IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.3642/Mum./2017
(Assessment Year : 2012–13)

Shri Vinay Ramchandra Somani
17A, Shree Niketan, 6th Floor
86–A, Netaji Subhash Road ……. Appellant
Marine Drive, Mumbai 400 002
PAN – ABYPSS5732J

v/s

Asstt. Commissioner of Income Tax
Circle–2(1)(2), Mumbai ……. Respondent

ITA no.3888/Mum./2017
(Assessment Year : 2012–13)

Smt. Shrilekha Vinay Somani
17A, Shree Niketan, 6th Floor
86–A, Netaji Subhash Road ……. Appellant
Marine Drive, Mumbai 400 002
PAN – AWPPS7323B

v/s

Asstt. Commissioner of Income Tax
Circle–2(1)(2), Mumbai ……. Respondent

Assessee by : Shri Prakash Jotwani
Revenue by : Shri Vijay Kumar

Date of Hearing – 04.03.2021	Date of Order – 01.06.2021

O R D E R

PER S. RIFAUR RAHMAN, A.M.

The appeal filed by the assessee challenging the impugned order dated 17th March 2017, and the appeal filed by the Revenue is against the order dated 31st March 2017, passed by the learned Commissioner of Income Tax (Appeals)–3, Mumbai, pertaining to the assessment year 2012–13.

ITA no.3642/Mum./2017
Assessee's Appeal – A.Y. 2012–13
[Shri Vinay Ramchandra Somani]

2. Ground no.1, relates to disallowance of ₹ 4,65,214, made under section 14A of the Income Tax Act, 1961 (for short *"the Act"*).

3. During the course of hearing before us, the learned Counsel for the assessee submitted that he did not wish to press this ground. The learned Departmental Representative has not raised any objection. Consequently, we dismiss this ground as not pressed.

4. Ground no.2, relates to cost of acquisition of 925 shares of Somani & Company.

5. Brief facts are, during the assessment proceedings, the Assessing Officer observed that the assessee has declared long term capital gain on sale of 3,425 equity shares of M/s. Somany & Co. Pvt. Ltd. When

the assessee was asked to provide details of the same, the assessee filed the details of acquisition of shares as per below table:–

Number of Shares	*Year of Acquisition*	*Cost (₹)*	*Indexed Cost (₹)*
*925 Equity shares prior to 01.04.1981 3545525*785/100*	*1981–82*	*35,45,525*	*2,78,32,371*
*500 Equity shares 50000*785/519*	*2006–07*	*50,000*	*75,626*
*2000 Equity shares 2500000*785/463*	*2003–04*	*25,00,000*	*42,38,661*
Total:			*3,21,46,658*

6. The assessee was asked to provide supporting documents in support of the above quantity of indexed cost arrived by the assessee. In response, the assessee filed copy of wealth tax return for the assessment year 1979–80, and copy of wealth tax return order for the assessment year 1979–80 to prove that 925 shares were held by the assessee prior to 1st April 1981. In the statement of total wealth for the year ended 31st March 1979, the assessee had shown 925 shares of M/s. Somani & Co. Pvt. Ltd. and its paid–up value @ ₹ 100 per share and fair value as on 31st March 1979 @ ₹ 105 per share. Further, the Assessing Officer vide letter dated 22nd December 2014, the assessee was asked to explain that the value declared as fair market value for the assessment year 1979–80 @ ₹ 105 per share whereas the assessee has shown the value of same shares of M/s. Somani & Co. Pvt. Ltd., as on 1st April 1981 @ ₹ 3,833 per share. In response,

the assessee vide letter dated 12th January 2015, submitted that M/s. Somani & Co. Pvt. Ltd. is an unlisted company and the book value as on 1979–80 was considered for the purpose of wealth tax, however, the provisions of section 55(2)(b)(i) of the Act gives the option to replace the actual cost with the fair market value of the asset as on 1st April 1981. For the purpose of long term capital gain, the cost was replaced with the fair market value and the capital gain calculated accordingly. By adopting the fair market value of each share @ ₹ 3,833 per share as per the valuation report.

7. After considering the submissions of the assessee, the Assessing Officer rejected the above submissions and observed that in the wealth tax return, the assessee himself shown the face value of each share of ₹ 100 and fair market value @ ₹ 105 per share. He observed that the fair market value means the value on that date if it is sold in the open market which in simple words "marketing value". He also observed that the assessee has shown fair market value of ₹ 105 per share as on 31st March 1979 and suddenly as on 1st April 1981, the fair market value of the same share is increased to ₹ 3,833. He further observed that there is no dispute that section 55(2)(b)(i) of the Act given the option as on 1st April 1981. In two years, market value one share cannot increase 36 times. He observed that if the value increased to that extent the assessee should have declared the same in wealth tax

return. Further, he observed that the assessee has also purchased 2,000 shares in the financial year 2003–04 @ ₹ 1,250 per share. When the assessee purchased the shares in the year 2003–04 (after 23 years @ 1,250 per share), the value of ₹ 3,833 per share as on 1st April 1981, is not proper and accordingly rejected. However, the Assessing Officer considered the value declared by the assessee as on 31st March 1979, in his wealth tax return @ ₹ 105 per share and adjusted the inflation for two years and determined the value per share as at ₹ 120 per share. Accordingly, he allowed the revised indexed cost of 935 shares sold by the assessee. Aggrieved with the above order, the assessee preferred appeal before the learned CIT(A).

8. Before the learned CIT(A), an Affidavit was filed by the assessee. The relevant portion of the Affidavit reproduced by the learned CIT(A) is extracted below:–

> *"2. During the year under consideration I have sold 3,425-equity shares of Somani & Co. Pvt. Ltd (hereinafter referred to as the said (Company) to M/s Sat guru Corporate Services Private Limited. The LTCG arising from the sale of these shares has been disclosed in the Return of Income at Rs. 53,37,65,018/-.*
>
> *3. Out of 3,425 shares, 925 shares were purchased by me in 1979 and therefore for the purposes of determining the cost of acquisition of these 925 shares, the value per share had to be determined as on 1st April, 1981. The method adopted for determining the fair Market Value of the shares as on 01-04-1981, is the Net Asset Valuation Method. As per this method, the Net Worth of the company is computed and the same is divided by the no. of shares issued by the company.*
>
> *4. The learned AO has computed the, capital gain by adopting the*

valuation per share at Rs.120/- per shares instead of Rs. 3,833/- and has failed to take into consideration that in order to determine the fair market value of a share, the net worth of the company is to be computed which when divided by the no. of shares would determine correct valuation.

5. Accordingly I have obtained a valuation Certificate dated 04/10/2016 from the Chartered Accountant, who has certified the value of the share as on 1st April, 1981 at Rs.3,881/- per share (Page 75 of the Paper book), and he has based the valuation on the value of the under lying assets (being immovable property and other assets) of the Company, as on 01–04–1981.

*6. Kindly note that this Valuation Report makes a reference to another Valuation Report **'i.e.** Valuation of Land as 01-04-1981) of the Government Approved Valuer's Report, who has valued the Land belonging to Somani & Co. Put. Ltd. as on 1st April, 1981.*

7. During the assessment proceedings, I had submitted only the Valuation Report pertaining the Land, which to the best of my knowledge was sufficient to justify the value per share as on 01-041981. However I am now submitting a Chartered Accountants Certificate explaining the value per share of M/s. Somani & Co. Put. Ltd., thereby further justifying the claim made by me in my return of Income."

