

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.570/Kol/2022  
Assessment Year: 2017-18**

Deputy Commissioner of Income-tax, Central Circle- 1(3), Kolkata.	Vs.	A. R. Sulphonates Pvt. Ltd. 21, Princep Street, Chandni Chowk, Kolkata-700072. (PAN: AAECA8617Q)
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Rajeeva Kumar, Advocate & Shri  
Giridhari Dhelia, AR

Respondent by : Shri B. K. Singh, JCIT, Sr. DR

Date of Hearing : 15.02.2024

Date of Pronouncement : 22.03.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the revenue is against the order of Ld. CIT(A)-20, Kolkata vide Appeal No. ITBA/APL/S/250/2022-23/1045040009(1) dated 30.08.2022 passed against the assessment order by ACIT, Central circle-1(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 24.12.2019 for AY 2017-18.

2. The only ground raised by the revenue is in respect of deletion of addition made by the Ld. AO on account of long term capital gain u/s. 50C of the Act of Rs.5,29,39,153/- by holding that leasehold right on land are not within the purview of section 50C.

3. Brief facts of the case are that assessee is engaged in manufacturing of sulphonates having its manufacturing unit at Thane, Maharashtra. For expansion of its business it had applied for leasehold land for plot no. N72 of Maharashtra Industrial Development Corporation (MIDC) for 9800 sq. mtr. of land. The said leasehold land was allotted to the assessee by MIDC on 11.04.2008 for a total consideration of Rs.1,74,35,231/- for setting up a manufacturing unit. Subsequently, assessee decided to transfer the said land to one partnership firm M/s. S. M. Industries (SMI).

3.1. Agreement to sale was executed with partners of SMI on 28.04.2011 whereby the assessee agreed to transfer the said leasehold land for a consideration of Rs.2 Cr. Against this agreement to sale, assessee received an advance of Rs. 5 lacs by account payee cheque and the balance was to be received on or before the execution of conveyance deed. Assessee had handed over possession of the said land to the partners of SMI on the date of execution of agreement to sale i.e. 28.04.2011. Since the said land was acquired on lease by the assessee from MIDC, it sought a permission from MIDC to transfer the leasehold rights in the land.

3.2. The permission from MIDC got delayed which was eventually given on 23.02.2016, where after assessee took all the necessary steps for execution of conveyance in favour of SMI which was done on 24.08.2016. Assessee received the balance consideration of Rs.1.95 Cr. as agreed earlier through agreement to sale dated 28.04.2011. Assessee claimed that copy of agreement to sale and circle valuation certificate at the time of execution of agreement to sale were submitted before the AO. According to the circle valuation certificate, the valuation of the said property for the purpose of stamp duty valuation at the time of execution of agreement to sale was Rs.1,62,99,500/-,

which was less than the actual consideration received by the assessee. In the course of assessment proceedings, assessee submitted that the transfer of lease could not be done by the assessee without the approval from MIDC.

3.3. It was also submitted that section 50C applies only to the capital asset being land or building or both. According to the assessee, lease right in a plot of land are neither land or building or both nor can these rights be included within the scope of land or building. Ld. AO, however, observed that leasehold right of the land acquired by the assessee are capital asset which the assessee acquired from MIDC and subsequently transferred it to the partners of SMI for the remaining period of lease.

3.4. He also submitted that Ld. AO ignored the fact that the agreement to sale was executed on 28.04.2011 which is much prior to the date of registration of transfer of rights in the land i.e. 24.08.2016 and applied the provisions of section 50C ignoring the first and second proviso to sec. 50C.

3.5. According to him, assessee is liable to pay long term capital gain as per the provisions of sec. 50C. He placed reliance on the decision of Coordinate Bench of ITAT, Lucknow in the case of ITO Vs. Hariom Gupta in ITA No. 222/LKW/2013 and ITAT, Delhi in the case of ITO Vs. Chander Sekhar in ITA No. 430/Del/2013 wherein it was held that leasehold rights of the land is a capital asset to which the provision of sec. 50C of the Act are applicable. He, thus, computed the long term capital gain by taking the full value of consideration of Rs.8,18,36,300/- to arrive at a figure of Rs.5,29,39,153/-. Aggrieved, assessee went in appeal before the Ld. CIT(A). Before the Ld. CIT(A), it was contended by the assessee that it was allotted right to use the leasehold property by MIDC. The property was neither transferred in the name of the assessee nor owned by it. It was only the right to use

the land which was taken on lease by the assessee and only the right to use the land was transferred to the assessee.

