IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD

BEFORE SMT P.MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI B.RAMAKOTAIAH, ACCOUNTANT MEMBER

ITA No.	Assessment year	Appellant	Respondent
1942/Hyd/2014	2006-07	Shri Mohd. Imran Baig, Hyderabad (PAN – ADDPM 3170 H)	Income Tax Officer Ward 3(1), Hyderabad
1943/Hyd/2014	2006-07	Shri Mohd. Fouzan Baig, Hyderabad (PAN – AGVPB 5458 N)	Income Tax Officer Ward 3(1), Hyderabad
1944/Hyd/2014	2006-07	Smt.Fareena Ayesha Begum, Hyderabad (PAN – AABPZ 7582 R)	Income Tax Officer Ward 6(3), Hyderabad
1945/Hyd/2014	2006-07	Shri Mohd. Irfan Baig, Hyderabad (PAN – ABZPM 3780 B)	Income Tax Officer Ward 3(1), Hyderabad
1946/Hyd/2014	2006-07	Smt. Ruheena Shireen Begum, Hyderabad (PAN – AKHPB 8791 N)	Income Tax Officer Ward 6(3), Hyderabad
1947/Hyd/2014	2006-07	Smt.Shaheeda Begum Hyderabad (PAN – AKHPB 8792 R)	Income Tax Officer Ward 6(3), Hyderabad
1948/Hyd/2014	2006-07	Shri Mohd. Zia Baig, Hyderabad (PAN – ABQOB 1845 D)	Income Tax Officer Ward 3(1), Hyderabad
1949/Hyd/2014	2006-07	Smt. Fouzia Begum, Hyderabad (PAN – AFLPB 4353 D)	Income Tax Officer Ward 3(1), Hyderabad
1950/Hyd/2014	2006-07	Shri Naureen Mohammadi Baig, Hyderabad (PAN – AKHPB 8790 P)	Income Tax Officer Ward 6(3), Hyderabad
1951/Hyd/2014	2006-07	Shri Abdul Arif Baig, Hyderabad (PAN – ABQPB 1797 E)	Income Tax Officer Ward 6(3), Hyderabad

1952/Hyd/2014	2006-07	Shri Mohd. Saffan Baig, Hyderabad (PAN – AKHPB 8819 M)	Income Tax Officer Ward 6(3), Hyderabad
1953/Hyd/2014	2006-07	Shri Mohd. Yassar Satar Baig, Hyderabad (PAN – AKHPB 8818 L)	Income Tax Officer Ward 6(3), Hyderabad
1954/Hyd.2014	2006-07	Smt. Juvedria Begum, Hyderabad (PAN – AHYPB 4802 C)	Income Tax Officer Ward 6(3) Hyderabad

Appellants by	**:**	*Shri Syed Jameeluddin*
Respondent by	*:*	*Shri Ramakrishna Bandi*

Date of Hearing	28.082015
Date of Pronouncement	27.11.2015

O R D E R

Per Bench :

All these are appeals of the respective assessees for the assessment year 2006-07. In these appeals, all the assessees (except Shri Mohd. Yassen Sattar Baig in ITA No.1953/Hyd/2014) are aggrieved by similar but separate orders of the CIT(A), confirming the order of the Assessing Officer that for computation of capital gains, the SRO valuation as on the date of registration of the sale deed is to be taken into consideration under S.50C of the Act. Further, in the cases of Smt. Ruheema Shireen Begum (ITA No.1946/Hyd/2014) and Smt. Shaheeda Begum (ITA Nos.1947/Hyd/2014), one more ground against the validity of the proceedings under S.147 was urged. But at the time of hearing, the learned counsel for the assessee has filed written submissions wherein it is stated that this ground of appeal is not being pressed by the respective assessees. Thus, these grounds in both the above appeals are rejected as not pressed. For the sake of brevity and

convenience, as common issue is involved in these appeals of the family members and co-owners of the same property, all the appeals were heard together and are disposed of by this common and consolidated order.

2. The grounds of appeal raised in the case of Shri Mohd. Zia Baig are as under-

"1. The order of the CIT(Appeals)-IV, Hyderabad, is erroneous in law and is against the facts and circumstances of the case.