Further, in Sr. No.16 of said Affidavit, the Appellant made following additional evidence under Rule 46A:

Sr. no.	*Page no.*	*Particulars*	*Reason for Not submitting before Assessing Officer*
1	*75*	*Chartered Accountant' s Valuation Certificate (Net worth Valuation Certificate)*	• *The same was not available with me at the time of the assessment proceedings* • *This is with regard to the valuation of the shares of Somani & Co.* • *I have obtained a Valuation Certificate dated 04.10.2016 from the Chartered Accountant, who has certified the value of the shares as on 1st April 1981 at ` 3,881/– per share, and he has based the valuation on the value of the under lying assets (being immovable property and other assets) of the Company, as on 01.04.1981*

9. Since the assessee filed additional evidences on this issue, the learned CIT(A) called for a remand report from the Assessing Officer and the Assessing Officer filed remand report dated 27th January 2017. For the sake of clarity, it is reproduced below:–

> *"4.1(a) During the AY under consideration, the assessee had sold 3425 equity shares of M/s Sonani & Co. Pvt Ltd (hereinafter referred to as the said company) to M/s Satguru Corporate Services Pt Ltd. The LTCG declared from the sale of these shares in the ROI was at Rs.53,37,65,o18/-. Part of the shares, that is about 925 shares were purchased by the assessee in 1979 and therefore the cost of acquisition of these* 925 *shares had to be determined as on 1' April, 1981.*
>
> *(b)Value of the said shares was determined by adopting the net asset valuation method to arrive at the fair market value of the said shares as on 01/04/81.*
>
> *(c)During the course of assessment proceedings, the assessee only submitted the valuation report pertaining to the land belonging to the said company. The assessee has now submitted a valuation certificate dated 04/10/2016 from the chartered accountant, certifying that the value of the share as on 1st April, 1981 was Rs.3,881/- per-share. This value was arrived at based on the valuation of the underlying assets of the said company as on 01-04-81. It is the case of the assessee appellant that this certificate had not been submitted at the time fo assessment as it was his bonafide belief that the valuation report pertaining to the land held by the company was sufficient to justified the value per share as on 01/04/81.*
>
> 4.2 *(a)The said issue has been dealt with by the AO in assessment order. The dispute between the AO and the assessee is with regard to the adoption of the fair market value of the share as on v of April, 1981. The assessee in its wealth tax return for AY 1979-80 had declared the fair market value of the said shares as on 31/03/1979 at the rate of Rs.105/- per-share. However, while adopting the fair market value as on 1st of April, 1981 for the purpose of arriving at the cost of acquisition of the said shares, the assessee is computed value of the same shares at Rs. 3,833/- per-share. It was the case of the assessee that the provisions of section 55(2(b)a) of the I T Act, 1961 give th assessee the option to replace the actual cost with the fair market value of the asset as on i of April, 1981 and*

the assessee had accordingly adopted the fair market value at Rs. 3,833/- per-share. The AO rejected the contention of the assessee that the cost of acquisition of the said shares be taken at R 3,833/- per-share and took the assessed fair market value of the shares as on 31/03/1979 at Rs.105/- and adjusted the same by considering the inflation for 2 years. The AO accordingly after such adjustment took the fair market value of each share at Rs.120/- per-share reworked the indexed cost of acquisition. Also, to bring out the anomaly in the contention of the assessee with regard to the adoption of the fair market value as on 01/04/1981, the AO, also brought out that the assessee had also shown to have acquired the same said shares in FY 2003-04 (i.e after 23 years) @ Rs. 1,250/- per-share. Please also pertinent to mention now, that the said assessee has also

"4.1 (a)During the AY under consideration, the assessee had sold 3425 equity shares of M/s Sornani & Co Pvt Ltd (hereinafter referred to as the said company) to M/s Satguru Corporate Services Pt Ltd. The LTCG declared from the sale of these shares in the ROl was at Rs.53,37,65,o18/-. Part of the shares, that is about 925 shares were purchased by the assessee in 1979 and therefore the cost of acquisition of these 925 *shares had to be determined as on 1' April, 1981.*

b)Value of the said shares was determined by adopting the net asset valuation method to arrive at the fair market value of the said shares as on 01/04/81.

(c)During the course of assessment proceedings, the assessee only submitted the valuation report pertaining to the land belonging to the said company. The assessee has now submitted a valuation certificate dated 04/10/2016 from the chartered accountant, certifying that the value of the share as on ist April, 1981 was Rs. 3,881/- per-share. This value was arrived at based on the valuation of the underlying assets of the said company as on 01-04-81. It is the case of the assessee appellant 111CI this certificate had not been submitted at the time to assessment as it was the bonafide belief that the valuation report pertaining to the land held by the company was sufficient to justified the value per share as on 01/04/81.

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of April, 1981 for the purpose of arriving at the cost of acquisition of the said shares, the assessee is computed value of the same shares at Rs. 3,833/- per-share. It was the case of the assessee that the provisions of section 55(2(b)a) of the I T Act, 1961 give th assessee the option to replace the actual cost with the fair market value of th asset as on i of April, 1981 and the assessee had accordingly adopted thl fair market value at Rs. 3,833/- per-share. The AO rejected the contention of the assessee that the cost of acquisition of the said shares be taken at R 3,833/- per-share and took the assessed fair market value of the shares as on 31/03/1979 at Rs.105/- and adjusted the same by considering the inflation for 2 years. The AO accordingly after such adjustment took the fair market value of each share at Rs. 120/- per-share reworked the indexed cost of acquisition. Also, to bring out the anomaly in the contention of the assessee with regard to the adoption of the fair market value as on 01/04/1981, the AO, also brought out that the assessee had also shown to have acquired the same said shares in FY 2003-04 (i.e. after 23 years) @ Rs. 1,250/- per-share. Please also pertinent to mention now, that the said assessee has also purchased the said shares in FY 2006-07 at the rate of Rs.100/- per-shore. The additional evidence in the form of a valuation certificate dated 04/10/2016 from a chartered accountant, who has certified the value of the share as on 1st of April 1981 at Rs 3,881/- per-share on the basis of the valuation being carried out on the value of the underlying assets of the company as on 01/04/1981 to which the said shares pertain, need not be entertained in the light of the facts brought out aforesaid. On the one hand, the assessee himself computed the fair market value of the said shares in its wealth tax return for AY 1979-80 at Rs.105/- per-share, in W 2003-04 @ Rs. 1,250/- in FY 2006-07 @ Rs.100/- and @ Rs.3,883/- per share as on 01/04/1981 on the other. This shows that the assessee with reference to the same transaction, i.e value of the said shares, at different times, insists on the truth of each of the 2 conflicting values to suit his private interests. The Latin Maxim "Allegans contraria non est audiendus" meaning "lie is not to be heard who alleges things contrary to each other", squarely applies to the assessee case. Accordingly, it is requested that this additional evidence need not be admitted."

10. After considering the submissions of the assessee, remand report and the response to remand report filed by the assessee, the learned

CIT(A) sustained the addition made by the Assessing Officer with the following observations:–

> *"7.5 I have perused the facts of the case and the contentions of the AO & appellant carefully. I find that in the Chartered Accountant's certificate filed under Rule 46A, the Cost of acquisition as on 01.04.1981 of the shares of Somani & Co. Pvt. Ltd. is arrived @ Rs.3881/- per share, after considering Value of Land of said company as on 01.04.1981 at Rs.7,66,80,110/- as per separate Valuation Report of M/s. Shah & Shah, a Govt. approved valuer. The question to be examined is whether or not the revaluation of asset of company is permitted for computing the fair market value of unquoted shares. In this regard, I find that as per Rule 11UA of Income Tax Rules, 1962, the fair market value of unquoted equity shares shall be [(AL)/(PE)*(PV], where A= book value of assets in the balance sheet, L = book value of liabilities in the balance sheet, PE = total paid-up equity share capital, & PV = paid-up value of such equity shares. It is therefore, clear that for calculating the fair market value of unquoted equity shares, the revaluation of assets of company is not permitted. Hence, the appellant's method completely devoid of any merit. T further find that when asked to submit the proof of cost during assessment proceedings, the appellant himself has given his Wealth Tax Return for AY 1979-80 in support of his claim. In the said wealth tax return, the market value of said shares is shown at Rs.105/– per share. I find that the market value for wealth tax purposes is determined in accordance with Rule iD of Wealth Tax Rules, 1957, which is also based on balance sheet figures of assets & liabilities, and not on any revaluation of assets of the company for the purpose. In these circumstances, the valuation adopted by AU @120/- per share is not unreasonable, hence accepted. As regards alternate argument of appellant that the AU is not an expert in valuation of assets and hence he should have made reference to DVO, I find that the appellant had not made any specific request for reference to DVO during assessment proceedings. Moreover, such reference to DVO can be made when the market value of any asset is to be taken into account in the assessment during assessment proceedings, which is not applicable in present case since the market value of assets of company has no relevant in determining the fair market value of unquoted shares. In view of above, no relief can be granted to the appellant in this regard, and therefore, Therefore, the Ground No.2 is dismissed."*

