

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 405/Hyd/2016
Assessment Year: 2010-11**

Asst. Commissioner of Income-tax, Circle – 2(2), Hyderabad. vs. G2 Corporate Services Ltd.,
Secunderabad.

(Appellant)

PAN – AABCD 2471J
(Respondent)

Revenue by : Dr. SVSS Prasad
Assessee by : Shri K. A. Sai Praad

Date of hearing 05-07-2016
Date of pronouncement 15-07-2016

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal is preferred by the Revenue against the order of the learned Commissioner of Income-tax(A) - 2, Hyderabad, dated 23-12-2015 for AYs 2011-12.

2. Briefly the facts of the case are that the assessee company is an investment company filed its return of income for the AY 2010-11 on 15/10/2010 declaring loss of Rs. 8,20,77,710/-. However, the AO completed the assessment u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') by making an addition of Rs. 97,18,78,900/-.

2.1 The only issue involved in this appeal is with regard to AO's action in making an addition of Rs. 97,18,78,900/- representing long term capital gains" on sale of shares of assessee company, in Silicon Builders. The AO has adopted the Fair Market Value (FMV) at

Rs.843.24 per share, as against the actual price of Rs.275 adopted by the assessee, as evidenced by a Share Purchase agreement and passing on the consideration through banking channels. The assessee-company transferred 18,18,180 equity shares in Silicon Builders to M/s Classic Realty Pvt. Ltd., during the assessment year under appeal, i.e., 2010-11, for a consideration of Rs.50,00,00,000. These shares were acquired by it during AY's 2008-09 and 2009-10 at a cost of Rs 50,00,00,000. M/s Silicon Builders was holding 1,50,00,000 shares in M/s Raghuram Cements Ltd (later known as M/s. Bharathi Cement Corporation P. Ltd.) since AY 2008-09. During the scrutiny, the AO directed the assessee company to show cause as to why the shares of Silicon builders should not be valued, adopting the value of M/s. Bharathi Cement Corporation P Ltd., Shares at Rs 671.20 per share. The relevant notes, on the order sheet, of the AO reproduced in the assessment order itself at page No.2, are as under:

"It is observed that the assessee has invested Rs.50 crores in M/s Silicon Builders P. Ltd., in F. Y. 2007-08. One of the underlying asset of M/s. Silicon Builders P Ltd is 1.5 crores share of M/s Raghuram Cements Limited (now M/s Bharathi Cement Corporation P Ltd) which was acquired at par i.e., Rs.10 per share. However, at the time of sale of shares of M/s Silicon Builders P Ltd., the value of shares of M/s Bharathi Cement Corporation P Limited is at Rs.671. But the assessee sold his entire stake of 18,18,180 shares at Rs.50 crore only to M/s Classic Realty P Ltd., which is also a company belonging to promoters of M/s Bharathi Cement Corporation P Ltd. In view of the above, it is asked why the sale consideration should not be adopted valuing the shares of M/s Silicon Builders by adopting the value of M/s Bharathi Cement Corporation P Ltd., at Rs. 671.20."

2.2. In this regard, the assessee submitted as under:

"The assessee was holding 18,18,180 shares in M/s Silicon Builders with a paid up capital of 2,57,93,406 equity shares constituting 7.05% of the company. M/s Silicon Builders was holding 1,50,00,000 equity shares in M/s Bharati Cements. The assessee's group companies agreed to sell their entire equity in Bharathi Cements to M/s Parficim, France at Rs 671.20 per

share. The promoters of the cement company have not taken separate consideration for transferring the controlling stakes, and also provided an exit to the investment with almost 100% appreciation on their investment. Hence the assessee sold the shares of Silicon Builders at cost considering commercial expediency and interests of the group".

2.3. Subsequently, the AO proposed to adopt the price of M/s. Bharathi Cement Corporation P Ltd., share at Rs 1,450 stating that group companies of assessee purchased the shares of M/s. Bharathi Cement Corporation P Ltd., at that rate and Sri N Prasad, Director justified investments of his group companies in M/s. Bharathi Cement Corporation P Ltd., basing on its strong points like availability of market, technology, lime stone deposits etc and hence a different stand can't be taken now.