3.6. According to the assessee, right in the leasehold property is not a capital asset being land or building or both as contained in sec. 50C of the Act. Assessee also contended that sec. 50C is a deeming provision and it should be applied only in respect of situation specifically mentioned therein. Ld. AO cannot go beyond the explicit mandate of the deeming provision for which the section is enacted. Assessee cited and gave reference to certain sections under the Act whereby “land or building” and “rights in land or building” have been recognised separately. He referred to sec. 54D where “land or building” and “rights in land or building” are recognized separately. Similar is the case in section 5(1) of the Wealth Tax Act, 1957.

3.7. Assessee thus, distinguished between “land or building” and “rights in land or building”. Assessee submitted that it has transferred leasehold rights in the plot of land allotted by MIDC and not the land itself and, therefore, provisions of section 50C are not applicable in the present case. It placed reliance on several judicial precedents including decision of Hon’ble High Court of Bombay in the case of CIT Vs. Greenfield Hotels & Estates Pvt. Ltd. (2016) 389 ITR 68 (Bom) and of the Coordinate Bench of ITAT, Kolkata in the case of DCIT Vs. Tejender Singh (2012) 50 SOT 391 (Kol) and Ritz Suppliers Pvt. Ltd. (2020) 113 taxmann.com 349 (Kol).

3.8. Ld. CIT(A) after considering the facts of the case and submissions made by the assessee noted about the undisputed fact that only the leasehold rights in an industrial plot of land has been transferred to SMI for a total consideration of Rs. 2 Cr. He further observed that the impugned industrial plot of land was taken on lease from MIDC, an organ of the Maharashtra Government and the leasehold rights for the

remaining period of lease has been transferred to SMI after obtaining due approval from MIDC. By placing reliance on the judicial precedence referred above, Ld. CIT(A) concluded that provisions of section 50C would not be applicable in assessee's case as it has transferred only the leasehold rights in the industrial plot of land. Thus, the addition so made by the Ld. AO was deleted. Aggrieved, revenue is in appeal before the Tribunal.

4. Before us, Ld. Sr. DR has placed on record a written submission dated 13.02.2024 whereby it is submitted that the main pre-requisite for charging of long term capital gain u/s. 50C are –

- (i) Existence of capital asset (immovable property) as land or building
- (ii) Transfer of capital asset
- (iii) Amount of consideration.

4.1. It is stated that assessee was in possession of leasehold property which has been transferred for a consideration received by the assessee. Ld. Sr. DR has referred to the provisions of section 269UA(d) which defines the 'immovable property' and also section 2(47)(vi) which defines the term 'transfer'. By referring to these two definitions, Ld. Sr. DR submitted that it can be easily inferred that the transaction of even leasehold property may yield long term capital gain. According to him, substantive addition in the case of the assessee should be confirmed.

5. Per contra, Ld. Counsel for the assessee also placed on record written notes containing 23 pages along with copies of agreement dated 07.12.2010 between MIDC as the guarantor and assessee as the licensee for granting of leasehold rights in the impugned industrial plot of land, copy of agreement for assignment dated 28.04.2011

between the assessee as the transferor/assignor and the partners of SMI as the transferees/assignees agreeing on the terms for transfer of leasehold rights granted by MIDC and copy of order dated 23.02.2016 by MIDC granting its approval in favour of licensee for the transaction of transfer of lease from the assessee to the partners of SMI.

6. The contentions of the Ld. Counsel for the assessee are twofold, first relating to application of section 50C which applies only on a capital asset being land or building or both and not on leasehold rights in land or building. The second being applicability of first and second proviso to sec. 50C of the Act where the date of agreement and date of registration are different and part amount has been paid through banking channel on or before the date of agreement.

