आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 382/JP/2023
निर्धारण वर्ष/Assessment Years : 2010-11

Latafat Hussain Kasir Hind Hotel Near Rajputana Shereton, Railway Station Road, Jaipur	बनाम Vs.	ITO, Ward 3(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEPH 5954 K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashish Khandelwal
राजस्व की ओर से/ Revenue by : Shri A. S. Nehra (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 10/10/2023
उदघोषणा की तारीख/Date of Pronouncement : 04/12/2023

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assessee is arising out of the order of the National Faceless Appeal Centre, Delhi dated 06/06/2023 [here in after (NFAC)] for assessment year 2010-11, which in turn arise from the order of the ITO Ward 3(2), Jaipur dated 27.12.2018 passed under 147 r.w.s. 144 of the Income Tax Act, [here in after referred to as Act].

2. The assessee has marched this appeal on the following

grounds:-

"1. That the ld CIT(A) in making observations based upon nonexistent facts and also failed to appreciate arguments & evidences in correct perspective.

2. That in assuming jurisdiction U/s 148 of the IT Act.

3. That the ld CIT(A) as well as ld AO erred in law as well in facts of the case in considering holding full value of consideration on account of transfer of immovable property at Rs. 9131043/- as per section 50C in place of actual consideration of Rs. 5916709/- overlooking the factum of realization of earnest advance through banking channel way back in 2005.

4. That both the lower authorities have erred in law as well in facts of the case in not referring the matter to valuation cell for elucidation of F.M.V despite claim of adverse traits by the appellant.

5. That the ld CIT(A) as well as ld AO has in considering/holding F.M.V of the property as on 1.4.1981 at Rs.93432/- as against claimed F.M.V based upon approved value's report of Rs. 501390/-, without even appreciating factum of construction and thereby brushing aside report of expert and sitting on chair of valuer for no cogent reason.

6. That the ld CIT(A) in disallowing exemption claim U/S 54 of the IT Act solely for the reason that investment was made in name of spouse without appreciating that spouse was housewife & had no independent source of income and also made serious flaw in law by overlooking & brushing aside the binding precedent of Jurisdictional high court."

3. The fact as culled out from the records is that the as per the information available on records during the year under consideration the assessee and others have sold their share being 6.771% in the immovable property situated at Khasra No. 10 & 11 at Badodia, Opp. Hotel Rajputana Sheraton, Station, Road, Jaipur. While registering the above transaction the Sub-Registrar-V, Jaipur determined the value of transaction for Rs. 2,28,27,608/-. The

share of the assessee in the said transaction comes to 40%. The assessee has not filed his return of income for A.Y 2010-11. Accordingly, it is evident that the assessee has failed to make true and full disclosure of income. Thus, there was reason to believe that the income of assessee has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961. Accordingly, notice under section 148 dated 31.03.2017 was issued and served upon the assessee through the postal authorities.

3.1 During the assessment proceedings, despite providing ample opportunities, assessee never turn-up and complied with the statutory notices issued and served upon from time to time and hence, assessment was completed based on material available on record and looking to the merits of the case u/s 144 of the I.T. Act, 1961 by making addition of Rs. 85,40,547/- (sale consideration Rs. 91,13,043/- minus cost of acquisition Rs. 5,90,496/-, arrived at comparing sale instances of properties in the nearby vicinity) raising a demand of Rs. 48,68,430/-.

4. Being aggrieved, from the order of the assessing officer the assessee carried the matter in appeal before the ld. CIT(A)/NFAC.

A propose to the grounds of raised by the assessee the relevant findings of the ld. CIT(A)/NFAC is reiterated here in below:

> "8.2.3 In the instant case, the appellant has failed to show any evidence that a claim for making a reference to Valuation Officer was made by him before the AO. Accordingly, I find no infirmity on the issue of calculating the LTCG by the AO as per the deeming provision of section 50C, which rather was mandated upon him to do so. The case laws quoted by the appellant are of such cases where a claim for making a reference to a Valuation Officer was specifically made by the appellant before the AO. In view of the clear-cut provisions of section 50C, I find no merits in the submission of appellant and the Grounds No.2 and 3 raised in appeal are dismissed.
>
> 8.3 In ground No.4, the appellant has challenged the action of AO in considering the fair market value of the impugned property as on 01.04.1981 at the rate of Rs.225 per Sq.metres. The AO under para 7 of his order has clearly mentioned his mode of arrival at this value which was arrived at after considering the fair market value of nearby properties sold during the relevant period. In this reference, the appellant had submitted a valuation report of the impugned property as on 01.04.1981 at Rs.41,78,654/- as land value and Rs.5,25,662/- as indexed cost of construction. Since, the AO has adopted a fair market value based upon the cogent evidences of comparable sale instances of nearby properties during the same period, I find no reasons to interfere with the finding of AO and hence, Ground No. 4 of the appeal is dismissed."

5. As the assessee did not find favor fully from the order of the ld CIT(A). The assessee has carried out this appeal on the grounds raised and reiterated in para 2 above. To support the various grounds so raised the ld. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

S.N.	Issues	Claim /objection /Contention of Appellant	Comments/Observation /finding of AO in Remand Report	Observation of Appellate Commissioner	Evidences filed by the appellant in support of Stand /Issue
01	No Cognizance of receipt of earnest advance through banking channel & considering stamp valuation to be Gospel Truth.	Stamp valuation as on date of agreement i.e. 2005 should have been applied as the appellant realized earnest money through banking channel at time of agreement . Amendment to section 50C curative in nature and therefore deserves too be applied retrospectively .	Copy of agreement furnished by the assessee only proves assessee's share in property along with Other co-owners . **(Pg No. 23 -Point No. 5 & 6 of PB** No whisper in the remand report regarding the contention of appellant .	The CIT(A) completely overlooked the issue raised by the appellant and same remained unadjudicated in appellate order .	Copy of SB A/c evidencing receipt of advance **(Pg No. 81 of PB)** Copy of Agreement dated 03.01.2005 containing stipulation as to mode of payment **(Pg No. 42 S.N. 9 of PB)** & also stipulation regarding no objection by seller to execute sale deed in favour of buyer or to any other person on direction of buyer **(Pg No. 45 clause 03 of PB)**
02	No Reference to DVO despite specific objection for excessiveness of Stamp valuation over FMV of the property and overlooking adverse traits attached to property .	There were series of adverse traits :- Large Number of Co-owners (27 co-owners) Sale of Undivided portion (6.771% of property) Pending prolonged litigation . Very Old Construction .	This office is not supposed to determine the value of the property as per market condition or on any other matter under litigation instead to determine the value of property u/s 50C of the Income Tax Act as determined by sub registrar office in sale deed . **(Pg No. 23 -Para No 4)**	The CIT-A opined that assessee actively participated in assessment proceeding , however at no point of time the assessee made a claim of higher value adoption as enumerated u/s 50C(2).(**Para 8.2.1 Pg 34 of Cit(A) order)**	Assessment order passed u/s 144 i.e. ex-parte therefore no question of participation in proceedings . Claim for reference to DVO was made before the AO as well as CIT(A) . **[Pg No. 8 Point No. 1 , Pg No. 13 Para 2 , Pg No. 91 Point 4 of PB]**

03	AO deriving FMV as on 01.04.1981 disregarding reasoned & holistic report of registered valuer and thereby sitting on arm chair of DVO & CIT(A) affirming such stand without pinpointing any single cogent difference in report of registered valuer	No specific objection was made in remand report regarding FMV as on 01.04.1981 except observing same as unreasonable. No whisper in remand report as to why report of registered valuer is not capable of acceptance . No consideration to commercial viability of the transferred asset & also factum of existing construction. Relied upon sales instances were not comparable or capable thereof .	AO in original assssment order accepted that land in question is situated on prime location and having commercial value **.(AO order Pg No. 3 Para 8)** Cost of Acquisition as calculated **by this office** arrived at by comparing sales instances of properties in near by vicinity**.(Pg No. 24 Para 5.1 of PB)**	The AO under Para 7 of his order has clearly mentioned his mode of arrival at this value which was arrived at after consiodering the Fair market value of near by properties sold during the relevant period .` **(CIT-A Order Pg No. 34 Para 8.3)**	Registered valuer's report dated 22.11.2016 **(PB Pg no. 59-60)**. Paper cuttings to demonstrate the nature of property to be commercial Proximity to railway station Observations of AO in original assessment order **(AO order Pg No. 3 Para 8)**