11. Aggrieved with the above order, the assessee filed appeal before the Tribunal.

12. Before us, the learned Counsel for the assessee drawn our attention to Para–7.5 of the order passed by the learned CIT(A) and submitted that the learned CIT(A) invoked provisions of rule 11UA of the Income Tax Rules, 1962, and observed that for calculation of fair market value of un–quoted equity shares, the re–valuation of assets of a company is not permitted and rejected the method adopted by the assessee. For this proposition, he submitted that provisions of rule 11UA is not applicable for this assessment year and he relied upon the decision of the Co–ordinate Bench in ITO v/s Smita Vinod Bhagwati, ITA no.6709/Mum./2012, order dated 12th August 2016 and submitted that in the above case, it was held that the adoption by the Assessing Officer of the value arrived at under the Wealth Tax Act, for the purpose of computing capital gain under the Income Tax Act, 1961, is wrong as per law. Further he relied upon the decision of the Hon'ble Delhi High Court in Madhu Tyagi v/s DCIT, [2008] 19 SOT 612 (Del.) to submit that the wordings and the purpose of allowing deduction towards cost of acquisition for computing capital gains is quite different from the purpose of levy of wealth tax and it is not permissible to import and apply principle laid down under the Income Tax Act to Wealth Tax Act or vice–versa. Further, relying upon the

decision of the Co–ordinate Bench of the Tribunal in Shashi Dharnidharka v/s ITO, ITA no.5314/Mum./2018, order dated 22nd October 2010, the learned Counsel for the assessee submitted that the facts in the present case are identical to the case relied upon by the learned Counsel in Shashi Dharnidharka (supra) wherein it was held that fair market value of the shares as on 1st April 1981, is to be worked out as per the relevant provisions of the Act. Since the Assessing Officer has not considered the valuation report of determining the value of land and building of the company and was restored the matter to the file of the Assessing Officer for fresh consideration. He submitted that even in this case, taxing authorities rejected the valuation report submitted by the assessee and as per section 55A of the Act this issue may be restore to the file of the Assessing Officer for referring the issue under section 55A of the Act for reference to the Valuation Officer. He submitted that as an alternative argument of the assessee for restoring the issue to the file of the Assessing Officer for valuation afresh. Finally, he submitted that the wealth tax valuation cannot be applied in the Income Tax Act and either the Assessing Officer should accept the valuation submitted by the assessee from a recognized valuer or let the Assessing Officer re–evaluate the value of shares by making a reference to the Departmental Valuation Officer and prove that in either case the Department cannot adopt wealth tax valuation.

13. On the other hand, the learned Departmental Representative relied upon the observations of the authorities below.

14. Considered the rival submissions and perused the material on record. We noticed that during the year under consideration, the assessee sold 3,425 equity shares of M/s. Somani & Co. Pvt. Ltd., and has purchased 925 equity shares prior to 1st April 1981 and 500 shares acquired in the assessment year 2006–07 @ ₹ 100 per share. Further, the assessee acquired 2,000 equity shares in the assessment year 2003–04 for ₹ 25 lakh @ ₹ 1,250 per share. For determination of capital gain, the assessee calculated the indexed cost of 925 shares by adopting the fair market value of the shares as on 1st April 1981 @ ₹ 3,833 per share. The assessee utilized the option as per section 55(2)(b)(i) of the Act to replace the actual cost with the fair market value as on 1st April 1981. Accordingly, the assessee obtained the valuation of un–quoted value of shares of M/s. Somani & Co. Pvt. Ltd. from independent valuer. The independent valuer re–valued the asset in the aforesaid company. It is pertinent to note that the major asset held by the company is the land belonging to the company which was re–valued to ascertain the fair market value of the company as on 1st April 1981. It is fact on record that the assessee or the company never re–valued the land earlier, all along the company was declaring the value of land as per Balance Sheet. The latest information submitted

by the assessee before the taxing authorities of the fair market value per share which was declared in the wealth tax return @ ₹ 105 per share as a fair market value. Before us, the learned Counsel submitted that the Assessing Officer adopted the wealth tax valuation which was submitted by the assessee as on 31st March 1979, and re–adjusted to re–value the value of share as on 1st April 1981. He objected to the above adoption of value based on wealth tax valuation rather than calculating the value of shares of un–quoted shares. We are in agreement with the assessee that the assessee has an option to replace the value of market value as on 1st April 1981 as per section 55(2)(b)(i) of the Act and also the judicial precedence suggest that wealth tax valuation cannot be adopted for Income Tax purpose. Therefore, the Assessing Officer cannot fully rely upon the value declared for wealth tax purpose in Income Tax assessment. Even the learned CIT(A) accepted provisions of rule 1D of the Wealth Tax rules. Considering the judicial precedence, we are in agreement that the assessee can adopt fair market value based on the re–valuation of the assets held by the company as on 1st April 1981. Further, we note that the learned CIT(A) observed that even under rule 11UA of the I.T. Rules, the fair market value of the un–quoted equity shares shall be calculated based on the net assets as per the Balance Sheet and re–valuation in the Balance Sheet is not permitted.

15. After considering the over all submissions of the assessee as well as the findings of the Revenue authorities, we notice that no doubt the assessee has re–valued the fair market value as on 1st April 1981, at ₹ 3,833 per share and we also notice that the assessee has purchased 2,000 shares @ ₹ 1,250 per share in assessment year 2003–04 and we notice that the assessee has claimed indexed cost based on this valuation only. Therefore, it is impractical to calculate the value of un–quoted equity shares @ ₹ 3,833, as on 1st April 1981 and the same shares valued and purchased at ₹ 1,250 per share in the assessment year 2003–04. One end, the assessee claimes the value as at 1st April 1981, at ₹ 3,833, and at the same time, the assessee himself calculates the value of same shares at ₹ 1,250, in the assessment year 2003–04. The assessee himself claims the cost of index with the value in 1st April 1981, at ₹ 3,883 and on 1st April 2003, at ₹ 1,250. The assessee himself cannot adopt two different yard sticks for the value of same shares. Therefore, before us, the proper valuation of fair market value is possible either by adopting the Balance Sheet value as on 1st April 1981 or adopt the value of shares purchased by the assessee in the assessment year 2003–04 and re–calculate the value of shares on reverse indexation basis to determine the value as on 1st April 1981. Since the assessee has not submitted Balance Sheet as on 1st April 1981 of the company M/s. Somani & Co. Pvt. Ltd., in our considered view, the assessee intend to adopt ₹ 3,883, on 1st April 1981, and at

the same time, the assessee cannot claim the value for the assessment year 2003–04 at ₹ 1,250. Therefore, in our considered view, the best possible option available to the assessee is only to adopt the value of fair market value in assessment year 2003–04 and re–calculate by adopting reverse indexation to determine the value as on 1st April 1981. Therefore, the value of each share will be @ ₹ 1,250 x ₹ 100 ÷ 463 = ₹ 270 per share. Since the Assessing Officer cannot adopt the value as per wealth tax valuation considering the judicial precedent, we deem it fit to direct the Assessing Officer to adopt the fair market value as on 1st April 1981 @ ₹ 270 per share.