6.1. To deal with the above two contentions, provisions of section 50C(1) are reproduced as under:

*“ [50C. Special provision for full value of consideration in certain cases.—*

*(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 6 [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 6 [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, 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 five 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 2 [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 2 [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 2 [or assessed or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted 2 [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.]”*

7. Ld. Counsel submitted that section 50C applies only in case of a transfer of capital asset being land or building or both. According to him, the capital asset to be subjected to long term capital gain taxation u/s. 50C is restricted to land or building or both on which the said deeming provision would apply. According to him, this section does not make a specific reference to “rights in lands or building” which otherwise is included in other provisions in the Act. According to him, legislature had made specific reference to “rights in lands or building” wherever deemed appropriate.

7.1. He referred to section 54D of the Act, section 5(1) of the Wealth Tax Act, 1957 which have been already narrated above. He also made reference to sec. 27(iiiib), section 54G,

section 54GA and explanation to section 269UA(d) wherein specific reference is made to rights in or with respect to any building or part thereof or specific mentions as “building or land or any rights in building or land”. On the strength of this specific reference in certain sections in the Act, he submitted that legislature intentionally had not included such a reference in section 50C and restricted its application only to capital asset being “land or building or both”.

7.2. In order to understand the legislative intent, Ld. Counsel elucidated on the variation in the nature of enjoyment and restriction in case of land or building as owned capital asset vs. as leasehold right in the same land or building. According to him, in a leasehold property, the lessee leases the property for a particular period with restriction related to transfer of ownership. In a lease transaction, only limited rights in the land get transferred under a lease agreement. On the contrary, a freehold property gives complete property ownership without any restrictions on its construction, modification and transfer. In respect of ownership of land and building, the most crucial factor to be considered is towards its perpetual succession. According to the Ld. Counsel, the word ‘perpetual’ has been defined in Oxford Dictionary as “continuing for a long period of time without interruption.”

7.3. Ld. Counsel has exhaustively dealt with various parameters highlighting the differences between leasehold and freehold property furnished in his written submissions.

The distinguishing features between leasehold and freehold property as submitted by the Ld. Counsel is tabulated below:

SN	Point	Leasehold Property	Freehold Property
1	Ownership Duration	Ownership is for a fixed term as stated in the lease agreement	Ownership is indefinite and typically lasts until the owner decides to sell or transfer the property.
2.	Ownership Rights	The lessee holds the rights to use and occupy the property for the lease duration.	The owner holds complete ownership rights to the property, including the land and any structures on it.
<b>3</b>	<b>Land Ownership</b>	The land is owned by the landlord or freeholder. The lessee only owns the rights to the property for the lease duration.	The owner owns both the land and any structures on it, giving them complete ownership of the property.
<b>4</b>	<b>Lease Agreement</b>	The lessee and the lessor sign a lease agreement specifying the terms, conditions, and duration of the lease.	No lease agreement is required since the owner has complete ownership rights.
<b>5</b>	<b>Renewal</b>	At the end of the lease term, the lessee may have the option to renew the lease or negotiate a new lease agreement.	No renewal is required as the owner has perpetual ownership of the property.
<b>6</b>	<b>Control over Property</b>	The lessee has certain restrictions and obligations as specified in the lease agreement, including seeking permission for modifications or subletting.	The owner has complete control over the property, including making decisions about modifications, usage, and subletting.
<b>7</b>	<b>Maintenance Responsibility</b>	Depending on the lease agreement, the lessee may be responsible for maintenance and repairs during the lease term.	The owner is responsible for maintenance and repairs of the property.
<b>8</b>	<b>Property Modifications</b>	The lessee may require permission from the	The owner has the freedom to modify or

		landlord to make modifications or alterations to the property.	alter the property as desired, subject to local regulations.
<b>9</b>	<b>Transfer of Ownership</b>	The lessee cannot transfer ownership of the property to another person without the consent of the landlord.	The owner can freely transfer ownership by selling or gifting the property to another party.
<b>10</b>	<b>Value Appreciation</b>	Leasehold property values may fluctuate based on lease terms and remaining lease duration.	Freehold property values are generally more stable and tend to appreciate over time.
<b>11</b>	<b>Landlord's Role</b>	The landlord may have certain responsibilities, such as collecting rent, managing maintenance, and enforcing lease terms.	There is no landlord involved since the owner has full ownership rights.
<b>12</b>	<b>Financial Considerations</b>	The lessee pays periodic rent to the landlord for the right to use the property.	The owner does not have to pay rent as they have full ownership of the property.
<b>13</b>	<b>Subletting</b>	The lessee may be allowed to sublet the property with the permission of the landlord, subject to lease terms.	The owner has the right to sublet the property without seeking permission from anyone.
<b>14</b>	<b>Rights to Income</b>	Any income generated from the property, such as rental income, typically belongs to the landlord.	The owner retains any income generated from the property, such as rental income or profits from selling.
<b>15</b>	<b>Security of Tenure</b>	Leasehold properties offer limited security of tenure as the lease term has a defined end date.	Freehold properties provide greater security of tenure as long as the owner continues to hold the property.
<b>16</b>	<b>Financing Options</b>	Financing leasehold properties may have limitations compared to freehold properties, as lenders may have stricter criteria.	Financing options are generally more accessible for freehold properties, as they provide greater security for lenders.
<b>17</b>	<b>Control over Costs</b>	The lessee may be subject to rent increases or additional charges as specified in the lease agreement.	The owner has control over costs and can make decisions about expenses related to the property.
<b>18</b>	<b>Inheritance</b>	The leasehold rights	Freehold properties can

		may not be inheritable, and the property reverts to the landlord at the end of the lease term.	be inherited by the owner's heirs, who become the new owners.
<b>19</b>	<b>Landlord's Consent</b>	The lessee may require the landlord's consent for various activities, such as making structural changes or running a business on the premises.	The owner does not require anyone's consent for activities related to the property.
<b>20</b>	<b>Risk of Property Loss</b>	The lessee may bear the risk of losing the property if they violate lease terms or fail to renew the lease.	The owner has full protection and ownership rights, reducing the risk of losing the property.
<b>21</b>	<b>Legal Protection</b>	Leasehold properties are subject to specific laws and regulations governing leases and tenant rights.	Freehold properties are protected by general property laws and regulations.
<b>22</b>	<b>Land Use Restrictions</b>	The lessee may be subject to certain restrictions on land use as specified in the lease agreement or local zoning regulations.	The owner has more freedom in land use decisions, subject to local zoning and planning regulations.
<b>23</b>	<b>Governing Authority</b>	Leasehold properties may be subject to the jurisdiction and regulations of the local housing or real estate authorities.	Freehold properties are subject to the jurisdiction and regulations of the local land and property authorities.
<b>24</b>	<b>Capital Investment</b>	Leasehold properties may require less initial capital investment compared to purchasing a freehold property.	Purchasing a freehold property requires a larger upfront capital investment.
<b>25</b>	<b>Flexibility</b>	Leasehold properties offer less flexibility as the lessee is bound by the terms and conditions of the lease agreement.	Freehold properties provide more flexibility as the owner has complete control over the property.
<b>26</b>	<b>Termination</b>	The lease can be terminated at the end of the lease term or in cases of lease violations by either the lessee or the landlord.	The owner has the option to terminate ownership by selling or transferring the property.

27	<b>Property Use Change</b>	The lessee may require permission from the landlord to change the use of the property, such as converting it into a commercial space.	The owner has the freedom to change the use of the property without seeking permission.
----	----------------------------	---	---

7.4. Ld. Counsel further submitted that deeming provision of section 50C cannot be extended beyond the purpose of which it is enacted. The mandate of sec. 50C extend only to capital asset, being land or building or both. To buttress his contention on this proposition, he placed reliance on judicial precedence of Hon'ble Supreme Court in the case of Amarchand N. Shroff 48 ITR 59, Mother India Refrigeration India Pvt. Ltd. 155 ITR 711 wherein, *inter alia*, it was held that legal fictions are only for a definite purpose. They are limited to the purpose for which they are created and should not be extended beyond their legitimate field.