2. The CIT(Appeals) is wrong in rejecting the plea of the assessee that the dates of Agreement, i.e. 20-05.2005, in which the amount of consideration was fixed will have to be taken into consideration for the purpose of stamp duty valuation, based on the first proviso to Section 56(2)(vii)(b) which provides that where the date of 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 agreement may be taken.

3. The Hon'ble Supreme Court, in the case of Sanieev Lal and Smt.Shanti Motilal V/s. CIT (2014)365 ITR 389(SC) held that if a right in the property is extinguished by an execution of an agreement to sell, the capital asset can be deemed to have been transferred. The CIT(A) wrongly held that the said decision of the Hon'ble Supreme Court is not applicable to the facts of the assessee's case.

4. The CIT(Appeals) is wrong in ignoring the fact that the registration of Sale Deed, finally, is only fulfilment of a contractual obligation imposed upon the assessee by virtue of the sale agreement.

5. The CIT(A) is wrong in rejecting the assessee's plea that the District Valuation Officer, Valuation Cell, has completely ignored the submission made by the assessee and the evidence produced before him and wrongly estimated the lieu of the property by applying the rates which were prevalent after the cut off date, i.e. 20-05-2005, and by taking into consideration properties which are located in a different area and also by applying the rates applicable to commercial area, though it is in residential area.

6. The CIT(A) is wrong in rejecting the assessee's objection to the huge addition of Rs.9,724/- per square yard, made by the District Valuation Officer, to the average price of Rs.19,447/- per sq. yard, which was worked out by him by taking into consideration the values fixed by the registration department because such values are fixed only after taking into consideration all aspects including location of the property.

7. Any other ground or grounds that may be urged at or before the time of hearing."

3. Out of the above, grounds no.1 and 7 are general in nature and hence need no adjudication. As regards ground No.2 to 6, brief facts of the case are that the assessees herein are all family members of two brothers, Shri Mohd. Zia Baig and Shri Abdul Arif Baig. The family of Shri Mohd. Zia Baig consists of the following members

1) Shri Mohd. Zia Baig
2) Shri Mohd. Imran Baig
3) Shri Mohd. Irfan Baig
4) Shri Mohd.Fouzan Baig
5) Smt. Fouzia Begum
6) Smt. Fareena Ayesha Begum
7) Smt. Ruheena Shireen Begum
8) Smt. Shaheeda Begum

The family of Shri Abdul Arif Baig consists of the following members-

1) Shri Abdul Arif Baig
2) Shri Mohammed Yasser Sattar Baig
3) Shri Mohammed Saffan Baig
4) Shri Naureeen Mohammedi
5) Smt. Juveria Begum

The family members of Shri Mohd. Zia Baig and Shri Abdul Arif Baig, owned adjacent immovable properties at Road No.3 Banjara Hills, Hyderabad and the shares of all the assessees in the properties are specified. They sold their properties together for a sale consideration of Rs.3,35,60,000 vide registered document No.1264 of 2006 and Rs.3,54,40,000 vide Regd. Document No.1262 of 2006 both dated 6.3.2006. The sale consideration was shared by the co-owners in the ratio of their land ownership. The assessees computed long term capital gains from the above transaction on the sale consideration received by them and arrived at the long term capital gains in the hands of each of these assessees. Subsequently, it came to the notice of the Department that the market value of the property in the above transaction was adopted at Rs.4,50,62,000 by the Sub-Registrar for the purposes of payment of stamp duty at the time of registration.

4. Observing that the capital gains should have been computed adopting the deemed consideration of Rs.4,50,62,000 as per the provisions of S.50C of the I.T. Act, the Assessing Officer held that proportionate deemed consideration has to be brought to tax. Since the assessee failed to adopt the deemed consideration as per the provisions of S.50C, he held that the capital gains was short admitted. In view of the same, the Assessing Officer formed an opinion that there was reason to believe that income chargeable to tax has escaped assessment within the meaning of S.147 of the Act. Therefore, notices under S.148 were issued to all the assessees in response to which the assessees have filed their returns of income, admitting the same incomes, which were admitted in the original returns of income. During the re-assessment proceedings, the assessees have filed their written objections vide letter dated 6.6.2013 stating that following were the factors relating to the property due to which the sale consideration at which the property was sold was Rs.3,35,60,000 and Rs.3,54,40,000 only and not RS.4,50,62,000/- :-

(a) that the property sold is located in residential area on Road No.3 Banjara Hills, Hyderabad;

(b) that the shape of the property is odd and this fact has been clearly mentioned on page 3 of the sale deed;

(c) that there is no passage or approach road for individual plots and the property is not abutting the main road;

(d) that there occurred certain deaths in the family after the purchase of the property, due to which it was decided to dispose of the property, as soon as possible and that no one was prepared to buy the property and no one was coming forward to buy the property knowing that the property is against Vastu and is also branded as haunted one in the locality;

(e) that in the year 2005, the present buyer came forward to buy the entire property and the rate was fixed after obtaining the market value and guideline value from the Joint Registrar 1, Hyderabad in April, 2005.

(f) that the assessees and other co-owners have entered into a Memorandum of understanding with the buyer which was executed on 20.5.2005 as is evident from the registered sale deeds dated 6.3.2006 ;

(g) That the buyer paid a total sum of Rs.60,000 as advance in cash to all the owners on the date of the MOU. Enquiries made in the Joint Sub Registrar Office Hyderabad revealed that the market value as assessed by the Sub-Registrar as on 20.5.2005 was Rs.8,250 per sq. yard for both commercial as well as residential area.

(h) That the rate fixed in the MOU was Rs.18,800 per sq. yard, whereby the sale consideration of the property is much more than

the market value as per the Market Value Guideline fixed by the Sub-Registrar's Office.

5. It was accordingly submitted that the sale deeds in respect of the above property was executed on 6.3.2006 and were registered on 10.3.2006 vide Document No.1261 and 1262 of 2006; and that the Sub-Registrar, Hyderabad adopted the market value of the said properties at Rs.4,50,62,000, for an area of 1785 sq. yards which works out to Rs.25,444 per sq. yard on the basis of the guide line value relating to the commercial area which is Rs.25,000 per sq. yard. He submitted that the value adopted by the Sub-Registrar is totally wrong and baseless, because the property was in residential area and not in commercial area.

6. It was also submitted that even though circle rates are applied in respect of valuation of land in an area, there could be huge variations in the prices of land falling even within the circle on account of location factors and hence same value cannot be adopted for all the plots in the area. It was accordingly requested to drop the proceedings initiated under S.147 of the Act.

7. The Assessing Officer, however, rejected the objections of the assessee and proceeded to compute the long term capital gains by invoking the provisions of S.50C of the Act. Since the assessees objected to the adoption of SRO value as Fair Market Value of the properties, he made a reference to the DVO of the Income-tax Department for ascertaining the Fair Market Value of the property as on the date of transfer. The DVO, after inspection of the property and verification of the relevant documents proceeded to estimate the market value of the property at Rs.4,51,71,285 and a show cause was accordingly issued to the assessees. The assessees filed their objections to the proposed valuation stating that–

(1) The DVO has taken properties situated in Jubilee Hills, Nandagiri Hills and MLA Colony in Banjara Hills Road No.12, which are not comparable to the assessee's property, which is situated at Road No.3, Banjara Hills;

(2) The location of some of the properties is on the 80 Ft. main road, as against the location of assessee's property on side road location without proper approach and having odd shape;

(3) The properties were sold on dates much later to the sale of properties by the assessees;

(4) The plots sold by the assessee were still undeveloped even after eight years of sale which shows that there was no development potential as on the date of sale and therefore, the addition of the development potential at 50% of the average rate of sale instances is not correct;

(5) The DVO erred in not considering that the MOU was entered on 20.5.2005 on which date the SRO value was only Rs.8,250 per sq. yd. which should be considered and not the SRO value as on the date of execution of the sale deed;

(6) The properties sold are in residential area, whereas the sale instances considered by the DVO are of commercial properties and further erred in not considering the certificate issued by HMDA authorities that the properties of the assessees were located in residential area .

The assessees also reiterated the objections raised against the reopening of the assessment. The DVO, however, estimated the Fair Market Value of the

property as on 6.3.2006 at Rs.4,51,71,285, vide orders under S.16A(4) of the Wealth Tax Act read with S.50C of the Income-tax Act.

8. After forwarding the copy of the order of the DVO to the assessees, the Assessing Officer proposed to adopt the Fair Market Value at Rs.4,50,70,285 as adopted by the SRO for stamp duty purposes. The assessees again filed their objections. The Assessing Officer, however, was not convinced with the contentions of the assessee and adopting the Fair Market Value at Rs.4,50,62,000 as deemed total consideration for the sale of the property, computed the capital gains accordingly in the hands of all the other co-owners.

9. Aggrieved, assessees preferred appeals before the CIT(A) stating as under-

a. The property was located in a residential area.
b. The plot had an odd shape.
c. The plot was to abutting the main road and there was no separate passage or approach road for individual plots.
d. The land had been unlucky for its previous owner and consequently, it had acquired an evil nature.
e. The land had been sold pursuant to an MOU dated 20.05.2005. A reference had been made in the sale deed to the MOU.
f. The fair market value of the land as on 20.05.2005 was Rs.8,250 per sq. yd. as per the certificate issued by the Jt. Sub-Registrar vide his letter dated 3.11.2011.
g. The rate fixed in the MOU was Rs.18,800 which was much more than the SRO's market value as on 20.5.2005.
h. The land was earmarked for residential use as per GO Ms. No.574 MA, dated 25.8.1980. This had been certified by the Director (Planning), HMDA in his letter dated 26.3.2013.

i. The SRO had adopted a rate of Rs.25,244 for levy of stamp duty in accordance with the rate of Rs.25,000 for commercial areas whereas the land was residential in nature.
j. In accordance with the first proviso to sec.56(2)(vii)(b), the SRO rate prevailing on the date of MOU, i.e. on 20.5.2005 should be adopted u/s. 50C.

Thus, according to the assessees, the SRO value of the property as on the date of agreement has to be considered and not as on the date of the transfer of the property. The assessee also relied on the first proviso to S.56(2)(vii)(b) of the Act which provides that for the purposes of S.50C of the Act, where the SRO value on the date of agreement fixing the amount of consideration for the transfer of the 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 purpose of that section. In support of the contention that this provision is applicable to the case of the assessee, reliance was placed upon the judgment of Hon'ble Supreme Court in the case of Sanjeev Lal and Smt. Shanti Lal V/s. CIT (2014) 365 ITR 389 (SC) for the proposition that the SRO value as on the date of agreement is to be considered. The CIT(A) however, distinguished the said judgment, stating that the issue in the cited case was to determine the date of transfer for the purposes of S.54 of the Income-tax Act, whereas in the assessee's case, the issue is whether value adopted by the SRO in the sale deed is correct and acceptable under S.50C. She observed that in the event of an objection having been made against the SRO's value before the Assessing Officer, the Act provides for a reference to the DVO for determination of the fair market value and for this purpose, the date of transfer is irrelevant. She observed that the assessees who themselves have rejected the correctness of the SRO's rate as per sale deed, have now sought adoption of the SRO rate on one or the other dates as per convenience. She further observed that the decision of the Hon'ble Supreme Court was rendered in the context of S.54 and was based inter alia on the peculiar facts of the case, and therefore, the

same cannot be applied to the facts of the case on hand. She further held that before the Hon'ble Supreme Court in the cited case, the agreement of sale involved transfer of certain rights in respect of the capital asset with reference to which Hon'ble Supreme Court held that the transfer had taken place entitling the assessee to a deduction under S.54, whereas S.50C applies with reference to the transfer of only land or building or both and hence, the said decision is not applicable to the assessee's case.

10. As regards the merits of the valuation by the DVO, the CIT(A) rejected the assessee's contention that the SRO value for commercial property cannot be applied to a residential property. Even with regard to the irregular shape of land and the lack of direct access to main road and such other aspects of the said property, contentions of the assessee were rejected by the CIT(A) by holding that the alleged negative aspects were apparently negligible enough to be ignored by the purchaser to offer a price that was much higher than the SRO rate, as contended by the assessee. Thus, the assessment order was confirmed lby the CIT(A).

11. Against the order of the CIT(A) all the assessee-co-owners have preferred appeals before us.

12. While the learned counsel for the assessee placed reliance on the objections raised by the assessees before the Assessing Officer as well as the CIT(A) and the relevant documents, the Learned Departmental Representative supported the orders of the authorities below.

13. Having regard to the rival contentions and the material available on record, we find that the assessees have contended to have entered into an MOU with the purchaser on 20.5.2005. However, the said document has not been produced either before the authorities below or before us. The only evidence in support of this contention is the recital in the registered sale deeds

dated 6.3.2006. At page 3 of the sale deed, we find that there is a recital that the vendors 1 to 8 have entered into an MOU on 20.5.2005 with vendee to sell the said property for a consideration of Rs.3,35,60,000, out of which the vendors already received Rs.60,000 as advance and that it is clearly understood by the vendee that the property is not abutting the main road and it is an odd shaped plot more fully described in the schedule and plan annexed to the deed. On page 4 of the sale deed, there is also a recital about the advances paid by the vendee to the vendors, and it is seen that a sum of Rs.5,40,000 is shown to have been paid by Cheque No.361101 dated 20.5.2005 and 6.2.2006 and all other payments with consecutive cheque Nos.361102 to 361104 and 361124 are made on 6.2.2006. Similarly, the balance of sale consideration was also paid by the consecutive cheque Nos.361120 to 361123 and 361125 dated 4.3.2006 drawn on Standard Chartered Bank, Raj Bhavan Branch. Hyderabad. As seen from the above, the assessee has failed to produce copy of the MOU either before the authorities below or before us. We, therefore, directed the assessee to produce before us evidence of entering into the MOU on 20.5.2005 or at least receiving the advances as on the date of MOU. The learned counsel for the assessee has filed written submissions clarifying the position with regard to the sum of Rs.5,40,000 reflected as being paid to the assessee on 20.5.2005 and 6.2.2006 vide Cheque No.361101. It was submitted that initially an amount of Rs.60,000 was paid in cash as advance by the vendee to Shri Abdul Arif Baig on 20.5.2005. and thereafter, MOU was entered into on 20.5.2005 and further amount of Rs.5 lakh was paid to Shri Baig towards his 1/5th share vide Cheque no.361101 drawn on Standard Chartered Bank, Rajbhavan branch, Hyderabad and that the said cheque was deposited by him in his SB Account No.19721 in Indian Overseas Bank, Lakdikapool Branch, Hyderabad, which has been credited to his account. A copy of the bank statement issued by Indian Overseas Bank is also submitted and it reflected the deposit of Rs.5 lakhs on 10th of March, 2006. On perusal of the said bank account, it is noticed that Opening Balance as on 1.3.2006 was NIL. When enquired, the learned counsel

for the assessee explained that the assessee did not have any bank account in Indian Overseas Bank prior to March, 2006 and it was only in the month of March that the assessee opened the bank account to receive the cheque payment from the vendees. Therefore, according to him, the recitals in the sale deed with regard to execution of MOU on 20.5.2005 are correct.

14. On this aspect, the Learned Departmental Representative submitted that the assessees have failed to produce the copy of the MOU to prove that the agreement of sale has been entered into by them on 20.5.2005. In the absence of the same, according to him, the agreement of sale dated 20.5.2005 is not acceptable as major portion of the sale consideration has been paid on 6.2.2006 and 6.3.2006, as is evident from the recitals in the sale deed. He also drew our attention to the fact that all the payments to the vendors are allegedly by consecutive cheques and that cheque Nos.031076 to 31083 dated 4.3.2006 are stated to have been issued by the vendee in favour of the family members of Mohammed Zia Baig at the time of registration, while the subsequent cheques bearing no.361101 to 361104 and 361124 are dated 6.2.2006 and 361120 to 361125 are dated 6.3.2006. He submitted that usually cheque leaves are used by a person in seriatim as and when required and not haphazardly, as seems to have been done in this case. He further submitted that though some of the cheques are allegedly dated 6.2.2006, as seen from the bank account of Abdul Arif Baig, the cheque has been encashed after the execution of registered sale deeds, i.e. 10.3.2006, which clearly shows that the sale consideration was received and possession was given only in March, 2006,. Therefore, he raised a doubt about the execution of MOU dated 20.5.2005. Thus, according to him, the SRO value as on 6.3.2006 was correctly adopted by the authorities below. As regards the date to which the provisions of S.50C are to be made applicable, the Learned Departmental Representative placed reliance upon the orders of the authorities below to submit that it should be the date of sale and not agreement of sale.

15. Having regard to the rival contentions and the material on record, we find that the issue is as to whether the date of agreement or the date of execution of sale deed has to be considered for the purpose of adopting the SRO value under S.50C of the Act. We find that this issue is now settled in favour of the assessee by the decisions of the Hon'ble Supreme Court in the case of Sanjeev Lal and Smt. Shantilal Motilal V/s. CIT(365 ITR 389) as well as decisions of the coordinate bench of this Tribunal at Visakhapatnam in the cases of M/s. Lahiri Promoters Visakhapatnam V/s. ACIT, Circle 1(1), Visakhapatnam (ITA No.12/Vizag/2009 dated 22.6.2010) and Moole Rami Reddy V/s. ITO (ITA No.311/Vizag/2010 dated 10.12.2010). It is therefore, now settled that the SRO value as on the date of agreement of sale has to be considered for the purpose of computation of capital gains.

16. In the case of Sanjeev Lal & Smt.Shantilal Motilal (supra), though the issue was the date of transfer for the purpose of allowing the deduction u/s. 54 of the Act, the ratio laid down by the Apex Court that 'by executing an agreement to sell in respect of an immovable property, a right in personam is crated in favour of the transferee/vendee and when such a right is created in favour of the vendee, the vendor is restrained from selling the said property to some one else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed", is very much applicable to the case before us.

17. In the case of K.P.Verghese V/s. ITO and Anr. reported in (1981) 131 ITR 597, the Hon'ble Apex Court, while considering the scope and ambit of S.52(2) of the Act, while explaining the consequences of strict literal interpretation of a statutory provision, has at para-6 observed as under-

> "It is a well recognised rule of construction that a statutory provision must be so construed, if possible that absurdity and

mischief may be avoided. There are many situations in which a purely literal construction of sub-sec. (2) of S..52, would lead to a wholly unreasonable results which could never have been intended by the legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement and it is quite well- known that sometimes the competition of the sale may take place even a couple of years after the date of the agreement-the market price shoots up with the result that the market price prevailing on the date of the sale exceeds the agreed price by more than 15% of such agreed price. This situation is not at all an uncommon case in an economy of rising prices. It cannot be contended with any degree of fairness and justice that in such cases, where there is clearly no understatement of consideration in respect of the transfer and the transaction is perfectly honest and bona fide and, in fact, in fulfilment of a contractual obligation, the assessee who has sold the property should be liable to pay tax on capital gains which have not accrued or arisen to him. It would indeed be most harsh and inequitable to tax the assessee on income which has neither arisen to him nor is received by him. It is difficult to conceive of any rational reason why the Legislature should have thought it fit to impose liability to tax in the case of nature. Many other similar situations can be contemplated where it would be absurd and unreasonable to apply sub-section 53 (2) according to its strict literal construction."

18. In the cases of Lahiri Promoters and Moole Ram Reddy (supra), the coordinate bench of the Tribunal at Visakhapatnam has considered the decision of the Apex Court in the case of K.P.Verghese (supra) to hold that the purpose of introduction of S.50C being to prevent undervaluation of the real value of the property in the sale deed, to avoid payment of tax or duty which the government is entitled to, the character of the transaction vis-à-vis Income Tax Act should be determined on the basis of the conditions that prevailed on the date the transaction was initially entered into.

19. In the case before us, the date of agreement of sale or MOU is allegedly dated 20.5.2005, but the said document was not produced before any of the authorities till date. Though the assessee has claimed to have received the advance of Rs.60,000 in cash on the date of MOU, there is no evidence in support of the cash payment, as contended by the assessee. There is not even a receipt issued in evidence thereof. Therefore, the moot question is whether the recitals in the sale deed alone can be considered as the evidence in support of the MOU. We find that none of the authorities below have examined this issue as they have proceeded on the premise that the date of execution of sale deed is the date to be considered for valuation under S.50C.

20. A transaction involving such immovable property in such prime locality of the city of Hyderabad and involving such financial implications would definitely not take place overnight. The purchaser would require time to verify the legal and clear title of the owners and also about the encumbrances on the property before proceeding to make the payment and get the sale deeds executed. All this would consume time and money. For this purpose, they would have negotiated with the owners about the sale consideration before embarking on this exercise, Therefore, it cannot be said that the transaction has been agreed to as well as executed on the same date. Thus, there had to be an agreement to sell, either oral or in writing. But what is such date is the question before us and this date attains importance because it would determine the SRO value to be taken into consideration for computation of capital gains. In the case before us, it is only the recitals in the sale deed about the MOU dated 20.5.2005 and no other document. The advance of Rs.60,000/- is allegedly in cash with no evidence in support of the same. Even the certificate of the SRO for market value as on 20.5.2005 is dated 3.11.2011 which is after the filing of the return of income by the respective assessees, but before the issuance of notice under S.148 dated 1.3.2013 for initiation of re-assessment proceedings Since no concrete material is filed before us in

support of the MOU dated 20.5.2005, we are not inclined to accept the same, particularly, since there was a revision of guideline values of the properties in 2006. The SRO has taken the revised guideline value and the date on which such revision has taken place also is not available on record.

21. The next question is the nature of the property for valuation under S.50C, because, according to the assessee, even if the date of registered sale deed is considered for determination of the fair market value under S.50C, the SRO value should be taken for residential area and not commercial area. He submitted that if the value of the residential area as on 1.4.2006 i.e. Rs.10,000 per sq. yard, is taken into consideration, the sale consideration received by the assessee was more than the SRO value and no addition was warranted. Therefore, the nature of the property as on the date of transfer attains importance. As pointed out by the learned counsel for the assessee, the said property is notified as a residential area in the encumbrance certificate issued by Registration and Stamps Department dated 12th April, 2013. As seen from pages 32 and 33 of the paper book filed by the assessee, the market value of the property as on 20.5.2005 is Rs.8,250 per sq. yard for both residential as well as commercial properties. In the certificate issued on 3.11.2011 for the market value as on 1.4.2006 as per the SRO/Guideline Value, Rs.25,000 per sq. yard is shown as market value of a commercial property and Rs.10,000 per sq. yd. is shown as market value of residential property. Before the DVO, the assessee has taken an objection that the valuation of any property depends on the approach from the road, shape, size, extent, location of the property etc. and that the comparison should be with similar properties in the same location. The DVO has not held the assessee's contentions to be wrong, but has only stated that due consideration and weightage has been given to all the incriminating factors shown by the assessee and the market value is worked out in a fair and judicious manner. Thus, the assessee's objection is that the nature of the property has not been dealt with by the DVO.

22. There cannot be any dispute that the nature of the property on the date of transfer/sale is to be considered. As pointed out by the learned counsel for the assessee, the encumbrance certificate mentions the property as residential property, but as rightly held by the CIT(A), Encumbrance Certificate merely reflects the registration of the documents and no more can be read into this description. But the learned counsel for the assessee had also relied upon the GO(Ms) No.574 M.A. dated 25.8.21980 and the letter dated 26.3.2013 issued by the Director(Planning), HMDA certifying that Road No.3, Banjara Hills, near Sultan-Ul-Uloom Engineering College, as earmarked for residential use, as per the above G.O. We find that none of the authorities below have commented adversely about this document, but in fact have remained silent on the same. This letter issued by the concerned relevant authority is relevant to determine the nature of the property. It is also a fact that even in a residential zone, one may put a property to commercial use by which it would fetch commercial value when sold. But in the case before us, there is no such allegation by the revenue. But, in fact, the contention of the assessee that the property remained as it is even after eight years of sale also confirms this position, as no person would keep such a property idle when there was ample development potential. The above fact of the land remaining as it is has not been controverted by the authorities below. Therefore, for want of any evidence to the contrary, we hold that the property in question was in residential zone on the date of transfer and therefore, the SRO value for residential property as on 6.3.2006 or the sale consideration received by the assessee whichever is higher is to be adopted under S.50C of the Act. Assessing Officer is directed to compute the capital gains in the hands of the respective assessees accordingly.

23. As regards the reliance of the assessee on the proviso to S.56(2)(vii)(b) of the Act, we find that the said proviso has been brought into the statute by the Finance Act of 2013 with effect from 1.4.2014. The learned

counsel for the assessee has relied upon the raito laid down judgment of the Apex Court in the case of Allied Motors P. Ltd. V/s. CIT(224 ITR 677), in support of the contention that the said proviso is curative in nature and is therefore, applicable retrospectively. He also relied upon the judgment of the Hon'ble Supreme Court in the case of Alom Extrusions Ltd. (319 ITR 306) for the proposition that where the amendments are curative in nature, they are effective retrospectively. However, on the legal principle, we have already held that the guideline value as on the date of agreement of sale is to be adopted. Therefore, the decision on this point would only result in an academic exercise. Therefore, this ground is not adjudicated at this stage.

24. In the result, all the appeals, except ITA No.1953/Hyd/2014, are partly allowed.

ITA No.1953/Hyd/2014
Shri Mohd. Yasser Sattar Baig:

25. In this case, the brief facts are that the assessment under S.143(3) of the Act was completed on 30.12.2008 by adopting the SRO value of the property for computing the capital gains. Thereafter, the assessment was reopened under S.147 of the Act, after receipt of the DVO report on the value of the property and during the assessment proceedings under S.143(3) read with S.147 of the Act, the Assessing Officer observed that the DVO value was more than the SRO value and since it was already taken care of in the assessment proceedings under S.143(3) of the Act, the assessment under S.143(3) read with S.147 got merged with assessment order under S.143(3) and accordingly stands disposed off.

26. Aggrieved, the assessee preferred an appeal before the CIT(A), who dismissed the same holding that the additions/disallowances appealed against were not made in the order under S.143(3) read with S.147 dated 10.3.2014 and that both the grounds raised by the assessee owe their genesis

to the order under S.143(3) dated 30.2.2008. Aggrieved, assessee is in appeal before us, raising the following grounds of appeal-

> **"1. The order of the CIT(Appeals) IV, Hyderabad, is erroneous in law and is against the facts and circumstances of the case.**
>
> **2. The CIT(A) in tee very first paragraph and also in paragraphs nos.5 and 7 of her order held that the appeal filed by the assessee is against the Order u/s. 143(3) r.w.s. 147 of the I.T. Act, dt. 10-03-2014, but rejected the assessee's appeal sating that no additions or disallowances were made in the Order appealed against. The CIT(A) is wrong in not adjudicating the Grounds urged by the assessee in the Grounds of Appeal filed.**
>
> **3. The assessee can make any claim at any stage of the reassessment proceedings or during the course of appeal proceedings, and therefore, the CIT(A) erred in not adjudicating the grounds urged by the Appellant.**
>
> **5. Any other ground or grounds that may be urged at or before the time of hearing."**

27. Having heard both the parties and having regard to the rival contentions, we find that during the assessment proceedings under S.143(3) the capital gains was computed by taking the SRO value and the assessment order was reopened u/s. 147 of the Act for the very same reason, i.e. to consider the DVO report for adopting the value u/s. 50C of the Act. We find that after considering the fact that the DVO value was more than the SRO value, and hence the SRO value is to be adopted u/s. 50C of the Act, the Assessing Officer in the re-assessment proceedings confirmed the assessment order under S.143(3). Thus, as rightly pointed out by the assessee in his grounds of appeal, the assessment order under S.143(3) got merged with the assessment order under S.143(3) read with S.147 of the Act and the assessee's challenge against the same before the CIT(A) is maintainable and the CIT(A)'s observations are not sustainable. Therefore, the order of the CIT(A) is set aside. However, since the common issue of computation of capital gains is arising in the case of all the co-owners including the assessee,

we are of the opinion that no useful purpose would be served in remanding this case back to the file of the CIT(A). Therefore, we remand this case also to the file of the Assessing Officer for re-computation of capital gains in the hands of this assessee also in the light of the decision of this Tribunal in the case of other co-owners.

28. In the result, assessee's appeal is treated as allowed for statistical purposes

29. To sum up, ITA No.1953/Hyd/2014 is treated as allowed for statistical purposes, and other appeals are all partly allowed.

Pronounced in the court on 27th November, 2015

Sd/-	Sd/-
(B.Ramakotaiah)	**(P.Madhavi Devi)**
Accountant Member.	**Judicial Member**

Dt/- 27th November, 2015

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B.V.S.