16. We noticed that the assessee prayed to restore this issue to the file of the Assessing Officer to refer this matter to the valuation officer. In view of our above observations, we do not see any reason to refer this issue to the valuation officer at this stage. Accordingly, ground no.2, is partly allowed.

17. Ground no.3, relates to the dispute in learned CIT(A)'s order in confirming the deemed sale consideration at ₹ 8,44,18,460 (being the market value on which stamp duty is paid) as against ₹ 5,72,76,000, being the agreement value and the amount actually received.

18. Brief facts are, the Assessing Officer observed that the assessee has sold land in proprietorship concern M/s. Gopal Corporation, for a

consideration of ₹ 5,72,76,000. The assessee filed a copy of agreement and from the agreement, the Assessing Officer observed that stamp duty valuation of the land is ₹ 8,44,18,460. When the assessee was asked why the provisions of section 50C of the Act should not be invoked, in response, the assessee vide letter dated 26th November 2014, submitted that the assessee sold 1,591 sq.mtrs. of open plot to Satguru Corporate Services Pvt. Ltd., @ ₹ 36,000 per sq.mtr. for a total consideration of ₹ 5,72,76,000 and the price was finalized in December 2011, when the ready reckoner rate was at ₹ 30,300 sq.mtr. The sale agreement could be registered only on 4th January 2012, as the Registry Office was short staffed in the last week of the year 2011. Subsequently, ready reckoner w.e.f. 1st January 2012, was increased to 37,900 sq.mtr. which works out to ₹ 6,02,98,900. The assessee further submitted that the stamp duty authorities taken value of land which is 140% of the ready reckoner value which is inclusive of TDR. The ready reckoner clearly states that the only land capable of utilizing TDR should be valued at 1.4 times of the land rate. The assessee stated that this particular plot of land is located in Oshiwara District Centre of MMRDA and the assessee through RTI obtained clarification from MMRDA vide their letter dated 11th April 2012, that no TDR can be allotted in the plot of land. Accordingly, the assessee requested to treat the sale price as ₹ 5,72,76,000. The Assessing Officer rejected the submissions of the

assessee and observed that in case assessee is not happy with the valuation and instead of taking information through RTI, the assessee could have filed objection to rectify / correct the valuation. Further, he observed that even during the scrutiny proceedings, the assessee has not objected to the stamp duty valuation and has not requested for reference to the DVO. Accordingly, the Assessing Officer taken the sale consideration as per the provisions of section 50C of the Act i.e., stamp duty valuation for this property. Aggrieved with the above order, the assessee filed appeal before the first appellate authority.

19. Before the learned Commissioner (Appeals), the assessee filed an Affidavit the contents of which are reproduced below:–

> *"8.1 On the other hand the appellant submitted by way of an Affidavit dated 11.11.2016, the relevant portion of which is reproduced below:*
>
> *"8.In addition to the above, I have also sold a portion of land admeasuring 1,591 sq. mtrs., which was held under my proprietary concern, Shree Gopal Corporation for a consideration of Rs.5,72,76,000/-. Although the deal was concluded in December, 2011, the same could not be completed and registered since the Joint Sub-Registrar of Assurances was short staffed. The sale agreement was registered on 04.01.2012. Enclosed on Page 134-137 of Paper book are the email correspondences which show that the deal was concluded in December, 2011.*
>
> *9. The Ready Reckoner rate in 2011 U)1S Rs. 30,300/- 'MV= 4,82,00,000/-) and in 2012 was Rs. 37,900/- per sq. mtr. (MV 6,02,98,900/-). Thus there was an increase of 25% in the ready reckoner rates within a period of 4 days from the end of the calendar year 2011. Thus had the sale agreement been registered in 2011, the agreement value was much higher than the ready reckoner rates. Enclosed on Page 128-133 of the Paper book are the relevant extracts of the Stamp Duty Reckoner showing the values in 2011 & 2012.*

10. The stamp duty has been paid at higher value of Rs.8,44,18,460/-. This is because, the stamp Authorities computed the value by taking the value by taking the value at 140% of the Ready Reckoner Value of. $s. 6,02,98,900/-, which is inclusive of TDR, although the ready reckoner states that only land capable of utilizing TDR should he valued at 1.4 times the land rate.

11. I had procured a clarification from MMRDA vide letter dated 11.4.2012, that no TDR can be loaded on the said plot of land. Thus I made a claim before the Assessing Officer that the stamp duty was paid by the buyer on Rs. 8,44,18,460/-, while the market value was only Rs.5,72,76,000/-.

12.The learned AO not being an expert in this field should have referred this matter of valuation to the Departmental Valuation Officer (DVO) u/s. 50C(2), who would aftger due consideration, would arrive at a correct market value of the land.

13. Identical facts and circumstances had arisen in the hands of a sister concern in the case of Mahalaxmi Rope Works Ltd. Wherein the AO had made an addition u/s. 50C in respect to the adjoining plot of land. The CIT(A) in that case had also called for the DVO's report (copy of which is enclosed herewith), which clearly shows that the valuation adopted by the Assessee is correct. Thus following the same, I request your Honours to kindly call for a DVO's report in my case, keeping in mind the valuation taken in the case of Mahalaxmi Rope Works Ltd. Enclosed on pages 138 to 141 is the DVO's report in the case of Mahalaxmi Rope Works Ltd..

Further, in Sr. no. 16 of said Affidavit, the appellant made following additional evidence under Rule 46A:

Sr.no.	*Page no.*	*Particulars*	*Reason for Not submitting before Assessing Officer*
2.	*134–137*	*Email Correspondences*	• *I was under a bonafide belief that the explanations and documents provided at the time of the assessment were sufficient to justifiy my claim. These documents will now assist in understanding the facts and circumstances of the entire case.*
	128–133	*Ready Reckoner Rate for 2011 & 2012*	
3.	*138–141*	*DVO's Report in case of Mahalaxmi Rope Works Ltd.*	• *The same was not available at the time of assessment proceedings.*

20. As the assessee filed additional evidence on this issue, a remand report was called from the Assessing Officer and the Assessing Officer submitted remand report dated 27th January 2017, the relevant report is reproduced below:–

> *"4.3 The further piece of additional evidence submitted to the Ld. CIT pertains to the sale of a portion of land admeasuring 1951 m^2, which was held under the proprietary concern of the assessee [shree Gopal Corporation] for a consideration of Rs. 5,72,76,000/-. It is the case of assessee that the deal was concluded in December, 2011, however the same could not be completed and registered since the joint sub registrar of assurances was short stuffed and the same came to be registered on 01/04/2012. Further, the ready reckoner rate in 2011 was Rs.30,300/- [Market Value Rs. 4,82,00,000/-I and in 2012 was 37,900/- per square metre [Market Value Rs. 6,02,98,900/-J. The assessee had contended that the stamp duty authorities had taken the value of lund considering utilisation of TDR [Transfer of Development Rights]. Accordingly, the assessee submitted that the stamp duty authorities had taken valuation at 140% of land value which was not correct as no TDR could be loaded on the said plot of land. The assessee obtained information pertaining to the same through RTI vide letter dated 11/04/2012 and submitted the same before the AO. The AO, held that the assessee should have requested the registrar's office to rectify/ correct the valuation on the basis of the RTI information and as the assessee had not done, it meant that he was satisfied with the valuation. The AO therefore, rejected the argument of the assessee. The AO also mentioned that the assessee had not objected to the stamp duty valuation in the scrutiny proceedings arid had not requested for referring the same to the DVO. in the light of these facts, the AO adopted the market value of the property assessed j'or stump duty to be the full value of consideration received by the assessee.*
>
> *In the additional evidence sought to be submitted, the assessee has requested that the CiT (A) call for a report from the DVO as in identical facts and circumstances, additions were made in the hands of a sister concern viz Malwlaxmi Rope Works Ltd with respect to the adjoining plot of land and the CIT (A) in that case had also called for the DVO'S report.*
>
> *The DVO report in the case of Mahalaxmi Rope Works Ltd has been filed by the assessee as additional evidence and its admittance is sought under rule 46A of the Income-tax Rules, 1962.*

4.4 It may be mentioned that the plot of land in the case of Mahalaxmi Rope Works Ltd and the plot of land belonging to the assessee are separate plot of lands though in the same area and therefore the valuation of one plot cannot be held that it would be the same for the other. Further, once on objections have been taken before the stamp duty authorities or before the AO with respect to the valuation carried out by the stamp duty authorities, it is requested that no further reference need be made to the DVO."

