IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'E' MUMBAI

ITA No.8101/Mum/2011
Assessment Year: 2008-09

SHAVO NORGREN (P) LTD
74, MITTAL CHAMBERS
NARIMAN POINT, MUMBAI-400021
PAN NO:AABCS8869H

Vs

DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE-3(3), ROOM NO 602A
AAYAKAR BHAVAN 6th FLOOR
MUMBAI-400020

ORDER

Per: B Ramakotaiah:

This is an assessee's appeal against the orders of the CIT (A)-7 Mumbai dated 2.9.2011 on the issue of computation of Long Term Capital Gain. Assessee has raised the following grounds:

"1. The learned CIT (A) has erred in law and on facts in upholding the order passed by the AO under section 143(3) of the Income Tax Act, 1961.

2. The learned CIT (A) has erred in law and on facts in confirming the assessment of a sum of Rs.2,39,91,000/ - as long-term capital gain on transfer of leasehold rights.

3. The learned CIT (A) has erred in law and on facts in confirming the action of the Assessing Officer in not treating Rs.14,30,220/ - as consideration for transfer of building. The learned CIT (A) ought to have reduced the said amount from sale consideration of rights in land.

4. The learned CIT (A) has erred in law and on facts in upholding invocation of Section 50C of the Act to the transaction of transfer of capital asset made by the appellant.

5. Without prejudice to the above, even if Section 50C of the Act is held to be applicable, the Assessing Officer ought to have referred the valuation of the capital asset to the District Valuation Officer. Since the Assessing Officer has not followed this procedure, the learned CIT (A) ought to have held the order of the Assessing Officer to be illegal and invalid/unsustainable.

6. Without further prejudice to the above, even if section 50C of the Act is held to be applicable, the stamp duty rate applicable as on April, 2007, i.e. the date of the Memorandum of Understanding ought to have been considered instead of stamp duty rate as on February 2008.

7. The learned CIT (A) has erred in law and on facts in sustaining the computation of long-term capital gain without even giving the indexed cost of acquisition as deduction. The learned CIT (A) ought to have held that computation of capital gain made by the Assessing Officer without reducing cost of acquisition/indexed cost of acquisition is unsustainable in law.

2. Briefly stated, from the statement of facts submitted before the CIT (A), Assessee had taken a plot of land on lease from Maharashtra Industrial Development Corporation (MIDC) in the year 1967 for a lease of 95 years commencing from 1st January, 1967. Assessee had also paid premium to MIDC as per their rules prevalent at that time. In the previous year 2007-08 assessee entered into a MOU for transfer of part of the said land on 9th April 2007, received an advance of Rs.30 lacs and applied to MIDC for their consent. MIDC gave their consent on 25/1/2008 for two different plots sub divided from the original one and accordingly the transfer of the lease was affected by agreement dated 7th March, 2008. At the time of entering into MOU an advance of Rs.30 lacs was obtained by assessee and subsequently the two plots together with Building thereon were transferred for? a total sum of Rs.2,01,57,606. Assessee worked out capital gain of Rs.1,60,38,687 after deducting the value of building at Rs.14,30,220/- and the market value as on 1/4/1981 increased by indexation cost to Rs.26,88,699. The AO applied Sec. 50C of the Income tax Act and considered the market value of the plot of land at Rs.2,39,91,000 and considered this as long term capital gain for the purpose of computation of income. While taking this view the AO did not allow any cost as deduction and also did not exclude the value of building standing on the plots of land which was valued at Rs.14,30,220 and adjusted in the block of assets while computing depreciation under the Income tax. Assessee's contention was that since this plot of land was a leasehold right only, it was neither a land nor a building and therefore Section 50C would not be applicable to such transaction.

2. While completing the assessment AO relied more on the terms of the agreement and completed the assessment denying claims and making addition. Before the CIT (A) assessee contested all the issues and the learned CIT (A) in his brief order vide Para 3.3 has decided against assessee as under:

"3.3 I have considered AO's order as well as appellant Authorized Representative's submissions. Having considered both, I find that the appellant company has transferred the plot of land over which the appellant company was having leasehold right for a period of more than 12 years from the date of assignment registered. It is evident that the appellant company has got leasehold right over the land from MIDC for a term of 95 years to be computed from 1st January, 1967 and thus the said right over the specified land which was transferred as per the agreement deed dated 07.03.2008 in the case of the appellant company and M/s Unnati Technology Pvt. Ltd is for transfer of land along with factory building. Therefore, in my considered view AO was completely justified in his action while applying the deeming provisions of section 50C of the Act as the appellant company had transferred the plot to the transferee. This fact is clearly evident from Para 'd', 'g', 'h', 'I' and 'j' of the transfer deed wherein the area of transfer has been specified. In view of the afore stated facts of the appellant's case, I am of the considered view that AO was completely justified in his action in applying the deeming provision of section 50C in the case of the appellant company. Accordingly, the addition so made by AO is held to be justified and thereby confirmed. Thus, appellant's this ground of appeal is dismissed".

Hence assessee is aggrieved and raised the above grounds.

3. The learned Counsel referred to the facts of the case and summarized the issues for consideration as under:

a) Total consideration: Assessee received an amount of Rs.2,01,57,606 as part of the sale of the asset, whereas invoking the provisions of section 50C AO took the amount at Rs.239,91,000.

b) valuation of building which was taken by assessee at Rs.14,30,220 which was reduced from the total consideration. In the absence of separate agreement AO ignored the apportionment of the above amount towards sale of the building.

c) the cost of the acquisition. Assessee initially did not claim the cost of acquisition whereas during the course of the assessment proceedings it claimed valuation as on 01.04.1981 at Rs.4,87,967 vide letter dated 04.08.2010 and arrived at the index cost of the acquisition at Rs.26,88,999. This was denied by AO holding that the rights of assessee in land are akin to the tenancy right hence there is no cost of acquisition.

4. Continuing with the arguments, it was the submission of the learned Counsel that assessee has transferred only leasehold rights in the property and therefore, provisions of section 50C are not applicable as the said provisions was applicable only for 'land and building' and not for the rights in the land and building. In this regard he relied on the decision of Coordinate Bench in the case of *Atul G. Puranik vs. ITO (2011) 132 ITD 499/11 ITR 120 (Trib.) (Mum.)* to submit that the leasehold rights in a plot of land cannot be included within the scope of land or building or both and those in the case of transfer of leasehold rights in land, provisions of section 50C cannot be invoked. Further he also relied on the unreported decision of ITAT in the case of *Income Tax Officer vs. M/s Pradeep Steel Re-Rolling Mills Pvt. Ltd in ITA No.341/Mum/2010* on the similar issue. He further relied on the decision of the ITAT 'D' Bench of Kolkata in the case of *DCIT vs. Tejinder Singh in ITA No.1459/Kol/2011* = *(2012-TIOL-147-ITAT-KOL)* dated 29.02.2012 for the same proposition. It was his submission that this issue is covered by the decisions of the Coordinate Bench.

5. Without prejudice to the above contentions, it was also submitted that AO has wrongly taken the valuation under section 50C as on 07.03.2008 i.e. the date of registration whereas the stamp duty rate should have been adopted as on 09.04.2007 i.e. date of Memorandum of Understanding (MoU). It was his submission that even though the agreement and the registration happened in the same financial year the rates were revised as per the calendar year and hence assessee having entered agreement as on 09.04.2007 the stamp duty valuation on that date could have been taken. He relied on the decision of the ITAT Visakhapatnam Bench in the case of *Lahiri Promoters vs. ACIT in ITA No.12/Vizag/2009* dated 22.06.2010.

6. On the issue of value of transfer of building, it was submitted that the plot contained a building which was also transferred and AO was not correct in excluding the valuation of the building. Assessee, it was submitted, has adjusted the cost of acquisition in the block of assets whereas AO did not take cognizance of the above and denied the benefit of exclusion of value of the building in the computation.

