आयकर अपीलीय अधिकरण, विशाखापटणम पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench, Visakhapatnam

Before Shri Ravish Sood, Judicial Member
and
Shri Balakrishnan S., Accountant Member

आ.अपी.सं /**ITA No.243/Viz/2025**
(निर्धारण वर्ष/Assessment Year: 2016-17)

Assistant Commissioner of Income Tax, Circle-1(1), Vijayawada.	Vs.	South India Research Institute Private Limited, Vijayawada. PAN: AADCS1247F
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri C. Subrahmanyam, CA	
राजस्व द्वारा/Revenue by:	Shri Badicala Yadagiri, CIT-DR	
सुनवाई की तारीख/Date of Hearing:	29/10/2025	
घोषणा की तारीख/Date of Pronouncement:	19/12/2025	

आदेश / **ORDER**

PER. RAVISH SOOD, JM:

The present appeal filed by the revenue is directed against the order passed by the CIT(Appeals), dated 24.02.2025, which in turn arises from the order passed by the Assessing Officer (for short, "AO") under Section 143(3) of the Income-tax Act, 1961 (for short, "Act") dated 21-12-2018, for the Assessment Year 2016-17. The revenue has

assailed the impugned order of the CIT(Appeals) on the following grounds of appeal before us:

> "1. The order of the Ld. CIT(A) is erroneous on facts and in circumstances of the case.
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> 2. The CIT(A) erred in law by considering an unregistered and unstamped Memorandum of Understanding (MOU) executed on plain paper, without any witnesses, as a valid and enforceable document for determining the nature and genuineness of a transaction involving substantial monetary consideration under the Income Tax Act.
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> 3. The CIT(A) erred in law by failing to recognize that the non-receipt of the full advance as agreed in the Original MOU (25.05.2004), amounting to ₹5 crores, invalidates the MOU, and such non-compliance affects the validity of the sale agreement for taxation purposes.
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> 4. The CIT(A) erred in law by failing to consider the variations in the Interim MOU (12.08.2013) and the Memorandum of Compromise (23.11.2013) while allowing the appeal, particularly when these documents revised the land extent to 19,365 sq. yds., but the assessee sold 22,258.6 sq. yds. instead.
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> 5. The CIT(A) erred in law by relying on the Original MOU dated 25.05.2004 for calculating Long Term Capital Gains (LTCG), despite significant differences in the extent of land agreed upon in the Original MOU, Interim MOU, Memorandum of Compromise, and the actual land sold by the assessee.
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> 6. The CIT(A) erred in relying on the MOU dated 12.08.2013 and the Memorandum of Compromise dated 23.11.2013 without proper examination of the consideration/value of the land, especially when no sale rate per unit (acre/sq. yd.) is mentioned in those documents.
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> 7. The CIT(A) erred in law by relying on the original MOU dated 25.05.2004, despite it being superseded by subsequent binding agreements, viz., the Interim MOU dated 12.08.2013 and the Memorandum of Compromise dated 23.11.2013.
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> 8. The CIT(A) erred in failing to appreciate that the actual sale of land was governed not by the Original MOU dated 25.05.2004, but by subsequent agreements, viz., the Interim MOU dated 12.08.2013 and the Memorandum of Compromise dated 23.11.2013, which effectively altered the terms and conditions of the original arrangement.

9. The CIT(A) erred in failing to recognize that the actual sale of land did not comply with the terms outlined in the Interim MOU dated 12.08.2013 and the Memorandum of Compromise dated 23.11.2013, especially since the agreements specified the sale of 19,365 sq. yds. of land, yet the assessee sold 22,258.6 sq. Yds, there is a significant deviation from the agreed terms.

10. Any other ground that may be urged at the time of appeal."

2. Succinctly stated, the assessee company, viz. M/s. South India Research Institute Pvt. Ltd., which is engaged in manufacturing and contract processing of pharmaceutical formulations, had filed its return of income for AY 2016-17 on 16-10-2016, declaring its total income at Rs. 40,05,510/-. Subsequently, the case of the assessee company was selected for "limited scrutiny" under CASS to examine, viz. (a) mismatch between amounts credited to profit & loss account and other heads of income; and (b) discrepancy between sale consideration reported in the return of income and sale consideration reflected in AIR/SRO records.

3. During the course of the assessment proceedings, the assessee company furnished the requisite information and also filed the supporting documents. The AO noticed that the assessee company had, during the subject year, executed registered sale deeds transferring various parcels of land to parties related to M/s. Sama Constructions. The AO observed that the aggregate value of the properties as per the Sub-

Registrar/Stamp Valuation Authority as on the dates of registration amounted to Rs. 36,38,86,500/-, whereas the assessee for computing the “capital gain” on transfer of the subject land had accounted for the sale consideration of Rs. 4,15,00,000/- in its books of account.

4. The AO vide his Show-cause notice (SCN) dated 08-12-2018 (sent by e-mail in ITBA) called upon the assessee company to put forth its explanation as to why the SRO values may not be treated as the full value of consideration for computing the capital gains under Section 50C of the Act. In reply, it was the assessee’s claim that, based on an original “Memorandum of Understanding” (MOU) dated 25-05-2004, the sale value of the land was fixed in acres and that it had received the full/part consideration of Rs. 4,15,00,000/- in the year 2004 through banking channels, i.e., cheques. The assessee company produced copies of the bank cheques, audited balance sheets for FY 2004-05 and FY 2005-06, the MOUs of 2004 and 2013, Lok Adalat proceedings, and other supporting documents to substantiate the receipt of consideration and the aforementioned set of facts.

5. Also, the assessee company relied on an interim MOU dated 12-08-2013 and a Memorandum of Compromise resulting from litigation, and contended that the advances received in the year 2004 were

ultimately appropriated against the transfer of about 4.6 acres of land during the subject year, i.e., FY 2015-16. The assessee company submitted that the subject sale transaction must be examined with reference to the sale consideration fixed in the agreement dated 25-05-2004 and thus, as the subject transaction falls within the proviso(s) to Section 50C of the Act, therefore, the stamp-duty value as on date of agreement (or date of receipt of part consideration by banking channel) was to be adopted.

6. The assessee company, to buttress its claim, had placed on record particulars of cheques totalling Rs. 4,15,00,000/- that were stated to have been paid in FY 2004–2005, viz. HDFC bank cheques dated 25-05-2004, 26-05-2004, 27-05-2004, 05-06-2004 and 14-07-2005. Also, the assessee company had placed on record the MOU dated 25-05-2004 and subsequent documents showing the litigation settlement and final registration of sale deeds in FY 2015-16.

7. However, we find that the AO rejected the assessee's contention that the MOU dated 25.05.2004 and the earlier banking receipts were to be considered for adopting the stamp value as was prevalent at the said point of time. The AO was of the view that as the "provisos" to Section 50C was inserted by the Finance Act, 2016, w.e.f. 01-04-2017, thus, the

same was not applicable to the subject transaction where the registration took place in FY 2015-16. Accordingly, the AO invoked Section 50C(1) and adopted the SRO values as on the dates on which the sale deeds were registered and recomputed the capital gain in the hands of the assessee company.

8. Accordingly, the AO, based on his aforesaid deliberations, computed the long-term capital gains (LTCG) on the transfer of the subject lands, as under:

(i). Sale consideration (deemed under s.50C): Rs. 36,38,86,500/-

Less: Indexed cost of acquisition : Rs. 97,53,322/-

LTCG : Rs. 35,41,33,178/-.

Thereafter, the AO, after setting off the unabsorbed depreciation, computed the total income of the assessee company at Rs. 32,63,89,850/-.

9. Aggrieved, the assessee company carried the matter in appeal before the CIT(A), who concurred with the contentions advanced by the assessee company and vacated the addition made by the AO. Also, the CIT(A) observed that as the “provisos” to Section 50C, which related back the adoption of the SRO value (as deemed sale consideration) to

the date on which the agreement to sell was executed (subject to satisfaction of the set of conditions therein contemplated), therefore, the SRO value of the property adopted by the AO of the year 2015 was not warranted in the case. Accordingly, the CIT(A), by drawing support from a host of judicial pronouncements, directed the AO to recompute the capital gain by adopting the SRO value of the property on the date on which the advance/consideration was received by the assessee company by considering the year of agreement/MOU signed by the appellant and the purchaser party. For the sake of clarity, we deem it apposite to cull out the observations of the CIT(A), as under:

> "6.2 All the arguments and related supporting documents have been examined by the undersigned. It is noticed from the assessment order that the appellant has executed the sale deed in favour of various persons of M/s. Sama Constructions during the year under consideration whereas a Memorandum of understanding was signed between the appellant and party on 25.05.2004 for sale of the property in question. On later stage, the matter was litigated before the Lok Adalat. Meanwhile both the parties were agreed to resolve the issue and therefore, another Memorandum of understanding was made and signed by the both parties 12.08.2013 and the final sale deed was executed during the year under consideration. The appellant has submitted the copy of sale deed executed, copy of Memorandum of understanding signed during the year 2004 and 2013, copy of proceeding/order of the Lokadalat, copy of bank account statement, copy of balance sheet for the year ended on 31.03.2005, extract of various judicial decision on the identical issue. The appellant has claimed that the full amount of consideration of Rs. 4.15 Crores was received during the year of 2004 and for the same balance sheet and the bank account statements have been furnished by the appellant substantiating the claim. The same have been perused and found in order.
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> 6.3 Here, the core question arises whether the proviso of section 50C is applicable before its insertion in the Act, i.e. before 01.04.2017 by the Finance Act 2016. The AO has denied the contention of the applicant based on the

theory that the proviso of section 50C is prospective in nature and thus, the claim of the appellant was not considered.

6.4 It is pertinent to discuss that legislature while introducing the proviso of section 50C, it is in their in mind that various transactions made by assessee by way of agreement and the amount paid during the agreement on which the seller and buyer agrees to transact the property on a specific consideration. However, it is also seen in various cases that the final sale deed is delayed due to various reasons and the receiver of the consideration has to pay the capital gain tax determined during the year of sale deed. This kind of difficulties were being faced by the various taxpayers and therefore, the legislature addressed the same and made amendment in the section 50C and introduced the proviso so that the taxpayer should not be in hardship.

6.5 After the insertion of the proviso, the questions were being arised whether the proviso is having nature of prospective or retrospective. Various judicial pronouncements were made by the higher appellate authorities in which it was held that the nature of amendment is retrospective rather than prospective.

6.5.1 The appellant also relied on various judicial decisions which are on identical issue and in favour of the respective appellants.

In the case of Rahul G. Patel vs. Deputy Commissioner of Income Tax, Circle 1(2), Baroda, the Hon'ble ITAT, Ahmedabad while deciding the issue for the AY 2013-14 held that as per the proviso to section 50C, stamp duty valuation of property for purpose of stamp duty payment on date of agreement will be deemed as full consideration of capital asset. The Tribunal held that

> *"14. It is pertinent to observe that an agreement to sale was executed by the assessee on 8.2.2010 which is followed by payment through account payee cheque. Details of payments have been duly noticed by the ld.AO as well as by the ld.CIT(A). First cheque was received on 1.4.2011 for a consideration of Rs.10 lakhs; then Rs.30 lakhs on 23.7.2011; Rs.15 lakhs on 28.12.2011 and Rs.50 lakhs on 26.3.2012. Similarly on 1.5.2012 Rs.45 lakhs was received through account payee cheque. It means that sale consideration were received by the assessee before the registration of sale deed regularly on different intervals. As observed earlier, section 50C provides that where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall for the purposes of section 48, be deemed to be the full value of the consideration. The question before us is, what could be the full value of sale consideration i.e. whether the value on which stamp duty was paid at the time of sale deed or the value declared in the sale agreement ? In such a situation where the*

assessee is not satisfied with adoption of sale value on which stamp duty was paid, then scheme of the Act prescribes a mechanism under sub-section (2) of section 50C for making a reference to the DVO to determine fair market value of the property. The reasons for such a mechanism is that stamp duty fee is only 4.95% (herein Gujarat) on the total sale consideration, which is a small amount and can be borne by any vendor/vendee. But for the purpose of Income Tax Act, the liability would enhance multi fold, and due to this reason, mechanism has been provided in the Act for the assessee to demonstrate that the value received by him was far less than one adopted for the purpose of stamp duty valuation. For this, he can make a request to the AO under section 50C(2) for making a reference to the DVO. It is pertinent to observe that the assessee entered into an agreement to sell on 8.2.2010. The AO has not disputed this agreement. The assessee has received payment in pursuance of this agreement through account payee cheque. Let us take a situation where a vendee fails to get the sale deed executed. The assessee being vendor has a remedy for filing a suit for specific performance under the Specific Relief Act. The time limit to file a suit for specific performance has been provided in Indian Limitation Act, which is three years. In such situation, when the vendor files a suit for specific performance to force the vendee to purchase the property. In that situation, he will not pay anything over and above, the amount stated in the sale agreement. In that situation, the assessee would not get anything more than the amount mentioned in the agreement, though such situation may arise after three-four years on execution of the decree passed in a suit for specific performance. In between there may an appreciation or depreciation in the said property. Circle rate may rise or reduce. In other words, at the time of an agreement in respect of an immovable property, a right in persona is created in favour of the transferee/vendee. When such right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because vendee in whose favour right in persona is created has legitimate right to enforce such specific performance of the agreement, if the vendor for some reason is not executing the sale deed. Thus, by virtue of agreement to sell, some right is given to the vendee by the vendor. It is encumbrance on the property. At this stage, we would like to make reference to new proviso appended to section 50C by way of Finance Act, 2016 and the background, under which such provision has been incorporated. In 2015, Government of India has set up Income Tax Simplication Committee headed by Justice R.V.Easwar, former judge of Delhi High Court. The Committee in its reported observed as under:

"6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERATION FIXED UNDER AGREEMENT TO SELL

Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "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 be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under section 48 of the Income-tax Act. The scope of section 50C was extended w.e.f. A.Y. 2010-11 to the transaction which were executed through agreement to sell or power of attorney by inserting the word "assessable" alongwith words "the value so adopted or assessed". Hence, section 50C is now also applicable in case of such transfers.

The present provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement. A later similar provision inserted by way of section 43CA does take care of such a situation.

6.2 It is therefore proposed to insert the following provisions in section 50C:

(4) Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(5) The provisions of sub-section (4) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before a date of agreement for transfer of the asset.

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15. Taking a clue from the report, a proviso has been appended by way of Finance Act, 2016 to section 50C and such proviso reads as under:

"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."

16. This amendment was explained in the Memorandum explaining the provisions of Finance Bill 2016. It reads as under:

"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. 30 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."

17. If we take all these aspects in their settings as a whole, then it would indicate that earlier whenever an assessee disputed adoption of sale equivalent to the amount on which stamp duty is paid, then reference to the DVO is made under section 50C(2). Normally, as observed earlier, when a sale agreement was executed, payment was received in part performance of the agreement, then vendor would not get anything more than the amount agreed in the sale agreement. There may be a time gap between execution of agreement to sell and

execution of sale deed. In between if circle rate is being enhanced, then he would like to challenge adoption of higher sale value on the strength of sale agreement. In that situation, unnecessary energy would be devoted in ascertaining fair market value of the property on the date of sale. The encumbrance on the property by virtue of sale agreement would also goad the DVO to determine the fair market value of the property on the date of sale at a lesser amount than the value adopted for the purpose of payment of stamp duty. We have already made a reference to Specific Relief Act and how a vendor or vendee could enforce the sale agreement under Specific Relief Act. Under such enforcement, they would settle their right on the basis of agreed terms in the sale agreement. This proviso would only simplify this exercise i.e. instead remitting the matter to the DVO under section 50C(2), he would conduct an inquiry as to what could be value of the property on the date of execution of the agreement, and whether such agreement has created any encumbrance or not. There could be a difference in the actual sale consideration than the amount on which stamp duty was paid. This proviso has simplified this thing. It contemplates that stamp duty valuation of the property for the purpose of stamp duty payment on the date of agreement can be deemed as full consideration of the capital asset. Thus, in this way, the proviso can be construed as clarificatory in nature, and can be applied on pending matters as already held by the ITAT in the case of Dharamshibhai Sonani (supra).

18. In the present case, we find that the assessee has contended that consideration of Rs.3,00,11,000/- is more than the valuation for the purpose of stamp duty as on 8.2.2010. No where the assessee has pointed out specific rate on the date of agreement. Therefore, we allow these two grounds of appeal for the statistical purpose. We set aside this issue to the file of the AO. The ld.AO shall call for circle rate for the purpose of stamp duty valuation of this property as on 8.2.2010. He shall determine the sale value of the property on the basis of circle rate applicable on this property on 8.2.2010, and thereafter compute long term capital gain assessable in the assessment year 2013-14. In other words, transfer of this property would be construed on 5.6.2012, but the full value of consideration is to be equivalent to the amount on which stamp duty was payable on 8.2.2010."

6.5.2 In the case of Nageswara Rao Viswanadha vs. Assistant Commissioner of Income tax [2024] 158 taxmann.com 542 (Visakhapatnam - Trib.)/[2024] 205 ITD 440 (Visakhapatnam - Trib.)[10-01-2024], the Hon'ble jurisdictional ITAT while deciding the identical issue has held that where assessee entered into agreement to sell properties on 14-8- 2014 and received part consideration of certain amount, however agreement to sell those properties were registered on 30-12-2015, provisions of section 50C adopting value for stamp duty purposes as on date of sale deed i.e. 30-12-2015 could not be applied but value as on date of agreement/date of receipt

of advance i.e. 14-8-2014 was to be applied. The Tribunal in its decision held as under:

> *"8. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that the assessee has sold two properties and has received his share of sale consideration amounting to Rs. 3,95,70,000/- and has disclosed a sum of Rs. 50,000/- as STCG in the return of income. The Revenue has not disputed the cost of acquisition claimed by the assessee at Rs. 3,95,20,000/-. The only dispute is with respect to the computation of capital gains by the Ld. AO by adopting the stamp duty value for the purpose of computation of the capital gains. The Ld. AO invoking the provisions of section 50C of the Act concluded that the assessee's share of sale consideration works out to Rs. 5,88,54,500/- as per the stamp duty value adopted by the SRO at the time of registration of the sale deed.*
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> *Further, it is also noticed that as per the directions of the Ld. CIT(A)-NFAC, the Ld. AO has referred the matter to the Ld. DVO who determined the value of the property at Rs. 8,23,96,160/-. The main contention of the Ld. AR is that when the agreement to sell the property has been entered into on 30/12/2015 by receiving a part sale consideration of Rs. 1.50 Crs on the same shall be deemed to be the sale consideration accepted by the vendor. Section 50C(1) of the Act is reproduced below for reference:*
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> *"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 25a[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:*
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> *[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:*
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> *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 28], 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 30[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.]"

9. From the bare reading of the section 50C(1) of the Act, and the first and second provisos, in the instant case, the date of agreement fixing the amount of consideration and the date of registration for transfer of the capital asset are not the same. The value adopted for the stamp duty valuation purposes as on the date of agreement shall be taken for the purpose of computing the full value of consideration for such transfer. Further, the second proviso also stipulates that where the amount of sale consideration, or a part thereof has been received by an account payee cheque or through banking channels, the first proviso to section 50C(1) shall be applied in those cases. In the instant case, we find that the agreement has been entered into on 30/12/2015 and the part consideration has been received on 14/8/2014. Therefore, we find merit in the argument of the Ld. AR that the provisions of section 50C of the Act adopting the value for stamp duty purposes as on the date of sale deed could not be applied but the value as on the date of the agreement/date of receipt of advance has to be applied. We are therefore of the considered view that the provisions of section 50C(2) & 50C(3) of the Act cannot be applied in the instant case. Therefore, we direct the Ld. AO to adopt the actual sale consideration declared and accepted on the date of agreement entered into by the assessee to compute the capital gains. Accordingly, the Grounds No. 2 & 3 raised by the assessee are partly allowed."

6.5.3 In the case of Bellandur Chikkagurappa Jayaramareddy vs. Assistant Commissioner of Income-tax [2022] 136 taxmann.com 94 (Bangalore - Trib.)/[2022] 193 ITD 757 (Bangalore - Trib.)[05-01-2022], the Hon'ble ITAT, Bengaluru Bench while deciding the identical issue for AY 2014-15, held that Proviso to section 50C(1) inserted by Finance Act, 2016 is retrospective. The Tribunal held in its order that:

''48. There was payment of Rs.2,50,00,000 on 23-11-2011 by cheque No. 259865 drawn on Vijaya Bank, Sarakki Branch, Bangalore. Being so, the argument of the ld. DR is that MoU is not suggesting any payment so as to apply the proviso to section 50C, thus it is deemed retrospective in nature. In our opinion, as held by the Madras High Court in the case of Vummudi Amarendran (supra), proviso to section 50C(1) is retrospective in nature applicable from AY 2014-15. Further part of the consideration has already been passed through MoU as

enumerated above. It cannot be said that no consideration is paid on the date of MoU. This finding of the lower authorities is not proper. Accordingly, we hold that proviso to section 50C(1) by the Finance Act, 2016 is retrospective and also the assessee proved that the 2nd proviso to section 50C(1) is satisfied since the assessee has paid a part of sale consideration on the date of such MoU dated 8-4-2013. In view of this, we hold that the guidance value has to be computed as prevailing on the date of MoU dated 8-4-2013. 49. Accordingly, the appeal of the assessee is allowed."

6.5.3 Similarly, there is plethora of decisions of the higher appellate authorities in which it was held that the proviso of section 50C is retrospective in nature.

6.6 Coming to the discussion of the appellant's case, the appellant had entered into transaction to sale the property and a MOU was signed by the appellant and the party during the year 2004 and the consideration amount crores was paid by the party to the appellant. On later stage there was litigation arisen between appellant and the party which was settled during the year 2013 by signing the MOU to finalise the transaction. The final sale deed took place during the year 2015-16 and the appellant reported the transaction of capital gain accordingly. The appellant adopted the consideration amount received during the year 2004 and worked out the capital gain thereon. The AO during the course of assessment proceedings, invoke the provision of section 50C and adopted the value of the property during the year of sale deed i.e. 2015 and worked out the capital gain accordingly.

6.7. The appellant during the course of appellate proceedings, filed various submissions which have been duly considered. The proof for having received the consideration amount during the year 2004, the appellant filed the bank account statement and the audited balance sheet/Profit and loss account. The core question in the instant appeal was only that whether the proviso of section 50C which was inserted in finance Act 2016 is applicable retrospective or not. From the plain reading of judicial decisions(supra), wherein it was held that the proviso of section 50C is retrospective in nature.

7. Therefore, in view of the above discussion, the undersigned finds force in the argument of the appellant. It is also held that the proviso of section 50C is retrospective in nature and thus, the value of the property adopted by the AO of the year 2015 was not warranted in the case. Therefore, respectfully following the judicial pronouncements(supra), the AO is directed to recompute the capital gain by adopting the value of the property on the date of consideration/advance received by the appellant by considering the year of agreement/MOU signed by the appellant and the party. Accordingly, the ground No. 1 to 3 raised by the appellant are allowed.

8. In the nutshell, the appeal filed by the appellant is allowed."

10. The revenue, being aggrieved with the CIT(A) order, has carried the matter in appeal before us.

11. We have heard the Ld. Authorised Representatives of both parties, perused the orders of the authorities below and considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

12. We shall first advert to the claim of the Ld. AR that for quantification of the LTCG as per the deeming provisions of Section 50C of the Act, the reserve price applicable on the date of execution of the “agreement to sell', dated 25.05.2004 was to be considered, and not that as was available on the dates of execution of the respective 'sale deeds', i.e., dated 24/07/2015. 27/07/2015, 29/07/2015. 16/11/2015 and 18/11/2015. As claimed by the Ld. AR, the amount of the sale consideration for the property under consideration was initially fixed with the purchaser M/s Sama Constructions, as per the 'agreement to sell', dated 25.05.2004, i.e., much prior to the execution of the 'sale deeds' during the year under consideration, i.e., AY 2016-17. It was the Ld. AR’s claim that the CIT(A) had rightly observed that for quantification of the LTCG as per the deeming provisions of Section 50C, the reserve price applicable on the date of execution of the “agreement to sell', dated

25.05.2004, was to be considered, and not that as was available on the dates of execution of the respective 'sale deeds', i.e.,24/07/2015. 27/07/2015, 29/07/2015. 16/11/2015 and 18/11/2015.

13. We shall, for the purpose of answering the controversy before us, look into Sec. 50C of the Act. The legislature, in all its wisdom, had, vide the Finance Act, 2016 w.e.f 01.04.2017, inserted the following two "*provisos"* to Sec. 50C of the Act:

> "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. "

The purpose of the aforesaid amendment was explained in the "Memorandum Explaining the Provisions of Finance Bill 2016", as under:

> "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. 30 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."

14. We find that as per the aforesaid amendment to Section 50C of the Act, which provides that subject to satisfaction of certain conditions therein envisaged, 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 purpose of computing the full value of consideration for such transfer. We are persuaded to subscribe to the view taken by the **ITAT Ahmedabad, SMC Bench**, in the case of **Dharamshibhai Sonani Vs. ACIT, Circle-9, Surat (2016) 75 taxmann.com 141 (Ahd)**, wherein it was observed, that though the aforesaid amendment had been introduced only with prospective effect from 1st April, 2017, however, as the same was a curative amendment that was made available on the

statute to remove an incongruity resulting in undue hardship to the assesses, therefore, the same was to be treated as retrospective in nature, even though it may not state so specifically. The Tribunal, after deliberating at length on the aforesaid amendment that was made available on the statute, had observed as under:

> "3. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.
>
> 4. The fundamental purpose of introducing section 50C was to counter suppression of sale consideration on sale of immovable properties, and this section was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. This Section provides for a presumption, a rebuttable presumption though-something with which I am not concerned for the time being, that the value, for the purpose of computing stamp duty, adopted by the stamp duty valuation authority represents fair indication of the market price of the property sold. Section 50C(1) provides that, "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". The trouble, however, is that while the sale consideration is fixed at the point of time when agreement to sell is entered into, there is sometimes considerable gap in parties agreeing to a transaction (i.e. agreement to sell) and the actual execution of the transaction (i.e. sale deed), and yet, it is the value as on the date of execution of sale deed which is recognized by Section 50C for the purpose of computing the capital gain because that is what is relevant for the purpose of computing stamp duty for registration of sale deed. The very comparison between the value as per sale deed and the value as per stamp duty valuation, accordingly, ceases to be devoid of a rational basis because these two values represent the values at two different points of time. In a situation in which there is significant difference between the point of time when agreement to sell is executed and when the sale deed is executed,

therefore, should ideally be between the sale consideration as per registered sale deed, which is fixed by way of the agreement to sell, vis-a-vis the stamp duty valuation as at the point of time when agreement to sell, whereby sale consideration was infact fixed, because, if at all any suppression of sale consideration should be assumed, it should be on the basis of stamp duty valuation as at the point of time when the sale consideration was fixed. Income Tax Simplification Committee set up in 2015, headed by Justice R V Easwar- a former judge of Delhi High Court and one of the most illustrious former Presidents of this Tribunal, took note of this incongruity and, in its very first report, observed as follows:

6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERA TION FIXED UNDER AGREEMENT TO SELL

Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "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 be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under section 48 of the Income-tax Act.

The scope of section 50C was extended w.e.f. A.Y. 2010-11 to the transaction which were executed through agreement to sell or power of attorney by inserting the word "assessable" alongwith words "the value so adopted or assessed". Hence, section 50C is now also applicable in case of such transfers.
The present provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement. A later similar provision inserted by way of section 43CA does take care of such a situation.

6.2 It is therefore proposed to insert the following provisions in section 50C:

(4) Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in sub- section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(5) The provisions of sub-section (4) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before a date of agreement for transfer of the asset.

5. True to the work ethos of the current Government, it was the first time that within four months of the Tax Simplification Committee being notified, not only the first report of the Committee was submitted, but the Government also walked the talk by ensuring that the several statutory amendments, based on recommendations of this report, were introduced in the Parliament. So far as Section 50 C is concerned, the Finance Act 2016, with effect from 1st April 2017, inserted the following provisos to Section 50C:

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. "

6. This amendment was explained, in the Memorandum Explaining the Provisions of Finance Bill 2016, 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. 30 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.

7. While the Government has thus recognized the genuine and intended hardship in the cases in which the date of agreement to sell is prior to the date of sale, and introduced welcome amendments to the statue to take the remedial measures, this brings no relief to the assessee before me as the amendment is introduced only with prospective effect from 1st April 2017. There cannot be any dispute that this amendment in the scheme of Section 50C has been made to remove an incongruity, resulting in undue hardship to the assessee, as is evident from the observation in Easwar Committee report to the effect that "The (then prevailing) provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement" recognizing the incongruity that the date agreement of sell has been ignored in the statute even though it was crucial as it was at this point of time that the sale consideration is finalized. The incongruity in the statute was glaring and undue hardship not in dispute. Once it is not in dispute that 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. In support of this proposition, I find support from Hon'ble Delhi High Court's judgment in the case of *CIT* v. *Ansal Landmark Township Pvt Ltd* [(2015) 377 ITR 635 (Del)], wherein approving the reasoning adopted an order authored by me during my tenure at Agra bench [i..e *Rajeev Kumar Agarwal* v. *ACIT* (2014) 149 ITD 363 (Agra)] which centred on the principle that when legislature is reasonable and compassionate enough to undo the undue hardship caused by the statute "such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically". In this case, it was specifically observed, and it was this observation which was reproduced with approval by Their Lordships, as follows:

"Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non-deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004"

8. Their Lordships were pleased to hold that this reasoning and rationale of this decision "merits acceptance". The same principle, when applied in the present context, leads to the conclusion that the present amendment, being an amendment to remove an apparent incongruity which resulted in undue hardships to the taxpayers, should be treated as retrospective in effect. Quite clearly therefore, even when the statute does not specifically state so, such amendments, in the light of the detailed discussions above, can only be treated as retrospective and effective from the date related statutory provisions was introduced. Viewed thus, the proviso to Section 50 C should also be treated as curative in nature and with retrospective effect from 1st April 2003, i.e. the date effective from which Section 50C was introduced. While the Government must be complimented for the unparalleled swiftness with which the Easwar Committee recommendations, as accepted by the Government, were implemented, I, as a judicial officer, would think this was still one step short of what ought to have been done inasmuch as the amendment, in tune with the judge made law, ought to have been effective from the date on which the related legal provisions were introduced. As I say so, in addition to the reasoning given earlier in this order, I may also refer to the observations of Hon'ble Supreme Court, the case of *CIT* v. *Alom Extrusion Ltd* [(2009) 319 ITR 306 SC)], to the following effect:

"Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by the Parliament only w.e.f. 1st April, 2004, would become curative in nature, hence, it would apply retrospectively w.e.f. 1st April, 1988 (i.e. the date on which the related legal provision was introduced). Secondly, it may be noted that, in the case of *Allied Motors (P) Ltd. Etc.* v. *CIT* (1997)

139 CTR (SC) 364: (1997) 224 ITR 677 (SC), the scheme of s. 43B of the Act came to be examined. In that case, the question which arose for determination was, whether sales-tax collected by the assessee and paid after the end of the relevant previous year but within the time allowed under the relevant sales-tax law should be disallowed under s. 43B of the Act while computing the business income of the previous year? That was a case which related to asst. yr. 1984-85. The relevant accounting period ended on 30th June, 1983. The ITO disallowed the deduction claimed by the assessee which was on account of sales-tax collected by the assessee for the last quarter of the relevant accounting year. The deduction was disallowed under s. 43B which, as stated above, was inserted w.e.f. 1 st April, 1984. It is also relevant to note that the first proviso which came into force w.e.f. 1st April, 1988 was not on the statute book when the assessments were made in the case of *Allied Motors (P) Ltd. Etc.* (*supra*). However, the assessee contended that even though the first proviso came to be inserted w.e.f. 1st April, 1988, it was entitled to the benefit of that proviso because it operated retrospectively from 1 st April, 1984, when s. 43B stood inserted. This is how the question of retrospectivity arose in *Allied Motors (P) Ltd. Etc.* (*supra*). This Court, in *Allied Motors (P) Ltd. Etc.* (*supra*) held that when a proviso is inserted to remedy unintended consequences and to make the section workable, a proviso which supplies an obvious omission in the section and which proviso is required to be read into the section to give the section a reasonable interpretation, it could be read retrospective in operation, particularly to give effect to the section as a whole. Accordingly, this Court, in *Allied Motors (P) Ltd. Etc.* (*supra*), held that the first proviso was curative in nature, hence, retrospective in operation w.e.f. 1st April, 1988. It is important to note once again that, by Finance Act, 2003, not only the second proviso is deleted but even the first proviso is sought to be amended by bringing about an uniformity in tax, duty, cess and fee on the one hand vis-a-vis contributions to welfare funds of employee(s) on the other. This is one more reason why we hold that the Finance Act, 2003, is retrospective in operation. Moreover, the judgment in *Allied Motors (P) Ltd. Etc.* (*supra*) is delivered by a Bench of three learned Judges, which is binding on us. Accordingly, we hold that Finance Act, 2003, will operate retrospectively w.e.f. 1st April, 1988 (when the first proviso stood inserted). Lastly, we may point out the hardship and the invidious discrimination which would be caused to the assessee(s) if the contention of the Department is to be accepted that Finance Act, 2003, to the above extent, operated prospectively. Take an example—in the present case, the respondents have deposited the contributions with the R.P.F.C. after 31st March (end of accounting year) but before filing of the Returns under the IT Act and the date of payment falls after the due date under the Employees' Provident Fund Act, they will be denied deduction for all times. In view of the second proviso, which stood on the statute book at the relevant time, each of such assessee(s) would not be entitled to deduction under s. 43B of

> the Act for all times. They would lose the benefit of deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right upto 1st April, 2004, and who pays the contribution after 1st April, 2004, would get the benefit of deduction under s. 43B of the Act. In our view, therefore, Finance Act, 2003, to the extent indicated above, should be read as retrospective. It would, therefore, operate from 1st April, 1988, when the first proviso was introduced. It is true that the Parliament has explicitly stated that Finance Act, 2003, will operate w.e.f. 1st April, 2004. However, the matter before us involves the principle of construction to be placed on the provisions of Finance Act, 2003.
>
> 9. So far as the amendment to Section 50C being retrospective in effect is concerned, there is no doubt about the legal position. I hold the provisos to Section 50C being effective from 1st April 2003. This is precisely what the learned counsel has prayed for. In his detailed written submissions, he has made out of a strong case for the amendment to Section 50C being treated as retrospective and with effect from 1st April 2003. The plea of the assessee is indeed well taken and deserves acceptance. What follows is this. The matter will now go back to the Assessing Officer. In case he finds that a registered agreement to sell, as claimed by the assessee, was actually executed on 29.6.2005 and the partial sale consideration was received through banking channels, the Assessing Officer, so far as computation of capital gains is concerned, will adopt stamp duty valuation, as on 29.6.2005, of the property sold as it existed at that point of time. In case the assessee is not content with this value being adopted under section 50C , he will be at liberty to seek the matter being referred to the DVO for valuation, again as on 29.6.2005, of the said property. As a corollary thereto, the subsequent developments in respect of the property sold (e.g. the conversion of use of land) are to be ignored. It is on this basis that the capital gains will be recomputed. With these directions, the matter stands restored to the file of the Assessing Officer for adjudication de novo, after giving an opportunity of hearing to the assessee and by way of a speaking order. I order so."

The aforesaid order of the Tribunal had thereafter been followed by a coordinate bench of the **ITAT, Mumbai**, in the case of **Kishore Hira Bhandari *vs.* Income Tax Officer, Mumbai (2019) 107 taxmann. Com 218 (Mumbai).**

15. We, thus, based on our aforesaid observations, respectfully follow the aforesaid view taken by the Tribunal, and principally concur with the claim of the assessee company that for the purpose of determining the LTCG as per the deeming provisions of Sec. 50C of the Act (subject to the satisfaction of the pre-conditions therein contemplated), the SRO value of the property which is prevailing on the date on which the “agreement to sell' is executed is to be taken for the purpose of computing the capital gain arising on transfer of the subject property.

16. But the dispute based on the contentious set of facts involved in the present case in so far, it stems from the issue involved in the present case, is still not put to rest. As per the original unregistered “agreement” dated 25-05-2004 (executed on plain paper), the assessee company had agreed to sell 15 acres of land @Rs. 1.50 crores per acre situated in Survey no. 9/4 Saroomnagar to M/s Sama Constructions (for short, “Purchaser”), against which an advance of Rs. 5 crores (to be adjusted towards the last transaction of sale) was stated to have been received from the purchaser through post-dated cheques, all drawn on HDFC Bank Ltd., viz., (i). Cheque no. 025776, dated 25.05.2004: Rs. 1 crore; (ii). Cheque no. 025777, dated 26.05.2004: Rs. 1 crore; (iii). Cheque no.

025778, dated 27.07.2004: Rs. 1 crore; (iv). Cheque no. 025779, dated 05.06.2004: Rs. 1 crore; and (v). Cheque no. 025780, dated 07.06.2004: Rs. 1 crore**.** Also, as per the "agreement", dated 25.05.2004, it was agreed, viz. (i) that w.e.f 25/05/2004 interest will be charged on the balance sale consideration @ 15% pa; and (ii). after one year from 25/05/2004, interest on the balance sale consideration will be charged @24%. However, as pointed out by the Ld. Authorised Representatives of both parties, the assessee company had only received an advance of Rs. 4.15 crores, viz. cheques, all drawn on HDFC Bank Ltd., viz., (i). Cheque no. 025776, dated 25.05.2004: Rs. 1 crore; (ii). Cheque no. 025777, dated 26.05.2004: Rs. 1 crore; (iii). Cheque no. 025778, dated 27.05.2004: Rs. 1 crore; (iv). Cheque no. 025779, dated 05.06.2004: Rs. 1 crore; and (v). Cheque no. 025786, dated 14.07.2005: Rs. 15 lacs. Thereafter, as certain disputes had cropped up between the aforementioned parties, therefore, M/s Sama Constructions (supra), had filed a petition w.r.t land admeasuring Acres 15 – 0 Guntas, which, thereafter, was marked as OS No. 476 of 2006 and was transferred to the Additional District Judge-XI, Ranga Reddy District. In the meantime, a compromise was entered into between the parties, as per which the assessee company had agreed to give Acres 3 – 0 Guntas (out of Acres 15 – 0 Guntas) situated at Survey No. 9/4 and 9/5 of Saroornagar

Mandal, Ranga Reddy District, which was accepted by the purchaser, viz. M/s Sama Constructions. The Additional District Judge-XI, Ranga Reddy District, based on the compromises between the parties, was thereafter requested by the parties to record the terms of the compromise decree to the extent of Acres 3 – 0 Guntas of land out of the suit schedule property, i.e., Acres 15 – 0 Guntas, which, inter alia, read as under:

> " In view of the said compromise, it is therefore prayed that the Hon'ble Court be pleased to record the terms of compromise and pass a compromise decree to an extent of Acres 3 – 0 Guntas of land out of the suit schedule property i.e., Acres 15 – 0 Guntas., in favour of the plaintiff and the balance of the suit schedule property the defendants being the rightful owners shall retain the same as owners and possessors. The Hon'ble Court may be pleased to pass such other or further orders as the Hon'ble Court deems fit and proper under the circumstances of the case."
>
> Sd/-
> For Sama Constructions
>
> Sd/-
> For South India Research Institute Pvt. Ltd."

17. On a perusal of the written submissions filed by the assesssee company in the course of the proceedings before the CIT(A)/NFAC, Page 37-43 of APB, as the land admeasuring Acres 3 – 0 Guntas as per the compromise agreement (agreed before the Lok Adalat) was not sufficient for the vendee, viz. M/s Sama Constructions, therefore, it had

requested the assessee company for the transfer of more land and reconsider the compromise, as result whereof two “Memorandum of Understanding” were thereafter executed between the parties, viz. (i) “Memorandum of Understanding”, dated 12.08.2013, wherein it was agreed that over and above the 3 acres settled before the Additional District Judge-XI, Ranga Reddy District, further 22.84 Guntas (2769 Sq. yards) would be demarcated adjacent to the 3 acres in the same line in continuation, which would be transferred to two persons, viz. (a). G. Sridhar Reddy, s/o. Late G. Papi Reddy, aged about 34 years; and (b). G. Bharathi, w/o. Late G. Papi Reddy, aged about 54 years, both r/o. Flat No. 401, Veda Gowry Residency, DD Colony, Begumpet, Hyderabad Page 44-45 of APB; AND (ii). “Memorandum of Understanding”, dated 12.08.2013, wherein it was agreed that over and above the 3 acres settled before the Additional District Judge-XI, Ranga Reddy District, a further 17.16 Guntas (2076 Sq. yards) would be demarcated adjacent to the 3 acres in the same line in continuation, which would be transferred to three persons, viz. (a). Chandrasekhar Reddy, s/o. Late P. Venkat Reddy Reddy, aged about 66 years; (b). P. Venkat Reddy, S/o P. Chandrasekhar Reddy, aged about 42 years; and (c). K. Laxmi Reddy W/o Late K. Chandrasekhar Reddy, aged about 58 years, all r/o. 16-2-

740/32, Kalyan Nagar, Gaddiannaram, Dilsukhnagar, Hyderabad, Page 45B -46B of APB.

18. Accordingly, based on the aforesaid compromise deed, memorandum of understanding, etc., the assessee company had transferred, viz. (i). Acres 3 – 0 Guntas as per the compromise agreement (agreed before Additional District Judge-XI, Ranga Reddy District, dated 23.11.2013); (ii). 22.84 Guntas (2769 Sq. yards) vide "Memorandum of Understanding", dated 12.08.2013; and (iii). 17.16 Guntas (2076 Sq. yards) vide "Memorandum of Understanding", dated 12.08.2013. Thus, the assessee company had transferred a total of 19,365 Sq. Yards of land comprised of, viz. (i). 3 acres (i.e. 14,520 Sq. yards); (ii). 2769 Sq. yards; and (iii). 2076 Sq. yards.

19. Thus, the assessee company, which vide an "agreement", dated 25.05.2004, originally agreed for transferring 15 acres of land (i.e 72600 Sq. Yards) @ Rs. 1.50 crore per acre to M/s Sama Constructions, had thereafter transferred only 22258.6 Sq. Yards of land, i.e., 4 Acres – 72 Guntas for a total sale consideration of Rs. 4.15 Crores (approx.). Also, as pointed out by the Ld. CIT-DR, the assessee company, as against its aforesaid compromise deed (approved by the Add. District Judge-XI, Ranga Reddy District on 23.11.2013) and the 2 memorandums of

understanding (MOU's) both dated 12.08.2013, had agreed for transferring 19365 Sq. Yards of land, but had actually transferred 22258.60 Sq. Yards of land, vide 15 registered sale deeds spread over the period 24.07.2015 to 18.11.2015 (as culled out by the AO at Page 2-4 of the assessment order).

20. We shall, in the backdrop of the aforesaid facts, deal with the subject issue, i.e., as to whether or not the AO has rightly adopted the SRO value as was available on the dates of execution of the respective sale deeds, i.e., dated 24/07/2015. 27/07/2015, 29/07/2015. 16/11/2015 and 18/11/2015; OR ought to have taken the SRO value applicable on the date of execution of the 'agreement to sell', dated 25.05.2004, for quantifying the LTCG on the transfer of the land admeasuring 22258.6 Sq. Yards of land, i.e., 4 Acres – 2899 Sq. Yards, as per the deeming provisions of Section 50C of the Act. Although Shri. C. Subramanyam, the Ld. AR for the assessee company had objected to the consideration of the aforesaid issue on the ground that the same does not emanate from the assessment order, but we are unable to accept the said objection. We say so, not for the reason that the said issue has been raised by the revenue in its "grounds of appeal" filed before us, but for the reason that the adjudication of the said aspect will have a material

bearing on the adjudication of the subject issue, which, thus, indispensably requires to be adjudicated. In our view, as Section 254(1) of the Act contemplates that the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, therefore, after concurring with the assessee that the “provisions” of Sec. 50C of the Act, as had been made available on the statute vide the Finance Act, 2016 w.e.f 01.04.2017, applies to the subject year involved in the present case, i.e., AY 2016-17, it is equally important and rather indispensably required to decide the issue that offshoots and stems from the aforesaid adjudication, i.e., the SRO value of which year is to be adopted as the deemed sale consideration for computing the LTCG under Section 50C of the Act. We thus, for giving quietus to the controversy involved in the present appeal, i.e., the determination of LTCG on the sale of the subject land by the assessee company to M/s Sama Constructions, proceed with and adjudicate upon the issue, i.e., the SRO value of which year is to be adopted by the assessee company as the deemed sale consideration for computing the LTCG under Sec. 50C of the Act.

21. We have given thoughtful consideration to the issue before us in the backdrop of the facts involved in the present case. Before proceeding

further, we may herein reiterate that we principally concur with the claim of the Ld. AR that though the “provisos” to Sec. 50C of the Act, had been introduced only vide an amendment with effect from 1st April, 2017, but, as the said amendment was a curative amendment that was made available on the statute to remove an incongruity resulting in undue hardships to the assesses, therefore, the same is to be treated as retrospective in nature, even though it may not state so specifically. Accordingly, we principally concur with the Ld. AR that the “provisos” to Sec. 50C will apply to the subject transaction of the sale of land by the assessee company vide 15 registered sale deeds executed during the year under consideration, i.e., over the period 24.07.2015 to 18.11.2015. However, this takes us to the core issue that the SRO value of which year is to be adopted for determining the LTCG as per the deeming provisions of Sec. 50C of the Act, viz. (i) the SRO value applicable at the time of executing the original “agreement to Sell”, dated 25.05.2004; or (ii). the SRO value applicable at the time of executing the compromise deed (approved by the Add. District Judge-XI, Ranga Reddy District on 23.11.2013); or (iii). the SRO value applicable on the dates on which the 2 memorandums of understanding (MOU’s), both dated 12.08.2013, were executed, as per which it was agreed to further transfer 4845 Sq. Yards, (2769 Sq. yards + 2076 Sq. yards); or (iv). the SRO value

applicable at the time the respective 15 registered sale deeds were executed by the assessee company during the year under consideration, i.e., during the period 24.07.2015 to 18.11.2015?

22. On the one hand, it is claimed by the assessee company that the SRO value available on the date of executing the original "agreement to Sell", dated 25.05.2004, should be taken for computing the LTCG as per the provisions of Sec. 50C of the Act, while on the other hand, it is the claim of the revenue that the SRO value available on the dates when the registered sale deeds were executed by the assessee company during the year under consideration, i.e., spread over the period 24.07.2015 to 18.11.2015 should be adopted as the deemed sale consideration for the purpose of computing LTCG under Section 50C of the Act.

23. In our view, the "agreement to sell", dated 25.05.2004, as per which 15 acres – 0 Guntas of land in Survey No. 9/4 Saroornagar was agreed to be transferred by the assessee company to M/s Sama Constructions (i.e., the purchaser) @ Rs. 1.50 crore per acre, did not hold the ground anymore and was never acted upon by the parties once disputes had cropped up between them, which thereafter was followed by, viz. (i). a compromise entered into between the parties (approved by the Addl. District Judge-XI, Ranga Reddy District on 23.11.2013),

wherein it was agreed that 3 Acres – 0 Guntas of land situated in Survey Nos. 9/4 and 9/5 situated at Saroornagar Mandal, Ranga Reddy District (out of 15 Acres - 0 Guntas) were to be transferred by the assessee company to M/s Sama Constructions; AND (ii). 2 memorandums of understanding (MOU's), both dated 12.08.2013, wherein it was agreed to further transfer 4845 Sq. Yards (2769 Sq. yards + 2076 Sq. yards) to the persons as directed by the purchaser, viz. M/s Sama Constructions.

24. We find that the original "agreement to sell", dated 25.05.2004, did not hold the ground for more than one reason, viz. (i). that as against the original "agreement to sell", dated 25.05.2004, wherein it was agreed to transfer 15 acres – 0 Guntas of land (i.e 72600 Sq. Yards), the land that was finally transferred aggregated to 4 Acres – 72 Guntas of land (i.e., 22258.6 Sq. Yards); (ii). that the original "agreement to sell", dated 25.05.2004, referred to the transfer of land situated in Survey No. 9/4 Saroornagar, but the compromise entered into between the parties (as referred in the order of the Add. District Judge-XI, Ranga Reddy District on 23.11.2013 referred to the transfer of land situated in Survey Nos. 9/4 and 9/5 situated at Saroornagar Mandal, Ranga Reddy District; while for the 2 memorandums of understanding (MOU's), both dated 12.08.2013, wherein it was agreed to further transfer 2769 Sq. yards and 2076 Sq.

yards to M/s Sama Constructions referred to lands situated in Survey Nos. 9/4 AND Survey Nos. 9/4 and 9/5, situated at Saroornagar Mandal, Ranga Reddy District, respectively; and (iii). that, while for, as per the original "agreement to sell", dated 25.05.2004, the subject land was agreed to be transferred @ Rs. 1.5 crores per acre, but in the absence of mention of any consideration either in the order of the Addl. District Judge-XI, Ranga Reddy District, dated 23.11.2013, wherein the compromise between the parties was approved; as well as in the 2 memorandums of understanding (MOU's), both dated 12.08.2013, wherein it was agreed to further transfer 2769 Sq. yards and 2076 Sq. yards to M/s Sama Constructions, i.e., the purchaser party, the total consideration of Rs. 4.15 crores (supra) that was paid by M/s Sama Constructions (supra) to the assessee company as an advance at the time of executing the original "agreement to sell", dated 25.05.2004, was the sale consideration that was paid by the purchaser, viz. M/s Sama Constructions for 4 Acres – 72 Guntas of land (i.e., 22258.6 Sq. Yards), against which 15 registered sale deeds were executed by the assessee company in favour of M/s Sama Constructions (supra) during the year under consideration, i.e., over the period 24.07.2015 to 18.11.2015.

25. Considering the aforesaid facts, we concur with the Ld. CIT DR that the original “agreement to sell”, dated 25.05.2004, pursuant to the aforesaid chain of events had lost its existence and was thereafter never acted upon by the parties except for adjusting the amount of advance of Rs. 4.15 crores (supra) that was then paid, against the subsequent transfer of 4 Acres – 72 Guntas of land (i.e., 22258.6 Sq. Yards).

26. Now, this takes us to the issue that when the original “agreement to sell”, dated 25.05.2004, was rendered as ineffective and was thereafter never acted upon by the parties, then which SRO value of the subject land is to be adopted as the deemed sale consideration for the purpose of computing the LTCG under Sec. 50C of the Act?.

27. The aforesaid issue is answered as under:

(a). In our view, as the assessee company had transferred 4 Acres – 72 Guntas of land (i.e., 22258.6 Sq. Yards), vide 15 registered sale deeds in favour of M/s Sama Constructions (supra) during the year under consideration, i.e., over the period 24.07.2015 to 18.11.2015, but the compromise entered into between the parties (as referred in the order of the Add. District Judge-XI, Ranga Reddy District on 23.11.2013 referred to the transfer of land

admeasuring 3 Acers – 0 Guntas (14520 Sq. Yards) situated in Survey Nos. 9/4 and 9/5 situated at Saroornagar Mandal, Ranga Reddy District; AND (ii). as per the 2 memorandums of understanding (MOU's), both dated 12.08.2013, it was agreed to further transfer an aggregate of 4845 Sq. yards of land, viz. (a). 2769 Sq. yards; and (b). 2076 Sq. yards to M/s Sama Constructions in Survey Nos. 9/4 AND Survey Nos. 9/4 and 9/5, situated at Saroornagar Mandal, Ranga Reddy District, respectively; therefore, the aggregate of land covered vide the aforesaid agreements/MOU's/Compromise aggregates to 19365 Sq. Yards, i.e., 4 Acres- 0.125 Guntas. Accordingly, as the transfer of the balance land admeasuring 2893.60 Sq. Yards [i.e. 22258.6 Sq. Yards (minus) 19365 Sq. Yards] is not based either on the compromise or the MOU's, therefore, the SRO value as applicable on the date of the last of the sale deeds that were executed during the year, i.e., as on 16/11/2015 and 18/11/2015, is to be adopted as the deemed sale consideration for computing the LTCG on the transfer of the said portion of land as per the provisions of Sec. 50C of the Act.

(b). as the compromise entered into between the parties (as referred in the order of the Add. District Judge-XI, Ranga Reddy District on 23.11.2013) refers to the transfer of 3 Acres – 0 Guntas of land situated in Survey Nos. 9/4 and 9/5 at Saroornagar Mandal, Ranga Reddy District, therefore, the SRO value as applicable on the date of order of the Add. District Judge-XI, Ranga Reddy District, i.e., 23.11.2013, is directed to be adopted as the deemed sale consideration for computing the LTCG on the transfer of the said portion of land as per the provisions of Sec. 50C of the Act.

(c). as per the 2 memorandums of understanding (MOU's), both dated 12.08.2013, it was agreed to further transfer an aggregate of land admeasuring 4845 Sq. yards, viz. (i). 2769 Sq. yards; and (ii). 2076 Sq. yards to M/s Sama Constructions situated in Survey Nos. 9/4 AND Survey Nos. 9/4 and 9/5, situated at Saroornagar Mandal, Ranga Reddy District, respectively; therefore, the SRO value as applicable on the date of the said MOU's, i.e., 12.08.2013, is directed to be adopted as the deemed sale consideration for computing the LTCG on the transfer of the said portion of land as per the provisions of Sec. 50C of the Act.

28. We, thus, in terms of our aforesaid observations, set aside the order passed by the CIT(A) and direct the AO to recompute the LTCG in terms of our aforesaid observations.

29. Resultantly, the order passed by the CIT(A) is set aside, and the appeal filed by the revenue is allowed in terms of our observations.

Order pronounced in the open court on 19th December, 2025.

Sd/- **(BALAKRISHNAN S.)** **ACCOUNTANT MEMBER**	**Sd/-** **(RAVISH SOOD)** **JUDICIAL MEMBER**

Hyderabad,
Dated 19th December, 2025
***OKK / SPS*

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2	South India Research Institute Private Limited, 202, Siri Nagar, Bandar Road, Vijayawada, Andhra Pradesh-520007.
3	The Pr. Commissioner of Income Tax,
4	The DR, ITAT, Visakhapatnam Bench
5	Guard File

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