21. In response to the remand report, the assessee also submitted rejoinder vide letter dated 14th March 2017, which is reproduced below:–

"8.3 A copy of the remand report was forwarded to the appellant, who submitted his rejoinder vide letter dated 14.03.2017, the relevant portion of which is reproduced below:

"14. The Appellant has sold a plot of land admeasuring 1591 sq. mtrs., which was held under his proprietary concern, Shree Gopal Corporation, for a consideration of Rs.5,72,76,00/-. Although the deal was concluded in December, the same could not be completed and registered since the Joint Sub-Registrar of Assurances was short staffed. So the sale agreement was registered on- -

15.The Ready Reckoner rate in 2011 was Rs. 30,300/- per sq. mtr.(MV=Rs.4,82,00,000/-) and in 2012 was Rs. 37,900/- per sq.mtr. (MV=Rs. 6,02,98,900/-). Thus there was an increase of 25% in the ready reckoner rates within a period of 4 days from the end of the calendar year 2011. Thus, has the sale agreement been registered in 2011, the agreement value was much higher than the ready reckoner rates.

16. The stamp duty has been paid at higher value of Rs. 8,44,18,460/-.This is because, the Stamp Authorities computed the value by taking the value at 140% of the Ready Reckoner Value of Rs. 6,02,98,900/-, which is inclusive of TDR, although the ready reckoner states that only land capable of utilizing TDR should be valued at 1.4 times the land rate.

17. The Appellant has procured a clarification from MMRDA vide letter dated 11-04-2012, that no TDR can be loaded on the said plot of land, thus the Appellant made the claim before the

Assessing Officer that although the stamp duty was paid on Rs. 8,44,18,460/-, the market value has been wrongly computed on the higher amount of Rs. 8,44,18,460/-.

18. In para 5.3 of the Remand Report, the learned AO has held that the Land sold as per Ready Reckoner Rates.

We submit that the ready reckoner rates prescribed by the Government are guidelines with respect to the market rates and therefore the immovable properties are generally sold at this price or higher. Section 50C has provided legality to these guidelines and has provided that in the event the Land is sold at a price lower than these ready reckoner rates, then for the purposes of computing the capital gain, the sale consideration shall be deemed to be the ready reckoner valuation and the lower agreement consideration at which the land is sold, shall be ignored. Thus in other words the Ready Reckoner Rates is nothing but the market value and therefore the Appellant has not violated the provisions of section 50C.

19. During the appeal proceedings, the Appellant had submitted certain additional evidences for which our Honour had called for a remand. The rebuttal submissions on this regard are as follows:-

(i) The valuation on which the stamp duty was paid was not contested before the stamp authorities. The AO failed to take into consideration, that the onus to pay stamp duty is on the purchaser and not the seller. Thus the Purchaser has wrongly paid stamp duty on a higher sum. it was unfortunate that the seller (i.e. the appellant herein) has actually suffered on account of the mistake of the Purchaser and therefore it was not possible for the Appellant herein to contest the valuation before the stamp authorities. It is to be noted that the Appellant has sold his portion of the land at the prevailing market rates, keeping in mind that the land did not have any TDR on it. It is the case that the Appellant was satisfied with the valuation made by the tamp Authorities, because it is a fact that no TDR can be landed on the said plot of land (Pg. 127 of the paper book) and therefore the valuation made by the stamp authorities is incorrect.

(ii) Assessee had not objected to the stamp duty valuation in the scrutiny proceedings and had not requested for referring the same to scrutiny proceedings and had not requested for referring the same to the DVO. During the assessment proceedings, the Appellant had submitted the certificate from MMRDA which clearly stated that the TDR cannot be loaded on the said plot of land. The appellant was not aware of the AO's

intention and presumed that the explanation provided by him was satisfactory. The Appellant was never given the opportunity to contest the valuation. Further during the remand proceedings the Appellant vide its Affidavit requested the cir (A) to direct the AO to refer the matter to the DVO, who after considering all the facts and circumstances of the case would arrive at the correct market value. It is provided that where the consideration received or accruing us a result of the transfer of a capital asset being land or building or both is less than the value adopted by an authority of the State Government for the purposes of payment of Stamp duty in respect of such transfer, then the value so adopted by the State Government authority shall be deemed to be the full value of consideration received or accruing as a result of such transfer. The said provisions of sub-section (i) of section 50C are further circumscribed by sub-section (2) of section 50C. in terms of clause ('a) of subsection (2) of section 50C, it is provided that where an assessee claims before the Assessing Officer that the value adopted o4 assessed by the Stamp valuation authority under sub-section (i) exceeds the fair market value of the property as on the date of transfer, then the Assessing Officer may refer valuation of the Capital asset to the Valuation Officer. In this case, factually it is evident that the assessee had claimed in the return of income itself that the value adopted by the Stamp valuation authority exceeded the fair market value as on the date of transfer as provided in section 50C('2)(a) of the Act. In our view, under these circumstances, the Assessing Officer ought to have referred the matter to the Valuation officer instead of straightaway deeming the value adopted by the Stamp valuation authority as the full value of consideration.

Refer matter to DVO in light of the DVO's report in the case of Mahalaxmi Rope Works Ltd., identical facts and circumstances had arisen in the hands of a sister concern in the case of Mahalaxmi Rope Works wherein the AO had made an addition u/s. 50C in respect to the adjoining plot of land. The CIT (A) in that case had also called for the DVO's report (copy of which is enclosed herewith), which clearly shows that the valuation adopted by the assessee is correct thus following the same, the Appellant requests your Honour to either kindly call for a DVO's report in this case keeping in mind the valuation taken in the case of Mahalaxmi Rope Work Ltd. or accept the valuation in the DV0's report for Mahalaxmi Rope Work Ltd. Enclosed pages 138 to 141 is the DVO's report in the case of Mahalaxmi Rope Work Ltd. (encl:i)

However the AO during the remand proceedings has not called for a DVO report on the ground that they are separate plots of land although in the same area and therefore the valuation

would be different. The explanation provided by the Assessing officer is bizarre as the land was in the very same area (as admitted by him) & identical in all respects (except size) (map enclosed Encl:2) and therefore it is obvious that the market value for both plots of land would obviously be on the same basis. Thus the reasons provided by the Assessing Officer for not appointing DVO in this matter appears unjustified.

We would also like to draw your attention to the Order passed by the CIT (A) in the case of Mahakixmi Rope Work Ltd. (having identical facts and circumstances), wherein the addition made on account of section 50C has been deleted. Therefore the addition made by the AO even in this case should be deleted. Copy of the Order is enclosed herewith for your perusal. Enc1:3)

20, We submit the following:

(i) For the purpose of adopting the correct value for the sale consideration, we humbly request your Honour to kindly consider the ready reckoner rates of 2011 and not of 2012. This is because the terms and conditions of the agreement was concluded in 2011 itself, but the mere formality of signing and registering was done on 4th January 2012. Kindly note that the terms and condition of the conveyance Deed was finalized and mutually agreed upon on 14th December 2011, (as can be seen from the email dated 14th December, 2011) and the intention of the Parties to execute and register the same before 31 December, 2011. It was only due to unfortunate circumstances that the same could not he completed.

(ii) We request you to kindly refer to the Valuation Report dated 9th February, 2016 which has valued the land in question at Rs. 30,300/- per sq. mtr.

The ready reckoner rate for 2011: Rs. 4,82,07,300/-
The ready reckoner rate for 2012: Rs. 6,02,98,900/-
Agreement consideration : Rs. 5,72,76,000/-

Thus it can be seen that the deal was concluded before Dec., 2011 and the consideration agreed upon was Rs.5,72,76,000/-, (about 19% higher) than the ready reckoner rate for on of Rs. 4,82,07,300/-. Therefore the ready reckoner rate for 2011 should be taken into consideration for determining the 50C issue.

21. Argument 2:

Without prejudice to what is stated above, in the event your

Honours hold that the Ready Reckoner Rates for 2012 have to be considered, then we submit as follows

(i) The Purchaser of this plot of land has paid 5% stamp duty on the following market value, computed by the Collector and Registrar of Mumbai.

Rs.8,44,18,460/- = 6,02,98,900 X1.4 times
(40% Loading of TDR)

(ii) Although the Purchaser has paid 5% stamp duty an this valuation of Rs.844,18,46o/-, submit that the stamp duty has been paid on a higher valuation. This is because the land in question is located in the MMRDA's Oshiwara District Centre. The Development control Regulations, 1991 are applicable to Oshiwara District Centre and it clearly states that the TDR CANNOT be used on these receivable plots in Special Planning authority area of MMRDA. Kindly note that MMRDA has in response to Appellant's RTJ application, clarified in their letter dated ii' April, 2012, that the TDR cannot be utilized on the plot of land in question (Page 127 of the Paper Book).

(iii) Keeping in mind the abovementioned communication between MMRDA and the Appellant, I submit that the stamp valuation authority has wrongly taken the market value of the said land at Rs. 8,44,18,460/- instead of Rs. 6,02,98,900/- and has therefore wrongly invoked the provisions of section 50C.

22. Argument 3 :

(i) Further we would like to submit that although the Stamp Duty valuation in 2012 is Rs. 6,02,98,900/- and the agreement consideration' is Rs. 5,72,76,000/-, then also no addition should be made under section 50C, as the difference between them is Rs. 30,22,900/-, i.e. only 5.28% more than the Agreement value.

(ii) Even as per section 32A4) of the Bombay Stamp Act, 1958" if the difference in the market value worked out based on the Stamp Duty Ready Reckoner and Market Value of the Properties declared by Maharashtra State Government and the consideration mentioned in the Agreement is not more than 10%, then in that case Agreement value shall be taken for the purposes of levying Stamp Duty.

(iii) we would like to rely on the following decisions:

- *Krishna Enterprises vs. ACIT (ITAT Mumbai) dated 26-11-2016*

S. 50C: if the difference between the sale consideration of the property shown by the assessee and the FMV determined by the DVO u/s. 50G(2) is less than 10%, the AO is not justified in substituting the value determined by the DVO for the sale consideration disclosed by the assessee.

- *Sita Bai Khetan us. ITO (ITAT Jaipur) dated August, 2016*

S. 50C: Valuation is a matter of estimation and some degree of difference is bound to be there. If the difference between the stamp duty valuation and the declared sale consideration is less than 10% addition u/s 50C should not be made.

- *ACIT vs. S. Suuarna Rckha (ITA No. 743/Hyd/2009 dated 29–10–2010*

Held: if difference between valuation for the purpose of stamp duty and the sale consideration actually received by the assessee is io% or less, then the value actually received by the assessee should be adopted for the purpose of computing the long term capital gain.

- *M/s. LGW Limited vs. ITO (KOL ITAT):A.Y. 09-10, Decided on 0710.2015: ITA No. 267/Ko1/2013*

Though section 50C of the Act does not speak of any such variation in terms of percentage between value adopted for the purpose of stamp duty and the registration and the actual consideration received on transfer, keeping in view of the fact that the difference between the valuation for the stamp duty and the actual consideration received by the assessee is less than 2% we are of the view that addition sustained by CIT (A) should be deleted.

- *Rahul Constructions vs. DCIT(Pune)(Trib.) 38 DTRI9 (2010) ITA No.1543/Pn/2007*

23. Argument : Reference to Valuation Officer

As stated above, the learned AD erred in not making a reference to the Valuation Officer u/s. 50C(2), although the Appellant had claimed that the stamp valuation exceeds the fair market value of the immovable property as on date of transfer."

22. After considering the above submissions and remand report, the learned CIT(A) rejected the submissions of the assessee with the following observations:–

> *"8.6 As regards appellant's contention that the A.O. should have referred the matter to DVO, I find that during the assessment proceedings, the appellant has not challenged that the value adopted by stamp valuation authority is less than the fair market value of property as on the date of transfer. The appellant's first contention of having finalized the price in December, 2011 before increase in Ready Reckoner rate since 01.01.2012 is devoid of merit, since no agreement evidencing the transfer of asset was entered into in December, 2011. The appellant's second contention of TDR loading in Ready Reckoner rate is also beyond jurisdiction of Assessing Officer to decide. In fact, the above contentions indicate that the appellant was not unsatisfied with the ready reckoner rates per se, but only disputed its applicability in his case, which has been duly dealt with by the Assessing Officer. Hence, the condition of sub–section (2) of section 50C was not satisfied and also the appellant had not demanded any reference to DVO at assessment stage. In such case, the A.O. was not obliged to suo–moto refer the valuation to DVO.*
>
> *8.7 The appellant has further contended that the A.O. should have referred the matter to DVO in the light of DVO's report in the case of Mahalaxmi Rope Works Ltd. I find that submission of such report for the first time during remand proceedings do not change the fact that no demand for reference to DVO was made at assessment stage. Also, there can be difference in fair market value of two plots in same area depending upon several factors, hence the said report is not conclusive proof of fair market value of appellant's land being the same as adopted in said report. In view of above, and in the spirit of the provisions of section 50C, I find the assessing officer was bound to adopt the value adopted by stamp valuation authority of Rs.8,44,19,000/- as the full value of consideration received. This resulted in net addition of Rs.2,71,43,000/- (i.e. Rs.8,44,19,000 – 5,72,76,000), which is confirmed, and therefore, Ground No.3 is dismissed."*

23. Aggrieved with the above order, the assessee is in appeal before the Tribunal.

24. Before us the learned Counsel for the assessee brought to our notice the details of sale of plots in the same area plot no.4, sold by

Mahalaxmi Rope Works Ltd. He also brought to our notice the area map indicating plots no.4, 9, 3 and 5. All these plots are within the vicinity of the plot no.7. The issue under consideration is only about Plot no.7. He submitted that this plot of land was sold by registered document only on 4th January 2012. He brought to our notice at Page–93 of the paper book to indicate that the stamp duty valuation was calculated at 37,900 per sq.mtr. and adopted premium of 40% more to the stamp duty rate to arrive at the stamp valuation of ₹ 8,44,18,460, and he also brought to our notice Page–105 of the paper book to indicate that the assessee has actually sold for ₹ 5,72,76,000 only. He submitted that the assessee has entered into an agreement of sale in December 2011, and in the same month the rates were finalized for sale. He prayed that the stamp valuation as per 2011 rates should be adopted or this issue may be referred to the DVO for valuation afresh. The same plea was made before the learned CIT(A) who in turn rejected it. The learned Counsel for the assessee submitted that similar issue came up in case of Mahalaxmi Rope Works Ltd. which is the issue of Plot no.4, situated exactly opposite to the Plot no.7, which is under consideration. He brought to our notice at Page–138 of the paper book which is District Valuation Report in case of Mahalaxmi Rope Works Ltd. transaction and he brought to our notice Page–144 of the paper book to indicate the stamp valuation rate was adopted without considering TDR in the above valuation of

Plot no.4, and prayed that the valuation adopted in Mahalaxmi Rope Works Ltd. transaction may be accepted or this issue may be referred to the DVO for fresh valuation. Further, he brought to our notice that the decision of the Co–ordinate Bench in Mahalaxmi Rope Works Ltd., ITA no.2954/Mum./ 2017, order dated 14th March 2019, wherein the learned CIT(A) in that case referred to the property to the DVO to ascertain the FMV. After considering the DVO valuation the learned CIT(A) ascertained the FMV based on the valuation of the DVO. Further, in that case, the learned CIT(A) deleted the addition on the ground that difference between the fair market as per the DVO's report and agreement valuation which was around 5.8% variation. Aggrieved, the Revenue was in appeal before the Tribunal and the Tribunal dismissed the appeal of the Revenue. Since the issue was similar to the facts in Mahalaxmi Rope Works Ltd. (supra), he prayed that the assessee's case also may be restored to the file of the Assessing Officer for reference to the valuation officer.

25. On the other hand, the learned Departmental Representative vehemently supported that the findings of the learned CIT(A) in Para–8.6 of his order and further submitted that the assessee's case request for DVO's valuation may not be considered.

26. Considered the rival submissions and perused the material on record. We notice that the assessee has sold Plot no.7, for ₹

5,72,76,000, on 4th January 2012, however, the assessee claimed that the assessee has negotiated and sold the land based on the earlier stamp valuation rate in December 2011 itself whereas the effective ready reckoner rates were changed w.e.f. 1st January 2012. Further, the assessee submitted that the stamp duty authorities not only adopted effective new rate on this transaction plus adopted TDR @ 140% of the effective rates. Its fact on record that the assessee has not challenged before the stamp duty authorities and also not prayed for reference to the DVO before the Assessing Officer. We notice that it is brought to our notice that in the adjacent Plot no.4, the stamp duty valuation was made adopting new effective rate, however, the TDR rates were not applied on the above said plot which is situated within the vicinity of Plot no.7. In case of Mahalaxmi Rope Works Ltd. (supra) the learned CIT(A) referred the issue to the DVO for valuation afresh and it was found that the difference between the actual sales and stamp valuation having difference of only 5.8%. Accordingly, the addition was deleted and the same was confirmed by the Co–ordinate Bench in the aforesaid case. After considering the over all situation, we notice that even in case of Mahalaxmi Rope Works Ltd. (supra), stamp duty authorities have applied TDR @ 140% and upon agitation the issue was referred to the DVO and the DVO has valued the property without applying the TDR. Since the issue under consideration is similar to the issue in Mahalaxmi Rope Works Ltd. (supra) case,

therefore, in our considered view, for the sake of justice, we restore this issue also to the file of the Assessing Officer and also direct him to refer this case to the DVO and adopt the value based on the report of the DVO to determine the actual capital gains as per law. Accordingly, ground no.3 raised by the assessee is allowed for statistical purposes.

27. Ground no.4, relates to disallowance of deduction under section 54F of the Act.

28. Brief facts of the case are, the Assessing Officer observed that the assessee had claimed deduction under section 54F of the Act amounting to ₹ 25,81,25,585. The assessee was asked to file the purchase agreement or letter of allotment for new property purchased. In response, the assessee provided copy of escrow arrangement. Further, the assessee was asked to provide the property document and bank statement for the same whether possession of the property was taken or not. In response, the assessee submitted that he received the residential flat as payment in kind. It was done through an escrow agreement wherein the flat no.D–504 and three car parking spaces in Signature Island valued at ₹ 25,81,80,676, was to be released after the sale transaction was completed. The assessee also provided the application for registration / enrollment and unit by M/s. Starlight Systems Pvt. Ltd., which was developing the project Signature Island. However, the Assessing Officer observed that the

application was unsigned and unfilled. The assessee submitted that the land sale was completed on 4th January 2012, the letter of allotment was duly released to him as per clause of escrow agreement and he became owner of the flat.

29. The Assessing Officer issued notice under section 133(6) of the Act to the builder M/s. Starlight Systems Pvt. Ltd., to frame whether the above said flat was allotted to the assessee or not. IN response, M/s. Starlight Systems Pvt. Ltd., vide letter dated 16th February 2015 stated that they have not allotted any flat nor received any payment thereof from the assessee. Subsequently, the assessee was informed about the reply to notice under section 133(6) of the Act. In response, the assessee submitted that the dispute was arisen between him and the builder. The builder disputed the allotment of the above said flat to the assessee. Further, the assessee submitted that the assessee had issued a public notice in the newspapers and filed a Suit against the builder in the High Court. In the interim order, the Hon'ble Jurisdictional High Court has restrained the builder from disposing off the said flat namely Flat no.B–504, till pending the hearing and final disposal of the case. Meanwhile, the Assessing Officer informed to the assessee that the deduction under section 54F of the Act can be allowed if the assessee invest / purchase new residential property within the prescribed time. In the given case, the Assessing Officer

observed that the assessee failed to provide any documentary proof that he had invested / purchased a new property. The unsigned and unfilled application for registration / enrolment form does not give any right to the ownership of the flat. Further, the Assessing Officer observed that iN this case the builder had also denied allotment of a flat as payment in kind and the assessee claimed the same as deduction under section 54F of the Act towards investment in a residential property. In case the assessee submitted that in case the Assessing Officer decides that there is no flat with which to claim deduction under section 54F of the Act then the assessee did not get any income and have no deduction to claim. The assessee further submitted that the Assessing Officer cannot add the value of flat to his income and at the same time the very same flat is not allotted to the assessee and thus cannot be allowed as a deduction. After considering the above submissions of the assessee, the Assessing Officer observed that the assessee earned a long term capital gain on sale of land through a separate agreement. The sale of land and total consideration is not disputed by the assessee and the builder. Thus, that sale deed was duly completed for a certain consideration by legal procedure and duly registered. The legal process is also complete. The builder became the owner of the said land and the assessee receiveed ascertained amount and is liable for tax. Further, the Assessing Officer stated that the escrow arrangement is an internal understanding

between the assessee and the builder on mode of consideration / payment and terms of the escrow arrangement are not part of sale deed. The dispute between the assessee and the builder is on mode of consideration / payment. Finally, the Assessing Officer observed that the deduction under section 54F of the Act can be allowed if the assessee invest / purchase new residential property within the prescribed time. Here, the assessee failed to provide any documentary proof that he had invested / purchased a new property. Accordingly, he rejected the deduction claimed by the assessee under section 54F of the Act. Aggrieved by this order, the assessee preferred appeal before the first appellate authority.

30. The assessee, before the learned CIT(A), filed detailed submissions vide letter dated 14th March 2017, which is placed on record at Page–22–26 of the order of the learned CIT(A). After considering the detailed submissions of the assessee, the learned CIT(A) rejected the submissions of the assessee with the following observations:–

> *"9.5 Further, in para 25 to 27 of his submissions, the appellant has also linked the sale of shares to the Agreement dated 04.01.2012 for sale of land to Satguru Corporate Services Pvt. Ltd. (Paper book Page no.93–125, being the subject matter of addition u/s 50C discussed above). I find that nowhere in said agreement, there is any reference of any Escrow Arrangement / Sale of shares. Hence, the said agreement has to be considered independent of any such arrangement, if at all.*

9.6 Alternatively, even if it is assumed that the sale consideration of said shares was partly in kind in the form of residential flat to be acquired by the appellant, there is merit in A.O's contention that the investment in purchase of residential property is application of income from capital gains. In my opinion, for computing the capital gain, the sale consideration received as well receivable, need to be taken into account. In view of above, the long term capital gain computed on sale of said shares are not to be disturbed by the allowability or not of deduction u/s 54F.

9.7 Now as regard the allowbility of deduction u/s 54F, the allotment letter submitted by the appellant on page–148–154 of the paper book in blank & unsigned, hence has to evidentiary value. The Builder has denied having allotted any flat to the appellant. The injunction order by Hon'ble High Court of Bombay dated 16.06.2014 restraining Satguru Corporate Services Pvt. Ltd. from sale of Flat B-504 only proves that the appellant has not got possession of said flat in time prescribed under Section 54F. Also, the appellant has failed to prove any payment made towards purchase of new residential house. Therefore, all evidences are against the appellant. In such case, since the appellant has failed to satisfy the basic condition of purchasing residential house within a period of one year before or two year after or construct within a period of three year after the date of transfer of original long term capital asset (the unquoted shares), the deduction claimed u/s 5,4F against purchase of said flat cannot be allowed to the appellant on given facts.

9.8 The appellant has further claimed that he has deposited Rs. 2,00,00,000/- in Capital Gain account scheme, and also submitted proof for the same in Paper Book. The evidences submitted shows that the appellant has made investment in following TDR with State Bank of India, Fort, Mumbai, which is claimed to be towards Capital Gain Account scheme:

S. No.	*Account Number*	*Term*	*Principal (Amount in Rs.)*	*Value Date*	*Maturity Date*
	32572410939	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*
2	*32572415687*	*2 Years*	*20,00,000*	*28.09.2012*	*28.09.2014*
3	*32572427137*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*

4	*32572429666*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*
5	*32572431733*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*
6	*32572434814*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*
7	*32572436390*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*
8	*$13^{2}57^{2}44^{2}5^{0}9$*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.204*
9	*32572446127*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*
10	*32572449912*	*2 Years*	*20,00,000/-*	*28.09.2012*	*28.09.2014*
	Total		*2,00,00,000*		

The Assessing Officer is directed to allow the deduction u/s 54F against above investment after necessary verification at his end. The Assessing Officer may further verify the use of said funds on maturity, and in case the amount is not utilized for purchase / construction of residential house within stipulated period, the taxability of such amount may be considered under Proviso to sub–section (4) of Section 54F, after due application of mind. In view of above, Ground no.4 is partly allowed."

31. On the other hand, the learned Departmental Representative supported the findings of the authorities below and submitted that the learned CIT(A) has rightly concluded and denied the benefit.

32. Considered the rival submissions and perused the material on record. We notice that the assessee has sold the residential land and entered into a separate deal with the buyer for allotment of a flat in the up–coming project. The part sale consideration received by the assessee as payment in kind. In that process, the assessee entered into an escrow arrangement with Satguru Corporate Services Pvt. Ltd., against the allotment of new flat. As per escrow arrangement, the

assessee made full payment against the allotment of the flat. Due to certain dispute with the builder, the builder could not complete the flat against which the assessee issued a public notice in the newspaper and also filed a suit in the Hon'ble Jurisdictional High Court against the builder. The assessee also filed a copy of the order dated 16th June 2014, passed by the Hon'ble Jurisdictional High Court and also filed a copy of public notice in the newspaper as part of paper book from Page–155–164 of the paper book. From the record, it is clear that the assessee has received part of sale consideration as in kind for allotment of flat for which the value was determined and kept under escrow arrangement. From the record, it is also given to understand that it has not received this portion of the sale consideration up to now since there is a separate arrangement was entered with the buyer of the land and the builder for consideration and allotment of the disputed flat which later ended up in dispute. Because of dispute, the builder has refused to confirm to the Assessing Officer that there is no arrangement and allotment of the aforesaid flat to the assessee. However, the documents submitted before us clearly indicate that the stand of the builder is not correct and proper. Considering the decision of the Hon'ble Jurisdictional High Court which was filed before us clearly indicate that there exist dispute with regard to above flat. In our considered view, there is no dispute that the assessee had entered into escrow arrangement with a clear purpose of purchasing the above

said flat and accordingly and based on the agreement with the buyer of the land, the assessee has left a portion of the sale consideration in escrow arrangement. Therefore, when the taxing authorities intend to tax the whole sale consideration as taxable consideration which includes the portion of the cost of flat then the assessee has deemed to have paid for the flat as purchase consideration. We notice that the Assessing Officer has taken a stand that in order to claim deduction under section 54F of the Act, the assessee has to demonstrate documentary evidences of the new property and the assessee should have invested / purchased new residential property within the prescribed time. We notice that in this situation the assessee has already kept the agreed settlement amount for purchase of flat with buyer of the land and accepted to receive the promised allotted flat within the prescribed time. Since there was a dispute between the assessee and the builder the flat was not allotted to the assessee within the prescribed time. We notice that the Courts have held that when the assessee performs his part of the duty before the prescribed time and incase there is a reasonable delay or default on the part of builder and failed to comply the agreement within the prescribed time and when the assessee demonstrated the reasonableness of the time frame of investment then the Courts have taken liberal view in giving deduction under section 54F of the Act. Therefore, in our considered view, in the given case the assessee has not received sale

consideration to the extent of value of flat and there is no mistake on the part of the assessee, therefore, in our considered view, the assessee had paid full purchase consideration for flat, therefore, the assessee is eligible for the claim under section 54F of the Act. Accordingly, ground no.4, raised by the assessee is allowed.

33. With regard to the deduction claimed by the assessee to the extent of ₹ 2 crore on capital gain deposit scheme, we notice that the learned CIT(A) has already allowed the claim of the assessee. Therefore, we do not see any reason to disturbe the findings fo the learned CIT(A).

34. In the result, assessee's appeal is partly allowed.

ITA no.3888/Mum./2017
Assessee's Appeal – A.Y. 2012–13
[Mrs. Shrilekha Vinay Somani]

35. The issue arose out of Grounds no.1(a) to 1(d) raised by the assessee relates to cost of acquisition of 925 shares of Somani & Company.

36. Having considered the submissions of the learned Counsel appearing for the parties and having perused the material on record, we find that the facts and circumstances of the issue raised by the assessee in this appeal is materially identical to the issue decided by us vide ground no.2, raised by the assessee in its appeal being ITA no.

3642/Mum./2017, vide Para–14–15 above, wherein we have set aside the order passed by the learned CIT(A) and partly allowed the ground raised by the assessee. Consistent with the view taken therein, we set aside the impugned order passed by the learned Commissioner (Appeals) for the year under consideration and partly allow the grounds no.1(a) to 1(d), raised by the assessee for this assessment year also.

37. The issue arose for our adjudication out of gorunds no.2(a) to 2(d) relates to disallowance of deduction under section 54F of the Act.

38. Having considered the submissions of the learned Counsel appearing for the parties and having perused the material on record, we find that the facts and circumstances of the issue raised by the assessee in this appeal is materially identical to the issue decided by us vide ground no.4, raised by the assessee in its appeal being ITA no. 3642/Mum./2017, vide Para–31–32 above, wherein we have set aside the order passed by the learned CIT(A) and allowed the ground raised by the assessee. Consistent with the view taken therein, we set aside the impugned order passed by the learned Commissioner (Appeals) for the year under consideration allow the grounds no.2(a) to 2(d), raised by the assessee for this assessment year also.

39. In the result, assessee's appeal is partly allowed.

40. To sum up, assessee's appeal being ITA no.3642/Mum./2017 is partly allowed; and assessee's appeal being ITA no.3888/Mum./2017 is partly allowed.

Order pronounced in the open court on 01.06.2021

Sd/-	**Sd/-**
C.N. PRASAD	**S. RIFAUR RAHMAN**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

MUMBAI, DATED: 01.06.2021

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai

		Date	Initial	
1.	Dictated on computer	.06.2021		Sr.PS
2.	Draft placed before author	.06.2021		Sr.PS
3.	Draft proposed & placed before the second member	– –		JM/AM
4.	Draft discussed/approved by Second Member	– –		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	18.06.2021		Sr.PS
6.	Date of pronouncement	01.06.2021		Sr.PS
7.	File sent to the Bench Clerk	18.06.2021		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			