2.4. In this regard, the assessee filed its objections as under:

"The price of Rs 1,450 was based on the offer to the group to acquire 15% of M/s Bharathi Cements at Rs 300 crores, which works out to Rs 342 per share. Since initially shares were purchased at a low value of Rs.104 and Rs 185, subsequently higher price was paid. However there is no record of such offer and who made the offer. "

2.5. Further, the assessee submitted as under:

"The assessee has transferred the shares of M/s Silicon Builders @ Rs 275 per share being its cost of acquisition to M/s Classic Realty Pvt Ltd, belonging to promoters of the cement company and explained the reasons therefor as follows during the assessment proceedings

The promoters of the cement company have not taken separate consideration for transferring the controlling stakes, and also provided an exit to the investment with almost 100% appreciation on their investment. Hence the assessee sold the shares of Silicon Builders at cost considering commercial expediency and interests of the group. "

2.6. However, the AO has not accepted the above submissions of the assessee and has gone ahead with adopting the share price of M/s. Bharathi Cement Corporation P Ltd., at Rs 1,450 in order to value the shares of M/s. Silicon Builders. AO's observations are as follows:

"The transaction appears to be collusive in nature as the shares were transferred to a company promoted by Sri Y.S Jagan Mohan Reddy. It is evident from the fact that group of companies owned by Sri Nimmagadda Prasad have been investing in the companies floated by Sri Y S Jagan Mohan Reddy at very high premium even when there is no return and the net worth of the company is eroded and also are borrowing for Income Tax payments.

The words used in Section 48 are 'The full value of the consideration received or accruing as a result of transfer'. The shares of Silicon Builders P Ltd are impregnated with value of the shares of M/s Bharathi Cement Corporation P Ltd as on the date of sale. So the transfer in this case is not one of pure sale to consider only the sale price received as the full value consideration. So what is to be considered in this case is the value of equivalent shares of M/s Silicon Builders P Ltd held in M/s Bharathi Cement Corporation Limited. So to arrive at the full value of consideration, the market value of the equivalent shares of M/s Bharathi Cement Corporation P Limited is the only option. The value of M/s Bharathi Cement P Ltd was RS.1450 per share. Accordingly, the value of Silicon Builders P Ltd is worked out as under:

The company M/s Silicon Builders P Ltd., is holding 1,50,00,000 of shares of M/s Bharathi Cement Corporation P Limited. The value of the same at the price of Rs. 1450 per share is worked out to Rs.2175,00,00,000. The total number of shares in t-t/s Silicon Builders is 2,57,93,406. Therefore the value of each share of Silicon Builders P Ltd is worked out as under:

2175,00,00,000

2,57,93,406 = 843.24

Accordingly, the long term capital gains u/s 112 are worked as under:

Sale proceeds of Shares in Silicon Builders

18,18,180 X 843.24 = 153,31,62,103

Less: Indexed cost of acquisition

FY 2007-08 for Rs. 29,99,99,700 34,41,01,289

FY 2008-09 for Rs. 19,99,99,800 21,71,81,913

56,12,83,203

Long term capital gains u/s 112 97,18,78,900

3. Aggrieved with the above order, the assessee carried the matter in appeal before the CIT(A).

4. Before the CIT(A), the AR of the assessee relied on various case laws to submit that fair market value cannot be substituted for full value of consideration and that there is no charging mechanism to tax the difference of fair value and full value.

5. After considering the submissions of the assessee, the CIT(A) observed that the Act recognises the difference between 'full value of consideration' and its 'fair market value' with regard to shares with the insertion of sub section (viia) to section 56 w.e.f. 01-06-2010, i.e., for the assessment year 2011-12. Further, charging the difference in Fair Market Value and full value of consideration in the hands of the transferee and not in the hands of transferor. In other words, it can be stated that there are no provisions in the Act for the assessment year 2010-11, being the period under appeal to substitute the Full value of consideration with Fair market value.

5.1. The CIT(A) further observed that as it is clear that specific provisions are available in the 'Act' for substitution of fair market value with full value of consideration like section 50C and 50D at present. However, the method of computation as prescribed under section 48 superficially mentions that "income chargeable under the head 'Capital Gains' shall be computed, by deducting from the full value of consideration received or accruing as a result of the transfer of the capital asset the following amount, namely: _ (i) expenditure incurred wholly and exclusively in connection with such transfer, and (ii) the cost of acquisition of the asset and the cost of any improvement thereto". Therefore, the 'full value of consideration' is clearly different from the 'fair market value'. It is to be noted that Section 50D, operative from 01.04.2013, permits fair market value

being the full value of consideration in certain cases where as a result of transfer of capital asset by an assessee the consideration received or accruing is not ascertainable or cannot be determined.

5.2. CIT(A) observed that under section 50C, there is special provision for substitution of full value of consideration in cases where Stamp Authorities adopt a particular value, i.e. deemed to be the full value of consideration received or accruing.

5.3. CIT(A) noted that reference to Valuation Officer under section 55A is also for the limited purpose of arriving at the cost of asset at the fair market value in certain circumstances but it does not empower the AO to substitute the 'fair market value' to 'full value of consideration' .

5.4. He, therefore, observed that the two words, 'full value of consideration' and 'fair market value ' are differently used in the Act and fair market value cannot be substituted in place of full value of consideration, unless it is specifically empowered by the Act. Hence, as far as computation of capital gains on sale of shares is concerned under section 48, it does not empower the AO to substitute the fair market value for the full value of consideration.

5.5. In view of the above observations, the CIT(A) relying on the decision of the jurisdictional ITAT, Hyderabad 'A' Bench, vide order in ITA No.582/Hyd/2015 A.Y.2010-11 dt.20-11-2015 in the case of M/s. Suguni Constructions Vs ITO, directed the AO to accept the capital gains worked out on the basis of the actual consideration received as full value of consideration and directed to delete the addition of Rs. 97,18,78,900/- made by the AO.

6. Aggrieved by the order of the CIT(A), the revenue is in appeal before us raising the following grounds of appeal:

1. Whether in the facts and circumstances of the case the CIT(A) is correct in holding that the facts in the case of M/s. Suguni Constructions Limited are identical to the facts involved in the case of the assessee i.e. G2 Corporate Services Private Ltd?

2. Whether in the facts and circumstances of the case the CIT(A) ought to have appreciated that the sale of shares of M/s. Silicon Builders Limited (Which in turn held shares of Bharati Cement Corporation whose market value was Rs.671/-) to M/s. Classic Reality, a company belongs to the promoters of M/s Bharati Cement Corporation, is a sham transaction to facilitate the benefit to the promoters of M/s Bharati Cement Corporation Limited.

3. Whether in the facts and circumstances of the case the CIT(A) is justified in holding that the sale consideration is to be adopted at Rs.275/- without considering the fact that the assessee on one hand sold shares of M/s. Silicon Builders Limited (which in turn held shares of Bharati Cement Corporation whose market value was Rs.671/-) at Rs.275/- to M/s. Classic Reality which belongs to promoters of Bharati Cement Corporation and on the other hand its other group companies purchases shares of Bharati Cement Corporation at Rs.1450/- from the promoters of the Bharati Cement Corporation.”

7. Before us, the Id. AR of the assessee submitted that the issue in dispute is squarely covered by the decision of the coordinate bench of this Tribunal in the case of M/s Suguni Constructions Pvt. Ltd., vide ITA No. 582/Hyd/2015, order dated 20/11/2015, a copy of which is available on record.

8. On the other hand, the Id. DR has neither controverted to the submissions of the Id. AR nor brought any contrary decision in support of revenue's case.

9. Considered the submissions of both the parties and perused the material facts on record as well as the orders of revenue authorities. We find that the issue in dispute is squarely covered by the decision of the coordinate bench of this Tribunal in case of M/s Suguni Constructions Pvt. Ltd. (supra) wherein the coordinate bench held as follows:

“6. Having regard to the rival submissions and the material on record, we find that the sale of shares by the assessee to M/s. Parficim, France, of both the companies, i.e. M/s. Silicon Builders as well as Bharati Cements is not doubted by the authorities below. Nor is the sale consideration received by the assessee questioned. The reason for computing the capital gain by the Assessing Officer by estimating the sale consideration is that the shares of Bharati Cements have fetched a higher amount as compared to the shares of Silicon Builders, which is holding the shares of Bharati Cements. As seen from the order of the CIT(A), the Assessing Officer has worked out the net worth of Bharati Cements to arrive at the share value of Bharati Cements to estimate the share value of M/s. Silicon Builders. This, in our opinion, is fallacious. Hon’ble Supreme Court in the case of CIT V/s. George Henderson (66 ITR 622) has held that the expression “full consideration” in the main part of S.12(B)(2) of the Indian Income-tax Act, 1922 cannot be considered as having a reference to the market value of the asset transferred, but the expression only named the full value of the thing received by the transferor in exchange for the capital asset transferred by him. S.12(B)(2) of the Indian Income Tax Act, 1922 is analogous to S.48 of the Income Tax Act, 1961. This fact has been taken note of by the coordinate bench of the Tribunal (Mumbai Bench) in the case of Reliance Communications Infrastructures V/s. CIT (34 SOT 245) as under-

““24. In our opinion, as a provision of S.48 of the Act of 1961 is analogous to S.12B(2) of the Act of 1922 and hence, the interpretation given by their Lordships to the expression “full value of the consideration” is equally applicable to the expression appearing in S.48 of the Act of 1961. Even after giving anxious consideration to the scheme of computation of capital gain, it is seen that there is no provision to substitute sale consideration declared by the assessee with that of ‘market value’, save provision of S.50C which is only applicable to capital asset in the form of land or building. In the present case, there is no dispute about the fact that the assessee has received only Rs.50 cores and it is also not the case of the department that over and above Rs.50 cores the assessee has received any amount, and hence, as the full value of the consideration is Rs.50 crores as against the value of the shares of 50 crores, the capital gain worked out to be ‘nil’ under S.48 of the Act. For the reasons given above, it cannot be said that short-term capital gains as held by the learned CIT in the order passed under S.263 has escaped assessment . Moreover, the case of the assessee is supported by the interpretation given by the Hon'ble Supreme Court to the expression “full value of consideration” in the case of George Henderson & Co. Ltd. (supra).”

Similar view has also been expressed by another bench of this Tribunal at Mumbai in the case of Morarjee Textiles Ltd. and Another V/s. ACIT (ITA No.1979/Mum/2009 for assessment year 2005-06) dated 10.5.2013, to which one of us, viz. Accountant Member, is a signatory, wherein, vide paras 15 to 21, it was held as under-

“15. We have considered the issue and examined the record. As far as the price adopted by the AO, we cannot approve the value as taken by the demat authorities as there seems to be an error in mentioning the value as the said company is a private limited company and there cannot be any market value as it is not quoted in the Stock Exchange. Therefore, part of AO's finding about the value of demat statement is not correct. With reference to the future profit and also adoption of book value there is nothing brought on record by the AO how these amounts were arrived at. Therefore, we are unable to support the substitution of value even on facts. Be that as it may, first of all, the AO does not have power under the I.T. Act to substitute 'fair market value' for 'full value of consideration'. There are specific provisions for substitution of fair market

value for full value of consideration like computation under section 50C and 50D in the I.T. Act at present but in the relevant assessment year, the AO has no power to adopt the 'fair market value' in place of 'full value of consideration'. The method of computation as prescribed under section 48 superficially mention that "income chargeable under the head 'Capital Gains' shall be computed, by deducting from the full value of consideration received or accruing as a result of the transfer of the capital asset the following amount, namely: - (i) expenditure incurred wholly and exclusively in connection with such transfer, and (ii) the cost of acquisition of the asset and the cost of any improvement thereto". The 'full value of consideration' is clearly different from the 'fair market value'. Section 50D inserted w.e.f. 01.04.2013 permits fair market value being the full value of consideration in certain cases where as a result of transfer of capital asset by and assessee the consideration received or accruing is not ascertainable or cannot be determined. Under section 50C, there is special provision for substitution of full value of consideration in cases where Stamp Authorities adopts a particular value, i.e. deemed to be the full value of consideration received or accruing. Reference to Valuation Officer under section 55A is also for the limited purpose of arriving at the cost of asset at the fair market value in certain circumstances but it does not empower the AO to substitute the 'fair market value' to 'full value of consideration'. These two words, 'full value of consideration' and 'fair market value' are differently used in the Income Tax Act and fair market value cannot be substituted in place of full value of consideration, unless it is specifically empowered by the Act. The AO has also wrongly relied on section 2(22B)(i), which is as under: "the fair market value, in relation to a capital assets, means - (i) the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date". This fair market value substitution is applicable only to the situation where the AO is empowered to determine the fair market value under the Act. As far as computation of capital gains on sale of shares are concerned under section 48 it does not empower the AO to substitute the fair market value for the full value of consideration

16. The Hon'ble Supreme Court in CIT vs. George Henderson and Co. Ltd. (1967) 66 ITR 622 (SC) on the issue that the market value of the shares which were allotted at Rs. 136/- per share was Rs. 620/- per share considered the expression "full value of consideration" as occurring in section 12B(2) of the Indian Income Tax Act and , 1922, which is analogous to section 48 of the Act has held as under:-

" It is manifest that the consideration for the transfer of capital asset is what the transferor receives in lieu of the asset he parts with, namely, money or money's worth and, therefore, the very asset transferred or parted with cannot be the consideration for the transfer. It follows that the expression "full consideration" in the main part of section 12B(2) cannot be construed as having a reference to the market value of the asset transferred but the expression only means the full value of the thing received by the transferor in exchange for the capital asset transferred by him. The consideration for the transfer is the thing received by the transferor in exchange for the asset transferred and it is not right to say that the asset transferred and parted with is itself the consideration for the transfer. The main part of section 12B(2) provides that the amount of a capital gain shall be computed after making certain deductions from the "full value of the consideration for which the sale, exchange or transfer of the capital asset is made." In case of a sale, the full value of the consideration is the full sale price actually paid. The legislature had to use the words "full value of the consideration" because it was dealing not merely with sale but with other types of transfer, such as exchange, where the consideration would be other than money. If it is therefore held in the present case that

the actual price received by the respondent was at the rate of Rs.136 per share the full value of the consideration must be taken at the rate of Rs.136 per share. The view that we have expressed as to the interpretation of the main part of section 12B(2) is borne out by the fact that in the first proviso to section 12B(2) the expression "full value of the consideration" is used in contradistinction with "fair market value of the capital asset" and there is an express power granted to the Income-tax Officer to "take the fair market value of the capital asset transferred" as "the full value of the consideration" in specified circumstances. It is evident that the legislature itself has made a distinction between the two expressions "full value of the consideration" and "fair market value of the capital asset transferred" and it is provided that if certain conditions are satisfied as mentioned in the first proviso to section 12B(2), the market value of the asset transferred, though not equivalent to the full value of the consideration for the transfer, may be deemed to be the full value of the consideration. To give rise to this fiction the two conditions of the first proviso are (1) that the transferor was directly or indirectly connected with the transferee, and (2) that the transfer was effected with the object of avoidance or reduction of the liability of the assessee under section 12B. If the conditions of this proviso are not satisfied the main part of section 12B(2) applies and the Income-tax Officer must take into account the full value of the consideration for the transfer."

17. In CIT vs. Gillanders Arbuthnot & Co. (1973) 87 ITR 407 (SC) Their Lordships after applying the principles enunciated in George Henderson and Co. Ltd. supra has observed and held as under (page 419):-

"Now let us see what is the impact of section 12B(2) on the transaction? Under that provision, the amount of capital gains has to be computed after making certain deductions from the full value of the consideration for which the sale is made. What exactly is the meaning of the expression "full value of the consideration for which sale is made"? It is the consideration agreed to be paid or is it the market value of the consideration? In the case of sale for a price, there is no question of any market value unlike in the case of an exchange. Therefore, in case of sales to which the first proviso to sub-section (2) of section 12B is not attracted, all that we have to see is what is the consideration bargained for. As mentioned earlier, to the facts of the present case, the first proviso is not attracted. As seen earlier, the price bargained for the sale of the shares and securities was only rupees seventy-five lakhs. The facts of this case squarely fall within the rule laid down by this court in Commissioner of Income-tax vs. George Henderson & Co. Ltd. Therein this Court observed:-

"In case of a sale, the full value of the consideration is the full sale price actually paid. The legislature had to use the words "full value of the consideration" because it was dealing not merely with sale but with other types of transfer, such as exchange, where the consideration would be other than money. If it is therefore held in the present case that the actual price received by the respondent was at the rate of Rs.136 per share the full value of the consideration must be taken at the rate of Rs.136 per share. The view that we have expressed as to the interpretation of the main part of section 12B(2) is borne out by the fact that in the first proviso to section 12B(2) the expression "full value of the consideration" is used in contradistinction with "fair market value of the capital asset" and there is an express power granted to the Income-tax Officer to "take the fair market value of the capital asset transferred" as "the full value of the consideration" in specified circumstances. It is evident that the legislature itself has made a distinction between the two expressions "full value of the consideration" and "fair market value of the capital asset transferred" and it is provided that if certain conditions are satisfied as

mentioned in the first proviso to section 12B(2), the market value of the asset transferred, though not equivalent to the full value of the consideration for the transfer, may be deemed to be the full value of the consideration. To give rise to this fiction the two conditions of the first proviso are (1) that the transferor was directly or indirectly connected with the transferee, and (2) that the transfer was effected with the object of avoidance or reduction of the liability of the assessee under section 12B. If the conditions of this proviso are not satisfied the main part of section 12B(2) applies and the Income-tax Officer must take into account the full value of the consideration for the transfer."

Applying the principles enunciated in that decision we think that the full value of the sale price received by the assessee was only rupees seventy-five lakhs. That being so, the capital gains made by the company were Rs. 27,04,772 as held by the High Court."

18 In K.P.Varghese vs. ITO (1981) 7 Taxman 13(SC); (1981) 131 ITR 597 (SC) it has been held vide para 15 and 18 as under:-

"15. It is, therefore, clear that sub-section (2) cannot be invoked by the revenue unless there is understatement of the consideration in respect of the transfer and the burden of showing that there is such understatement is on the revenue. Once it is established by the revenue that the consideration for the transfer has been understated or, to put it differently, the consideration actually received by the assessee is more than what is declared or disclosed by him, sub-section (2) is immediately attracted, subject, of course, to the fulfillment of the condition of 15 per cent or more difference, and the revenue is then not required to show what is the precise extent of the understatement or, in other words, what is the consideration actually received by the assessee. That would in most cases be difficult, if not impossible, to show and hence sub-section (2) relieves the revenue of all burden of proof regarding the extent of understatement of concealment and provides a statutory measure of the consideration received in respect of the transfer. It does not create any fictional receipt. It does not deem as receipt something which is not in fact received. It merely provides a statutory best judgment assessment of the consideration actually received by the assessee and brings to tax capital gains on the footing that the fair market value of the capital asset represents the actual consideration untruly declared or disclosed by him. This approach in construction of sub-section (2) falls in line with the scheme of the provisions relating to tax on capital gains. It may be noted that section 52 is not a charging section but is a computation section. It has to be read along with section 48 which provides the mode of computation and under which the starting point of computation is "the full value of the consideration received or accruing". What in fact never accrued or was never received cannot be computed as capital gains under section 48. Therefore, sub-section (2) cannot be construed as bringing within the computation of capital gains an amount which, by no stretch of imagination, can be said to have accrued to the assessee or been received by him and it must be confined to cases where the actual consideration received for the transfer is understated and since in such cases it is very difficult, if not impossible, to determine and prove the exact quantum of the suppressed consideration, subsection (2) provides the statutory measure for determining the consideration actually received by the assessee and permits the revenue to take the fair market value of the capital asset as the full value of the consideration received in respect of the transfer.

18. We must, therefore, hold that sub-section (2) of section 52 can be invoked only where the consideration for the transfer has been understated by the

assessee or, in other words, the consideration actually received by the assessee is more than what is declared or disclosed by him and the burden of proving such understatement or concealment is on the revenue. This burden may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is understatement or concealment of consideration in respect of the transfer. Subsection (2) has no application in case of an honest and bona fide transaction where the consideration received by the assessee has been correctly declared or disclosed by him, and there is no concealment or suppression of the consideration..... "

19. . In Rupee Finance & Management (P) Ltd. (2008) 22 SOT 174 (Mum); (2009) 120 ITD 539 (Mum) it has been held in penultimate para of the order that:

" As already held in the order of Rupee Finance & Management Pvt. Ltd. there is no allegation much less, any evidence to show that these assesses before us have received monies in excess of amounts of sale consideration recorded and disclosed in the transaction for the sale of shares. The first appellate authority has rightly noted that under section 48 the starting point for computation of capital gains is the amount of full value of consideration received or accruing as a result of transfer of the capital asset. The Hon'ble Supreme Court in the case of K.P.Varghese (supra) held that sub-section (2) of section 52 can be invoked only when the full value of the consideration is received in respect of a transfer is shown at a lesser figure than that which is actually received by the assessee. It further laid down that the burden of proving such understatement of consideration is on the revenue and that the sub-section has no application in the case of a bona fide transaction, where the true consideration received by the assessee has been declared or disclosed by him. Section 50C, has come into the statute only with effect from 1.4.2003 by Finance Act, 2002 and is not applicable to the impugned assessment years. Hence, for the period prior to the insertion of section 50C no addition can be made by invoking the ratio of this section. The first appellate authority at page 21 of his order has rightly observed that, what in fact never accrued or was never received cannot be computed as capital gain. He relied on the decision of the Calcutta High Court in the case of CIT vs. Smt. Nandini Nopani (1998) 230 ITR 679. He rightly held that it is manifest that the consideration for the transfer of capital asset is what the transferor receives, in lieu of assets he parts with, i.e. money or monies worth and that the expression 'full consideration' cannot be construed as having reference to the market value of the assets transferred but refers to the price bargained for by the parties and it cannot refer to the adequacy of the consideration. He also rightly observed that the Legislature has used the words 'full value of the consideration' and not 'fair market value of the assets transferred'. He recorded that the Assessing Officer has not brought on record any material to show that the assessee has received more than what has been disclosed in the books and under these circumstances the difference cannot be brought to tax under the head 'Capital gains'. We fully agree with these findings and the appeals filed by the revenue fail."

20. In view of the principles laid down above, we cannot uphold the orders of the AO and the CIT(A) in redetermining the full value of consideration by adopting the fair market value. Since the provisions of the Act does not provide for substitution of the values and the said provisions for substitution provided under the Act is not applicable to the facts of the case, we cannot approve the action of the AO in revaluing the sale price. Similar view was taken by the Coordinate Bench in the case of MGM Shareholders Benefit Trust

(supra) wherein the ITAT ultimately did not approve the substitution of sale price on the facts of that case. The final finding in para 41 is as under: -

"41. There is no quarrel on the principle of law laid down in the other decisions relied on by Id. D.R. However, in view of the principles enunciated by the Hon'ble Supreme Court, in the above decisions referred in para 31 to 36 and the Tribunal decision in para 37 of this order we are of the view that the full value of the sale price received by the assessee was only Rs.0.10p Per share and, hence, the short term capital loss shown by the assessee at Rs.5,21,28,059/- is accepted and the order passed by the Assessing Officer and the Id. CIT(A) in this regard are set aside. The grounds taken by the assessee are, therefore, allowed and the grounds taken by the revenue are rejected." 21. In view of the above, we have no hesitation in allowing the grounds raised by the assessee on the issue and direct the AO to adopt the full value of consideration as received by the assessee and to recompute the long term capital gains or losses accordingly. The orders of the AO and the CIT(A) to that extent are modified. Ground is allowed. "

Thus, it is seen that the approach of the Assessing Officer as well as the CIT(A) is against the legal precedents on the issue. Respectfully following the legal precedents cited supra, we direct the Assessing Officer to adopt the full value of consideration as received by the assessee on sale of shares of M/s. Silicon Builders at cost to be the full consideration for computation of capital gains on such sale."

9.1 As the issue under dispute is materially identical to the decision of the coordinate bench in the said case, respectfully following the same, we uphold the order of the CIT(A) in directing the Assessing Officer to delete the addition made by him on account of long term capital gains, since the decision of the CIT(A) is in consonance with the decision of the ITAT.

10. In the result, appeal of the revenue is dismissed.

Pronounced in the open court on 15th July, 2016

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 15th July, 2016

kv

Copy to:-

- 1) ACIT, Circle – 2(2), 8th Floor, B Block, Room No. 824, IT Towers, AC Guards, Hyderabad – 500 004*
- 2) M/s G2 Corporate Servcies Ltd., F. No. 202, P.No. D-19, Gayatri Arcade, Vikrampuri Colony, Karkhana, Secunderabad.*
- 3) CIT(A) - 2, Hyderabad*
- 4) Pr. CIT-2, Hyderabad*
- 5) The Departmental Representative, I.T.A.T., Hyderabad.*