04	Denial of deduction u/s 54 for house constructed in name of spouse .	Both the lower authorities failed to consider that the assessee constructed house property from the funds derived from sale of house property in the name of spouse overlooking judgment of jurisdictional high court on the issue in favour of the appellant	Deduction claimed u/s 54F of the RS. 27,48,461/- for construction of property cannot be allowed as the property/plot on which construction has been made is i the name of the spouse of the assessee . **Pg 24 Para 5.2 (PB)**	CIT(A) dis-allowed the claim of the assessee by relying on some recent verdict of Hon'ble Karnataka high court in Antony Parakal Kurian v ACIT [2022] 138 TAxmann.com 440 **[Para 8.4 Pg No. of CIT(A) order]**	Copy of sale deed in connection with purchase of Land .**(Pg No. 63-70 of PB)** Copy of Valuer's report in connection with cost of construction .**(Pg No. 71-78 of PB)** Copy of photograph of house property .**(Pg No. 79 of PB)** Relied upon Judgment **(Pg No. 111-120)**

6. The ld. AR of the assessee in support of the written submission filed a paper book containing following records:

S.NO.	PARTICULARS	PAGE NO.	
1	Written Submission before CIT(A) dated	1	10
2	Rejoinder to Remand Report dated	11	21

3	Copy of Remand Report filed by ITO Ward 3(2)	22	25
4	Copy of registered sale deed dated 13.05.2009	26	37
5	Copy of Agreement dated 03.01.2005 through which earnest advance was realized	38	49
6	Copy of News Papers cutting & others evidencing the history of usage of the property as renowned Hotel	50	51
7	Copy of valuation report elucidating FMV as on 01.04.1981 in co-owners case	52	60
8	Copy of Prevailing DLC (Stamp Value)Rate at the time of Agreement in 2005 & at the time of execution of sale deed	61	62
9	Copy of Registered sale deed & valuation report of construction in support of reinvestment claimed u/s 54 of the Act	63	79
10	Copy of Bank Statement for the period 01.04.2004 to 31.03.2006 evidencing realization of earnest advance through banking channel	80	88
11	Copy of computation filed before the CIT(A) as additional evidence	89	90
12	Copy of Application filed under Rule 46A before the CIT(A)	91	92
13	Copy of Relied upon Judgments	93	144

7. The ld. AR of the assessee in addition to the above also argued that the assessee along with the other co-owners entered into an agreement in 2005 and against that he has received the money at the time of execution of agreement by an account payee cheque and therefore, the DLC rate as on the date of agreement be counted and not as on the date of final sale deed is executed. This exclusion is as per the provision of the Act. As regards the fair

marked value claim he has relied upon the government approved registered valuer's report and the ld. AO has not authority to disregard that report without referring the matter to the DVO. As regards the investment in the name of wife he has relied upon the submission and judgment to support the claim of the assessee.

8. The ld DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the ld. CIT(A). The ld. DR submitted that the agreement was with 27 parties in assessment year 2005-06 whereas the same is sold in the assessment year 2010-11 to a company other than to whom 27 parties agreed. Even the amount entered into agreement and ultimately share are at different amount. As regards the investment in the house property in the name of the wife the ld. DR heavily relied upon the decision quoted in the order of the ld. CIT(A) in the case of Antony Parakal Kurian Vs. ACIT 138 taxmann.com 440 where in the court held that the phrase own used plays significant role and there by the investment in the name of wife cannot be considered for exemption u/s. 54 of the Act as the assessee not owned the property in his name.

9. In the rejoinder the ld. AR of the assessee submitted the assessee has claimed the benefit u/s. 54 and not u/s. 54F so the arguments of the ld. DR is not in accordance with the provision of law. The ld. AR relying on the date of agreement submitted that since the amount of agreed sum is already partly received by the assessee by an account payee cheque as per provision of section 50C the benefit of taking the stamp duty as on the date of agreement be considered. The assessee has furnished the calculation of the DLC rate as on the date of agreement. The same is reproduced for the sake of convenience:

SHRI LATAFAT HUSSAIN

STATEMENT SHOWING COMPUTATION OF STAMP VALUATION AS ON DATE OF AGREEMENT (03.01.2005)

	Area	Applicable DLC Rate as on 03.01.2005	Total for 6.771% share)	ASSESSEE'S SHARE (40%)
TOTAL LAND AREA AS PER REGISTERED SALE DEED (15332.20 Mtr X 6.771 %)	1038.143 Mtr	**14850** (29700/2)	15416424.00	**6166569.60**
Total Tin Shed Area (461 Mtr X 6.771 %)	31.21 Mtr	**1500 Rs/Mtr**	46821.00	**18728.40**
Total Building constructed Area (17000.80 X 6.771 %)	1151.20 Sq Ft	**120 RSs. /Sq Ft**	138144.00	**55257.60**
Boundarywall			25000.00	**10000.00**
Total Stamp Valuation as on Date of Agreement (03.01.2005)			**15626389.00**	**6250556.00**
Actual Consideration Received by the Appellant (14290349 *40 %)			**14290349.00**	**5716140.00**
Difference in Stamp Valuation Vis-a-vis Actual Consideration			1336040.00	534416.00
Marginal Difference (%) of Actual Consideration			9.34%	**9.34%**

Relying on the above chart and considering the fact that if the DLC value is adopted as on the date of the agreement then the difference between the actual consideration and the DLC value is less than 10 % benefit in the proviso to section 50C will apply retrospectively based on the various judgment that the amendment in the act is curative in nature and for this the ld. AR of the assessee relied upon the various judgment including the judgment of this coordinate bench in ITA no. 35/JP/2019.

10. We have heard the rival contentions and perused the material placed on record. The bench noted that the ld. AR of the assessee in this appeal has challenged value of consideration on account of transfer of immovable property at Rs. 91,31,034/- as per provisions of section 50C of the Act against the actual consideration of Rs. 59,16,709/-. The ld. AR of the assessee in support of the contention that the assessee has entered into an agreement with dated 03.01.2005 placed on record (APB38-49) that agreement. The ld. AR of the assessee also placed on record the agreement value by an account payee cheque. For that he has relied upon the bank statement placed on record at page 80-88 of his paper book. This fact that the assessee is has accounted for and received the

money in the year 2005 has not been doubted. As argued by the ld. AR of the assessee that the agreement was entered into by the parties who have 40 % shares. Out of that 40 % share parties having the right @ 6.771 % share has sold the property and the if the same agreement value of 2005 is considered then the different in the actual agreed value and DLC value is 9.34 %, which is less than the prescribed 10 % in the proviso inserted [Substituted for "five" by the Finance Act, 2020] w.e.f. 1-4-2021. The relevant provision of the Act is cited here in below :

> **Special provision for full value of consideration in certain cases.**
>
> **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 or through such other electronic mode as may be prescribed[7], 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 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.

(2) Without prejudice to the provisions of sub-section (1), where—

(*a*) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(*b*) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (*i*) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

10.1 As it is evident from the above provision of the law 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 even the subsequent condition that the consideration should have been transferred as on the date of the agreement which is evident from the copy of agreement to sale filed by the assessee(APB38-49). The ld. AR of the assessee demonstrated that Rs. 35,000/- has been received by an account payee cheque on 11-01-2005 being the date of which the agreement was executed for agreement to sale. Therefore, the stamp duty value as on date of agreement should be accepted and not as on the date of actual registration. The ld. AR of the assessee in his paper book filed the certified copy of increase in DLC rate which were effective as on the date of agreement whereas in this case, the agreement was duly executed on 31.01.2005. Therefore, the revision of DLC rate will not be applicable to the case of the assessee. The bench also noted that based on this agreement placed on record coupled with the transfer of money for agreement to sale, it is clear that the agreement to sell was made on 03.01.2005 and thus the DLC rate as on the date of agreement shall apply in the present set of facts. The agreement was duly executed before Notary Public and as per the certified copy of DLC rate it is evidently clear that the DLC rate

for the impugned property as on the date of agreement. The ld. AR of the assessee considering the provision of law and facts as placed on record also relied upon the various case laws and submitted that since this proviso being curative in nature the benefit is required to be given to the assessee for the year under consideration. We take the support of the same view of this co-ordinate bench in the case of 35/JP/2019 and in the case of decision of the Madras High Court in the case of the CIT Vs. Vummudi Amarendran [120 taxmann.com 171] where in the case the high court held as under :

> **7.** Before we proceed to consider as to whether proviso inserted in Section 50C of the Act has to be read retrospective or prospective, we need to point out that the Assessing Officer did not doubt the *bona fides* of the transaction done by the assessee, since the Assessing Officer accepted the fact that the assessee had entered into an Agreement for Sale of the property in question *vide* Agreement for Sale dated 4-8-2012, wherein agreed sale consideration was Rs. 19 Crores and the assessee had received Rs. 6 Crores by way of account payee cheque on the date of signing the Agreement. This fact was noted by the CIT(A) and held that the Agreement cannot be treated to be ante-dated as the assessee had received Rs. 6 crores as advance on the date of Agreement through banking channel. The only reason for the Assessing Officer to adopt higher value is based upon the guideline value fixed by the State Government. The question would be as to what is the effect of the guideline value fixed by the Government and the purpose behind fixing the same. This aspect was clearly explained in the case of J. Jayalalitha. It has been pointed out that the guideline value has relevance only in the context of section 47A of the Indian Stamp Act (as amended by Tamil Nadu Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by the authorities under the Stamp Act for the purpose of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a *prima facie* rate prevailing in an area to ascertain the true or correct market value. It is open to the

Registering Authority as well as the person seeking registration to prove the actual market value of the property. The authorities cannot regard the guideline valuation as the last word on the subject of market value but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. It was further pointed out that this position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968; this explanation also will have to be read in conjunction with explanation to section 47(A) of the Indian Stamp Act (as amended by the Tamil Nadu Act 24/1967). It was further pointed out that undue emphasis on the guideline value without referred to the setting in which it is to be viewed will obscure the issue for consideration. Further it was held that in any event, if for the purpose of the Stamp Act, guideline value alone is not a factor to determine the value of the property, its worth will not be any higher in the context of assessing the true market value of the properties in question to ascertain whether the transaction has resulted in any offense so as to give a pecuniary advantage to one party or other.

8. Thus, the Assessing Officer could not have based his conclusion solely based on the guideline value which has been held to be only a *prima facie* rate prevailing in the area to ascertain the true or correct market value and it is not the last word on the subject of market value but only a factor to be taken note of. As pointed out earlier, the genuinely of the transaction done by the assessee was not doubted and the receipt of advance was through banking channel by way of a demand draft.

9. Therefore, in our considered view the Assessing Officer could not have based his finding solely relying upon the guideline value especially when the Assessing Officer is not a person who is computing stamp duty under the provisions of Indian Stamp Act on the Deed of conveyance. Having observed so we need to take note of the next issue would be as to whether the proviso to Section 50C could be read to be prospective or retrospective. Section 50C(1) proviso reads as follows:

"**Provided** that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capita 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."

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 though 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 *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 Honble 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 Honble 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 Honble 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 prospectivity. 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.

19. For all the above reasons, the appeal filed by the Revenue is dismissed. The Substantial Questions of Law raised in these appeals are answered against the Revenue and in favour of the assessee. No costs.

10.2 Thus, respectfully following the ratio as decided in the above case we hold that the amendment in Section 50C was brought in to provide relief to the assessee in a situation in which the stamp duty valuation of a property has risen between the date of execution of agreement to sell and execution of sale deed, as is the norm rather than exception. Here in this case as argued by the ld. AR that the agreement was executed between 27 parties who hold 40 % share and ultimately based on that agreement only 6.667 % share in the improvable property is registered on 13.05.2009 though the agreement is executed on 03.01.2005. Thus, we directed the ld. AO to calculate the DLC rate as on the date of agreement i.e. 03.01.2005 and compute the necessary capital gain based on that date DLC rate. In terms of this observation the ground no. 3 raised by the assessee is allowed.

11. In ground no. 4 the assessee has challenged the action of the ld. AO who has not referred the matter to the DVO as the assessee disputed the DLC rate. Since the issue raised in ground no. 3 for taking the DLC rate as on the date of agreement is decided in favour of the assessee the bench feel that this ground become educative in nature.

12. In ground no. 5 the assessee has challenged the claim of cost of acquisition based on fair market value of approved valuer for an amount of Rs. 5,01,390/-. The ld. AO considered the fair market value of the property wherein he cited the DLC rate of for the purpose of stamp duty purpose of the property and has disbelieved the claim of cost of acquisition of the assessee as on 01.04.1981 and reduced the cost of acquisition considering the fair market value as on 01.04.1981 at Rs. 225 per sq. m. The ld. AR of the assessee in support of the contention submitted that the ld. AO has adopted the plot area rate. The ld. AR of the assessee also submitted that the ld. AO cannot overlook the report of the expert who is the government approved valuer. He has obtained the report and the same has been issued after examining the detail facts estimated fair market value as on 01.04.1981 based on the

detailed guideline. The ld. AR of the assessee also submitted that ld. AO cannot replace fair market value as claimed by the assessee without referring matter to the DVO as he is also not an expert. The ld. AO already appreciated that the property of the assessee is situated at prime location and has commercial value. Therefore, contrary to the finding he has adopted the rate of the residential which is also not correct. The ld. AO has also ignored the fact that the assessee has made construction on the property sold and almost 1150 sq. ft and tin shed construction of 350 sq. ft. is appearing which is not considered by the AO while estimating the value of the property as on 01.04.1981 and the ld. AO has decided fair market value as on 01.04.1981 without considering the fact that the property is of having commercial nature, property is having construction of 1150 sq.ft and tin shed of 350 sq.ft. the cost of acquisition. The ld. AO has not considered these aspect of the matter while estimating fair market value as on 01.04.1981 and therefore, without referring to the matter, the ld. AO cannot replace the fair market value on its own without considering the fact available on record. To support this view, the ld. AR of the assessee has relied upon the judgment which we have persuaded

and the ratio decided by judicial decision cited by the ld. AR of the assessee is reproduced herein below.

> "The Allahabad High Court in their recent judgment in Principal CIT v/s Vidhi Agarwal ITA no. 264 of 2015 categorically held that report of registered valuer is a valid piece of evidence in deciding matters of valuation and such report can be modified, questioned, or rebutted by the assessing officer only in the light of reliable material available with him.
>
> In the case of Mrs. Susamma Paulose v/s JCIT, it has been held that :-
>
> *".....A registered valuer is competent to value properties as per the provisions of the IT Act and Rules made there under. The AO is not justified in brushing aside the report of the registered valuer without pointing out any specific reason for that. The AO did not have any materials with him to rebut the valuation worked out by the registered valuer. The AO was rejecting the report of the registered valuer with a stroke of pen as if the law does not recognize the valuation made by a registered valuer. The method followed by the AO is quite unlawful and arbitrary. The report of a registered valuer is a valid piece of evidence in deciding matters of valuation. Such report can be modified or questioned or rebutted by the AO only in the light of reliable materials available with him. In the present case, the AO himself has not referred the matter to valuation. In the facts and circumstances of the case, the AO as well as the CIT(A) have erred in coming to their conclusions regarding the valuation of the property as on 1st April, 1981. Fair market value of the land as on 1st April, 1981, estimated by a registered valuer being based on sound factual basis and the phenomenal development in that area could not be rejected by the AO without assigning any specific reasons".*
>
> Further, the method of calculation adopted by approved valuer i.e backward method or off loading system for calculation of cost of acquisition have been approved by the Delhi High Court in Ishwar Singh & Another dated 04.07.2018 LA. APP (741/2006).

13. Considering the overall discussion made hereinabove, we hold that the ld. AO cannot replace the fair market value which is supported by approved valuer as on 01.04.1981. The bench also noted that ld. AR of the assessee differentiated that the rate

adopted by AO is of residential property whereas ld. AO on the contrary accepted the fact that the value of the property sold by the assessee is having commercial area. The ld. AR also did not consider the fact that the property sold is having construction on it and benefit of which is also not given thus considering the legal decisions cited hereinabove. We hold that the report of registered value is a valid piece of evidence while computing the fair market value as on 01.04.1981 without disputing the same before the DVO. The ld. AO cannot reject the valuer report. Based on these observations, we direct the ld. AO to allow the claim based on valuer report submitted for determining the cost of acquisition as on 01.04.1981.

In terms of these observations, ground No. 5 raised by the assessee is allowed.

14. Ground No. 6 relates to the benefit claimed by the assessee u/s 54 of the Act for an amount invested in the name of spouse. The ld. AO in the assessment order did not allow the deduction even though the same was claimed in the return of income. The assessee has claimed the additional ground in the appeal filed before the ld. CIT(A). The ld. CIT(A) noted in the order that in the

remand report of the AO and rejoinder of the assessee thereon reveals that the assessee made a claim of deduction u/s 54F for an amount of Rs. 27,48,461/-. The ld. AO noted remand proceedings the said property on which deduction is claimed is not in the name of the assessee but in the name of his wife Smt. Rajiya Begam relying on the decision of Antony Parakal Kurian vs. ACIT-[2022] 138 taxmann.com 440 (Karnataka) the claim was rejected. The relevant observation is as under :