7. With reference to the cost of acquisition, the learned Counsel submitted that at the time of acquisition and subsequently the registration, assessee had paid the premium for leasehold right and this value was shown in the fixed asset schedule of the company account as "leasehold assets". Therefore, assessee is entitled for the claim of cost of acquisition on the proportionate amount of premium paid, valued as on 01.04.1981. It was

his submission that there is no reason for not allowing assessee's contention on cost of acquisition.

8. The learned DR in reply, referring to the agreement particularly page No.56 of the paper book, submitted that assessee has constructed the building after the agreement to submit that assessee not only transferred plot of land but also building. Therefore, provisions of section 50C are applicable. Further he also relied on the order of the Coordinate Bench of the ITAT in the case of *Arif Akhatar Hussain vs. Income Tax Officer in ITA No.541/Mum/2010* wherein the Hon'ble ITAT upheld invoking provisions of section 50C on transfer of development rights. He supported AO's order as confirmed by the CIT (A).

9. The learned Counsel in reply submitted that the transfer of development rights is different from the lease rights. Whereas the development rights are transferred by the owner for perpetuity the leasehold rights are transferred by the lessee who has limited rights and for limited period. Therefore, the decision of the Coordinate Bench is not applicable.

10. We have considered the issue and examined the record and the rival contentions. Undisputed facts in this case are that the company had taken a plot of land from Maharashtra Industrial Development Corporation in the year 1967 on lease for 95 years commencing from 01.01.1967. It is also the fact that the company has paid premium to MIDC as per the rules prevalent at that time and also showed the same as an asset under the head "leasehold assets" in the balance sheet. Assessee has entered into MoU for transfer of part of the land on 09.04.2007 with the consent of MIDC which was obtained on 25.01.2008. The main issue before us is whether assessee is owner of the plot of the land or only having leasehold rights and whether provisions of section 50C are attracted on this transfer.

11. The Coordinate Benches in the cases relied upon by assessee has considered the issue of transfer of rights. In the case of Atul G Puranik vs. Income Tax Officer (Supra), it was held as under:

"Full value of consideration and section 50C

The Assessing Officer adopted the value of asset sold on 25-8-2005 at Rs. 2.88 crores by applying the provisions of section 50C for the purposes of computing capital gain. His view was based on the assessee's submission that the market rate prevailing for land during 1-4-2004 to 31-12-2004 was Rs. 3950 per sq. meter. The Commissioner (Appeals) upheld the action of the Assessing Officer on this score.

On going through the provision of section 50C(1), it transpires that where the full value of consideration shown to have been received or accruing on the transfer of an asset, being land or building or both, is less than the value adopted or assessed or assessable by stamp valuation authority, the value so adopted etc. shall, for the purposes of section 48, be deemed to be full value of consideration received or accruing as a result of such transfer. This section has been inserted by the Finance Act, 2002 with effect from 1-4-2003 with a view to substitute the declared full value of consideration in respect of land or building or both transferred by the assessee with the value adopted or assessed or assessable by stamp valuation authority. But for this provision, there is nothing in the Act, by which the full value of a consideration received or accruing as a result of transfer of land or building or both is deemed to be any amount other than that actually received. From the language of sub-section (1), it is clear that the value of land or building or both adopted or assessed or

assessable by the stamp valuation authority shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such a transfer. Two things are noticeable from this provision. Firstly, it is a deeming provision and secondly, it extends only to land or building or both. It is manifest that a deeming provision has been incorporated to substitute the value adopted or assessed or assessable by stamp valuation authority in place of consideration received or accruing as a result of transfer, in case the latter is lower than the former. It is further relevant to note that the mandate of section 50C extends only to a capital asset which is "land or building or both". It, therefore, follows that only if a capital asset being land or building or both is transferred and the consideration received or accruing as a result of such transfer is less than the value adopted or assessed or assessable by the stamp valuation authority, the deeming fiction under sub-section (1) shall be activated to substitute such adopted or assessed or assessable value as full value of consideration received or accruing as a result of such transfer in the given situation.

It is a settled legal proposition that a deeming provision cannot be extended beyond the purpose for which it is enacted.

It is thus clear that a deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of the section. Turning to section 50C, it is seen that the deeming fiction of substituting adopted or assessed or assessable value by the stamp valuation authority as full value of consideration is applicable only in respect of "land or building or both". If the capital asset under transfer cannot be described as 'land or building or both', then section 50C will cease to apply. From the facts of this case narrated above, it is seen that the assessee was allotted lease right in the Plot for a period of sixty years, which right was further assigned to 'P' in the year in question. It is axiomatic that the lease right in a plot of land are neither 'land or building or both' as such nor can be included within the scope of 'land or building or both'. The distinction between a capital asset being 'land or building or both' and any 'right in land or building or both' is well-recognized under the I.T. Act. Section 54D deals with certain cases in which capital gain on compulsory acquisition of land and building is charged. Sub-section (1) of section 54D opens with : "Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking…..". It is palpable from section 54D that 'land or building' is distinct from 'any right in land or building'. Similar position prevails under the Wealth-tax Act, 1957 also. Section 5(1) at the material time provided for exemption in respect of certain assets. Clause (xxxii) of section 5(1) provided that "the value, as determined in the prescribed manner, of the interest of the assessee in the assets (not being any land or building or any rights in land or building or any asset referred to in any other clauses of this sub-section) forming part of an industrial undertaking" shall be exempt from tax. Here also it is worth noting that a distinction has been drawn between 'land or building' on one hand and 'or any rights in land or building' on the other. Considering the fact that Tribunal is dealing with special provision for full value of consideration in certain cases under section 50C, which is a deeming provision, the fiction created in this section cannot be extended to any asset other than those specifically provided therein. As section 50C applies only to a capital asset, being land or building or both, it cannot be made applicable to lease rights in a land. As the assessee transferred lease right for sixty years in the Plot and not land itself, the provisions of section 50C cannot be invoked. Therefore, the full value of consideration in the instant case be taken as Rs. 2.50 crores".

12. In the case of *Income Tax Officer vs. M/s Pradeep Steel Re- Rolling Mills Pvt. Ltd in ITA No.341/Mum/2010* the ITAT 'C' Bench vide order dated 15.07.2011 has considered the similar issue as under:

"4. The revenue is in appeal. We are unable to find fault with the decision of the CIT(A) that section 50C cannot be invoked to a transfer of leasehold rights. The section applies only to capital assets being land or building or both. It does not in terms include leasehold rights in the land or building within its scope. The Assessing Officer's conclusion to the contrary is based on section 27(iiib) of the Act, which says that a person who acquires any rights, excluding any rights by way of a lease from month to month or for a period not exceeding one year, in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof. Firstly, this provision has been expressly limited in its application to sections 22 to 26 of the Act, which deal with the computation of the income under the head "Income from house property". It has not been made applicable to the computation of capital gains. Secondly, the rights mentioned in the provision are rights over the building and any rights over the land have not been included in the section. In any case, since the section 27(iiib) has not been extended to the computation of capital gains under section 45 and is limited to the computation of the income under the head "Income from house property", the conclusion of the CIT(A) that section 50C cannot be invoked where leasehold rights in land or building are transferred, seems to us, to be correct. We accordingly affirm the decision of the CIT(A) and dismiss the appeal filed by the revenue with no order as to costs".

13. Similar view was also held by the ITAT Kolkata Bench in the case of *DCIT vs. Tejinder Singh in ITA No. 1459/Kol/2011* = *(2012-TIOL-147-ITAT-KOL)* dated 29.02.2012 as under:

"8. A plain look at the undisputed facts of this case clearly shows that the assessee was a lessee in the property which was sold by the KSCT; there is no dispute on this aspect of the matter. Yet, the Assessing Officer has treated the assessee a seller of property apparently because the assessee was a party to the sale deed, and because, according to the Assessing Officer, "consideration is paid on sale of the property for giving up right of the owner of the property" and that "in the case of leasehold property, the right of owner is divided between lessor and lessee". We are unable to share this line of reasoning. It is no t necessary that consideration paid by the buyer of a property, at the time of buying the property, must only relate to ownership rights. In the case of tenanted property, as is the case before us, while the buyer of property pays the owner of property for ownership rights, he may also have to pay, when he wants to have possession of the property and to remove the fetters of tenancy rights on the property so purchased, the tenants towards their surrendering the tenancy rights. Merely because he pays the tenants, for their surrendering the tenancy rights, at the time of purchase of property, will not alter the character of receipt in the hands of the tenant receiving such payment. What is paid for the tenancy rights cannot, merely because of the timing of the payment, cannot be treated as receipt for ownership rights in the hands of the assessee. This distinction between the receipt for ownership rights in respect of a property and receipt for tenancy rights in respect of a property, even though both these receipts are capital receipts leading to taxable capital gains, is very important for two reasons - first, that the cost of acquisition for tenancy rights, under section 55(2)(a), is, unless purchased from a previous owner - which is admittedly not the case here, treated as 'nil'; and, - second, since the provisions of Section 50 C can only be applied in respect of "transfer by an assessee of a capital asset, being land or building or both", the provisions of Section 50 C will apply on receipt of consideration on transfer of a property, being land or building or both, these provisions will not come into play in a case where only tenancy rights

a re transferred or surrendered. It is, therefore, important to examine as to in what capacity the assessee received the payment. No doubt the assessee was a party to the registered tripartite deed dated 20th July 2007 whereby the property was sold by the KSCT, but, as a perusal of the sale deed unambiguously shows, the assessee has given up all the rights an d interests in the said property, which he had acquired by the virtue of lease agreements with owner and which were, therefore, in the nature of lessee's rights; these rights could not have been, by any stretch of logic, could be treated as ownership rights. It has been specifically stated in the sale deed that the lessee, which included this assessee before us, had proceeded to, inter alia, "grant, convey, transfer and assign their leasehold rights, title and interest in the said premises". There is nothing on the record to even remotely suggest that the assessee was owner of the property in question. The monies received by the assessee, under the said agreement, were thus clearly in the nature of receipts for transfer of tenancy rights, and, accordingly, as the learned CIT(A) rightly holds, Section 50 C could not have been invoked on the facts of this case. Revenue's contention that the provisions of Sect ion 50 C also apply to the transfer of leasehold rights is devoid of legally sustainable merits and is not supported by the plain words of the statute. Section 50 C can come into play only in a situation " 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, (emphasis supplied by us by underlining) is less than the value adopted or assessed or assessable by any authority of a State Government ..... for the purpose of payment of stamp duty in respect of such transfer". Clearly, therefore, it is sine qua non for application of Section 50 C that the transfer must be of a "capital asset, being land or building or both", but then a leasehold right in such a capital asset cannot be equated with the capital asset per se. We are, therefore, unable to see any merits in revenue's contention that even when a leasehold right in "land or building or both" is transferred, the provisions of Section 50C can be invoked. We, therefore, approve the conclusion arrived at by the CIT(A) on this aspect of the matter".

14. Thus there are Coordinate Bench decisions which states that the transfer of leasehold rights does not attract application of provisions of section 50C.

15. On the other hand, prima facie examination of documents placed on record indicates that AO and CIT (A) have justified their action in invoking provisions of section 50C. As seen from the allotment of plot originally in 1967 assessee has paid premium for the leasehold land subject to fulfillment of conditions stated therein. However, the MIDC has confirmed and registered the said plot in the name of assessee vide the lease deed dated 01.04.1974. Even though the deed is held as lease agreement, the perusal of the terms indicates that substantial rights were transferred to assessee including the rights to construct building. In fact, vide Para 2q of the agreement assessee was assigned limited powers of assignment of the demised premises or any part thereof or any interest thereof with the previous written consent of the Chief Executive Officer of MIDC.

16. Further as seen from the deed of assignment between assessee and M/s. Unnati Technology (P) Ltd assessee agreed to alienate a part of the land subject to sub plotting and consent by MIDC. The registered deed dated 17.03.2008 indeed mentions that vide order dated 25.01.2008 the MIDC i.e. lessee has inter alia has further divided the larger property into three separate plots namely 14/1 admeasuring 4115.34 sq mtrs, plot No.14/1A admeasuring 1515.45 sq.mtrs and plot No.14/B admeasuring 1122.21 sq mtrs and further the lesser inter alia has granted permission to assign and transfer the land at Plot No.14/1B in favour of the transferee. Likewise Plot No.14/A sub plot was assigned to the said company. There are two deeds for transfer of respective properties. Assessee has substantial right in the property as can be seen from the MoU entered with M/s Unnati

Technology (P) Ltd vide agreement dated 09.04.2007 wherein it was specifically stated as under:

"G. The Assignor has represented to the Assignee that:

(i) The said indenture of lease is valid and subsisting and is in full force and is not in any way cancelled, terminated or withdrawn by the lessor;

(ii) The Assignor has complied with all the terms of the said Indenture of Lease till date and the Lessor has not served any notice of any kind for contravention of any terms and condition of the said Indenture of Lease or otherwise to the Assignor;

(iii) Leasehold title of the Assignor to the said Larger Property is clear and free from all encumbrances;

(iv) There is no decree, order, attachment or restraint order passed by any court or authority or any statutory body having jurisdiction in India, which restrains the Assignor from dealing with or disposing off the said Larger Property or any part thereof including for any statutory dues or otherwise;

(v) Neither the said Larger Property nor any part/s thereof is the subject matter of any pending litigation and/or any order or decree of any court, tribunal or quasi-judicial body or authority whereby or by reason whereof the Assignor is prevented or restrained from dealing with or disposing of the same, and the Assignor's right, title and interest therein have not been attached either before or after judgment or by or at the instance of any tax or other authorities.

(vi) The Assignor is exclusive quiet, vacant and peaceful possession of the said Larger Property and there are no tenants, sub-tenants, lessees, licensees or occupants in possession of the said Larger Property or any part thereof;

(vii) There is no agreement, arrangement, contract or commitment either for sale or lease or license to develop or to enter into any Joint Venture for development or to introduce the said Larger Property in any partnership or otherwise to alienate the said Larger Property and the Assignor is fully entitled to develop- sell and/or transfer the said Larger Property or any part thereof;

(vi) that there is no order of attachment by the Income Tax, Sales Tax, Central and State Excise Department, Provident Fund or by any other authority, Financial Institution nor any notice of acquisition/requisition has been received in respect of the said Larger Property till date;

H. The Assignor is desirous of developing a portion of the said Larger Property admeasuring 2475 sq. mtrs or thereabout, which portion is more particularly described in the Fourth Schedule hereunder written and shown in blue colour wash on the plan thereof hereto annexed as Annexure-3 (hereinafter referred to as the said Property)".

17. In the recitals, it is also clearly mentioned that vide order dated 22/01/1982 under section 20 of the urban land (Ceiling & Regulation Act) 1976 (ULC) the competent authority has granted exemption to the Assignor to hold the excess vacant land admeasuring 10536.53 sq. meters on the terms and conditions therein. Further MIDC is not even a

confirming party in the transaction of assignment. This indicate that assessee has substantial and absolute powers as far as the property in question is concerned and the fact that the property has got exemption from ULC and was sub divided as per the request of assessee do indicate that the MIDC has only limited powers whereas assessee has absolute powers over the property. Moreover as seen from the recitals from the MoU, assessee also has developmental rights which it had intended to utilize. This also indicate that the development rights which are attached to the property are with assessee.

18. Not only the above, as seen from deeds of assignment, assessee transferred the rights in the plots as well as rights in the building, since there is building involved in this assignment, we are of the opinion that the transfer of property in question do attract provisions of section 50C and therefore, assessee's contention on this cannot be accepted. As seen from the marking given in the 'scheduled property' in the deed of transfer substantial portion was covered by the building thereon and as seen from the MoU, assessee seems to be developing the property by utilizing the development rights. In view of this, since both land and building were assigned by these deeds, we are of the opinion that provisions of section 50C are attracted in this case. As seen from the report of the valuation placed on record from page Nos.95 to 99 the valuation report also indicate that the valuation was undertaken as plot of land and not as 'leasehold rights'. This also supports our opinion that assessee has more than leasehold rights on the plot of land.

19. Legal proposition on the transfer of leasehold rights has already been discussed above with which we are in agreement. However, we cannot completely come to a conclusion whether assessee had complete rights over the land and to what extent the valuation has to be determined u/s 50C, in the absence of complete details like the application made to ULC, the copy of the ULC order and further the agreements entered by M/s Unnati Technology Pvt. Ltd subsequent to construction of building with third parties if any, for sale or assignment of rights therein. Nothing was brought on record either by assessee or by the Revenue to examine whether the said M/s Unnati Technology Pvt. Ltd has only constructed the building for development or has transferred further rights to some other parties. As pointed out by the learned DR even after entering into MoU, assessee has further developed the building and therefore to what extent the rights in the buildings were transferred and whether the cost attributed by assessee is correct or not can not examined. Therefore, without coming to a conclusion on the above issue, we direct AO to obtain the complete information and examine whether assessee has only leasehold right or complete rights over the property so that provisions of section 50C are attracted. After examining the relevant documents and establishing the rights over the plot, AO is free to determine whether assessee has transferred the plot of land or only leasehold rights. Since assessee had also transferred the building, provisions of section 50C may attract to that extent. Since this require examination of facts and also to make further inquiries to establish assessee's rights over the properties, we, in the interest of justice, restore the matter to the file of AO for fresh examination of the issues with reference to application of provisions of section 50C.

20. Coming to the other issue of reduction of value of the building and adjusting in the block of assets, AO was not correct in excluding the value altogether. In our view, he has not examined the issue in its entirety. Since we have already observed that the building was also transferred, it is necessary for AO to examine how much property was transferred and whether the same has to be adjusted under the provisions of section 50 or under section 43(6) in the block of assets. As pointed out by DR there seems to be construction after the agreement, the details of which are not on record. Since this aspect of valuation of building was not examined by AO, we in the interest of justice restore the matter to the file of AO to examine this and do accordingly.

21. As seen from the record, AO has not taken in to consideration the objections of assessee, while invoking the provisions of section 50C. Under section 50C(2), AO has to give an opportunity to assessee to make submissions. This exercise has not been done by AO. AO has to follow the provisions of 50C(2) when the provisions of section 50C are made applicable. In order to fulfill this legal requirement also, we have set aside the order of AO and the CIT (A) on this issue.

22. The contention of cost of acquisition is also restored to the file of AO. Just because assessee has not claimed at the time of filing the return, statutory obligation of deducting the cost of acquisition cannot be brushed aside. There is information on record that assessee did pay premium at the time of acquiring property by way of lease and assessee has filed a valuation report before the AO claiming the value as on 01.04.1981 and subsequent indexation as per the provisions of law. AO is directed to examine this claim and allow the cost of acquisition as per the facts and law. The other contention about date of adopting valuation (whether date of MOU or date of Registration) has become academic as the application of Section 50C itself was restored to AO in its entirety. Assessee is free to raise relevant objections before AO. With these directions, the matters are restored to the file of AO for fresh adjudication on computation of long term capital gain. Assessee should be given due opportunity in the proceedings to furnish the documents and make submissions. Accordingly, the grounds are considered allowed for statistical purposes.

23. In the result, appeal filed by assessee is allowed for statistical purposes.

(Order pronounced in the open court on 14.12.2012.)