7.5. On the second leg of his contention, ld. Counsel referred to the first and second proviso to section 50C to submit that assessee had entered into an agreement to sale with SMI to transfer the leasehold rights in the year 2011 for a consideration of Rs. 2 Cr. and received an advance of Rs. 5 lakh through banking channel, upon signing of the said agreement to sale. Accordingly, in terms of first and second proviso to section 50C, stamp duty valuation at the time of registration of the said agreement in the impugned year cannot be taken for computing the capital gain, rather the value adopted by the stamp valuation authority on the date of agreement to sale be taken for the purpose of computing full value of consideration for such transfer. In this respect,

he pointed out that valuation report for valuing the property at the time of execution of agreement to sale at Rs.1,62,99,500/- issued by the competent authority was submitted before the AO in the course of assessment proceedings itself, along with copy of agreement to sale. The facts in respect of this proposition are undisputed and, therefore, Ld. AO is wrong both in law and on facts, to adopt the stamp duty value relevant to the year under consideration and make the addition to that effect.

8. We have heard the rival contentions and perused the material on record. We have carefully gone through the submissions of both the parties as well as agreements and judicial precedents referred before us. When we refer to the agreement dated 07.12.2016 by which MIDC as guarantor of leasehold right has transferred the lease rights to the assessee as the licensee in the said agreement, it is noted that assessee i.e. licensee had applied to the guarantor i.e. MIDC for grant to it, a lease of the land and premises which the guarantor had agreed to grant to it upon certain terms and conditions. The consideration prescribed in the said agreement is in respect of premium payable by the licensee. This agreement has been referred to as agreement to lease through which guarantor had handed over the possession to the licensee of the said industrial plot of land. In sub-clause (b) of clause (2) of this agreement, it is specifically mentioned that the licensee cannot assign, letting or part with the possession of the demised premises or any part thereof without the previous written consent to the Chief Executive Officer and the Chief Executive Officer may in his

absolute discretion, refuse such consent or grant the same subject to such condition as he may think fit. Thus, with this restrictive covenant, assessee has limited rights for the transfer of even the leasehold right that it had obtained under this agreement.

8.1. In the agreement for assignment dated 28.04.201 between the assessee as transferor/assignors and partners of SMI as transferee/assignees in clause (4), it is specifically stated that the transfer of lease is subject to grant of permission by MIDC that in clause 14 it is specifically stated that on grant of requisite permission of MID C, the transfer or assignment in respect of said plot will be completed in favour of the transferees/assignees for which necessary agreement/deeds shall be executed. Similar requisition of obtaining permission of MIDC is also contained in clause 17 of this agreement. Further to this, the order from MIDC dated 23.02.2016 is in respect of granting of approval for the transfer of lease from the assessee to SMI in absence of which the entire transaction of transfer would have failed. Thus, taking into consideration all these three documents, it is evidently demonstrated by the assessee that the leasehold rights are limited and restrictive in nature as compared to the ownership rights.

8.2 The moot point before us to be considered is whether the transfer of leasehold rights in land falls within the purview of section 50C or not. In this respect, from section 50C(1) itself, we have already noted that it refers to transfer of a capital asset, being land or building or both. Whether

this land or building or both would include the leasehold rights in the said land or building or both is what we need to consider.

8.3. In the written submission made by the Ld. Sr. DR, while referring to the pre-requisite of charging long term capital gain u/s. 50C, it is stated that existence of capital asset as land or building is one of the important pre-requisite. In this statement, Ld. Sr. DR has also used the word “immovable property” which in our understanding does not find place in section 50C(1). By referring to “immovable property”, ld. Sr. DR has gone into the provisions of section 269UA(d) wherein this term ‘immovable property’ is defined which refers not only to ‘land or building or part of a building’ but by way of explanation, also includes “any rights therein” which has a restrictive application as the explanation mentions “for the purpose of this sub clause”. Ld. Sr. DR has also referred to the definition of “transfer” in section 2(47)(vi) according to which any transaction which has the effect of transferring or enabling the enjoyment of any immovable property is also covered by the definition of transfer. Again in this definition by way of explanation (1), the term ‘immovable property’ draws its meaning from clause (d) of sec. 269UA which we have dealt above.