> *"residential house purchased in wife's name cannot be considered as property owned by the assessee, thus, it cannot be construed as owned by the assessee for determining eligibility for exemption under section 54F."*

15. The ld. AR of the assessee in support of the contentions so raised submitted that deduction is claimed u/s 54 of the Act and not u/s 54F of the Act even though this fact is submitted in the copy of contention filed under rule 46A before ld. CIT(A). The same has been considered as u/s 54F instead of u/s 54 of the Act. The ld. AR of the assessee relying on the submission made before the ld. AO reiterated that it is evident from the computation of income that the assessee has claimed the deduction u/s 54 of the Act for which he has filed the copy of registered sale deed, copy of bank statement and affidavit stating the investment made by him is based on these

evidence and the assessee is eligible to claim deduction u/s 54 of the Act. The bench noted that it is not under dispute that the assessee has made investment out of capital gain offered. The investment made is in the name of wife. In support the assessee filed copy of document of registered purchase deed and related affidavit were filed before ld. CIT(A). The same was forwarded to the AO who has not denied the fact that the investment made by the assessee in the name of wife and claimed u/s 54 of the Act. The lower authority merely denied the claim of the assessee on the ground that the assessee has invested in the residential house not in his name but in the name of wife. Thus now the issue is whether the assessee can claim benefit of section 54 in the name of wife while computing the capital gain for which the bench noted the provisions of section 54 of the Act as extracted here in below :

> "**54.** (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—
>
> (*i*) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the

new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be *nil*; or

(*ii*) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:

Provided that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India, and where such option has been exercised,—

(*a*) the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India" had been substituted;

(*b*) any reference in this sub-section and sub-section (2)to "new asset" shall be construed as a reference to the two residential houses in India:

Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

Following third proviso shall be inserted after the second proviso to sub-section (1) of section 54 by the Finance Act, 2023, w.e.f. 1-4-2024:

Provided also *that where the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account for the purposes of this sub-section.*

(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall [11]**[**, *subject to the third proviso to sub-section (1)***]** be deemed to be the cost of the new asset:

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(*i*) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(*ii*) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Following second proviso shall be inserted after the existing proviso to sub-section (2) of section 54 by the Finance Act, 2023, w.e.f. 1-4-2024:

Provided further *that the capital gains in excess of ten crore rupees shall not be taken into account for the purposes of this sub-section.*"

16. On perusal of the above provision of law, the bench noted that the property purchased is of residential in nature and the assessee has claimed it against sale of residential property as per above provision of the Act. The sole reason against which the ld. AO denied the claim is that the investment made in the name of spouse Smt. Rajiya Begam, the ld. AO has not disputed that the money has been fallen from the bank account of the assessee and the same has been purchased in the name of wife. It is well settled that the provision of law is put a condition to invest in the residential property and the assessee entitled to claim deduction u/s 54 in respect of purchase/construction of house property not only in the name of himself, it can be in the name of spouse too. We take strength to support this contention of the assessee from the decision of the Jurisdictional High Court wherein the court in the

case cited herein below considered investment in the name of family and benefit of section 54 of the Act was granted:

> *"The Rajasthan High Court in Mahadev Balai vs. ITO (Rajasthan High Court) D.B. Income Tax Appeal No. 20/2016 order dated 07.11.2017 wherein the Hon'ble High Court had to consider the following question of law at the instance of the assessee:-*
>
> *"Whether the Ld. ITAT was justified in disallowing the exemption under Section 54B of the act without appreciating that the funds utilized for the investment for purchase of the property eligible under Section 54B belonged to the Appellant only and merely the registered document was executed in the name of the wife and further, the wife had no separate source of income?*
>
> *HELD by the High Court allowing the appeal:-*
>
> *(i) On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd. and other judgments of different High Courts, the word used is assessee has to invest it is not specified that it is to be in the name of assessee.*
>
> *(ii) It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others."*

17. Respectfully following the cited judgement of the Jurisdictional High Court, we hold that the benefit u/s 54 of the Act cannot be denied merely on the reason that the investment made is in the name of wife of the assessee. Therefore, we direct the ld. AO to allow the deduction u/s 54 of the Act as claimed for the investment made by the assessee in the name of wife. Based on

these observations, the ground No. 6 raised by the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 04 /12/2023

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judcial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 04 /12/2023
*Ganesh Kumar, PS
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Latafat Hussain , Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward 3(2), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 382/JP/2023}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar