DELHI BENCH "D": NEW DELHI
BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
AND
SHRI A. T. VARKEY, JUDICIAL MEMBER

ITA No. 2049/Del/2009
(Assessment Year: 2005-06)

ITO Ward-5(1) New Delhi	Vs.	M/s. Modipon Ltd., Modinagar-201204 Gaziabad (UP) PAN:AAACM2069E
(Appellant)		**(Respondent)**

ITA No. 2171/Del/2009
(Assessment Year: 2005-06)

M/s. Modipon Ltd., Modinagar-201204 Gaziabad (UP) PAN:AAACM2069E	Vs.	ITO Ward-5(1) New Delhi
(Appellant)		**(Respondent)**

Appellant by : Vivek Nangia, Sr. DR
Respondent by : Santosh Agarwal, Adv

O R D E R

PER A. T. VARKEY, JUDICIAL MEMBER

These are cross-appeals against the order of the ld CIT(A), VIII, New Delhi dated 2nd March 2009, for Assessment Year 2005-06.

2. First of all, we will take up the matter of the assessee, i.e. ITA No.2171/Del/2009 Ground No.1 is general so it is dismissed.

3. Ground No.2 to 2.3, relates to determination of capital gain on transfer of plot of land at Ghaziabad.

4. Briefly stated the facts are that during the previous year relevant to the Assessment Year 2005-06, the assessee company had sold a plot of land as per sale-deed dated 16.09.2004. The sale price on which capital gain has

been worked out was taken at Rs.2,57,76,000/- (Rs.2,62,08,000 less brokerage of Rs.4,32,000/-). As per the sale deed of the said plot filed during the assessment proceedings, it is seen that the circle rate of the said plot was Rs.40,32,000/- on which stamp duty had been charged by the sub-registrar, GDA, Ghaziabad. The assessee was asked by AO, to clarify vide order sheet entry dated 20.12.2007 as to why in terms of provisions of section 50C(1) of the Income Tax Act, 1961 (herein after 'the Act'), the circle rate may not be adopted for computing the capital gain on sale of above property.

5. Not satisfied with the reply of the assessee company, the AO enhanced the long term capital gain and worked out the same as under:-

Sale price or Circle rate whichever is higher	40320000
Brokerage paid	432000
Less	39888000

6. Cost of acquisition of land (indexed

Year of acquisition/ improvement	Cost	Cost of inflation index	
1994-95	9365739	259	17357354
1995-96	1156063	281	1974770
1996-97	675625	305	1063278
1997-98	199500	351	272821
Index Cost of acquisition			20668223
Long term capital gain			19219777

7. Before the ld CIT(A), it was submitted that assessee sold the land vide registered agreement dated 27th May 2004, for consideration of Rs.2,62,08,000/- and on the said date the circle rate was Rs.13,000/- per sq meter. However, on the date of registration of sale-deed, i.e. 16th September 2004, the circle-rate enhanced to Rs.20,000/- per sq meter. It was thus prayed that the AO was not justified to enhance the sale consideration, on the basis

of circle-rate prevailing on the date of execution of sale deed. The ld CIT(A) however rejected the said submission and held that u/s 50C of the Act, the circle-rate has to be adopted on the date of transfer of the property, which is the date of sale-deed. He held as follows:-

> *"Mere signing/registration of "agreement to sale" cannot be treated as "transfer" of property under consideration. Even by executing the 'agreement to sale', all the rights continued to vest with the assessee company. From a reading of the said 'agreement to sale', It IS evident that there was no extinguishment of the rights of the appellant company on Its execution. Therefore, there was no "transfer" within the meaning of section 2(47), such transfer taking place only when the "sale agreement" was executed in September, 2004. This view is found supported by the decision of Delhi High in the of CIT Vs. Atam Prakash & Sons 175 Taxman 499 (Del) in which it has been laid down by the Hon'ble Court that grant of permissive right to construct building on the plot of land would not amount to "transfer" of capital asset in terms of section 2(47).*
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> *The value or circle rate at the time of execution of "agreement to sale" is of no consequence for the purpose of the application of the provisions of section 50C. The "agreement to sale" may bind the parties' inter-se but does not override the statutory provision as are applicable on the "date of transfer"; which in the instant case had been 16.09.04. Section 50C has been introduced to cover those cases where the consideration received or accruing as a result of transfer is less than the value adopted by the stamp duty authority in respect of such transfer and therefore, the case of the appellant is covered by ambit of these provisions.*
>
> *In view of the above, I hold that "full value of consideration" is the value of Rs.4,03,20,000/-; being the value adopted by the stamp duty authority as on the date of transfer which is 16.09.2004 and that the same shall be aodpt4ed for the purpose of computing capital gain u/s 48."*

8. Before us, the ld counsel for the assessee, submitted that the circle-rate as on the date of agreement to sale is to be taken instead of circle-rate on the date of sale. He relied on the decision of Vishakapatnam Bench in the following case:-

i) M/s. Lahiri Promoters Vs. ACIT,

ITA No.12/Vizag/2009, dated 22.06.2010 335-346

ii) Koduru Satya Srinivas & Anr. V ACIT, ITA

No.556 and 557/Vizag/2008, dated 02.07.2010 347-357

iii) Molle Rami Reddy Vs. ITO, ITA No. 311/Vizag/2010, dated 10.12.2010 358-367

9. It was alternatively submitted that the consideration adopted of Rs.4.03 crores is more than the actual consideration of Rs.2.62 crores, therefore AO erred in not referring the valuation of land to the Valuation Officer. In support reliance was place on the case of Ajmal Fragnancer and Fashion Pvt. Ltd. 34SOT57 and Trishla Jain Vs. ITO 11 OTR (Tribunal) 579. On the other hand, the ld DR, placed reliance on the orders of the authorities below and submitted that the addition is based on the plain reading of the statute.

10. Having considered the submission, material on record and case laws, we find in the instant case, the appellant entered into an agreement to sale dated 27^{th} May 2004 for sale of land at Kaushambi, Ghaziabad. The agreement to sell was duly registered with registrar of Ghaziabad on the same date. The total consideration stated in the agreement was Rs.2,62,08,000/- which has been received by the appellant as per the schedule of the agreement as under:-

Payment schedule

	As per Agreement		Actual	
Particulars	Date	Amount	Date	Amount
Advance	21.04.2004	10,00,000	21.04.2004	10,00,000
Advance	27.05.2004	50,00,000	27.05.2004	50,00,000
First instalment on or before	25.06.2004	45,00,000	20.06.2004 24.06.2004	50,00,000 44,50,000
Second instalment on or before	20.07.2004	50,00,000	31.08.2004	30,00,000
Third instalment on or before (Final)	31.08.2004	1,07,08,000	03.09.2004 06.09.2004 06.09.2004 06.09.2004	40,00,000 37,00,000 50,000 8,000
Total		2,62,08,000		2,62,08,000

11. Pursuant thereto, sale-deed was executed on 16th September 2004, copy of which is also placed on the PB. In the above scenario, it was noticed by the AO, that the circle-rate on the agreement was Rs.13,000/- per sq meter, whereas the circle-rate on the date of execution of sale-deed was Rs.20,000/- per sq meter. He therefore held that the circle-rate on the execution of sale-deed is to be applied for computing capital gain u/s 50C of the Act. He therefore computed the capital gain in preference to the computation of assessee as under:-

Sl No.	Particulars	Amount (Rs.) As per assessee	Amount (Rs.) As per AO
1.	Sale Value	2,62,08,000	4,03,20,000
2.	Less: Brokerage	4,32,00	4,32,000
3.		2,57,76,000	3,98,88,000
4.	Less Indexed Cost	2,06,68,223	2,06,68,223
5.	Long term capital gain	51,07,777	1,92,19,777

12. Section 50C of the Act provides as under:

"Special provision for full value of consideration in certain cases.-

(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 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 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.

(2) Without prejudice to the provisions of sub-section (1), where-

(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation-For the purposes of this section, 'Valuation Officer shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer." (emphasis supplied)

13. The aforesaid section provides that where consideration received or accruing as a result of the transfer by an assessee, of a capital asset being a land or building or both is less than the value adopted or assessed by stamp-value authority, the value so adopted by the stamp value authority shall be deemed to be full value of consideration u/s 48 of the Act. It is thus manifest that the value adopted by the stamp-valuation authority is deemed as the consideration for computation of capital gain. However, such valuation adopted by the stamp-valuation authority should be in respect of the transfer by the assessee, of the capital assets. Now, in the instant case, undisputedly on the execution of the sale-deed circle, rate was Rs.20,000/- per sq meter

and therefore, the value adopted for the purpose of stamp-duty was Rs.4,03,20,000/- which was deemed as full value of consideration by the AO. The assessee on the other hand contends that circle-rate on the date of agreement registered with registrar of Ghaziabad was for Rs.13,000/- per sq meter, which works out to be the actual sale-consideration of Rs.2,62,08,000/- and therefore the said figure should be adopted instead of Rs.4,03,20,000/-. In our opinion, on the peculiar set of facts we find that the agreement to sale was duly registered, whereby, the total consideration was agreed to between parties works out to Rs.2,62,08,000/- and was adopted as the consideration for the payment of stamp-duty i.e.@ 4% of Rs.2,62,08,000/- i.e. Rs.10,48,320/-. In view thereof, the aforesaid valuation is also the value adopted by the stamp valuation authority in respect of transfer of the capital asset by the assessee. However subsequent to the said agreement to sell, there was change in the circle rate from 16th June 2014, whereby the valuation was enhanced from Rs.13,000/- to Rs.20,000/- per sq meter. This enhancement was beyond the control of the assessee (seller). It is also not the case of the revenue, that the buyer has given more than the consideration that has been accepted by the parties where they executed the agreement to sale. Furthermore on facts of a case, the Hon'ble Apex court held that registration of the transfer in accordance with the agreement to sale cannot be termed as the "date of transfer" as envisaged by Section 50C of the Act (Sanjeev lal & Anr. Vs. CIT & Anr. (2014) 365 ITR 389(SC)), wherein, it was held as under:-