8.4. By taking recourse to the phrase ‘immovable property’, Ld. Sr. DR has made an attempt to infer that the transaction of even leasehold property would yield long term capital gain, liable to be taxed u/s. 50C. In this context, it is important for us to note that sec. 50C is a deeming provision by which

the full value of consideration is substituted by the value adopted or assessed or assessable by stamp valuation authority in place of consideration received for a transfer of capital asset being land or building or both. It is a settled legal proposition that deeming provision cannot be extended beyond the purpose for which it is enacted. Section 50C(1) does not refer to immovable property but to specific capital asset being, land or building or both. Thus, the inference arrived at by the Ld. Sr. DR fall apart for which due force is drawn from the judicial precedence of Hon'ble Supreme Court in the case of Amarchand N. Shroff (supra) and Mother India Refrigeration (supra), referred above in this respect.

9. Coming to the facts of present case, where the transaction relates to transfer of a leasehold property whereby an industrial plot of land was allotted by MIDC under a lease agreement to the assessee and subsequently assessee transferred the said leasehold land to SMI for the remaining period of lease, the important point we need to consider is whether the leasehold rights which are restricted in nature are covered within the meaning of "capital assets being, land or building or both", contained in section 50C(1).

9.1. For this, we need to understand the nature of rights accruing on a property which is freehold and the one which is leasehold. In this respect, we do find force in the submission made by the Ld. Counsel exhaustively dealing with several parameters to distinguish between the features of leasehold property and a freehold property, already tabulated above. Accordingly, the capital asset being land or

building or both referred to in sec. 50C(1) do not include leasehold rights in land or building or both.

9.2. Further, we take note of the fact that wherever legislature intended to include specific reference to “rights in land or building or part thereof” which is included in certain sections such as section 54D, section 54G, sec. 54GA, sec. 27(iiib), sec. 5(1) of Wealth Tax Act, 1957 and explanation to sec. 269UAD. Such a reference to “rights in land or building or part thereof” does not find place in sec. 50C(1) which sets it apart from the inference to be drawn that capital asset being, land or building or both would also include rights in land or building or part thereof, to cover leasehold rights which are limited in nature and cannot be equated with ownership of land or building or both. The Act has given separate treatment to land or building or both and the rights therein.

9.3. Considering the exhaustive discussion made above on various aspects of the issue before us, and the factual matrix corroborated by relevant documentary evidence, we are in agreement with the submissions made by the Ld. Counsel for the assessee to hold that leasehold rights in land are not within the purview of section 50C of the Act. Accordingly, we concur with the finding arrived at by Ld. CIT(A) in deleting the addition of Rs.5,29,39,153/- on account of long term capital gain for transfer of leasehold industrial plot u/s. 50C of the Act.

10. On the alternate plea made by the Ld. Counsel as to application of first and second proviso to section 50C, we do

find force in the same. In this respect, assuming for a moment for the purpose dealing with this alternate plea that transfer of a leasehold right in land is covered by sec. 50C(1) then, on this alternative plea also, the assessee is adequately safeguarded by first and second proviso to sec. 50C whereby it had entered into agreement to sale with SMI to transfer the leasehold rights in land in the year 2011 itself for a consideration of Rs.2 Cr. against which assessee had received Rs. 5 lacs in advance through banking channel, fact of which are undisputed and uncontroverted. Assessee had also placed on record the stamp duty value at that relevant time on record which is lesser than the actual consideration of Rs. 2 Cr. and thus, there cannot be any adverse bearing on the assessee by applying first and second proviso to sec. 50C in the instant case.

11. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> March, 2024.

Sd/-  
(Sonjoy Sarma)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 22nd March, 2024***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent.
  3. CIT(A)-20, Kolkata
  4. The Pr. CIT, Kolkata.
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata