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Huzaima & Ikram
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Kind regards

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Rising inequalities

by

Huzaima Bukhari & Dr. Ikramul Haq

Rajat Nag, the Managing Director of Asian Development Bank (ADB), has urged regional governments "to tackle rising income inequality with more urgency, warning any delay could undermine social cohesion and economic growth". Failing to address the problem now, he said, could spark further dissatisfaction and lead governments to resort to populist measures to appease their citizens. But populist measures like fuel subsidies and cash grants, Mr. Rajat warned, "are taxing on state coffers and could result in financial instability in the longer term".

In the entire region, Pakistan is no exception, rising inequality is destroying the entire social fabric and this has critical political ramifications. Mr. Rajat, while speaking to reporters in Singapore on April 23, 2012, ahead of the ADB's May 2-5 annual meeting in Manila, aptly observed that "if policymakers do not address the problem now, "there will be greater pressure later to maybe take on populist policies which are not economically very wise because there is mounting pressure and for political reasons to start making concessions. But if you handle them early enough, those pressures can be dissipated."

A study released by the Manila-based bank has also warned that "Asia's rising wealth is fuelling inequality and income disparities, with the underprivileged at risk of being sucked into a "vicious circle" of poverty and neglect. Mr. Rajat also emphasised that "a first step towards narrowing the income gap would be the reduction of general subsidies — including those on fuel and cash transfer programmes". This money, he said, could be better spent on public health, education and in building human capital.

The following two points raised by ADP are worth considering by all:

- Governments need to have better targeted social expenditures and social protection schemes.
- While they need to look at fiscal expenditures being made on the social expenditures, they should ensure that the subsidies are not too broad and that the tax bases are made broader.

Despite the region's fast-paced economic expansion, rising income inequality has had a "dampening impact on economic growth reducing poverty," Mr. Rajat added. In Asia, the Gini coefficient — the main measure for income inequality — has risen from 0.33 to 0.46 over the last 20 years, according to ADB figures. "If inequality had remained stable in Asia from 1990 to 2010 we reckon that about 240 million more people would have been lifted out of poverty than has been the case," Mr. Rajat said.

In our article *Poverty figures* (**Business Recorder**, 21 October 2011), we observed that "the single most devastating factor for increased income and wealth inequalities remains the regressive tax system in Pakistan. Incidence of tax on the poor during the last 20 years has increased substantively (35%) while the rich are paying no tax on their colossal income and wealth—for them tax burden has decreased by 18% for the same period. Since Zia's take-over in July 1977, regressive taxes have gradually replaced progressive ones—the real brunt came in 1991 when presumptive taxes were introduced and the rich got cover of laws like Protection of Economic Reforms Act, 1992. The final nail in the coffin of progressive taxation came during the period of Musharraf-Shaukat when the rich were given exemption from wealth taxation, capital gain taxation and personal income tax rates were slashed for higher income earners".

Commenting on our article, Mr. Yousaf Nazar, author of a well-researched book, ***Balkanization and Political Economy of Pakistan***, observed:

"The incidence of poverty (based on $2/day) was 61% in Pakistan according to the World Bank development indicators for 2006. Given the double digit food inflation, it only could be worse now. Praful Patel (then Vice President of South Asia World Bank) personally told me in Karachi in 2007 that it was 74% in 2005. How it dropped dramatically is beyond me. This is the number I quoted in my book and in DAWN articles I wrote then. It has to be around 70% now because Pakistan has had one of the worst (among worst five) inflation rates during 2007-2011. We need to put 2005 numbers in the context of the double digit food inflation (or the sensitive price indicator). This is the most straight forward approach to analyse if the poverty number has gotten better or worse. I am sure you know the answer".

All available data and studies confirm that rich-poor divide in Pakistan is increasing alarmingly. According to conservative estimates, 70% of population is poor in three broad categories, namely, 'transitory poor', 'chronic poor' and 'extremely poor'. The definition of transitory poor is those people who live below the poverty line for most of the time, but not always during a defined period. Chronic and extremely poor are those households that are always below the poverty line, all the time during a defined period. Similarly, on the other side, 11% and 19% of total non-poor (above the poverty line) have been classified as 'transitory vulnerable' and 'transitory non-poor', respectively. This portrays an alarming situation—more and more people are moving from transitory category to chronic category, courtesy regressive taxation, inequitable distribution of income and wealth, monopoly over assets by a few and wasteful expending by the government. Since long, rulers in Pakistan—civil and military alike—have been showing extreme apathy towards the poor. They are not at all interested to provide economic justice to masses, and alleviate the poor from subsistence level.

Unfortunately, nobody in Pakistan has conducted a comprehensive research to determine all the dimensions of rich-poor divide. Different studies (notably that of late A. R. Kamal and Talat Anwar) provide estimates of various inequality indices in Pakistan wherein the Lorenz Curve and Gini Coefficients have been most commonly used. According to Kamal, studies on income inequality in Pakistan show different estimates arising due to the following five important factors. Firstly, different studies use different data sets, some based on Household Income and Expenditure Surveys, others that make use of income tax data, and some other studies splice the two sets of data. Second, while some studies consider inequalities in income, others consider inequalities in the consumption expenditures. Third, while some studies are done for Pakistan as a whole, others examine income inequalities in both the rural and urban areas. Fourth, some studies report income inequalities across households; others report inequalities across population or earners. Fifth, some researchers classify data by deciles prior to estimation of Gini-coefficient; others employ the income intervals that are not uniform. All studies, however, confirm that income inequality in 2000-2007 had been the maximum compared to any time period in the history of Pakistan. The poorest 30% lost their share while the richest 20% gained in both the urban and rural areas during Musharraf-Shaukat era.

According to UN Official report, from 1987-99 the Gini Coefficient for Pakistan was in the range of 0.33 to 0.43, which deteriorated to 0.68 in 2006, yet Musharraf and his “technocrat team” (sic) keep on claiming wonderful ‘economic turnaround” during the PML(Q) regime. It is a national shame and disgrace; for their insensitivity, indifference and apathy towards the poor masses of Pakistan for which, history will never forgive them.

Inequalities in income in Pakistan, as elsewhere, largely reflect inequalities in the distribution of assets. Since the poor have virtually no assets and the lower middle class own very few assets, income distribution is skewed. Distribution of state land; development of plots and houses for the common man at affordable prices and installments; the sale of shares of public enterprises in smaller lots; human resource development; and credit to the micro, small and medium enterprises are some of the ways that might help the poor in acquiring assets. However, the role of official bodies set up by federal and provincial governments in this regards (much-publicized ‘Benazir Income Support Programme’ or ‘Khushal Fund’!) is inadequate—due to various weaknesses, even the allocated funds have either not been distributed or mis-utilised.

Income inequalities in Pakistan have increased sharply during the last 25 years and the trend continues unabated despite tall claims (sic) of poverty reduction. The main factors that govern personal income distribution include: distribution of assets; functional income distribution; transfers from other households, government and rest of the world; and tax and expenditure structure of the government while the single most devastating factor for increased income and wealth inequalities remains the regressive tax system.

Study of Pakistan from this political economy perspective is very crucial as our society is fast moving towards dehumanizing characteristics. We are facing economic disparities, starvation, scarcity of essential commodities, non-affordability of eatables, power shortages and lack of essential social services. The Great Divide in today's Pakistan between the rich and the poor is assuming alarming proportions and may eventually lead to civil commotion, if curative measures are not taken up on a war-footing.

CGT Ordinance 2012 Promulgated

President Asif Ali Zardari has promulgated the Capital Gains Tax Ordinance 2012 to give a boost to liquidity on stock market.

The Ordinance will become part of the Finance Bill 2012 to be placed before the National Assembly on May 25th and will only apply to investor portfolio on ready market.

Under the revised CGT regime, 10 percent CGT tax would be collected on the holding of shares for the period of less than six months while on the holding of shares for a period between six to 12 months the CGT rate would be at the rate of 8 percent.

This tax rate would be frozen for the period of two years.

The filing of the tax returns will be compulsory along with wealth tax statements for all investors of stock market.

The Capital Gains Tax collection and deduction would be carried out by National Clearing Company of Pakistan Limited (NCCPL), which has been declared a tax collecting agent under the amended law.

As such, there will be no direct contact between investors and the officials of FBR.

The President has also signed the Stock Exchange (Corporatization, Demutualization and Integration) Bill, 2009.

The joint session of the Parliament had unanimously passed this bill on March 28, 2012. – *Courtesy Business Recorder*

Centre plans to extend Sales Tax Act 1990 to Fata, Pata

The federal government is planning to extend the Sales Tax Act 1990 to the Federally Administered Tribal Areas (Fata) and Provincially Administered Tribal Areas (Pata) in the upcoming budget (2012-13) to ensure applicability of the 16 percent standard rate of sales tax on the units operating in tribal areas.

Sources told here on Tuesday that the Ministry of Finance and the Federal Board of Revenue (FBR) are reviewing budgetary proposal to extend Sales Tax Act 1990 to the Fata and Pata from new financial year.

The basic rationale behind the proposal is to ensure applicability of sales tax law across the country without discriminatory treatment to specific areas.

The discriminatory treatment to the industrial units in specific area for the applicability of sales tax would end on extension of the Sales Tax Act 1990 to the Fata and Pata.

The budget markers wanted to expand the scope of the Sales Tax Act 1990 to bring manufacturing units and retail sectors located in Fata/Pata into the sales tax regime.

In case the Sales Tax Act, 1990 has been extended to Fata/Pata, all provisions of the sales tax law would be applicable on the units operating in tribal areas.

The industrial and manufacturing units of the Fata and Pata would be subjected to standard rate of 16 percent sales tax following extension of the Sales Tax Act to the said areas.

Any unit engaged in manufacturing or wholesaler, dealer or supplier having annual turnover of Rs 5 million in Fata/Pata areas would operate under the standard sales tax regime.

When contacted, a tax expert said that the goods produced in the industrial and manufacturing units of the Fata and Pata are subjected to tax in the territorial areas of Pakistan.

Tax is applicable on crossing of finished products from the non-tariff areas to the tariff areas.

Legally, there is no tax in case the goods produced in the tribal areas are subsequently consumed in the same areas.

Practically, the goods manufactured by the units of tribal areas are being sold in the tariff areas of Pakistan.

This has given a disadvantage to the industrial units operating in the documented regime with applicability of all kinds of taxes.

If the goods of the non-tariff areas are being sold in the tariff areas of Pakistan, this places the manufacturing units of Pakistan at a disadvantage.

The companies working within the territorial jurisdiction of Pakistan become un-competitive due to non-applicability of taxes on the goods manufactured in the trial areas and sold in the tariff areas.

The applicability of the Sales Tax Act 1990 to the tribal areas would bring uniformity in the taxation across the country.

This would also end distortion in the sales tax regime by applying standard rate of 16 percent sales tax throughout the country, sources added. – *Courtesy Business Recorder*

Finance Bill vetting: FBR asks Law Division to depute experienced draftsmen

The Federal Board of Revenue has requested the Law and Justice Division to depute experienced draftsmen at the FBR House from May 24-25, 2012 for vetting of the Finance Bill (2012-13) covering new taxation measures to be announced in the federal budget on May 25, 2012.

Sources told here on Tuesday that the FBR has issued a letter dated April 24, 2012 to the Law and Justice Division for vetting of the budget documents.

According to the FBR, the federal budget 2012-13 has been scheduled to be announced on May 25, 2012.

It is therefore, requested that the concerned officials of the Law and Justice Division should visit FBR House on May 24, 2012 and remain available in the FBR till announcement of budget speech on May 25, 2012.

Through a budget circular number 1 of 2012 issued here on Tuesday, the FBR has informed the tax officials engaged in the budget exercise that the summary for the Cabinet would include summary of each new taxation measures, revenue effect of each tax measure, aggregated revenue effect and other details, if any.

The summary for the Cabinet would be compiled in the FBR's Composing Room under the personal supervision of the Co-ordinator/Deputy Co-ordinator Budget.

All sections involved in the budget exercise should ensure smooth functioning of their computer equipments in co-ordination with the Pakistan Revenue Automation Limited (Pral) and convey their requirements of computer stationary etc to the concerned Administration Section well in advance, budget circular added. – *Courtesy Business Recorder*

Tariff for motorcycle CKD kits likely to be cut

The government has decided to reduce tariff for motorcycle CKD kits for new entrants from 15 percent to 5 percent for five years, arguing that the motorcycle industry is not nascent anymore, sources in the Engineering Development Board (EDB) told *Business Recorder* on Tuesday.

The tariff on CBUs has also been reduced from 65 percent to 35 percent, they said.

These incentives have been approved by a tariffs rationalisation committee headed by the Deputy Chairman, Planning Commission, Dr Nadeemul Haq.

In January this year, the committee (already constituted by the ECC) had been directed by Prime Minister Yousuf Raza Gilani, who is also the chairman of Cabinet Committee on Investment (CCoI) to decide about a proposal of Board of Investment (BoI) regarding incentives to a Japanese company Yamaha Motorcycle.

Official documents available with the *Business Recorder* showed that the CCoI had been informed that M/s Yamaha Motors Japan planned to establish a facility for manufacturing motorcycles in National Industrial Park, Bin Qasim Karachi at a cost of $150 million.

The company will manufacture motorcycles with an engine capacity of 125cc and above and will offer electronic fuel injection (EFI) engine, automatic transmission and environment-friendly exhaust system consistent with European standards.

The Tariff rationalisation committee met on April 5, 2012, which was briefed by the Chairman of the National Tariff Commission (NTC) about the background of the case.

He stated that a meeting of the tariff rationalisation committee was held on January 18, 2012, in which it was decided that NTC, in consultation with EDB, would conduct a study and suggest recommendations pertaining to rationalisation of duty on CKD kits and CBU within a month.

The NTC considered the following issues in consultation with major stakeholders: (i) whether the domestic industry was adequately protected or the protection offered an industry was on the higher side and (ii) whether the incentive in the existing scheme for new entrants was adequate or not?

He further added that an in-depth analysis of issues revealed the following with regard to motor cycle industry in Pakistan:

(i) The industry survived behind high tariff walls.

However, due to lack of competition the industry could not be developed as an efficient industry and remained as a 'negative value-added industry'.

This conclusion is true for both motorcycle industry and the vendor industry.

ii) Due to infinite protection, which at present is prohibitive for imports of parts as well as CBU motor cycles, manufacturers did not invest in research, development and innovation.

iii) The industry is as old as 40 years and no more a 'nascent industry'.

It also cannot be argued that the industry cannot achieve volume of production necessary or achieve economies of scale.

The protection of the vendor industry increased over time in-spite of trade liberalisation in other sectors, after the end of 'Deletion Policy' in 2005.

Insiders in the EDB argued that there was a lack of policy for new entrants in the motorcycle industry and they were heavily dependent upon clones of 'Honda 70' and Chinese parts only.

The existing vendor base of parts manufacturers helped the mushroom growth of copying assemblers but discouraged Research & Development (R&D). – *Courtesy Business Recorder*

Exchange companies transactions: 0.2 percent WHT on cash withdrawals abolished

To facilitate exchange companies, the Federal Board of Revenue has abolished 0.2 percent withholding tax on cash withdrawal from bank accounts exclusively dedicated for authorised business related transactions of the exchange companies duly licensed/authorised by the State Bank of Pakistan (SBP).

In this connection, the FBR has issued an SRO.383(I)/2012 on Tuesday to announce specific exemption from advance tax on cash withdrawal by exchange companies as authorised by State Bank of Pakistan (SBP).

According to the notification, the provision of section 231A of the Income Tax Ordinance 2001 shall not apply in respect of any cash withdrawal by exchange companies licensed and authorised by the State Bank of Pakistan, specifically on their bank accounts exclusively dedicated for authorised business related transaction.

This is subject to the condition that the exemption under this clause shall be available to exchange companies who are issued exemption certificate by the concerned Commissioner Inland Revenue for a financial year.

Secondly, the Commissioner shall issue the exemption certificate after obtaining relevant details and particulars of the bank accounts.

Following is the text of the notification issued here on Tuesday: In exercise of powers conferred by sub section (2) of section 53 of the Income Tax Ordinance, 2001 (XLIX of 2001), the Federal Government is pleased to direct that the following further amendments shall be made in the Second Schedule to the said Ordinance, namely:

In the aforesaid Schedule:

In part-I In clause 61, after sub clause (xliii), the following new sub clause shall be added, namely:

---- "(xliv) Any amount donated to Federal Board of Revenue Foundation", and

In clause 66, after sub clause (xxvii) the following new sub clause shall be added, namely:

---- "(xxviii) Federal Board of Revenue Foundation,".

In part IV, after clause (61), the following new clause shall be inserted, namely:-

---- "(61A) The provision of section 231A shall not apply in respect of any cash withdrawal by exchange companies duly licensed and authorised by the State Bank of Pakistan on their bank account exclusively dedicated for their authorised business related transaction:

Provided that

---- (a) exemption under this clause shall be available to exchange companies who are issued exemption certificate by the concerned exemption certificate by the concerned Commissioner Inland Revenue for a financial year; and

---- (b) the Commissioner shall issue the exemption certificate after obtaining relevant details and particulars of the bank accounts". – *Courtesy Business Recorder*

Turnover tax regime to continue, insists FBR

The Federal Board of Revenue (FBR) is planning to continue with one percent turnover tax regime in budget (2012-2013) to avoid a revenue loss of around Rs 20 billion during the next fiscal year.

Sources told here on Tuesday that keeping in view the huge revenue loss, it was not feasible to reduce turnover tax to its previous rate of 0.5 percent.

They said that any move to abolish it would cause a massive revenue loss to the national exchequer.

Prior to the budget 2010-11, the 0.5 percent tax on declared turnover was chargeable in cases of companies declaring losses.

With the argument to rationalise the levy vis-à-vis taxes payable in corporate cases returning taxable income, the rate of minimum tax for cases showing losses was enhanced to one percent.

As a result, the business and trade did not accept this enhancement in the turnover tax rate under Section 113 of the Income Tax Ordinance 2001.

The FBR had received a number of presentations from different sectors for reduction in the turnover tax rate since 2010-11.

Since enhancement in the rate of turnover tax, the FBR has reduced tax under Section 113 of the Income Tax Ordinance 2001 on Pakistan International Airlines Corporation (PIAC), petroleum agents and distributors and poultry industry, including poultry breeding, broiler production, eggs production and poultry feed production.

During 2010-11, turnover tax was reduced from one percent to 0.5 percent for refineries and oil marketing companies (OMCs).

The FBR had also allowed 80 percent rebate on payment of turnover tax by pharmaceutical distributors, distributors of fast moving consumer goods and distributors of fertilisers.

The FBR had already reduced turnover tax from one to 0.5 percent for Sui Northern Gas Pipelines (SNGPL) and the Sui Southern Gas Company Limited (SSGC).

The rate of minimum tax was enhanced from 0.5 percent to 1 percent and minimum tax shall be applicable where a loss is suffered under the conditions as described in sub-section (1) of Section 113.

The same applies in the case of an association of persons having turnover of Rs 50 million or above in the tax year 2007 or in any subsequent tax year.

An individual having a turnover of Rs 50 million or above in the tax year 2009 or in any subsequent tax year shall also be liable to 1 percent tax on the turnover. – *Courtesy Business Recorder*

Senior bureaucrats visit FBR headquarters

Senior bureaucrats undergoing the 96th National Management Course visited FBR headquarters here on Tuesday.

The 61 officers and 11 faculty member group was led by Rector of National School of Public Policy (NSPP), Ismail Qureshi.

FBR's Member (SP&S) Azra Mujtaba briefed the visiting officers on the history, structure, significance and working of FBR.

The presentation was followed by an interactive question and answer session in which the visiting officers raised many questions.

Member (Inland Revenue), Shahid Hussain Asad, Member (Taxpayers' Audit), Hafiz Muhammad Anees, Member (HRM), Rana Seerat and Member (Administration), Muhammad Raza Baqir answered the group's questions.

Addressing the visiting group, Shahid Hussain Asad highlighted the steps taken by FBR to enhance revenues and to maximise enforcement and implementation.

He elaborated that the to-date revenue collection for the current financial year is higher than the corresponding period last year.

He emphasised how taxes are crucial for development of any country and it is our duty to pay taxes for national development.

Member (IR) thanked the National Management Course's participants for visiting FBR and for contributing to the interactive session and giving suggestive feedback.

A memorial shield was presented to Ismail Quershi by Member (TPA) on behalf of FBR.

Rector (NSPP) Ismail Qureshi thanked the senior officers of FBR for providing this opportunity for exchange of ideas, suggesting that this be a continuous process.

He added that we should continue working with zeal and keep on contributing towards nation building and appreciated the FBR's increased co-operation with provinces on revenue matters.

He also suggested setting up of a joint federal provincial Revenue organ like IRSA.

The Rector Ismail Qureshi presented a commemorative shield to FBR which was received by Member (IR). – *Courtesy Business Recorder*

Govt to end protection of motorcycle industry after 40 years

LAHORE: The government has decided tariff reduction for the new entrant in the motorcycle assembly business and completely built unit (CBU) import after protecting the domestic industry for 40 years.

According to the official documents available with The News the tariff reduction decision was made in the Cabinet Committee on Investment (CCOI) by issuing instruction to the Ministry of Commerce (MOC) to reduce the tariff for new entrant and CBU.

"The CCOI unanimously recommended reducing tariff for new entrants to 5 percent from 15 percent for a duration of five years and (duty on) CBU to 35 percent from 65 percent," the document read.

The CCOI has instructed the MOC to move a summary to the CCOI accordingly. Now the MOC has prepared the summary for the CCOI, which would be tabled in the next meeting.

According to the available official documents CCOI held a follow-up meeting of the tariff rationalisation case of Motorcycle Project in Pakistan on April 5 with the Deputy Chairman of the Planning Commission in chair.

During the meeting the Minister of State of Board of Investment BOI Saleem H Mandiwala observed that the main barrier in the investment of motorcycle industry was the high rate of tariff, which needs to be curtailed for new entrants.

Similarly, the Deputy Chairman Planning Commission, Dr Nadeem-ul-Haq observed that artificial barriers need to be removed and protection to the local industry should end after a long period of 40 years. "Holistic approach is required rather than imposing or reducing duty on components and subcomponents," he asserted.

The Chairman of the National Tariff Commission in his presentation highlighted the background of the case and stated that earlier a meeting of the tariff rationalisation committee was held on 18th January 2012 wherein it was decided that NTC in consultation with Engineering Development Board (EDB) would conduct a study and put-forth the recommendations pertaining to rationalization of duty on CKD and CBU within a month's time.

NTC after doing all the necessary procedures considered the following issues in consultation with major stakeholders. Whether the domestic industry is adequately protected or the protection offered an industry is or the higher side; and whether the incentive in the existing scheme for new entrants are adequate or not? He further added that analysis of the issues revealed the following with regard to motorcycle industry in Pakistan:

The industry survived behind high tariff walls. However, due to lack of competition the industry could not be developed as an efficient industry and remained as a 'negative value added industry'. This conclusion is true for both motorcycle industry and the vendor industry, NTC noted.

Due to infinite protection, which at present is prohibitive for imports of parts as well as CBU motor cycles, manufacturers heavily depended on easy resulted into lack of research an, development and innovation, NTC said.

The Industry is as old as 40 years and no more a 'nascent industry'. Therefore argument of nascent industry could not apply to the existing industry. – *Courtesy The News*

C.No.1(14)Jurisdiction/2011-55993-R Islamabad, the 19th April, 2012

ORDER

Subject: **Jurisdiction of Commissioner Inland Revenue, Regional Tax Office-II, Karachi.**

In exercise of the powers conferred under sub-section (1) of the section 209 of the Income Tax Ordinance, 2001, sub-section (1) of section 30 and section 31 of the Sales Tax Act, 1990, sub-section (1) of section 29 of the Federal Excise Act, 2005, and in supersession of the all earlier orders or notifications of the Board in respect of jurisdiciton of RTO-II, Karachi, (except the jurisdiciton of Chief Commissioner of RTO-II, Karachi) the Federal Board of Revenue is pleased to direct that the Commissioners of Inland Revenue specified in column (2), shall exercise the powers and functions, as specified in column (3), in respect of the persons or classes of persons or cases or classes of cases or areas as specified in column (4) of the Table below (excluding cases or classes of cases or persons or claases of persons assigned to other RTOs/LTUs.)

2. This notification shall take effect from 19th April, 2012.

TABLE

S. No.	Commissioner Inland Revenue	Powers & Functions	Jurisdiction
(1)	(2)	(3)	(4)
01.	Commissioner Inland Revenue (Zone-I), RTO-II, Karachi.	The Commissioner Inland Revenue shall exercise powers and perform functions as assigned in: (a). Income Tax Ordinance, 2001, and Rules thereunder; (b). Sales Tax Act, 1990 and Rules thereunder; (c). Federal Excise Act, 2005 Rules thereunder; (d). Wealth Tax Act, 1963 (Repealed) and (e). Finance Act, 1989 (Act No. V of 1989), as amended vide Finance Act, 2010	a) All Individuals, corporate or non-corporate persons or classes of persons of the following sectors whose place of business is situated in the areas, falling within the limits of former Civil Division Karachi:– I. Chemicals manufacturers/ distributors/whole sellers/ retailers/importers & exporters; II. Fertilizer, tobacco, glass, ply sheet, & soap manufacturers/ distributors/whole sellers/ retailers/importers & exporters; III. Contractor/builders & developers, Real estate;

			IV. Real estate agents/ property dealers; V. Advertising agencies/ agents/classified advertising/ booking agents/compaigners, media agents/advertisers/ production houses (film/ drama/TV commercials & voice over etc)/media composers/boarders/ hoarders; and VI. Print media/newspaper publishers distributors sole agents electronic media TV/Radio broadcasters channels & cable operators; (b) All cases of companies (other than the cases assigned to any other RTOs/LTU) whose names begin with alphabet I to J; (c) All non-corporate perons or classes of persons (other than those assigned to RTO Karachi & RTO-III, Karachi) falling within the territorial limits of Jamshed Town & Baldia Town. (d) All cases of directors of companies, partners of firms or member of AOP or Individuals or employees of the companies as specified in paragraph (a) above provided that where a person is a director, partner or member, in more than one compamy, firm or AOP, (as the case may be) jurisdiciton over his case shall lie with the Zone having jurisdiction over the company, firm or AOP, (as the case may be, whose

			name come first in alphabetical order. (e) Monitoring and Enforcement of withholding taxes under the Provisions of the laws and rules specified in column 3 (of the table) in respect of all withholding agents existing in the Zone-I of RTO-II, Karachi. (f) All cases of statutory agents/ representatives assessable under sections 172 and 173 of the Ordinance, falling within the former Civil Division Karachi, in respect of non-resident persons or classes of persons, whether their income arises in one province or more and existing in Zone-I, RTO-II, Karachi. (g) Cases or classes of cases or perons or classes of persons or areas assigned by FBR from time to time.
02.	Commissioner Inland Revenue (Zone-II), RTO-II, Karachi.	The Commissioner Inland Revenue shall exercise powers and perform functions as assigned in: (a). Income Tax Ordinance, 2001, and Rules thereunder; (b). Sales Tax Act, 1990 and Rules thereunder; (c). Federal Excise Act, 2005 Rules thereunder; (d). Wealth Tax Act, 1963 (Repealed) and (e). Finance Act, 1989 (Act No. V of 1989), as amended vide Finance Act, 2010.	a) All Individuals, corporate or non-corporate persons or classes of persons of the following sectors whose place of business is situated in the areas, falling within the limits of former Civil Division Karachi:– I. Pharmaceuticals manufacturers/ distributors/whole sellers/ retailers/ importers & exporters; II. Machinery & engineering equipment distributors/ whole sellers/retailers/ importers & expoerters; III. Food beverages/ice cream parlors

			manufacturers/ distributors/whole sellers/ retailers/importers & exporters; IV. Medical & surgical equipments/drug store and chemists; V. Flour mills/Vegetable ghee/ oil mills manfuactureres/ distributors/whole sellers/ retailers/importers & exporters; VI. Fish catching & fishers; VII. Warehouses/storages; VIII. Poultry farming & hatcheries; and IX. Carpets manufacturers/ distributors/whole sellers/ retailers/importers & expoerters; and (b) All cases of companies (other than the cases assigned to any other RTOs/LTU) whose names begin with alphabet K, L & P. (c) All non-corporate persons or classes* persons (other than those assigned to RTO Karachi & RTO-III Karachi) falling within the territorial jurisdiction of Shah Faisal Town & Shah Faisal Cantt & Korangi Town & Korangi Creek. (d) All cases of directors of companies, partners of firms or member of AOP or Individuals or employees as specified in paragraph (a) above provided that where a

* The word “of” missing.

			person is a director, partner or member, in more than one company, firm or AOP, (as the case may be) jurisdiction over his case shall lie with the Division having jurisdiction over the company, firm or AOP, (as the case may be),whose name come first in alphabetical order. (e) Monitoring and Enforcement of withholding taxes under the Provisions of the laws and rules specified in column 3 (of the table) in respect of all withholding agents existing in the territorial limites of Zone-II of RTO-II, Karachi. (f) All cases of statutory agents/ representatives assessable under sections 172 and 173 of the Ordinance, falling within the former Civil Division Karachi, in respect of non-resident persons Karachi, in respect of non-resident persons or classes of persons, whether their income arises in one province or more and existing in Zone-II, RTO-II, Karachi. (g) Cases or classes of cases or persons or classes of persons or areas assigned by FBR from time to time.
03.	Commissioner Inland Revenue (Zone-III), RTO-II, Karachi.	The Commissioner Inland Revenue shall exercise powers and perform functions as assigned in: (a). Income Tax Ordinance, 2001, and Rules thereunder; (b). Sale Tax Act, 1990 and Rules thereunder;	a) All Individuals, corporate or non-corporate persons or classes of perons of the following sectors whose place of business is situated in the areas, falling within the limits of former Civil Division Karachi:–

		(c). Federal Excsie Act, 2005 Rules thereunder; (d). Wealth Tax Act, 1963 (Repealed) and (e). Finance Act, 1989 (Act No. V of 1989), as amended vide Finance Act, 2010.	I. All architects/engineers/ lawyers/chartered accounts*; II. Non profit organization; III. Doctors/Hakeems/ Tabibs/Homeopaths & Clinics; IV. Hospitals/labs/nursing homes/maternity homes radiological/pathological labs; V. Courier services; VI. Beauty parlors/sliming centres & beauty saloons; VII. Transporters/transport services; VIII. Stevedoring/clearing & forwarding agents/freight forwarders; IX. Iron & steel manufacturers/ distributors/whole sellers/retailers/importers & exporters; X. Leather tanneries/ distributors/ whole sellers/retailers/importers & exporters. XI. Leather garments & leather good/distributors/ whole sellers/retailers/ importers & exporters; XII. Timber & furniture manufacturers/ distributors/whole sellers/ retailers/importers & expoertes; and XIII. Foot wears/shoes manufacturers/ distributors/whole sellers/

* Apparently the intended word is “accountants”.

			retailers/importers & exporters; (b) All cases of companies (other than the cases assigned to any other RTOs/ LTU) whose names begin with alphabet M; (c) All non-corporate persons or classes* perons (other than those assigned to RTO Karachi & RTO-III Karachi) falling within the territorial limits of SITE Town. (d) All cases of directors of companies, partners of firms or member of AOP or individuals or employees as specified in paragraph (a) above provided that where a person is a director, partner or member, in more than one company, firm or AOP, (as the case may be) jurisdiciton over his case shall lie with the Division having jurisdiciton over the company, firm or AOP, (as the case may be), whose name come first in alphabetical order. (e) Monitoring and Enforcement of withholding taxes under the Provisions of the laws and ruels specified in column 3 (of the table) in respect of all withholding agents existing in the territorial limits of Zone-III of RTO-II, Karachi. (f) All cases of statutory agents/representatives assessable under sections 172 and 173 of the

* The word "of" missing.

			Ordinance, falling within the former Civil Division Karachi, in respect of non-resident persons or classes of persons, whether their income arises in one province or more and existing in Zone-III, RTO-II, Karachi. (g) Caess or classes of cases or persons or classes of persons or areas assigned by FBR from time to time.
04.	Commssioner Inalnd Revenue (Zone-IV), RTO-II, Karachi.	The Commissioner Inalnd Revenue shall exercise powers and perform functions as assigned in: (a). Income Tax Ordinance, 2001, and Rules thereunder; (b). Sales Tax Act, 1990 and Rules thereunder; (c). Federal Excise Act, 2005 Rules thereunder; (d). Wealth Tax Act, 1963 (Repealed) and (e). Finance Act, 1989 (Act No. V of 1989), as amended vide Finance Act, 2010.	a) All Individuals, corporate or non-corporate persons or classes of persons of the following sectors whose place of business is stituated in the areas, falling within the limits of former Civil Division Karachi:– I. Paper & paper boards manufacturers/ distributors/whole sellers/ retailers/importers & exporters; II. Petrol pumps/CNG stations; III. Printers; IV. Auto/car dealers/car rentals/auto assemblers/ auto venders; V. Prinintg ink manufacturers/ distributors/whole sellers/ retailers/impoerters & exporters. VI. Packaging manufacturers/ distributors/whole sellers/ retailers/importers & exporters; VII. Stationary manufacturers/

			distributors/whole sellers/retailers/ importers & exporters; and (b) All cases of companies other than the cases assigned to any other RTOs/LTU whose names begin with alphabet N & O. (c) All cases of persons or classes* persons (except companies) other than those assigned to RTO Karachi & RTO-III Karachi falling within the territorial jurisdiciton of Orangi Town. (d) All cases of directors of companies, partners of firms or member of AOP or Individuals or employees as specified in paragraph (a) above provided that where a person is a director, partner or member, in more than one company, firm or AOP, (as the case may be) jurisdiciton over his case shall lie with the Division having jurisdiciton over the company, firm or AOP, (as the case may be), whose name come first in alphabetical order. (e) Monitoring and Enforcement of withholding taxes under the Provisions of the laws and rules specified in column 3 (of the table) in respect of all withholding agents exisiting in the territorial limits of Zone-IV of RTO-II, Karachi. (f) All cases of statutory agents/ representatives assessable

* The word "of" missing.

			under sections 172 and 173 of the Ordinance, falling within the former Civil Division Karachi, in respect of non-resident persons or classes of persons, whether their income arises in one province or more and existing in Zone-IV, RTO-II, Karahci. (g) Cases or classes of cases or persons or classes of persons or areas assigned by FBR from time to time.
06.	Commissioner Inland Revenue (Information Procssing and TFD), RTO-II, Karachi.	a) Maintenance of physical and electronic records; b) Receipt of communication from Tax Facilitation Division, Enforcement Divisions, Legal Division, Audit Divisions and other Inalnd Revenue Authorities; c) Data entry of receipts and information contained in the communication from Tax Facilitation Division, Enforcement Divisions, Audit Divisions and other Inland Revenue Authorities; d) Cross matching of information collected from taxpayers and other sources and issuance of discrepancy report to Audit Divisions; e) Dispatch of hard copies to different Divisions on demand; and f) Storage of information, documents, statements, returns and all other communications received from other Divisions, Inland Revenue Authorities and sources.	All cases or classes of cases or persons or classes of persons or areas falling within the limits of former civil Division, Karachi and assigned to RTO, Karachi, RTO-II, Karachi and RTO-III, Karachi (the IP/TFD Divisions of aforesaid RTOs shall be One/common).

		g) Receive returns, statements, statutory notices, documents, applications from taxpayers, mail from other Inland Revenue Authorities, tax payment receipts (Challans) from Banks, and all outside communications and h) Sort and disseminate information, documents, returns,statements and mail mentioned at (a) above, to concerned Inland Revenue Authorities. i) Communicate assessment order/penalty orders and demand notices to taxpayers.	
07.	Commissioner Inland Revenue (Human Resource Management Division), RTO-II, Karachi.	a) To support line management in identifying HR needs of the Unit, to ensure staff recruitment in line with FBR's policies, training and development of staff maintenance of easily retrievable employees' data detailed as under:– i. Posting of Officers/ officials (BS 1-18) in the RTO with the approval of chief Commissioner. ii. Career planning. iii. Help line management in identifying HR needs. iv. Maintenance of employees' profiles and personal files. v. Development of job descriptions. vi. Positive attitude building.	All officers/officials posted in RTO-II, Karachi.

* The word "of" is missing.

		vii. Regulation of performace related pecuniary incentives. viii. Traning and development according to training needs analysis. ix. Coordination with FBR on various HRM areas. x. Initiation of disciplinary proceedings, processing and finalization thereof. xi. Monitoring and implementation* performance appraisal system.	

2012 PTR 908 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH, AHMEDABAD

G.C. Gupta, Vice President and
Anil Chaturvedi, Accountant Member

FACTS/HELD

1. **Section 50C is a deeming provision which does not apply to "rights in land & building"**
2. The assessee booked a flat in a building which was under construction for which he had paid Rs. 16.12 lakhs. The builder had not handed over possession of the flat to the assessee nor had he executed any registered sale deed in favour of the assessee. The assessee entered into an agreement pursuant to which he transferred *his rights, title and interest in the said flat* in consideration of the amount paid by him to the builder. The AO took the view that as the flat was valued at Rs. 57.57 lakhs for stamp duty purposes, *capital gains had to be computed on that basis u/s 50C*. This was reversed by the CIT (A). On appeal by the department, HELD dismissing the appeal:

> S.50C applies "*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 for the purpose of payment of stamp duty* …" S. 50C is a **deeming provision** and extends to only to land or building or both. A deeming provision can be applied only in respect of the situation specifically given and cannot go beyond the explicit mandate of the section. **If the capital asset under transfer cannot be described as "land or building or both", s. 50C will cease to apply**. As the assessee had transferred booking rights and received back the booking advance, the booking advance cannot be equated with the capital asset and therefore s. 50C cannot be invoked (Tejinder Singh followed).

Appeals dismissed.

I.T.A. No. 2519 /AHD/2009 (Assessment Year: 2006- 07).
Heard on: 27th March, 2012.
Decided on: 13th April, 2012.
Present at hearing: Samir Tekriwal, Sr. D.R., for Appellant. Manish J. Shah, for Respondent.

JUDGMENT

Per Anil Chaturvedi:– (Accountant Member)

This appeal is filed by the Revenue against the order of Ld. CIT (A) III, Surat dated 30-6-2009 for the Assessment Year 2006-07.

2. The only effective ground raised by the Revenue is as under:–

> *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A)-III, Surat has erred in deleting the addition of Rs.41,45,255/- holding that the A.O. has not mentioned section 50C of the I.T. Act."*

3. The facts of the case are that the appellant is an Individual. The appellant filed his return of income on 8.1.2007 declaring total income of Rs 80,050/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) on 30.12.2008 by determining the total income at Rs 42,25,305/-. During the course of assessment proceedings the Assessing Officer (A.O) noticed that on 25-6-2004 i.e. in the A.Y. 2005-06, the appellant had booked a flat No.701 with M/s. Patel Brothers Construction Corporation, Patel Apartment, Byculla Mumbai, which was under-construction. The total agreed purchase price was Rs.15,99,000/- out of which Rs.50,000/- was payable at the time of booking and the balance amount was payable in installments in such a manner that the entire amount was paid before taking possession of the flat. In addition to the purchase consideration, the appellant had to pay Rs.13,000/- for legal charges, taxes, electric water deposit, formation of society charges etc. Out of the agreed aggregate consideration of Rs.16,12,000/- the appellant had paid an amount of Rs.50,000/- at the time of booking on 25-6-2004 by cash and the balance amount was paid by the appellant in various installments from time to time. An amount of Rs.1,00,000/- was kept outstanding by the appellant since the builder i.e. M/s. Patel Construction Corporation had failed to give the possession of the flat in time to the appellant and also failed to allot the promised parking place. As the entire amount was not paid by the appellant, the builder had neither handed over the possession of the flat to the appellant nor had executed any registered sale deed in favour of the appellant. In the current year in the month of May, 2005 the appellant requested the builder to cancel the booking of the flat and return the booking amount as paid by him towards the said flat. In response to the request of the appellant to cancel the booking and return the booking amount, the builder informed that the booking will be cancelled and the amount

thereof will be returned back, only after another buyer is located for the said flat and payment is received for it.

4. On 28-2-2006 i.e. in the year under consideration, the appellant, the builder and the new buyer, Mr. Meeraj Abdul Aziz Bhagad, entered into a triparty registered sale agreement for transfer of the said flat, wherein the appellant (addressed as the vendor in the sale agreement) was to transfer all his rights, title and interest in the said flat to the buyer viz. Mr. Meeraj Abdul Aziz Bhagad; the builder M/s. Patel Brothers Construction Corporation (addressed as the confirming party in the sale agreement) was to give the possession of the said flat to the buyer and was also to allot the said flat to the buyer which was originally agreed to be allotted to the appellant and the new buyer viz. Mr. Meeraj Abdul Aziz Bhagad (addressed as the purchaser in the sale agreement) was to acquire only the rights in the said flat from the appellant and the possession and the allotment thereof from the builder. Accordingly, during the year under consideration, the appellant received back the booking amount paid by him to the builder, from the buyer.

5. During the course of assessment proceedings, the AO observed that the Jt. Sub Registar's Office Mumbai, had considered the value of the said flat at Rs. 57,57,255/- for registration of flat as against the total value of Rs.16,12,000/- . Accordingly, on the basis of information received from office of the Jt. Registrar Office, Mumbai, the AO treated the difference amount of Rs.41,45,255 (i.e. Rs.57,57,255 – Rs.16,12,000/-) as the unexplained income of the appellant and made addition thereof to the total income of the appellant.

6. Aggrieved by the order of A.O, the appellant preferred appeal before CIT (A). Before CIT(A), appellant contended that as appellant had only paid booking amount and had neither taken possession nor had executed registered purchase document in his name, the flat, being an immovable property never stood in his name and therefore provisions of Section 50C was not applicable. Appellant had only the "booking rights" in the said flat and has recovered back the booking amount as paid by him and hence provision of Section 50C are not applicable and therefore the A.O had erred in considering Rs 41,45,255 as unexplained income of the appellant.

7. CIT (A) deleted the additions made by A.O. by observing as under:–

> *"I have considered the facts of the case and the rival positions. I have gone through the tri party registered sales deed executed between the appellant, the builder and the new buyer and on going through the same it is seen that no registered document had been executed between the appellant and the builder in respect of purchase of flat No.701 but the appellant had only booked the said flat with the builder.*

Further, prior to the execution of the subject tri party registered sale deed in respect of flat No.701, the appellant had not acquired the possession of the said flat from the builder and the full consideration as agreed at the time of booking was also not paid. Thus it is evident from the registered sale deed itself that the appellant had neither entered into any legal document in his name as an owner nor had he acquired the possession of the said flat from the builder and therefore, the appellant was not the legal owner of the said flat being an immovable property as per the provisions of section 2(47) of the I. T. Act.

The tri party registered sale deed further mentions that the new buyer shall acquire the possession of the said flat from the builder and not from the appellant. The deed also clearly states that the appellant agrees to sell, transfer and assign only his rights, title and interest in the said flat to the buyer and the builder in turn agrees to allot the said flat to the new buyer and also put the new buyer in possession of the said flat.

Thus, it is evident from the registered sale deed that it is the builder who is transferring the capital asset i.e. the flat to the new buyer, by handing over the possession of the flat as also the legal ownership thereof to the new buyer and the appellant only receives back the booking advance paid by him to the builder, by relinquishing his booking right in the said flat.

The appellant has been addressed in the registered sale agreement as a vendor only to sell, transfer and assign his right as a booking member in the said flat to the new buyer as is clearly mentioned in point No.1 on page 5 of the registered sale deed and it is clearly provided in the registered sales deed that it is actually the builder who is transferring the possession and allotment of the said flat to the new buyer and thus, the transferor vendor of the capital asset i.e. the flat is the builder.

However, the ITO only on the basis of information received from office of the Jt. Registrar Office, Mumbai, has treated the amount of Rs.41,45,255 being the difference between the stamp duty valuation and the value as per the registered sale deed as the unexplained income of the appellant and made addition thereof to the total income of the appellant, by erroneously treating the appellant as the vendor transferring a capital asset being land or building or both. The ITO has not mentioned section 50C of the Act while making the said addition however, it is seen that the powers of substituting the stamp duty value for the actual sales consideration are provided only in section 50C of the I. T. Act and therefore, the impugned addition has been clearly made only as per the provisions of the said section since, there is no other *evidence on record of any unaccounted income being received by the appellant.*

It is further seen that the provisions of section 50C of the I. T. Act are applicable in the case of an assessee when he transfers a capital asset being land or building or both, however, in the present case from the tri party registered sale deed it is explicit that the appellant has transferred only his booking rights in the said flat to the buyer and has not transferred the flat i.e. a capital asset land or building or both and therefore, the provisions of section 50C are not applicable in the case of the appellant.

Accordingly, in view of the facts of the case, I hold that the provisions of section 50C of the Act are not applicable in the case of the appellant case, first of all the appellant had only given booking advance for flat No.701 to the builder and had neither entered into any registered purchase deed nor had taken the possession of the said flat from the builder and thus was not the owner of the said flat and secondly the appellant not being the owner of the said flat cannot be said to have transferred the same to the new buyer but what has been transferred is only the booking rights and therefore, I hereby delete the addition of Rs.41,45,255/- as made by the ITO by adopting the stamp duty valuation as provided in section 50C of the Act. However the ITO is directed to inform the Assessing Officer of the builder namely Patel Bros Construction Corporation to examine the issue of on money receipt in respect of this sale."

8. Aggrieved by the order of Ld. CIT (A), Revenue now is in appeal before us.

9. The Ld. D.R. vehemently argued and urged that the order of the Assessing Officer needs to be upheld. According to the Ld. D.R., in the balance sheet filed by the appellant in earlier year, the appellant himself had shown the amount paid for booking the flat as a "flat". Now in the year of sale, the appellant has changed his stand and argues that what has been sold is "booking rights" of the flat and not the "flat" per-se and therefore, provisions of section 50C are not applicable. According to D.R., the appellant cannot change the stand. Ld. D.R. pointed out to the fact that appellant had agreed to purchase the flat for Rs.16 lacs out of which the appellant had already paid Rs.15 lacs which constitute more than 90% of the agreed consideration. In such a situation it can very well be said that appellant had already purchased flat and therefore, on its transfer it was a case of transfer of flat and not "booking rights" and therefore the provisions of section 50C would become clearly applicable. He further stated that the word "transfer" and "capital asset" has not been defined in section 50C and accordingly the meaning of these terms should be understood in the way in which it is defined in sec. 2(42) and

Sec.2(47). He further stated that section 50C cannot be considered in isolation. He therefore, vehemently argued and contended that the sale made by appellant should be considered as sale of flat and not of booking right and accordingly Sec. 50C would be applicable and therefore the order of A.O. should be upheld. In support apart from various cases, he relied on the following decisions:-

(1) *CIT vs. Narang Dairy Products* (1996) 219 ITR 478 (SC)

(2) *CIT vs. Mormasji Mancharji Vaid* (2001) 250 ITR 542 (Guj) (FB)

(3) *J.K. Kashyap vs. ACIT* (2008) 302 ITR 255 (Del.)

(4) *Sanjaybhai Z Patel vs. ACIT* (2011) 48 SOT 231 (Ahd)

(5) *Ferdoon Irani vs. ITO* (1986) 15 ITD (Bom) 627

10. Ld. D.R. thus vehemently argued and urged that the order of CIT (A) should be set aside and that of A.O. be upheld.

11. Ld. A.R. on the other hand urged that section 50C is a deeming provision by virtue of which a legal fiction has been created. It is a settled law that legal fiction cannot be extended beyond the purpose for which it is enacted. Legal fiction is only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond the legitimate field.

12. The Ld. A.R. further stated that what has been sold by the appellant was “booking rights” and not the flat. He stated that appellant cannot sell the flat because he never got the possession of the flat, He pointed to the agreement for sale dated 28-2-2006 that was entered into between appellant, the purchaser and the builder. He pointed out the recital clause of agreement wherein it has been stated that Appellant owing to certain unavoidable circumstances, could not make payment of balance amount to the Builder and as such could not avail the possession of the flat. He further stated that provisions of section 50C are applicable in the case of an appellant when he transfers a capital asset being land or building or both. In the case of appellant the tri-party registered agreement it is explicit that the appellant has transferred only his “booking rights” in the flat to the buyer and has not transferred the flat i.e. a capital asset being land or building or both and therefore, the provisions of Sec.50C are not applicable in the case of appellant. He also drew our attention to the finding of CIT (A) which has been reproduced hereinabove at para 7 to support his claim. The Ld. A. R. relied on the following decisions:-

(a) *Atul Puranik vs. ITO* (2011) 132 ITD 499.(Mum)

(b) *DCIT vs. Tejinder Singh* (ITA No.1459/Kol/2011) order dated 29.2.2012

(c) *Smt Kishore Sharad Gaitonde vs. ITO* (ITA 1561/M/09) order dated 27.11.2009.

13. We have heard the rival contentions perused the material placed on record. It is undisputed fact that tripartite agreement for sale has been entered on 28-2-2006 between the appellant, the builder and the purchaser in respect of flat No.701. It is also an undisputed fact that prior to the execution of the tripartite agreement the appellant had neither paid full consideration of the flat nor the appellant had acquired the possession of the flat from builder. From the agreement it is evident that it is the builder who is transferring the capital asset i.e. the flat to the new buyer, by handing over the possession of the flat as also the legal ownership thereof to the new buyer and the appellant only received back the booking advance paid by him to the builder, by relinquishing his booking right on the said flat.

14. Sec.50C reads as under:–

> *"50C. 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 (hereinafter 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."*

15. In the case of DCIT vs Tejinder Singh (supra) it has been held as under:

> *"8…. Revenue's contention that the provisions of section 50C 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 50C 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 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 50C that the transfer must be of a "capital seet, being land or building or both", but then 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."*

16. From the reading of Sec. 50C,it is evident that Sec. 50C is a deeming provision and it extends to only to land or building or both. Section 50C can come into play only in a situation where the

consideration received or accruing as a result of the transfer by an appellant of a capital asset, being land or building or both is less than the value adopted or assessed or assessable by any authority of State Government therefore for the purpose of payment of stamp duty in respect of such transfer. It is settled legal proposition that deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of the section. Clearly therefore, it is essential that for application of Sec.50C that the transfer must be of a capital asset, being 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 the case narrated above, it is seen that the assessee has transferred booking rights and received back the booking advance. Booking advance cannot be equated with the capital asset and therefore section 50C cannot be invoked.

17. We have perused the case laws relied by Ld. DR. All those case laws are distinguishable on facts. As the facts of the present case are different, the ratio of the judgments relied upon by the Ld. D.R. cannot be applied to the present case.

18. In view of the facts and in the circumstances of the case, we therefore, are in agreement with the conclusion arrived at by CIT (A) on this aspect and therefore relief granted by CIT(A) deserves to be upheld.

19. In the result the appeal of the Revenue is dismissed.

Order pronounced in Open Court on 13-4-2012.