"In normal circumstances by executing an agreement to sell in respect of an immoveable property, a right in personam is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in personam is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforestated question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under:

"2(47) "transfer", in relation to a capital asset, includes,-....

(ii) the extinguishment of any rights therein; or………"

Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset."

14. Moreover, in an identical matter Vishapatanam Bench of ITAT in the case of Lahiri Promoters Vs. ACIT in ITA No.12/VI/Vizag /2009 held as under:-

"8. We have heard the rival contentions and carefully perused the record. The issue agitated before us revolves around section 50C of the Act. For the sake of convenience, we extract the section 50C(1) below:

"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 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 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."

This section provides for adoption of value assessed/determined by the Stamp valuation authority for the purpose of payment of stamp duty (hereinafter "stamp duty value"), if the sale consideration disclosed in the sale deed is less than the stamp duty value. Section 50C was inserted by the Finance act 2002 w.e.f. 01.04.2003.

9. In the instant case, there is no dispute that the assessee herein entered into a separate sale agreement with the two vendees respectively on 27.03.2003. The assessee has cited certain reasons for not executing the sale deed immediately which were not found to be false. Thereafter, the sale deeds were executed on 30.06.2005 by complying with the terms of the sale agreement. Hence the sale deed was executed for the consideration as agreed between the parties as per the sale agreement. If we apply the provisions of section 50C literally, the tax authorities are right in adopting the value assessed by the stamp authority for the purposes of computation of capital gains. However, Ld AR has heavily placed reliance on the decision of Hon'ble Supreme Court in the case of K.P. Verghese Vs. ITO, referred supra, with regard to the proper interpretation of section 50C in the facts and circumstances of the case.

10. The Hon'ble Supreme Court in the case of Shri K.P. Varghese vs. ITO (supra) has observed that while interpreting a provision, strictly literal reading of Section should not be adopted if it leads to manifestly unreasonable and absurd consequences. However attempt should be made to discover the intent of the legislature from the language used by it. The Hon'ble Apex Court rendered the said decision in the context of then existing Sec 52(2) of the Act, which provided that where a capital asset is transferred and if in the opinion of the ITO, the fair *market value of that asset exceeds the full value of the consideration declared by the assessee by an amount of not less than 15% of the value 50 declared, then the full value of the consideration shall be taken to be its fair market value on the date of its transfer. The revenue took the stand that in order to invoke the provisions of section 52(2), it is enough if it is shown that the fair market value exceeded the disclosed value by 15%. However, the Hon'ble Supreme Court held that a fair and reasonable construction of Sec 52(2) would be to read into it a condition that it would apply only where the consideration for the transfer is under- stated and hence it would have no application in the case of a bonaflde transaction where the full value of the consideration for the transfer is correctly declared by the assessee. For the sake of convenience, we 'extract below the relevant observations of the Hon'ble Apex Court on the rule of interpretation and the logical conclusion:*

> *"5. Now, on these provisions the question arises as to what is the true interpretation of s.52, sub-s.(2). The argument of the Revenue was, and this argument found favour with the majority judges of the Full Bench, that on a plain and natural construction of the language of s.52, sub-s.(2), the only condition for attracting the applicability of that provision was that the fair market value of the capital asset transferred by the assessee as on the date of the transfer exceeded the full value of the consideration declarered by the assessee in respect of the transfer by an amount of not less than 15% of the value so declared. Once the ITO is satisfied that this condition exists, he can proceed to invoke the provision in s.52, sub-s.(2), and take the fair market value of the capital asset transferred by the assessee as on the date of the transfer as representing the full value of the consideration for the transfer of the capital asset and compute the capital gains on that basis. No more is necessary to be proved, contended the*

Revenue. To introduce any further condition such as under-statement of consideration in respect of the transfer would be to read into the statutory provision something which is not there; indeed, it would amount to re-writing the section. This argument was based on a strictly literal reading of s.52, sub-s.(2), but we do not think such a construction can be accepted. It ignores several vital considerations which must always be borne in mind when we are interpreting a statutory provision. The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and, as pointed out by Lord Denning, it would be idle to expect every statutory provision to be "drafted with divine prescience and perfect clarity". We can do no better than repeat the famous words of judge teamed heared Hand when he said:

.. it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary: but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning".

We must not adopt a strictly literal interpretation of s.52, sub-s.(2), but we must construe its language having regard to the object and purpose which the legislature had in view in enacting that provision and in the context of the setting in which it occurs. We *cannot ignore the context and the collocation of the provisions in which s.52, sub-s(2) appears, because, as pointed out by Judge Learned Hand in the most felicitous language:*

"...the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes, and no degree of particularity can ever obviate recourse to the setting in which all appear, and which all collectively create."

Keeping these observations in mind we may now approach the construction of s.52, sub-s. (2).

6. The primary objection against the literal construction of s.52, sub s.(2), is that it leads to manifestly unreasonable and absurd consequences. It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision but it can certainly help to fix its meaning. It is a well recognized rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement - and it is quite well known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement - the market price shoots up with the result that the market price prevailing on the date of sale exceeds the agreed price, at which the property is sold, by more than 15% of such agreed price. This is not at all an uncommon case in an economy of rising prices and in fact we would find in a large number of cases where the sale is completed more than a year or two after the *date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no under- statement of consideration in respect of the transfer and the transaction is perfectly honest and bonafide and, in fact, in fulfilment of a contractual obligation, the assessee, who has sold the property, should be liable to pay tax on capital gains which have not accrued or arisen to him? It would indeed be most harsh and inequitable to tax the assessee on income, which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carried out such a contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income, which has neither arisen to the assessee nor has been received by him. If we may take another illustration, let us consider a case where A sells his property to B with a stipulation that after some time which may be a couple of years or more, he shall re-sell property to A for the same price. Could it be contended in such a case that when B transfers the property to A for the same price at which he originally purchased it, he should be liable to pay tax on the basis as if he has received the market value of the property as on the date of re-sale, if, in the meanwhile, the market price has shot up and exceeds the agreed price by more than 15%. Many other similar situations can be contemplated where it would be absurd and unreasonable to apply s.52; sub-s (2), according to its strict*

> *literal construction. We must, therefore, eschew literalness in the interpretation of s.52, sub-s (2), and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the Court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction; Vide Luke vs. IRC (1963) AC 557 : (964) 54 ITR 692(HL). The Court may also in such a case read into the statutory provision a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision. We think that, having regard to this well recognized rule of interpretation, a fair and reasonable construction of S.52, sub-s(2), would be to read into it a condition that it would apply only where the consideration for the transfer is understated or, in other words, the assessee has actually received a larger consideration for the transfer than what is declared in the instrument of transfer and it would have no application in the case of a bonafide transaction where the full value of the consideration for the transfer is correctly declared by the assessee. There are several important consideration which incline us to accept this construction of s.52, sub-s(2).*

The Hon'ble Supreme Court also observed that while interpreting a section it would be legitimate to consider what was the mischief and defect, which was sought to be remedied by an enactment. In that connection the speech made by the Finance Minister while moving the *amendment is extremely relevant as it throws a considerable light on the objectives and purpose of enactment. However, as pointed out by Ld AR the purpose of introduction of Sec 50C was not mentioned by the Finance Minister at the time of moving amendment. It was also not explained in the Notes on clauses and Explanatory Memorandum attached to the relevant Finance Bill. However, the Hon'ble Madras High Court in the case of K.R. Palani Swamy and others Supra, while upholding the constitutional validity of Sec 50C, had an occasion to spell out the objective of introducing Sec 50c. The relevant observations are extracted below:*

> *17. Let us consider the legislative competence of the Parliament in inserting the provision s.50C of the IT Act. It is obvious from the reading of the above provision and rather it is not disputed that the same is inserted to prevent large scale under valuation of the real value of the property in the sale deed so as to defraud Revenue, the Government legitimately entitled to by pumping in black money. The impugned provision has been incorporated to check such evasion of tax by undervaluing the real properties.*
>
> ……………………………………………..
>
> *Tax could be evaded by breaking the law or could be avoided in terms of the law. When there is a factual avoidance of tax in terms of law, the legislature steps into amend the IT law to catch such an income within the net of taxation.*"

Hence the object of introduction of section 50C is to prevent under valuation of the real value of the property in the sale deed to avoid payment of tax or duty which the Government is entitled to, which, in our opinion, is akin to the Objective of introduction of section 52, which was existing earlier.

11. In the case of KP.Varghese, supra the Hon'ble Apex Court contemplated a situation, by way of an example, where the completion of sale took place after a couple of years after the date of agreement. In this connection it is pertinent to extract the relevant observations of the Hon'ble Supreme Court, at the cost of repetition, as the said example contemplated by the Hon'ble Apex Court is squarely applicable to the facts of the present case.

> *"There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature. Take, for example, a case where A agrees to sell his property to B for a certain price and before the sale is completed pursuant to the agreement-and it is quite well known that sometimes the completion of the sale may take place even a couple of years after the date of the agreement-the market price shoots up with the result that the market price prevailing on the date of sale exceeds the agreed price, at which the' property is sold, by more than 15% of such agreed price, This is not at all an uncommon case in an economy of rising prices and in fact we would fine in a large number of cases where the sale is completed more than a year or two after the date of the agreement that the market price prevailing on the date of the sale is very much more than the price at which the property is sold under the agreement. Can it be contended with any degree of fairness and justice that in such cases, where there is clearly no under-statement of consideration in respect of the transfer and the transaction is perfectly honest and bonafide and, in fact, in fulfilment of a contractual obligation, the assessee, who has sold the property, should be liable to pay tax on capital gains which have not accrued or arisen to him? It would indeed be most harsh and inequitable to tax the assessee*

on Income, which has neither arisen to him nor is received by him, merely because he has carried out the contractual obligation undertaken by him. It is difficult to conceive of any rational reason why the legislature should have thought it fit to impose liability to tax on an assessee who is bound by law to carry out his contractual obligation to sell the property at the agreed price and honestly carried out such a contractual obligation. It would indeed be strange if obedience to the law should attract the levy of tax on income, which has neither arisen to the assessee nor has been received by him."

11.2 The Hon'ble Apex court in the case of K.P.Verghese, supra has held that the provisions of section 52(2), that was existing at the relevant point of time was not applicable to a honest and bona' fide transaction where the consideration received by the assessee was correctly declared or disclosed by him and there was no concealment or suppression of the consideration. The Hon'ble Supreme Court, after considering the speech of the Finance Minister, has understood that the object of introduction of section 52(2) was to curtail those transactions of sale of property, where the actual consideration received was understated in the sale deed. However, though the object of introduction of section 50C was not mentioned in the relevant Finance bill or in the speech of the Finance minister, yet, the Hon'ble Madras High Court in the case of K.R. Palani Swamy and others, Supra has stated that the provision of Sec 50C was inserted in the income-tax act to prevent large scale under valuation of real value of property in the sale deed, so as to defraud revenue which the government is legitimately entitled to, by pumping in black money. Thus we can see that the purpose of introduction of section 52(2) earlier and section 50C w.e.f. 01.04.2003 are for the purpose of achieving similar objectives.

11.3 In the instant case also, the assessee herein has fulfilled a contractual obligation on 30-6-2005, which the assessee is bound by law to carry out as per the sale agreement entered in March, 2003. Now the next question that requires to be addressed is whether there was any under' statement of actual consideration at the time when the sale agreements were entered into. The assessee has placed a copy of the certificate dated 16.04.2010 issued by the Jt. Sub Registrar, Visakhapatnam by way of additional evidence. According to the said certificate, the market value of the impugned property located at Allipuram Ward was Rs.5000/- as on 26.3.2003. According to the ld AR, the sale value agreed to by the parties, as per the sale agreement entered into on 27-03-2003 was more than the market value fixed by the Jt. Sub Registrar at the time the sale agreement was entered into. Thus according to Ld AR, there is no understatement or suppression of actual consideration. It is also not the case of revenue that there was any understatement of actual consideration.

12. Thus, by executing the sale deed in June, 2005, the assessee has only completed the contractual obligation imposed upon it by virtue of the sale agreement, Since the process of sale has been initiated from the date of sale agreement, in our opinion, the character of the transaction vis-a-vis Income tax Act should be determined on the basis of the conditions that prevailed on the date the transaction was initially entered into. Accordingly, the applicability of the provisions of section 50C should be looked at only on the date of sale agreement. The assessee has filed a certificate obtained from the Joint Sub Registrar, Visakhapatnam, regarding market value of the impugned property as on the date of the sale agreements. The said certificate was not produced before the tax authorities. We have already held that the provisions of section 50C should be applied to the impugned sale transactions as on the date on which sale agreements were entered into. Since the applicability of section 50C as on the date of sale *agreements is required to be examined by the AO, we set aside the issue to the file of the AO with a direction to compute the capital gains on sale of impugned properties after applying the provisions of section 50C as on the date of sale agreements. Accordingly, the order of Ld CIT(A) is reversed.*

15. The ratio of the above decision, has also been followed in the case of Kodura Satya Srinivas ITA No.556/559 dated 02.07.2010 and Mook Rani Reddy 311/Visaka) dated 10.12.2010. No contrary decision has been brought to our notice.

16. Having regard to the above, factual and judicial position we delete the addition. As a result the ground is allowed.

17. Ground No. 3 to 3.3 relates to disallowance of Rs.33,12,722/- of prior period expenses. From a perusal of order of the ld CIT(A), it is noted that the aforesaid sum was disallowed ass the said expenditure did not pertain to the year under consideration, but related to earlier years as per the tax audit report filed by the assessee. The ld CIT(A) in this regard has noted and held as under:-

"On perusal of the statement of such expenses debited and claimed during the year under consideration but relating to earlier years, it noted that the said expenditure relates to the Fiber Division and Chemical Division.

The expenses have been debited under various head such as legal fee, telephone expenses, interest, maintenance charges, travelling, consumption of HSD, Sales promotion, commission, rent, transport charges etc. None of these heads of expenses are unusual *and therefore, in normal course of recording of expenditure under mercantile system of accounting, the appellant was required to claim the expenditure in the relevant year in which the liability accrued upon the appellant, even if payment for the same was not made. In case of any doubt about the quantum of expenditure, the mercantile system of accounting requires the claim by way of provisions, which are usually considered usually considered allowable so long as these are not contingent in nature.*

The appellant has not brought out of any evidence before the undersigned to explain how the liability on account of the expenditure claimed is crystallized and allowable in this year when the appellant should have claimed it in the corresponding earlier years."

18. On consideration of the rival submissions, we find that the issue is covered in favour of the assessee, in view of the judgement rendered in assessee's own case reported in 334 ITR 102 (Del), wherein the Hon'ble High Court after incorporating the order of the ITAT and confirming the same, the Hon'ble High Court observed also as under:-

> *"That apart, a specific query was put to the learned counsel for the appellant that whether the return filed in the earlier assessment year showed profit or loss in so far as the assessee-company is concerned. Learned counsel for the appellant was not in a position to answer to this. Learned counsel for the respondent informed that even in the earlier year, the assessee had shown positive income and paid tax thereon. If that is the situation in any case, there is no loss of revenue. Had this expense been allowed in the previous year, the assessee would have paid lesser tax. On this ground also, we do not find it to be a fit case to interfere with the order of the Tribunal.*
>
> *This appeal is accordingly dismissed."*

19. From the perusal of the aforesaid judgement, it is noted that the Hon'ble High Court has held that though expenditure incurred is reported as prior period expenditure, yet expenditure is allowable in the instant year. It is seen that the expenditure claimed represent bills settled during the course of business during the year under consideration. It is otherwise too well settled law that a contractual liability is allowable in the year of crystallisation of liability [refer 82 ITR 363 (SC)]. Having regard to the aforesaid factual and judicial positions, we delete the disallowance made and sustained by the authorities below and allow the ground raised by the assessee.

20. Ground No.4 to 4.3 relates to disallowance u/s 14A of the Act.

21. The AO made the disallowance in the instant case by observing as under:-

> *"7. The assessee has earned dividend income of Rs.1,20,85,365/-. As per section 14A no deduction can be allowed for expenses incurred in relation to income which does not form part of the total income. To protect interest of revenue an estimated disallowance of Rs.200,000/- is made from the total expenses attributable to exempt income."*

22. The ld CIT(A) has however held that under Rule 8D the disallowance amount of Rs.4.63 lakhs, therefore AO was directed to verify the facts and figures and also if the assessee has applied the provisions of section 14A and Rule 8D correctly or not. He further directed to AO as under:-

> *"The AO is directed to compute the disallowance amount under Rule 8D(2) and substitute it against the amount disallowed in the assessment order at Rs.2 lacs. In case there is difference of opinion between the AO and the appellant on any item or manner of inclusion of that item under various components of Rule 8D, reasons for adoption of particular manner shall be given in the order giving effect to this order.*

23. We find that the issue is no longer Res-integra, to the extent that Section 14A of the Act cannot be invoked unless satisfaction has been recorded by the AO, in terms of section 14A (2) of the Act, which provides as under:-

> ***Expenditure incurred in relation to income not includible in total income.***
> ***14A.*** *For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.*
> *(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.*
>
> *(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :]*
>
> *[**Provided** that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.*

24. The Hon'ble High Court of Delhi, in the case of Maxopp Investment Ltd. Vs. CIT reported in 347 ITR 272 (Del) has held as under:-

> *"Para 30. Sub-section (2) of section 14A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to*

income which does not form part of the total income under the said Act. In other words, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of section 14A. Sub-section (3) applies to cases where the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the-assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred-in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of section 14A of the said Act. It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same."

\- - - - - - - - - - - - -

Para 40. From the above discussion, it is clear that, in effect, the provisions of sub-sections (2) and (3) of Section 14A would be workable only with effect from the date of introduction of Rule 8D. This is so because prior to that date, there was no prescribed method and sub-sections (2) and (3) of Section 14A remained unworkable.

<u>How is Section 14A to be worked for the period prior to the introduction of Rule 8D?</u>

41. Sub-section (2) of section 14A, as we have seen, stipulates that the Assessing Officer shall determine the amount of expenditure incurred in relation to income which does not form part of the total income " in *accordance with such method as may be prescribed". Of course, the determination can only be undertaken if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. This part of section 14A (2) which explicitly requires the fulfilment of a condition precedent is also implicit in section 14A (2) which explicitly requires the fulfilment of a condition precedent is also implicit in section 14A(1) {as it now stands} as also in its initial avatar as section 14A. It is only the prescription with regard to the method of determining such expenditure which is new and which will operate prospectively. In other words, section 14A, even prior to the introduction of sub-sections (2) & (3) would require the assessing officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons. It is then that the question of determination of such expenditure by the assessing officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced by virtue of sub-section(2) of section 14A. Prior to that, the assessing was free to adopt any reasonable and acceptable method.*

42. Thus, the fact that we have held that sub-sections (2) & (3) of section 14A and Rule 8D would operate prospectively (and, not retrospectively) does not mean that the assessing officer is not to satisfy himself with the correctness of the claim of the assessee with regard to such expenditure. If he is satisfied that the assessee has correctly reflected the amount of such expenditure, he has to do nothing further. On the other hand, if he is satisfied on an objective analysis and for cogent reasons that the amount of such expenditure as claimed by the assessee is not correct, he is required to determine the amount of such expenditure on the basis of a reasonable and acceptable method of apportionment. It would be appropriate to recall the words of the Supreme Court in Walfort (supra) to the following effect :-

> *"The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."*

So, even for the pre-Rule8D period, whenever the issue of section 14A arises before an Assessing Officer, he has, first of all, to ascertain the correctness of the claim of the assesee in respect of the expenditure incurred in relation to income which does not form part of the total income under the said Act. Even where the assessee claims that no expenditure has been incurred in relation to income which does form part of total income, the assessing officer will have to verify the correctness of such claim. In case, the assessing officer is satisfied with the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, the assessing officer is to accept the claim of the assessee in so far as the quantum of disallowance under section 14A is concerned. In such eventuality, the assessing officer *cannot embark upon a determination of the amount of expenditure for the purposes of section 14A(1). In case, the assessing officer is not, on the basis of objective criteria and after giving the assessee a reasonable opportunity, satisfied with the correctness of the claim of the assessee, he shall have to reject the claim and state the reasons for doing so. Having done so, the assessing officer will have to determine the amount of expenditure incurred in relation to income which does not form part of the total income under the said Act. He is required to do so on the basis of a reasonable and acceptable method of apportionment.*

25. Applying the aforesaid ratio, and the exercise that is required to be adhered to by the AO is clearly spelt out in para 42 above. In the light of the aforesaid order of the Hon'ble High Court, we remit this issue back to the file of the AO, to decide the matter afresh as outlined above in para 42 of the order extracted above in Maxopp (supra) case.

26. Ground No.5 relates to addition of Rs.11 lakhs out of loan written off in the instant year.

27. The facts in brief are that during the year, the assessee credited the profit and loss account with a sum of Rs.5,12,70,887/- (Page 111 of the PB) representing the amount written back on account of remission of liability of loan as a result of One Time Settlement (OTS) with ICICI Bank. However, the same was reduced in the computation of income by the assessee on the ground such income is not taxable as the amount is of capital nature. The AO however rejected the claim by observing as under:-

"The remission of above liability of loan partakes the nature of income within the meaning of section 2(24)(v). As it is the claim of assessee that it is not in the nature of revenue receipt therefore this will be chargeable to tax as income from other sources u/s 59. Addition of Rs.51270887/- is therefore made to taxable income of the assessee.

28. The ld CIT(A) held as under:-

8.3.1 The first question can be seen in the light of the working given by the appellant company during the course of appellate proceedings, which is reproduced hereunder:

Loan account No.	Principal amount	FITL (funded interest term loan	Total
M006113001	5.67	1.58	7.24
M006116001	1.15	-	1.15
M006117001	1.03	-	1.03
M06119002	2.13	-	2.13
AG19903010328	0.62	-	0.62
TOTAL	10.60	1.58	12.17
OTS			5.58
WRITTEN BACK IN THE BOOKS OF ACCOUNTS AS PER DETAILS GIVEN BELOW			
INTERST WRITTEN BACK 1998-99	0.23		
1999-2000	0.90		
2000-01	0.28		
2001-02	0.06		
TOTAL	0.06		
AMOUNT WRITTEN BACK (REMISSION OF LOAN LIABILITIES			5.12

A perusal of the above table reveals that the appellant had been allowed conversion of interest amount of Rs.1.58 crores into loan amount. Thus, the interest of Rs.1.58 crores had already been computed and claimed by the appellant in various years. Whereas the aggregate amount of interest written back by the appellant totals up to only Rs.1.47 crores. The appellant was not able to explain the said discrepancy in its claim that only Rs.1.47 crores was actually claimed as against the amount of Rs.1.58 crores. Under these facts, I hold that the amount of interest written back cannot be less then Rs.1.58 crores; being converted into loan by the bank. In this view of the matter, the principal amount of loan written back got reduced by Rs.11 lacs and should had been Rs.5.01 Crores (5.12 crores - 0.11 crores).

29. Before us, the ld counsel for the assessee, submitted that the issue is covered in favour of the assessee in view of the judgements of the jurisdictional High Court in the case of 331 ITR 440 (del) and 325 ITR 87 (del). The ld DR, however has contended that the entire sum is a taxable income and is of revenue nature. In the alternative, he prayed that the matter may be restored to the file of AO for verification of the utilization of loan. Having considered the factual position and material on record, we find force in the alternative prayer made by the ld DR that there is no finding in the order as to utilization of the loan. We therefore, restore this issue back to the file of the Assessing Officer for his fresh adjudication with a direction to the assessee to furnish all the details and particulars of loan, and the purpose for which the loan taken from Bank was utilized. All these informations are within the control and specific knowledge of the assessee and, therefore, it would be the duty of the assessee to prove and establish that the amount of loan taken from the Bank was utilized for the purpose of acquiring capital assets in case the assessee wants to have the benefit of decision of Hon'ble Delhi High Court in the case of CIT vs. Tosha International Ltd. (2009) 176 Taxman 187 (Delhi) as well as the decision of Hon'ble Bombay High Court in the case of Mahindra & Mahindra Ltd. Vs. CIT (2003) 261 ITR 501. If on an enquiry and verification, it transpires that the assessee has utilised the loan for the purpose of its business activity or trading activity, the amount of loan to the extent it has been waived by the bank shall be deemed to be the assesee's income chargeable to tax as per the decision of Hon'ble Bombay High Court in the case of Solid Containers Ltd. Vs. DCIT (2009) 308 ITR 417 where the principle

laid down by the Hon'ble Supreme Court in the case of CIT vs. T.V. Sundaram Iyengar & Sons Ltd. 222 ITR 344, has been applied and followed. We clarify that amount of loan utilized for capital assets shall be non-taxable, but the sum utilized for working-capital shall be brought to tax as a revenue receipt. Needless to state that AO, shall afford adequate opportunity to the assessee, while adjudicating the issue afresh. Therefore, this ground is allowed for statistical purposes.

30. Ground No. 6 to 8 are general and therefore rejected.

31. Now we take up Revenue's appeal ITA No.2049/Del/2009. Ground No.1 and 4 are general and therefore dismissed.

32. Ground No.3 is inter- related to ground No. 5 of the assessee's appeal, where we have remitted the issue back to the file of AO. In view of the said findings the said ground is allowed for statistical purposes.

33. The only ground remaining relates to addition of Rs.35,77,820/- on account of belated payments of employees contribution of PF etc.

34. The ld CIT(A) has deleted the addition by holding as under :-

> ''6.3.3 In the case of PM Electronics Ltd. (supra) also the issue was on the allowability of deduction u/s 36(1)(va) read with sections 2(24)(ix) and 438 in respect of employer and employees contribution towards PF Fund which were made after the due date prescribed under the Employees Provident Fund Act and Rules made there under but before the due date of furnishing the return of income u/s 139(1). Analysing the, decisions of Gauhati High Court in CIT Vs. George

Williamson (Assam) Ltd. (supra), Delhi High Court in CIT Vis Dharrnendra Sharrna 297 ITR 320 and Hon'ble Supreme Court in CIT Vs Vinay Cement Ltd. 213 CTR 268, it is held that the judicial discipline requires to follow the view of the Supreme Court in Vinay Cement (supra) as also the division bench of Delhi High Court in Dharrnendra Sharrna (Supra) that the assessee was entitled to claim the benefits of the amounts contributed to PF before filing the return.

6.3.4 Respectfully following these decisions and considering the facts of the case, I hold that the addition on this account made by the AO cannot be sustained. The AO is directed to allow relief to the appellant to the extent of Rs. 35,77,820/-.''

35. Having considered the rival submission, we find that in the case of assessee, the Hon'ble High Court of Delhi in ITA NO.50/2009 dated 23.12.2009 for Assessment Year 2000-2001, following the judgement of the same High Court in PM Electronic in ITA No.475/2007 and the judgement of the apex court in Vinay Cements 13 CTR 268 (SC) held as under:-

"17. We may only add that if the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed, as per the principle laid down by the Supreme Court in Vijay Cement (supra)"

36. Respectfully following the above order, we confirm the order of the ld CIT(A).

37. In the result the appeal of the assessee is partly allowed and appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 09.1.2015.

-Sd/-	**-Sd/-**
(T.S. KAPOOR)	**(A. T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 09/01/2015

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi