IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.8034/Del./2018
(ASSESSMENT YEAR : 2015-16)

Akash Juneja, 316 – D, Pocket II, Mayur Vihar Phase – 1, New Delhi – 110 091.	vs.	ITO, Ward 60 (1), New Delhi.

(PAN : ACTPJ3948B)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Ms. Supriya Mehta, CA
REVENUE BY : Shri Kanav Bali, Sr. DR

Date of Hearing : 15.11.2022
Date of Order : 21.11.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the ld. CIT (Appeals)-19, New Delhi dated 30.11.2018 for the assessment year 2015-16.

2. The grounds of appeal taken by the assessee read as under :-

> "1. On the facts and in the circumstance of the case and In law the CIT(A) was Incorrect and unjustified in dismissing the appeal of the assessee.

2. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that proviso to section SOC is not applicable to the assessee and also stating that the copy of the agreement dated 19/5/2012 and also the payment of the same day prior to 1/4/2017 Is not helpful to the assessee.

3. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the AO was justified in treating the long term capital of Rs.65,94,414/- as liable to tax on account of capital gain.

4. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that the proviso to section 50C would not applicable to the assessee even though this proviso is applicable to the assessee.

5. On the facts and in the circumstance of the case and in law the CIT(A) was incorrect and unjustified in holding that assessee has not Incurred Rs.75,000/- on account of cost of improvement."

3. Brief facts of the case are that assessee is a partner in Vikas Industries from where assessee has received profit and interest on capital. Assessee is also receiving salary income as Director in Vikas Pencil Manufacturing Ltd.. During the proceedings of the case, direction u/s 144A of the Income-tax Act, 1961 (for short 'the Act') has been received from JCIT, Range 60, New Delhi to enquire into the issues i.e. that assessee had sold a property during the year at Rs.76,50,000/- and the index cost of improvement claimed was Rs.33,17,868/-. AO was directed to enquire about the genuineness of the same. AO noted that as per assessee's submission that assessee has sold his 50% share in one property for Rs.1,53,00,000/- on 31.12.2014. The property was jointly owned by assessee and his brother, Vikas Juneja, hence assessee's sale

consideration was Rs.76,50,000/-. On perusal of the registered deed, the stamp value on the circle rate was Rs.3,39,96,240/- whereas the consideration amount was Rs.1,53,00,000/-. Assessee was issued show-cause u/s 50C(1) why the circle rate should not be adopted. In response, assessee submitted that the actual consideration of the property was fixed at Rs.1,53,00,000/- vide agreement to sell dated 19.05.2012 and the assessee has only completed the contractual obligation imposed upon it by virtue of the sale agreement by executing the sale deed on 31.12.2014. AO further noted that assessee has not submitted any documentary evidence regarding cost of improvement of Rs.75,000/- relating to the expenses on boundary wall and gate and claimed index value of Rs.1,21,519/-. AO disallowed the same. Further, AO disallowed Rs.10,112/- as indexed value of taxes paid to the MCD. Accordingly, AO made the addition in the hands of the assessee.

4. Ld. CIT (A) summarized the assessee's case as under :-

> "7. I have examined the facts at hand. I have perused the-appellant's submissions. This is a case where the appellant claims to have entered into an agreement to sale on 19.05.2012. At the time of entering into 'agreement to sale, the circle rate was Rs. 31,510/- per sq.mtr. However, the property was transferred vide registered sale deed on 31.12.2014. The Assessing Officer held that the appellant had sold the property at a rate below stamp duty valuation on 3.1.12.2014 (Rs. 46,200 per sq.mt. vis a vis Rs. 31,510/- per sq.mtr.). According to the Assessing Officer, the property was sold for Rs. 1,53,00,000/-, on 31.12.2014, when the stamp duty valuation was Rs. 3,39,96,240/-. According to the Assessing Officer, the sale consideration of the property was to be taken at Rs. 3,39,96,240/-

(instead of Rs. 1,53,00,000/-). Thus, the AO held that addition as per provisions of section 50C was called for."

5. Ld. CIT (A) noted that assessee has pleaded before him that the First Proviso to section 50C(1) should be applied but the ld. CIT (A) was not in agreement with the same and held that same was prospective only. The order of the ld. CIT (A) in this regard read as under :-

" The appellant, before me, claimed. that the property was sold on 31.12.2014, at the stamp duty valuation rate which prevailed on the date of agreement to sale which was 19.05.2012 (@ Rs.31,510/- per sq.mtr.). For this proposition, the appellant wishes to take benefit of provisions of section 50C (being first proviso to section 50C(1) of the Income Tax Act, 1961). However, I find that the first proviso to section 50C which reads as follows, is applicable with effect from 01.04.2017.

"Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset) being land or building or both) is less than the Value adopted or assessed [or assessable} by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer) the value so adopted or assessed (or assessable) shall) for the purposes of section 48) be deemed to be the full value of the consideration received or accruing as a result of such transfer."

In fact, the explanatory circular-from 01.04.2017 being circular No.3 of 2017, clearly mandates that the amended provision is applicable with effect from A.Y. 2017-18 (please refer para 29.3 of circular No. 3 of 2017, dated 20.01.2017, F.No. 370142/20j2016-TPL).

As such, in view of express intention of legislature as explained above, the appellant cannot be allowed retrospective benefit of amendment in law.

8. Further, the Assessing Officer has doubted the cost of improvement of Rs.75,000/-, indexed value of which was Rs.1,21,519/-. No proof has been presented even in appeal. As such, Assessing Officer's action with regard to this amount of Rs. 75,000/- is confirmed."

6. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee submitted that section 50C(1) along with First Proviso thereof reads as under :-

> **"50C.** (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :
>
> **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 [or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer.]"

8. Referring to the above, ld. Counsel of the assessee submitted that assessee's case duly falls under the ken of aforesaid Proviso. The assessee has duly entered into agreement much prior to the date of registration and a part of the consideration has also been paid by account payee cheque or account payee draft as per the requirement. He submitted that there was no requirement to pay full amount at the time of

agreement. He further submitted that the Revenue's plea that this Proviso should apply prospective as it was introduced by Finance Act, 2016 w.e.f. 01.04.2017 does not hold good in view of the decisions of the Tribunal and the decision of Hon'ble Madras High Court. In this regard, ld. Counsel of the assessee placed reliance upon the decision of Hon'ble Madras High Court in the case of CIT, Chennai vs. Shri Vummudi Amarendran in T.C..A. No.329 of 2020 dated 28th September 2020 wherein it was held that the amendment made by the Finance Act, 2016, inserting a proviso to section 50C, is clarificatory in nature and hence will be applicable retrospectively. Ld. Counsel of the assessee submitted that to the same effect, there were several ITAT decisions. He referred to following two case laws from ITAT, Delhi for the same proposition :-

(i) M/s. Jai Laxmi Developers (P) Ltd. vs. DCIT - 2018 (6) TMI 1753 – ITAT Delhi - dated June 19, 2018; and

(ii) Amit Bansal vs. ACIT – 2018 (11) TMI 1699 – ITAT, Delhi – November 22, 2018.

9. Ld. DR for the Revenue relied upon the orders of the authorities below and submitted that according to the Revenue, the said amendment should apply prospectively.

10. Upon careful consideration and having perused the records, we note that there is no decision of Hon'ble jurisdictional High Court on this subject but the decision of Hon'ble Madras High Court is there which is in favour of the assessee which does provide that the said amendment

should be read as clarificatory. The view is followed by the ITAT in the above said decisions. There is no dispute that agreement was entered much prior to the date of registration and the part payment has also duly been done at the time of agreement. Hence, the view of the authorities below that circle rate on the date of registration should be applicable is not correct. We hold that in accordance with the ratio of aforesaid case laws, the rate as on the date of agreement should be taken for the purpose of computation. As regards other two aspects of the cost of improvement, no cogent submissions have been made before us. Hence we do not find any infirmity in the order of the ld. CIT (A) where he has upheld the addition of Rs.75,000/- on account of cost of improvement.

11. In the result, the appeal of the assessee is partly allowed as above.

Order pronounced in the open court on this 21st day of November, 2022.

Sd/-	**sd/-**
(ANUBHAV SHARMA)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 21st day of November, 2022
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Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT (A)-19, New Delhi.
5.CIT(ITAT), New Delhi.

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