IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL NO. 34 OF 2022

Vidarbha Veneere Industries Ltd.
(In Liquidation),
Office of Official Liquidator,
Civil Lines, Nagpur. .....PETITIONER.

-VERSUS-

Income Tax Officer,
Ward-7(1), Civil Lines,
Nagpur. .....RESPONDENT.

Mr. R.R.Dawda, Adv. for the appellant.
Mr. Bhushan N. Mohata, Adv.for the respondent.

CORAM : AVINASH G. GHAROTE &
ABHAY J. MANTRI, JJ.

DATE : 1ST APRIL, 2025

ORAL JUDGMENT (PER: Avinash G. Gharote, J.)

Heard.

2. Rule. Rule returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. The appeal questions the order dated 24/03/2017 (Pg.72), passed by the learned Tribunal in MA No.07/Nag/2016, whereby the claim of the appellant of non-applicability of Section 50C of the Income Tax Act, 1961

(for short “IT Act”) to a property held in leasehold right has been negated by dismissing the appeal.

4. Mr. Dawda, learned counsel for the appellant, by relying upon the language of Section 50C read with the definition of ‘Capital Asset’ as defined in Section 2(14) of the IT Act submits, that since the lands in question which are Plot Nos.G-17, 18, 6 and 7, situated in the MIDC, Nagpur, were transferred by the MIDC, in favour of M/s. Vidarbha Veneeer Industries Ltd. by way of a lease dated 31/03/1979, rights under which have been assigned by the lessee, by way of a Deed of Assignment dated 30/08/2004 in favour of the present appellant (Pg.118), the same would not attract Section 50C of the IT Act and therefore, the income tax would not be payable on the sale consideration. In support of his contention learned counsel placed his reliance upon **Atul G.Puranik v. Income Tax Officer, (2011) 30 CCH 0239 MumTrib**.

4. Mr.Mohata, learned counsel for the respondent, supports the impugned decision contending, that the manner in which, a property is held, is immaterial, for the purpose of applicability of Section 50C of the IT Act.

5. Section 50C of the IT Act reads as under:-

> **“50C.** (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of

stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer : *(emphasis supplied)*

[**Provided** that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account [or through such other electronic mode as may be prescribed], on or before the date of the agreement for transfer:]

[**Provided also** that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and [ten] per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.]"

The expression 'Capital Asset' has been defined in Section 2(14)of the IT Act reads as under:-

"(14) "capital asset" means —

(a) property of any kind held by an assessee, whether or not connected with his business or profession;" *(emphasis supplied)*

6. The expression used in Section 50C of the IT Act is 'consideration

received or accruing as a result of transfer of a capital asset, being land or building or both'. This will have to be related to the definition of 'capital asset', as occurring in Section 2(14) of the IT Act. A perusal of the definition of 'Capital Asset' as contained in Section 2(14) of the IT Act would indicate, that it includes property of any kind, "held by an assessee". What is material to note is, that the expression is "held by an assessee" and not owned by an assessee. Insofar as the immovable property, i.e. land or building is concerned, there are number of ways, in which it can be held. The holding can be either as an owner, lessee, sub-lessee, allottee, tenant, licensee, gratuitous licensee or any other mode, permissible or recognized by law. The expression "held by an assessee" therefore does not restrict the manner in which the land or building can be held. The holding of land, is merely a method in which rights to the land, can be held or acquired, by a person. That cannot be in any manner equated with land or building, but rather, would be a species of the right to hold it, which as indicated above, are of multiple nature.

7. We, therefore, find that merely because the land was originally allotted by the MIDC by way of a lease to the predecessor of the appellant, who in turn has received the same by way of an assignment, that being one of the modes of transfer, of land or building, the mere use of a particular mode of transfer, cannot create any exception *vis-a-vis* the holding of the land or building by the Assesee. The word 'transfer' as used in Section 50C(1) of the IT Act, also cannot be used in a restricted sense and will have to be given widest amplitude, considering the nature and purpose of the section

and thus would include all modes and methods of transfer as are permissible and recognizable in law.

8. **Atul Puranik** (*supra*) relied upon by the learned counsel for the appellant does not consider the effect and import of Section 2(14)(a) in conjunction with the language used in section 50C of the IT Act, and merely goes on to hold, that since the land is held in a leasehold right, it cannot be equated with land or building, which does not address the issue altogether, neither does it consider the position, that mode of holding of a property, cannot be equated with the property itself, as against which what Section 50C read with Section 2(14) of the IT Act speaks about, is the property. We are therefore, not in agreement with what has been held in **Atul Puranik** (*supra*). In **Commissioner of Income Tax v. Greenfield Hotels and Estates Pvt.Ltd., (2016) 389 ITR 0068 (Bom),** all that has been said, is that since the Tribunal did not challenge its earlier view, it was binding upon it. As indicated above, **Atul Puranik** (*supra*), does not address the issue at all in light of the language of the statutory provision and therefore cannot be considered as a good law, in view of which, **Greenfield Hotels and Estates Pvt. Ltd.** (*supra*) would also be of no assistance. In view of the above discussion, we do not see any reason to entertain the appeal. The same is therefore dismissed.

9. Rule stands discharged. No order as to costs.

(ABHAY J. MANTRI,J) **(AVINASH G. GHAROTE, J)**

KHUNTE