculating the cost of acquisition.

In view of above, the guideline value of Rs.1200 per sft, as provided by the SRO officially vide his letter dated 19.07.2018 is considered for calculation of the Fair Market Value of the land as per the provisions u/s 50C of the Income-tax Act, 1961.

Considering the above facts, the computation of Long Term Capital Gain is as under:

SRO's stamp duty value of the property @ Rs. 1200 per sft		Rs.15,26,34,240/-
Cost of acquisition	Rs. 15,50,000/-	
Less: Indexed cost of acquisition		Rs. 29,28,471/-
Taxable Long Term Capital Gains		Rs. 14,97,05,769/-
Long Term Capital Gains already offered to tax		Rs. 2,80,71,529/-
Balance LTCG		Rs.12,16,34,240/-

12. Before the learned CIT (A), the assessee apart from challenging the addition on merit challenged the validity of the re-assessment proceedings through an additional ground. However, the learned CIT (A) upheld the validity of the re-assessment proceedings but granted part relief to the assessee by directing the Assessing Officer to exclude the area i.e. roads and parks and arrive at the correct figure of the plotted land and adopt the guideline value as per the SRO and calculate the capital gain. The relevant observations of the learned CIT (A) on this issue read as under:

“9.1 During the course of appellate proceedings, the contended that even though as per the agreement 2.92 acres was transferred, at the time of transfer the transferable land was in the form plotted land which constitutes only 82,320 square feet as against 1,27,195 sq. ft adopted by the Assessing Officer for the purpose of calculating capital gains. The

rest of the land being 44875 Sq. ft is in the form of roads and parks which are handed over to the Government and has no value. When sub registrars valuation is adopted for the purpose of long term capital gains it will be in law to take the entire land into account as against the actual land available that is transferable. Thus, the Assessing Officer is actually estimating the long term capital gains at Rs. 15,26,34,240/- as against actual value of the available land, being Rs.9,87,84,000/-. Thus, there is an over assessment of Rs. 5,38,50,2450/- because of valuing land which has zero value. I object to this also, apart from the general objection to invoking the provisions of sec. 50C on a wrong premise.

9.2 The assessee's contentions with regards to the area that was transferred and the consequent sale of which is chargeable to capital gains are reiterated once again for the sake of clarity.

9.3 The 8.66 acres of land which is subject to capital gains during the assessment years 2013-14 and 2014-15 is part of a layout made by Tatia development corporation in an extent of 66,591 Sq.Mts{ Approximately 16.45 acres). This was approved as layout on 21.09.2012.

9.4 Out of the above extent of 66,591 sq.mts 43,099 sq.mts constituted plotted area where as 19,726 sq.mts constituted roads and 4766 sq.mts constituted park area. The road and park areas are pledged to the Government, prior to plan approval and they cannot be sold. **Thus, when I transferred the land in March 2014 it was only 64.72% of 2.92 acres of land which was actually transferred to the buyer and not entire 2.92 acres.** Thus, accepting for a while the Sub registrar's valuation the capital gain works out as under:

Total Area sold 2.92 acres which is equal to 14,132 sq.yds which is equal to 1,27,195 sq. ft.

Actual plotted area available for sale, after providing roads etc being 64.72 % of 2.92 acres or 1,27,195 sq. yds. as on 1/04/2014 82320 sq. ft.

Value as per Sub-registrar's valuation in March 2014 21200 82320X1200
=
Rs. 9,87,84,000/

Value adopted by the Assessing officer for 1,27,195 sq. ft.=1,27195X1200
Rs.15,2634,240/-

Excess capital gain arrived at by the assessing officer (15,26,34,240 9,87,84,000) Rs.5,38,50,240/-.

9.5 It is a matter of universal fact that when a plotted land is transferred in acres form what is actually transferred is saleable plotted area which, in this case is only 82,320 sq. ft. The rest of the land represents roads and parks which are already handed over to the Government and have no market value. So when the land is transferred in March, 2014 it was only 82,320 and the Officer sub-registrar's valuation is only for this. Hence, the Assessing erred in adopting Rs. 15,26,34,240/- as capital gain as against Rs.9,87,84,000/-. Thus, even adopting all sub-registrar's valuation, which is not at acceptable in view of the facts already submitted on 18" and there is 26 March, higher assessment of Rs.5,38,50,240/- as long term capital gains.

9.6 I have perused the submissions made by the assessee. In report was this, a called for from the AO as the assessee had raised this additional issue as grounds of appeal. In spite of several reminders, the AO has not Submitted the remand report called for on the admissibility of the additional grounds. Hence, as the additional ground has wider ramification for the assessee, the same is admitted.

9.7 On going through the submissions of the assessee, then I find merit in the contentions of the assessee. As per the AO, the transfer of 2.92 acres of land took place in March, 2014 on the execution of the Agreement to Sale and final receipt of sale consideration. Hence, the area allocated for roads and parks and open places which could not be plotted as they are pledged to the Government need to be excluded. Accordingly, the AO is directed to exclude these area, that is, roads and parks and arrive the correct figure of the plotted land and adopt the guidance value as per the SRO and calculate the capital gain. The difference in the capital gain offered by the assessee and that arrived by the Assessing Officer shall be the capital gain chargeable to tax that has escaped assessment. Ground No.9 and additional Ground No.4 are allowed".

13. Aggrieved with such part relief granted by the learned CIT (A), the assessee as well as the Revenue are in appeal before the Tribunal by raising the following grounds:

14. Grounds raised by the assessee are as under:

"1. The entire reopening of assessment U/s. 148 of the Income Tax Act, 1961 by issue of notice U/s. 148 dated 2/8/2018 on a Scrutiny assessment completed U/s. 143(3) on 26/09/2016 which is the within the period of four years and without there being any nexus between the reasons recorded and income escaping assessment the entire reassessment proceedings are totally invalid, bad in law, without jurisdiction and therefore the entire reassessment proceedings U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (Act) passed on 30/12/2019 must be quashed.

2. *The Ld. CIT (A) failed to note that the reopening of the assessment was on the basis of an Audit objection and the Assessing Officer merely on the basis of the objection without the assessment and proper application of mind reopened the assessment and therefore the entire reassessment proceedings being on borrowed satisfaction has no legs to stand and therefore the entire assessment order passed U/s. 143(3) r.w.s 147 on 30/12/2019 must be quashed.*

3. *The Ld. CIT(A) while admitting at paragraph 8.10 that the MoU's were valid in respect of sale of land admeasuring 2.92 Acres situated at 111, Varadarajapuram, Sriperumbadur Taluk, Kanchipuram District, Tamil Nadu failed to note that the provisions of section 50C of the Act has to be applied on the basis of "Assessed" or "Assessable" values involving immovable properties thus bringing into play even unregistered MoU's and therefore, the Ld. CIT(A) ought to have held that the "assessable values" as on 28/05/2010 or 16/12/2011 as per MoU's ought to have been adopted and thereby ought to have accepted the sale consideration disclosed at Rs. 3,10,00,000/- which were more than the "assessable values" as against Rs. 9,87,84,000/- adopted by the CIT (A) (para 9.4 and 9.5 of the order).*

4. *The Ld. CIT (A) failed to note that the provisions of section 50C of the Act to adopt the valuation as per the SRO rates as on 28/03/2014 are inapplicable as the entire sale transactions were governed by earlier unregistered MoUs of 28/05/2010, by 16/5/2011 and the Registered GPA of 10/01/2013 on which dates the value of the land and the sale price agreed to were much more than the SRO value as on 28/05/2010 at Rs. 3,90,500/- per acre and was Rs. 90 lakhs per acre from 17/03/2012 and upto 31/3/2013 and therefore the Ld CIT (A) erred in confirming its value at Rs. 9,87,84,000/- for the reasons stated at paragraphs 9.4 and 9.5 of the CIT (A)'s order.*

5. *The Ld. CIT (A) erred in confirming the sale rate at Rs. 1,200/- per sft which is totally contrary to the facts and evidence on record and therefore being erroneous is wholly unsustainable.*

6. *Without prejudice to any of the aforesaid grounds the Ld. CIT (A) erred in not applying the proviso to section 50C of the Act which was introduced w.e.f. 1/4/2017 by the Finance Act of 2016 and therefore, it being a clarificatory beneficial amendment was retrospective in nature and would come into play and further the entire sale proceeds of Rs. 3,10,00,000/- which were all received on various dates between 10/01/2013 to 28/03/2014 by account payee cheques drawn on HDFC Bank Limited and by RTGS from Tatia Developer Private Limited and therefore ought to have upheld the sale consideration disclosed by the appellant at Rs. 3, 10,00,000/-, in accordance with the aforesaid statutory provision.*

7. *The Ld. CIT (A) failed to note that the entire land of 2.92 Acres was subject matter of sale prior to its development by the developer from 21/09/2012 onwards and therefore the Ld. CIT(A) erred in adopting the*

SRO value as on 28/3/2014 which was the rate prevailing after development of land by the developer.

8. The Ld. CIT (A) failed to note that the entire sale price was only Rs. 3,10,00,000/- as supported by documents and receipts and that there was no evidence to adopt any figure to the contrary.

9. The Ld. CIT (A) failed to note that on 10/1 1/2012 relevant to the Assessment Year 2013-14 land admeasuring 5.74 Acres belong1ng Rs. to the appellant in the same area was transferred for Rs. to 6,05,00,000/- which gives a rate of Rs. 1,05,40,069/- per Acre which was accepted in an intimation passed U/s. 143(1).

10. Any other ground or grounds that may be urged at the time of hearing”.

15. The learned Counsel for the assessee did not press grounds of appeal No. 1 & 2 challenging the validity of reopening for which the learned DR has no objection. Accordingly, grounds of appeal No. 1 & 2 are dismissed as not pressed.

16. So far as the other grounds are concerned, the learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in giving only part relief to the assessee. He submitted that neither the Assessing Officer nor the learned CIT (A) has expressed any doubt about the genuineness of the MOUs dated 28.05.2010 and 16.12.2011 or the registered GPA dated 10.01.2013. Further, the Department did not question the sale of part of the land of 5.74 acres during financial year 2012-13 based on the said MOUs when the same was offered for taxation in A.Y 2013-14. He submitted that although the assessment was completed u/s 143(1) for A.Y 2013-14, however, neither proceedings u/s 147 nor u/s 263 have been initiated for the A.Y 2013-14. The payments which are made through DD/Cheque/RTGS are also not disputed. He submitted that under these circumstances, adopting the guideline value as on

28.03.2014 on the basis of final agreement and the receipt issued to the assessee by the buyer is incorrect.

17. The learned Counsel for the assessee further submitted that it is incorrect to adopt the guideline value for developed land in sq. ft whereas the land sold by the assessee, which is part of the series of transactions starting from 28.05.2010, is undeveloped land. He submitted that once MOUs were entered into on 28.05.2010 and 16.12.2021 and the GPA was registered on 10.01.2013, the assessee ceded her rights in the land as part consideration was received through DD/Cheque/RTGS. He submitted that the final agreement and the receipt dated 28.03.2014 did not alter the nature of land in the hands of the assessee nor did it alter the sale value fixed in the agreements invoking first and second proviso of section 50C to the case. He submitted that on the basis of the MOUs, the buyer proceeded without hindrance to obtain approval of layout and development of the land. It is also not a case where the entire sale consideration of Rs.3.1 crores was received at the time of final agreement and receipt. He submitted that the consideration was received on various dates between 10.01.2013 and 28.03.2014 as mentioned in the agreement and the final receipt dated 28.03.2014 and thus it clearly shows that the assessee sold only undeveloped land and therefore, the sq.ft wise valuation would not apply.

18. Referring to the order of the Assessing Officer and the CIT (A) he submitted that it is incorrect on their part to hold that the property was transferred and handed over only on 28.03.2014 based on the routine recitals in the agreement and final receipt whereas there is undisputed evidence to the fact that there is

development of land subsequent to the MOUs and the registered GPA in favour of Tatia Developer (P) Ltd who claimed the development cost in their books. Referring to the copy of the MOUs/GPA copies of which are placed at Page No.39 to 65 of the paper book, he submitted that the assessee had no role in development and it is the buyer who has obtained approvals of layout from CDMA and taken up for plotting and development. He submitted that it is also incorrect to take Rs.2,89,400/- as development cost of the layout as incurred by the assessee while the amount is petty and spent for fencing etc.,

19. The learned Counsel for the assessee submitted that it is the guideline value applicable to the GPA (Deed No.167/2013 dated 10.01.2013) that needs to be adopted in the present case as value u/s 50C because the GPA is the basis on which further sales are effected by the buyer on square foot basis as per the guideline valuation. He submitted that even after the guideline valuation as per communication of SRO dated 19.07.2018, the acreage value is Rs.0.9 crore only for the large survey number 83 (of which Survey No.83/1B to 83/H are only parts). He submitted that when the sale of land is part of series of transactions, the total land being 8.66 acres and the present sale is only for balance of 2.92 acres, there is no rationale in adopting valuation in the hands of the assessee in square foot basis when the sale is in acreage and the recitals in agreement and final receipt are routine.

20. The learned Counsel for the assessee in his another plank of argument submitted that 1st and second proviso to section 50C apply to the present case because the amounts as part of MOUs and registered GPA were received in cheques/DDs/

RTGS which indicate that the value as per the agreements shall be taken as full value of consideration. He submitted that the learned CIT (A) while agreeing that the development of the land was done by Tatia Developers (P) Ltd held incorrectly that guideline value for developed land @ Rs.1200 sft has to be adopted as sale consideration whereas what the assessee sold was undeveloped land in acreage for which the guideline value is Rs.0.9 crore per acre. He submitted that it is incorrect to state that the MOUs or agreements have no legal validity because they are unregistered. He submitted that the final agreement is nothing but culmination of the series of transactions as per the MOUs/GPA and hence the MOUs are undisputed facts on record. He submitted that it is also incorrect on the part of the Assessing Officer and the learned CIT (A) to ignore the registered GPA. He submitted that it is not understood as to how the learned CIT (A) and the Assessing Officer considered all unregistered documents except that dated 28.03.2014 as invalid and ignore registered GPA even when it is the sole basis for further transfers by the buyer.

21. Referring to the various case decisions, he submitted that the provisions which are curative in nature and are made to remove any undue hardship to the taxpayer or to remove an apparent incongruity will have to be treated as effective from the date on which the amendment containing such incongruity was introduced.

22. Referring to the decision of the Hon'ble Madras High Court in the case of CIT vs. Vummudi Amarendran, reported in 429 ITR 97, he submitted that the Hon'ble Madras High Court in the said decision has held that the Assessing Officer could not have based his conclusion solely on guideline value which has

been held to be only a prima facie rate prevailing in area to ascertain true or correct market value.

23. Referring to the decision of the Ahmedabad Bench of the Tribunal in the case of Rahul G. Patel vs. Dy.CIT, reported in 67 ITR 280, he submitted that the Tribunal has held that in view of proviso to section 50C, stamp duty valuation of property for purpose of stamp duty payment on date of agreement can be deemed as full consideration of capital asset.

24. Referring to the decision of the Allahabad Bench of the Tribunal in the case of Hari Mohan Das Tandon (HUF) vs. PCIT, reported in 169 ITD 639, he submitted the Tribunal in the said case has held that for sale of property in September, 1966, agreement to sell of September 1966 though registered on 29.11.2010 would have to be considered.

25. Referring to the Delhi Bench of the Tribunal in the case of Amit Bansal vs. ACIT, reported in 174 ITD 349, he submitted that the Tribunal has observed that in view of proviso to section 50C, where date of agreement fixing amount of consideration and date of registration regarding transfer of capital asset in question are not same, value adopted or assessed or assessable by stamp valuation authority on date of agreement is to be taken for purpose of full value of consideration.

26. Referring to the decision of the Ahmedabad Bench of the Tribunal in the case of Ramesh Govindbhai Patel vs. Income Tax Officer, reported in 184 ITD 731, he submitted that the Tribunal has observed that when the date of agreement fixing amount of consideration and date of registration of property is

different, value adopted by stamp valuation authority on date of agreement was to be taken for purposes of computing full value of consideration of such transfer.

27. The learned DR, on the other hand, strongly supported the order of the Assessing Officer. He further submitted that the learned CIT (A) has wrongly drawn the conclusion that only 64.70% of 2.92 acres of land was transferred by the assessee and not the entire land. He submitted that the rate given by the DSR should be applied for the entire 2.92 acres of land. He submitted that the provisions of section 50C introduced by the Finance Act, 2016 are prospective in nature. He accordingly submitted that the order of the Assessing Officer should be upheld and the grounds raised by the assessee should be dismissed and the grounds raised by the Revenue should be allowed.

28. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the assessee in the instant case has declared the Long-Term Capital Gain of Rs.2,80,71,529/- on account of sale proceeds of 2.92 acres of land in Survey No.83/1B to 83/3H at Varadharajapuram Village, Kancheepuram District which was sold for a consideration of Rs.3.10 crores. We find the Assessing Officer, on the basis of guideline value at Rs.1200/- per sft provided by the SRO determined such Long-Term Capital Gain at Rs.14,97,05,769/- as per provisions of section 50C. After deducting the capital gain already offered to tax by the assessee at Rs.2,80,71,529/- he made addition of Rs.12,16,34,240/- to the total income of the assessee the details of which are already given

at Para 11 of this order. We find the learned CIT (A) while upholding the action of the Assessing Officer in adopting the SRO's stamp duty value of the property @ 1200 per sft, however, directed the Assessing Officer to exclude the area allotted for roads, parks and open places which could not be plotted as they are pledged to the Govt. He accordingly directed the Assessing Officer to recompute the capital gain.

29. It is the submission of the learned Counsel for the assessee that the entire property was covered under agreements of various dates and the amounts have been already decided prior to 28.03.2014. It is submitted that the entire land was to be sold for Rs.9,14,00,000/- out of which an amount of Rs.6,05,00,000/- was already received in A.Y 2013-14 and offered to tax and the amount of Rs.3,10,00,000/- was received in A.Y 2014-15. It is also his submission that the return of income for A.Y 2013-14 was accepted wherein the value of the land was shown at Rs.1,05,00,000/- per acre as against the guideline value of Rs.90.00 lakhs per acre and the return was processed u/s 143(1) and no proceedings u/s 147 or 263 have been initiated. It is also his submission that when the assessee has sold the land in acres, the adoption of the sft rate given by the SRO, which is applicable to developed land with lay out etc., cannot be applied to the case of the assessee. It is also his submission that the provisions of section 50C are retrospective in nature and therefore, adoption of value @ Rs.1,05,00,000/- per acre is in accordance with law.

30. We find some force in the above arguments of the learned Counsel for the assessee. A perusal of the various details furnished by the assessee in the Paper Book shows that the assessee was the owner of 8.66 acres of land which was sold in

two financial years i.e. F.Y 2012-13 and F.Y 2013-14. The details of such land sold and capital gain disclosed as per submission of the learned AR are as under:

S.No	A.Y	Extent of land sold	Total consideration	Capital gains disclosed	Remarks
1	2013-14	5 acres 74 cents (deed of sale 18.12.12)	Rs.6,05,00,000	2013-14	Thus, the total sale proceeds disclosed in the A.Y 2013-14 was Rs.6,05,00,000 comprising of 5 acres 74 guntas. Copy of the computation of total income for the A.Y 2013-014 finds a place at pages 29-30 of the paper book.
2	2014-15	2.92 Acres of land in S.No.83/1/B to 83/3B in Varadarajapuram Village Kachipuram	Rs.3,10,00,000	2014-15	The capital gains was disclosed in A.Y 2014-15 and this finds a place at pages 23 & 24 of the Paper Book

30.1 From the details furnished by the assessee in the paper book, we find the chronology of events are as under:

S.No	Event	Date	Stamp Duty/Guideline valuation
1	First MoU with Ramji	25/5/2010	Rs.3,90,000 per acre (page 61-65 of the Paper Book)
2	Second MoU with Ramji and Tatiya Developers (P) Ltd	16/12/2011	Rs.3,90,000 per acre (Pages 56 to 60 of the paper book)
3	Payment of Rs.1 cr. To Ramji	25/5/2010	Rs.3,90,000 per Acre (pages 63 to 63 of the paper Book)
4	Payment made by Tatiya Developers Pvt Ltd	From 17.7.2012 to 2.1.2013	Rs.90 lakhs per acre (page 53 of the Paper Book)
5	First settlement with M/s Tatiya Developers Pvt Ltd	10/11/2012	Rs.90 lakhs per acres
6	Second settlement with Tatiya Developers Pvt Ltd	28/3/2014	Guideline value was increased to Rs.1200 per sft because of development of layout of the land belonging to the Appellant and also lands which were taken from other owners. The property was developed by the Developer in the year 2014. The appellant is not concerned with this development as it had given up all its rights in land on 10.1.2013 itself when the GPA was given to M/s. Tatiya Developers Pvt Ltd and the guideline valuation of Rs.90 lakhs per acre (Page43 of the paper book).

31. A perusal of the details furnished by the assessee shows that in A.Y 2013-14 the assessee has sold 5.74 acres of land as per sale deed dated 18.12.2012 for a consideration of Rs.6.05 crores and had declared Long-Term Capital Gain of Rs.96,61,387/- after deducting the indexed cost of acquisition etc., which has been accepted by the Revenue and no proceedings u/s 147 or 263 have been initiated. We find for the impugned A.Y also, the assessee sold the remaining portion of 2.92 acres of land for a total consideration of Rs.3.10 crores which comes to Rs.1,05,00,000/- per acre. However, the Assessing Officer in the instant case on the basis of the SRO's letter dated 17.08.2018, wherein he had given the rate per sft at Rs.1200/-, adopted the sale consideration at Rs.15,26,34,240/- and accordingly brought to tax the differential Long-Term Capital Gain of Rs.12,16,34,240/-. A perusal of the letter of the SRO Padappai which has been reproduced by the learned CIT (A) in Para 6.5 of his order gives the following details.

“6.5 In the present case, although the assessment was reopened on the basis of an Audit Objection, the Assessing Officer proceeded to gather information independently by addressing a letter to the SRO, Padappai to ascertain the guideline value of the land sold by the assessee. The SRO, Padappai vide his letter No.178/2018 dated 19.07.2018 submitted the details as under:

With reference to the letter cited above, we sent herewith the guideline value for the below mentioned survey numbers in varadharajapuram village as on 28.03.2014.

S. No.	SURVEY NUMBER	GUIDELINE VALUE
1	83/1A	Rs.90,00,000/- acre
2	83/1B	Rs.1200/- Sq.Ft
3	83/1C	Rs.1200/- Sq.Ft
4	83/1D	Rs.1200/- Sq.Ft
5	83/2	Rs.90,00,000/- acre
6	83/3A	Rs.1200/- Sq.Ft
7	83/3B	Rs.1200/- Sq.Ft
8	83/3C	Rs.1200/- Sq.Ft
9	83/3D	Rs.1200/- Sq.Ft
10	83/3E	Rs.1200/- Sq.Ft
11	83/3F	Rs.1200/- Sq.Ft
12	83/3G	Rs.1200/- Sq.Ft
13	83/3H	Rs.1200/- Sq.Ft

32. From a perusal of the above, it is seen that the SRO value of the Survey No.83/1A and 83/2 on 28.03.2014 are Rs.90 lakhs per acre whereas for the other layouts it is Rs.1200 per sft. We further find from page 18 of the Paper Book that the same Sub Registrar, Padappai has certified the guideline value for survey No.83/1C, 1D, 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H at Rs.90,000/- per cent as on 31.03.2013 i.e. Rs.90 lakh per acre the details of which are as under:

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Registration department

From

To

P.Damodaran
Sub Register,
Sub Registrar Office,
Padappai.

Thiru..Jayasekar,
No.68, 9th Street,
Anna Nagar East,
Chennai- 600102.

Letter No. 8/2019, Dated : 28.11.2019.

Sir,

Sub : Sub Registrar Office, Padappai – Guideline Value –
Varadharajapuram Village – Survey Nos.
83/1C,1D,3A,3B,3C,3D,3E, 3F,3G & 3H – furnished –
reg.

Ref : Your Letter dated : 28.11.2019

With reference to your letter cited, the guideline value for the survey Nos. 83/1C, 1D, 3A, 3B, 3C, 3D, 3E, 3F, 3G & 3H is furnished hereunder:-

Village	Survey No.	Guideline Value as on 31.03.2013
Varadharajapuram	83/1C,1D,3A,3B,3C,3D,3E, 3F,3G & 3H	Rs.90,000/- Cent

Neela

SR

Sub Registrar,
Padappai
SUB-REGISTRAR
PADAPPAI

33. Under these circumstances, we agree with the contention of the learned Counsel for the assessee that when a part of the land i.e. 5.74 acres out of the total area of 8.66 acres was sold in A.Y 2013-14 and the remaining part of 2.92 acres of land was sold in A.Y 2014-15, the Assessing Officer instead of taking the value of the land in acres could not have taken the value per sft which is for developed land with internal roads etc. The final agreement and the receipt dated 28.03.2014 did not

alter the nature of land in the hands of the assessee nor did it alter the sale value fixed in the agreement. In our opinion, the assessee cannot be fastened with liability by adopting higher rate of valuation of the land which was developed by Tatiya Developers (P) Ltd in the year 2014 since the assessee had given up all her rights in land on 10.01.2013 itself when the Registered GPA was given to M/s. Tatiya Developers (P) Ltd and the guideline value on that date was Rs.90 lakhs per acres. Under these circumstances when the assessee has sold the land at Rs.1.05 crores as against the guideline value of Rs.90 lakhs per acres, therefore, we are of the considered opinion that the Assessing Officer is not justified in applying the rate of Rs.1200 per sft which in our opinion is the rate applicable for developed land.

34. There is one more angle which merits consideration. A perusal of the sale consideration of Rs.3.10 crores as per the agreement and final receipt dated 28.03.2014 shows that the same was on the basis of earlier agreements which is evident from the agreement and final receipt, copy of which is placed at pages 39 to 44 of the Paper Book. A perusal of the schedule of payment mentioned at Page 40 of the Paper Book shows that the total consideration was paid through Cheque/ RTGS from 10.01.2013 to 28.03.2014 which are as under:



தமிழ்நாடு தமில்நாடு TAMILNADU

AC 980182

AGREEMENT & FINAL RECEIPT

A.S. SIVASUNDARAN
STAMP VENDOR

L.No.12144/20198 Dt.30.9.07
NO.159, ARCOT ROAD, PORUR, CH
CELL NO: 98414 29962

This agreement executed at Chennai on this 28 day of March, 2014
by **Mrs. Neela Reddy**, Wife of Shri. M.Sarvothama Reddy, aged about 52
years, residing at plot no.43, Meenakshi Bamboos, Opp; Ramkee Towers,
Gachi Bowli, Hyderabad - 500 032 hereinafter called '**The First Party**'
which term wherever the context so admits and permits means and
includes her heirs, legal and personal representative, executor and
administrator assigns.

TO AND IN FAVOUR OF

M/S TATIA DEVELOPER PVT LTD., and **M/S TATIA CHEMICAL
CORPORATION PVT LTD.**, both having registered office at No.18,
Ritherdon Road, Vepery, Chennai: 600 007 represented by it's Director
Mr. Padam Kumar Tatia, Son of Late shri Jawarilal, aged about 53
Years, residing at No.2, Second main road, Vengeswarar Nagar,
Vadapalani, Chennai - 600 026 hereinafter called '**The Second Party**'
which term shall wherever the context so admits and permits, means
and includes, her heirs, legal and personal representatives, executors,
and administrators assigns witnessth as follows:

DEVELOPER PRIVATE LIMi:

For TATIA CHEMICAL CORPORATION PVT. LTD.,

[Signature]
Director

Neela Neela

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Whereas Party of first part is the absolute owners of lands to an extent of **2.92 Acres**, comprised in Survey Nos. 83/1B, 83/1C, 83/1D, 83/3A, 83/3B, 83/3C, 83/3D, 83/3E, 83/3F, 83/3G and 83/3H situated at 111, Varadharajapuram Village, Sriperumbudur Taluk, Kancheepuram District having purchased the same vide Documents No. 5308/05 dt 13.12.2005 registered with SRO, padappai.

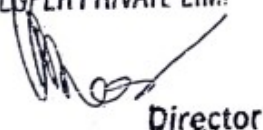
The First Party has executed Deeds of General Power of Attorney in favour of the Second Party and the said Deed is registered as Document No. 167 of 2013.

Whereas since the First Party is in urgent need of money, she has fixed the full sale consideration for the Schedule Property as Rs. 3,10,00,000/- (Rupees Three Crore Ten Lakhs Only) and requested the Second party to give the above said amount and the Second party also accepted to pay the same to the First Party and the Second Party has paid the sum of Rs. 3,10,00,000/- to the First Party as follows, the receipt of which is hereby acknowledged by First Party:

HDFC Bank Cheques & RTGS from Tatia Developer Pvt Ltd

000016 dt. 10.01.2013	Rs. 73,00,000/-
000094 dt. 25.03.2013	Rs. 25,00,000/-
000122 dt. 15.04.2013	Rs. 15,00,000/-
000121 dt. 17.04.2013	Rs. 10,00,000/-
RTGS dt. 03.06.2013	Rs. 25,00,000/-
RTGS dt. 20.06.2013	Rs. 15,00,000/-
RTGS dt. 12.07.2013	Rs. 65,00,000/-
RTGS dt. 03.09.2013	Rs. 5,00,000/-
RTGS dt. 28.10.2013	Rs. 5,25,000/-
RTGS dt. 19.12.2013	Rs. 10,00,000/-
RTGS dt. 26.12.2013	Rs. 10,00,000/-
RTGS dt. 21.02.2014	Rs. 10,00,000/-
RTGS dt. 26.03.2014	Rs. 20,00,000/-
RTGS dt. 28.03.2014	Rs. 21,75,000/-
Total	<u>Rs. 3,10,00,000/-</u>

for TATIA DEVELOPER PRIVATE Ltd.



Director

Neela
Neela

35. The payment of the above amount was on the basis of the MOU agreed upon on 16.12.2011 copy of which is placed at Page Nos.56 to 59 of the Paper Book. The total extent of the land of 8.66 acres was agreed to be sold for Rs.9,14,00,000/ in two financial years i.e. 2012-13 and 2013-14 respectively. We find the assessee has executed registered GPA on 10th January, 2013 which finds place at Page 43 to 46 of the Paper Book. The consideration of Rs.3,10,00,000/- is paid on various dates starting from 10.01.2013 to 28.03.2014 and the final receipt was given on 28.03.2014 for the sum of Rs.3.10 crores. A perusal of the MOU executed at Chennai on 28.5.2010 copy of which is placed at pages 61 to 64 of the Paper Book shows that the consideration for the entire sale of 8.66 acres was agreed to be sold for a total sum of Rs.9.14 crores and the amount of Rs.6.05 crore was disclosed in A.Y 2013-14 and the balance Rs.3.10 crore was disclosed in A.Y 2014-15. Under these circumstances we are of the considered opinion that in view of the proviso to section 50C where the date of agreement fixing the consideration and date of registration and transfer of capital asset in question are not the same, the value adopted or assessed or assessable by the stamp valuation authority on date of agreement is to be taken for purpose of full value of consideration.

35.1 It has been held in various decisions that the amendment to section 50C introduced by the Finance Act 2016 for determining the full value of consideration in the case of immovable property is curative in nature and will apply retrospectively. The Hon'ble Madras High Court in the case of CIT vs. Vummudi Amarendran (Supra) decided an identical issue and has held that provisions of section 50C should be taken

retrospectively from the date when the proviso exists which read as under:

10. Reading of the above proviso would show that the legislature took note of the fact that there are several occasions where the Agreements are entered into between a willing vendor and willing purchaser on an agreed sale consideration, the Agreement is reduced into writing and in many a cases a substantive portion of the sale consideration is given to the vendor as advance on the date of execution of the Agreement. There are other types of transaction where the vendor executes Power of Attorney in favour of the intending purchaser empowering him to sell the property at any time he proposes to do so. In fact this was also a subject matter of consideration, when the legislature thought to introduce the amendment to Section 50C of the Act. There may be cases where the sale consideration will be taken as deferred payment subject to certain contingencies. However, the case on hand is very straight forward case, where there is an Agreement for Sale, agreeing to sell the property at Rs.19 Crores and a sum of Rs.6 Crores has been received as advance sale consideration. The proviso to Section 50C(1) of the Act deals with cases where the date of the agreement, fixing the amount of consideration and the date of registration for the transfer of the capital assets 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. Thus, an amendment by insertion of proviso seeks to relieve the assessee from undue hardship.

11. The Hon'ble Supreme Court in Commissioner of Income Tax, Kolkata Vs. Calcutta Export Company [2018 (404) ITR 654(SC)], 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 be 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 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 Private Limited Vs. CIT [1997 (224) ITR 677 (SC)], Whirlpool of India Limited Vs. CIT, New Delhi [2000 (245) ITR 3], CIT Vs. Amrid Banaspati Company Limited [2002 (255) ITR 114] and CIT vs. Alom

Enterprises [2009 (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 25.07.2019, 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 Dharamshi bhai Sonani Vs. ACIT [2016 75 taxmann.com 141 (Ahmedabad- Trib)]; order of the Delhi Bench of the ITAT in the case of Income Tax officer Vs. Modipon Limited [2015 (57) taxmann.com 360/154 ITD 369”.

36. The various other decisions relied on by the learned Counsel for the assessee also supports his case to the proposition that where the date of agreement fixing the amount of consideration and the date of registration of property is different, value adopted by stamp valuation authority on the date of agreement has to be taken for purposes of computing full value of consideration of such transfer. Since in the instant case, admittedly, the guideline value on the date of agreement is Rs.90,000/- per cent i.e. Rs.90 lakh per acre and the assessee has sold the land @ Rs.1,05,00,000/- per acre, therefore, the Assessing Officer, in our opinion, is not justified in adopting the guideline value as on 31.3.2014 that to in sq. foot. In view of the above discussion, we set aside the order of the learned CIT (A) and direct the Assessing Officer to accept the sale consideration shown by the assessee at Rs.3,10,00,000/- only. The grounds raised by the assessee are accordingly allowed.

37. Grounds raised by the Revenue in ITA No.3/Hyd/2021 read as under:

“1. The learned CIT (A) erred in directing the Assessing Officer to consider only the saleable area for computation of capital gains as per the SRO value of Rs.1200/- per sq.ft as against the total area sold of 2.92 acres.

2. *The learned CIT (A) failed to appreciate that the fact that assessee is not in the business of development and sale of plots but sold the property as a whole land of 2.92 acres.*

3. *Any other ground that may be raised at the time of hearing”.*

38. Since the assessee’s appeal is allowed, the appeal of the Revenue becomes infructuous. Accordingly, the same is dismissed.

39. In the result, appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 19th October, 2023.

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

Hyderabad, dated 19th October, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Smt. Neela Reddy Moramreddygaru, Plot No.43, Meenakshi Bambooss S.No.33 & 38, Opp: Ramkey Towers, Gachibowli, Hyderabad 500032
2	Income Tax Officer Circle 14(5) Hyderabad & Dy.CIT, Circle 8(1) Hyderabad
3	Pr. CIT-1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order