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

BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.519/Lkw/2017
Assessment Year:2014-15

Dy.C.I.T., Range-2, Lucknow.	Vs.	Ms. Zubeida Shahanshah, 13, Jopling Road, Nanpara House, Lucknow. PAN:AIAPS 1559 A
(Appellant)		(Respondent)

Appellant by	Shri C. K. Singh, D.R.
Respondent by	Shri Yogesh Agrawal, Advocate
Date of hearing	25/01/2019
Date of pronouncement	31/01/2019

O R D E R

PER T. S. KAPOOR, A.M.

This is an appeal filed by the Revenue against the order of learned CIT(A)-1, Lucknow dated 31/03/2017 pertaining to assessment year 2014-2015. In this appeal the Revenue has taken the following grounds of appeal:

> *"1. Under the facts and circumstances of the case, the Ld. CIT(A) erred in law and facts while holding that the sale of the property was a distress sale without appreciating the relevant documentary facts that the assessee sold the property on principal to principal basis under Builder's Agreement after settlement of mutual misunderstanding out of Court and there was not third party encroachment or litigation involved, therefore, the ratio of Hon'ble ITAT, Mumbai in the case of B.*

R. Herman & Mohanta (I) Pvt. Ltd Vs. Department of Income tax dated 15.06.2012 was not applicable in the present case.

2. Under the facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts in deleting the addition of Rs.1,82,95,925/- by invoking the amended proviso to section 50C(1) of the Act retrospectively & adopting the fair market value at Rs.4,05,00,000/- as on the date of agreement to sell i.e. 11.10.2011 relying upon the judgment of Hon'ble ITAT, Ahmedabad Bench in the case of Dharmshibhai Sonani Vs. ACIT, Surat without appreciating that the Hon'ble ITAT, Ahmedabad in the above case remanded the matter back to the file of the A.O. and after examination adopt the stamp duty valuation as on the date of agreement and moreover, the retrospective application of amended proviso to section 50C(1) is debatable under various courts of law.

3. Under the facts & circumstances of the case, the CIT(A) erred in law & facts in excluding the value of land area of 844.24 sq.mtr. for stamp duty valuation of Rs.46,43,320/- as per section 50C of the Act in as much as the assessee received an advance of Rs.10,00,000/- towards the same earlier as per Builder's Agreement dated 10.10.2005.

4. Under the facts & circumstances of the case, the CIT(A) failed to appreciate that ever otherwise, proviso to section 50C(1) was applicable on date of agreement to sell i.e. 11.10.2011 by adopting stamp Duty Valuation as on the date of agreement & not the Fair Market Value as there was no distress sale of property.

5. Under facts & circumstances of the case, the CIT(A) has allowed entire relief to the assessee without proper appreciation of facts & law."

2. At the outset, Learned D. R. submitted that assessee had sold property and Assessing Officer applied the provisions of section 50C of the Act and which learned CIT(A) has deleted holding the sale made by the assessee as a distress sale and learned CIT(A) has wrongly relied on the ratio of decision of Hon'ble Bombay Tribunal in the case of B. R. Herman &

Mohanta (I) Pvt. Ltd. order dated 15.06.2012. Learned D. R. further submitted that learned CIT(A) has wrongly adopted the fair market value as on the date of agreement instead of taking the value as per collector's rate for calculation. Learned D. R. further argued that assessee had received an advance of Rs.10,00,000/- towards the same property which has not been included in the sale proceeds and therefore, the Assessing Officer had rightly made the addition of Rs.46,43,320/- being the deemed value of such Rs.10,00,000/- u/s section 50C of the Act. Learned D. R. further argued that learned CIT(A) should have taken stamp duty value as on the date of agreement and not the agreed value as there was no distress sale of property and the stamp duty valuation of the property was Rs.4,18,52,923/- as per approved valuer's report, copy of which is placed at pages 140 to 148 of the paper book.

3. Learned A. R., explaining the facts of the case, submitted that assessee had declared a capital gain to the tune of Rs.2,33,75,744/- which arose on account of sale of property situated at 13, Jopling Road, Lucknow for a sale consideration of Rs.4,05,00,000/-. Learned A. R. submitted that assessee had originally entered into a builder agreement on 10/10/2005 whereby the assessee agreed to transfer a part of its property to M/s Misthi Construction Pvt. Ltd. for construction of flats and the assessee was to get 35% share out of the said proceeds of flats. Learned A. R. submitted that dispute arose between the parties on account of which, after various litigations, the assessee entered into a memorandum of understanding on 10/10/2011 whereby the consideration for the property was fixed at Rs.4,05,00,000/- and in this respect our attention was invited to copy of memorandum of understanding placed at pages 68 to 73 of the paper book. Learned A. R. submitted that this memorandum of understanding itself

notes the fact of having entered into a builder's agreement on 10/10/2005 and also notes that due to disputes this new memorandum of agreement has been entered and therefore, it cannot be said that the sale through this MOU was not made as a distress sale. Learned A. R. submitted that this memorandum of understanding notes that there were various litigations between the parties and to arrive at an amicable settlement, the agreement was entered into and was presented to Hon'ble High Court and therefore, it is wrong on the part of the Revenue to argue that the sale was not a distress sale. Learned A. R. further argued that even if the provisions of section 50C are applied, the circle rate prevalent at the time of entering the agreement has to be taken into account as the provisions of section 50C itself has been amended and its application has been held to be retrospectively applicable by Hon'ble Ahmedabad Tribunal in the case of Dharamshibhai Sonani vs. ACIT, Surat [2016] 75 Taxmann.com 141 (I.T.A.T. Ahmedabad). Learned A. R. invited our attention to a copy of valuation report of approved valuer dated 11/10/2011, placed at pages 142 to 148 of the paper book, where the valuer has valued the property as per circle rate at Rs.4,18,52,923/-. Learned A. R. submitted that in the worst case scenario, the deemed valuation u/s 50C can be taken at Rs.4,18,52,923/- instead of Rs.4,05,00,000/-. As regards the advance of Rs.10,00,000/- which the Revenue claims to have been received by the assessee, Learned A. R. submitted that no doubt the amount of Rs.10,00,000/- has been referred to in builder's agreement dated 10/10/2005 but this agreement itself became disputed and assessee entered into a fresh memorandum of understanding wherein the entire sale consideration was refixed and the mode of payments have also been refixed wherein there is no mention of Rs.10,00,000/- alleged to have been received by the assessee vide builder's agreement dated 10/10/2005.

Therefore, it was argued that this receipt of Rs.10,00,000/- remained as security and that has to be refunded back. In this respect our attention was invited to clause 43 of Builders' Agreement wherein it was agreed that in case of dispute, the advance of Rs.10,00,000/- was to be refunded. Learned A. R. further invited our attention to an opinion of Sr. Advocate Shri Jaidev Narain Mathur, copy placed at pages 136 to 139 of the paper book, wherein the Sr. Advocate, after going through the entire facts, has concluded that this amount is a liability of the assessee which needs to be repaid to the builder. Therefore, it was argued that learned CIT(A) has rightly deleted the addition.

4. We have heard the rival parties and have gone through the material placed on record. The first ground of appeal taken by the Revenue is that learned CIT(A) has wrongly considered the sale of property as a distress sale. In this respect, we find that originally a builder agreement was executed and registered on 10/10/2005, a copy of which is placed at pages 28 to 67 of the paper book. Vide this builder's agreement, a part of property of the assessee, measuring 884.24 sq. meter, was to be transferred to assessee for a consideration of Rs.10,00,000/-, stamp value of which was Rs.46,43,320/-. This fact is apparent from clause 47 of the agreement, which for the purpose of completeness is reproduced below:

> *"47. That the subject matter of this agreement is 844.24 sq. meter of land the valuation of the same @Rs.5,000/- per sq. meter comes to Rs.42,21,200/-, the land is situated at more than 9 meter wide road hence 10% extra value comes to Rs.4,22,120/-. Thus, the total value of the land comes to Rs.46,43,320/- consequently the stamp duty of Rs.4,64,400/- has been paid."*

As per this agreement the builder was to construct flats on the property and the proceeds were to be shared between the builder and the assessee to the extent of 65% and 35% respectively. The said agreement could not be executed as there arose certain disputes and the matter became subject of litigation, as is apparent from copy of Writ Petition filed by the builder, placed at pages 100 to 110 of the paper book. In view of the litigations the assessee entered into a fresh memorandum of understanding vide agreement to sell dated 11/10/2011, placed at pages 68 to 73 of the paper book. In this memorandum of understanding, the fact of original agreement dated 10/10/2005 and various legal proceedings against the agreement has been noted and further this agreement states that to end the litigation the consideration has been fixed at Rs.4,05,00,000/- and the manner of making payments has also been noted in this agreement. This memorandum of understanding is for sale of 2591.12 sq. meter of land which is apparent from Clause-I of the fresh memorandum of understanding, the contents of which are reproduced below:

> *"1. That the first party shall transfer absolute ownership in the land measuring 2591.12 sq. mtr. of the plot on which the second party has to construct multistoried residential apartments i.e. part of property No.25/22, situated at 13, Lajpat Rai Marg also known as 13, Jopling Road, Lucknow. It is clarified that the agreement between the parties is only in relation to 2591.12 sq/ mtr.s and does not include the remainder of the plot no. 25/22, 13 Lajpat Rai Marg, Lucknow which currently houses the residence of the first party. A copy of the map of the said property is annexed as Schedule-A with this Memorandum of Understanding and the portion bounded in red is the property in question."*

On comparison of the contents of these two agreements, we find that originally the assessee had entered into an agreement for a small piece of land measuring 884.24 sq. mtr. and later on the area was increased to

2591.12 sq. mtrs. Therefore, it can not be said that the assessee had made the sale as a distress sale as the land area in new agreement is much more than area in original agreement and there is no dispute about the increased area as the dispute remained limited to original area of 884 sq. mtrs. Therefore, the argument of Learned A. R., that the sale of entire property was a distress sale, do not hold force. Therefore, ground No. 1 of the appeal is allowed.

4.1 As regards ground No. 2, the Revenue has taken the ground that learned CIT(A) has wrongly invoked the amended proviso to section 50C(1) retrospectively and has wrongly taken the fair market value as on agreement to sell i.e. on 11/10/2011. It has been argued that the section can not be said to be amended retrospectively and Assessing Officer had rightly taken the stamp duty valuation as on the date of sale deed. In this respect we find that section 50C(1) has been amended by Finance Act 2016 with effect from 01/04/2017 whereby it has been held that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer provided the amount of consideration, or a part of consideration, was paid by an account payee cheque or by use of electronic clearing system, on or before the date of the agreement for transfer. In the present case, we find that memorandum of understanding was entered on 10/10/2011, a copy of which is placed at pages 68 to 73 of the paper book. The sale consideration has been fixed at Rs.4,05,00,000/- out of which Rs.15,00,000/- was paid vide cheque no. 177078 on the date of agreement itself which finds mention in the copy of agreement itself.

The said advance also finds mention in the sale deed registered on 16/09/2013, placed at pages 7 to 19 of the paper book where in the schedule of payments, placed at page 17, the same cheque dated 11/10/2011 for Rs.15,00,000/- finds mention. Therefore, in the present case the value of circle rate, prevailing at the time of entering the agreement i.e. 11.10.29011, was to be considered, as the applicability of this section has been held to be applicable retrospectively by the judgment of Ahmedabad Bench of the Tribunal in the case of Dharmshibhai Sonani (supra), where the Hon'ble Tribunal has held that the amendment in section 50C(1) has to be applied retrospectively and the circle rate prevailing at the time of entering agreement has to be applied. The relevant findings of Hon'ble Tribunal are reproduced below:

> *"6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERATION FIXED UNDER AGREEMENT TO SELL*
>
> *Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under section 48 of the Income-tax Act.*
>
> *The scope of section 50C was extended w.e.f. A.Y. 2010-11 to the transaction which were executed through agreement to sell or power of attorney by inserting the word "assessable" along with words "the value so adopted or assessed". Hence, section 50C is now also applicable in case of such transfers.*
>
> *The present provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement. A later similar*

provision inserted by way of section 43CA does take care of such a situation.

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

> *(4) Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in sub- section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.*
>
> *(5) The provisions of sub-section (4) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before a date of agreement for transfer of the asset.*

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

> *Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:*
>
> *Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.*

"6. This amendment was explained, in the Memorandum Explaining the Provisions of Finance Bill 2016 (http:/ /indiabudget .nic. in/ ub2016-17/memo/mem1.pdf), as follows:

> *Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building on both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in trade. It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration. It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property. 30 These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply in relation to assessment year 2017-18 and subsequent years.*

7. While the Government has thus recognized the genuine and intended hardship in the cases in which the date of agreement to sell is prior to the date of sale, and introduced welcome amendments to the statue to take the remedial measures, this brings no relief to the assessee before me as the amendment is introduced only with prospective effect from 1st April 2017. There cannot be any dispute that this amendment in the scheme of Section 50C has been made to remove an incongruity, resulting in undue hardship to the assessee, as is evident from the observation in Easwar Committee report to the

effect that "The (then prevailing) provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement" recognizing the incongruity that the date agreement of sell has been ignored in the statute even though it was crucial as it was at this point of time that the sale consideration is finalized. The incongruity in the statute was glaring and undue hardship not in dispute. Once it is not in dispute that a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced. In support of this proposition, I find support from Hon'ble Delhi High Court's judgment in the case of CIT Vs Ansal Landmark Township Pvt Ltd [(2015) 377 ITR 635 (Del)], wherein approving the reasoning adopted an order authored by me during my tenure at Agra bench [i..e Rajeev Kumar Agarwal Vs ACIT (2014) 149 ITD 363 (Agra)] which centred on the principle that when legislature is reasonable and compassionate enough to undo the undue hardship caused by the statute "such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically". In this case, it was specifically observed, and it was this observation which was reproduced with approval by Their Lordships, as follows:

> *"Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced. In view of these discussions, as also for the detailed reasons set out earlier, we cannot subscribe to the view that it could have been an "intended consequence" to punish the assessees for non-deduction of tax at source by declining the deduction in respect of related payments, even when the corresponding income is duly brought to tax. That will be going much beyond the obvious intention of the section. Accordingly, we hold that the insertion of second proviso to Section 40(a)(ia) is declaratory and curative in nature and it has retrospective*

effect from 1st April, 2005, being the date from which sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004" [8]

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

"Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by the Parliament only w.e.f. 1st April, 2004, would become curative in nature, hence, it would apply retrospectively w.e.f. 1st April, 1988 (i.e. the date on which the related legal provision was introduced). Secondly, it may be noted that, in the case of Allied Motors (P) Ltd. Etc. vs. CIT (1997) 139 CTR (SC) 364: (1997) 224 ITR 677 (SC), the scheme of s. 43B of the Act came to be examined. In that case, the question which arose for determination was, whether sales-tax collected by the assessee and paid after the end of the relevant previous year but within the time allowed under the relevant sales-tax law should be disallowed under s. 43B of the Act while computing the business income of the previous year? That was a case which related to asst. yr. 1984-85. The relevant accounting period ended on 30th June,

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

the statute book at the relevant time, each of such assessee(s) would not be entitled to deduction under s. 43B of the Act for all times. They would lose the benefit of deduction even in the year of account in which they pay the contributions to the welfare funds, whereas a defaulter, who fails to pay the contribution to the welfare fund right upto 1st April, 2004, and who pays the contribution after 1st April, 2004, would get the benefit of deduction under s. 43B of the Act. In our view, therefore, Finance Act, 2003, to the extent indicated above, should be read as retrospective. It would, therefore, operate from 1st April, 1988, when the first proviso was introduced. It is true that the Parliament has explicitly stated that Finance Act, 2003, will operate w.e.f. 1st April, 2004. However, the matter before us involves the principle of construction to be placed on the provisions of Finance Act, 2003."

4.2 In view of the above facts and judicial precedents, we hold that the amendment to section 50C by the Finance Act 2016 has to be applied retrospectively as the amendment is curative in nature therefore, collector's rate prevalent at the time of entering agreement has to be taken as deemed consideration. Therefore, ground No. 2 is dismissed.

4.3 Now coming to ground No. 3. We find that in the original agreement dated 10/10/2005, there is mention of Rs.10,00,000/- which was paid to the assessee but this agreement was not executed and became a matter of dispute and a fresh memorandum of understanding was entered into by the assessee whereby the entire sale consideration was refixed and there is no mention of this amount of Rs.10,00,000/-. As per the legal opinion of Sr. Advocate, placed at pages 136 to 139 of the paper book, the said amount of Rs.10,00,000/- is a liability of the assessee and which needs to be repaid to the builder. The Sr. Advocate has examined all the documents and has based his conclusion in para 9, which, for the sake of convenience is reproduced below:

"9. In my considered opinion the Querist is bound to return to the Builder the sum of Rs. 10 lacs which is stated to have been paid to the Querist by the Builder as advance as per Clause 23 of the Builders Agreement dated 10.10.2005. The said repayment may be made in installments as may be agreed by the parties but since it is the admitted case of the parties that the said amount has neither been adjusted by the Builder nor forfeited by the Querist, the same needs to be repaid by the Querist to the Builder."

4.4 We further find that clause 43 of the Builder's Agreement clearly states that the amount of Rs.10,00,000/- is refundable as is apparent from contents of clause 43, which is reproduced below:

"43. That if the second party opts out of this agreement due to defect in the title of the owner, they shall be entitled to the refund of advance deposit of Rs.10,00,000/- which will be payable without any interest or liability within a period of 90 days."

4.5 In view of the above facts and circumstances, the action of the Assessing Officer in making addition of Rs.46,43,320/-, being deemed value of Rs.10,00,000/- is not correct and learned CIT(A) has rightly deleted the same holding the same to be liability of the assessee.

5. Now coming to ground No. 4. We find that the agreement to sell was entered on 11/10/2011. The stamp duty valuation as on this date was Rs.4,18,52,923/-, as per the approved value report, placed at pages 142 to 148 of the paper book. The learned CIT(A) has taken Rs.4,05,00,000/- as the value of sale consideration. However, since we have held that assessee has sold property on principal to principal basis and not as a distress sale after entering memorandum of understanding for a much more area therefore, this amount, which is the deemed value existing at the time of entering agreement, was to be taken into consideration as per the

provisions of section 50C. Therefore, the Assessing Officer is directed to take the consideration of Rs.4,18,52,923/- instead of Rs.4,05,00,000/- and is accordingly directed to recompute the capital gains. In view of the above, ground No. 4 is allowed

6. In the result, the appeal of the Revenue is partly allowed.

(Order pronounced in the open court on 31/01/2019)

Sd/.	**Sd/.**
(A. D. JAIN)	**(T. S. KAPOOR)**
Vice President	**Accountant Member**

Dated:31/01/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow

Assistant Registrar