IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD SMC BENCH, AHMEDABAD

[Coram: Pramod Kumar AM]

I.T.A. No.1237/Ahd/2013
Assessment Year: 2008-09

Dharamshibhai Sonani, ***.....Appellant***
22, Kamalpark Row House,
Kapodara, Varachha Road,
Surat – 395 006.
[PAN: BAOPS 8772 A]

Vs.

Asstt. Commissioner of Income Tax,
Circle – 9, Surat. ***.....Respondent***

Appearances by:

Manoj N. Makhania, *for the appellant*
Satish Solanki, *for the respondent*

Date of concluding the hearing: 26.07.2016
Date of pronouncing the order: 30.09.2016

O R D E R

[1] By way of this appeal, the assessee appellant has challenged correctness of the order dated 21st January, 2013, passed by the learned CIT(A), in the matter of assessment under section 143(3) r.w.s. 147 of the Income Tax Act 1961, for the assessment year 2008-09. Grievance of the assessee, in substance, is that learned CIT(A) erred in upholding the impugned addition of Rs.15,60,900 to the sale consideration, for the purpose of computing capital gains, under section 50C of the Act.

[2] It is a case of reopened assessment. During the course of reopened assessment proceedings, the Assessing Officer took note of fact that the assessee, along with a co-owner, had sold certain land at Village Behstan, Surat, on 24.04.2007 at stated consideration of Rs.45,00,000/- whereas on that day, according to the stamp duty valuation authority, this land was valued at Rs.76,21,800/-. It was in this backdrop that the Assessing Officer sought to add Rs.15,60,900/- to the value of sale consideration, for the purpose of computing capital gains, received by the assessee. It was explained by the assessee that though a registered ñagreement to sellò was executed on 29.06.2005, the sale deed of land could finally be executed only on 24.04.2007 since the land was agricultural land, since the buyer was a private limited company, which could have purchased only non-agricultural land, and since land was required to be converted into non-agricultural land before execution of sale deed. The stamp duty valuation as on 24.04.2007 was therefore, according to the assessee, not relevant for ascertaining

whether the sale consideration was suppressed which is what is relevant for the purpose of section 50C. This explanation was, however, rejected. What, according to the Assessing Officer, was relevant was the date on which sale deed is executed. The Assessing Officer proceeded to adopt sale consideration, under section 50C, at stamp duty valuation rate. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. The assessee is not satisfied and is in further appeal before me.

[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, ñ**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**ò 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-à-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 (http://taxsimplification.in/REPORT.pdf), observed as follows:

> *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.

[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 (http://indiabudget.nic.in/ub2016-17/memo/mem1.pdf), 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 ñ**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**ò 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 Vs 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 Vs 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 ñ**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**ò In this case, it was specifically observed, and it was this observation which was reproduced with approval by Their Lordships, as follows:

> ñ**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**ò

[8] Their Lordships were pleased to hold that this reasoning and rationale of this decision ñmerits acceptanceò. 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 Vs Alom Extrusion Ltd [(2009) 319 ITR 306 SC)],** to the following effect:

ñOnce 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. vs. 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. 1st 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 1st 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 exampleð 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.

[10] As I part with the matter, I may make one more observation. The amendment in Section 50C was brought in to provide relief to the assessee in a situation in which the stamp duty valuation of a property has risen between the date of execution of agreement to sell and execution of sale deed, as is the norm rather than exception, but the real estate market is now traversing through a difficult phase and there can be situations in which there is a fall in the stamp duty valuation rates with the passage of time. Such a situation has actually arisen in many places in the country, such as in Gurgaon (http://www.hindustantimes.com/gurgaon/for-the-first-time-circle-rates-reduced-in-gurgaon/story-cjp6e72TeGS9H5jJIALAGP.html), New Delhi (http://www.delhismartcities.com/blogs/high-circle-rates-causing-slump-realty-reduce-delhi-government/), and even in Dehradun (Uttarakhand)

(http://www.tribuneindia.com/news/uttarakhand/relief-to-property-buyers-as-circle-rates-cut-50-pc/247805.html) and some other places. It is therefore possible that, at first sight, first proviso to Section 50C may seem to work to the disadvantage of the assessee in certain situation in the event of the word ómayô being construed as mandatory in application, but then one cannot be oblivious to the fact that this proviso states that ñthe 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 *(emphasis supplied)*ò making it clearly optional to the assessee, and that, in any event, what has been brought by the lawmakers as a measure of relief to the taxpayers cannot be construed as resulting in a higher tax burden on the taxpayers. Of course, assuming that my understanding of this statutory provision is in harmony with the legislative intention, insertion of words **"at the option of the assessee**ò between ñ**stamp valuation authority on the date of agreement may**ò and ñ**be taken for the purposes of computing full value of consideration for such transfer**ò in first provisio to Section 50C(1), could have made the legal provision even more unambiguous.

[11] In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on 30th day of September, 2016.

Sd/-

Pramod Kumar
(Accountant Member)

Ahmedabad, dated the 30th day of September, 2016.

Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *DR*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad