आयकर अपीलीय अधीकरण, न्यायपीठ –"A" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
[Before Shri P. M .Jagtap, Vice-President (KZ) and Shri A. T. Varkey, JM]

I.T.A. No.1941/Kol/2019
Assessment Year: 2014-15

M/s Karb Associates Pvt. Ltd. (PAN:AABCK0927G)	Vs.	DCIT, Circle-8(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	18.08.2021
Date of Pronouncement	25.08.2021
For the Appellant	Shri Miraj D. Shah, AR
For the Respondent	Shri Supriyo Pal, Addl. CIT, Sr. D.R

ORDER

Per Shri A. T. Varkey, JM:

This appeal has been preferred by the assessee against the order of the Ld. CIT(A)-3, Kolkata dated 24.07.2019 for A.Y 2014-15.

2. The relevant grounds of appeal are Ground Nos.2 & 3 which reads as under:

> *"2.That the Ld. CIT (Appeals) - 3, Kolkata erred in law as well as on facts of the case by confirming the assessment made by the Ld. A.O. and making addition of Rs.54,88,952/- u/s 43CA of IT Act, being the difference between the sale value recorded in books and stamp duty value ignoring the facts and material evidences on records.*
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> *3.That the Ld. CIT (Appeals) - 3, Kolkata erred in law as well as on facts of the case by confirming the assessment made by Ld. A.O. without referring the case to the valuation officer according to provisions u/s 55A of the I.T. Act and not mentioning the reasons in the assessment order as requested by the assessee."*

3. From a perusal of the aforesaid grounds, it reveals that the assessee is aggrieved by the action of the Ld. CIT(A) confirming the assessment made by the A.O by making addition of Rs.54,88,952/- u/s 43CA of the Income Tax Act 1961 (hereinafter the 'Act') without referring the case to the Valuation Officer according to provisions u/s 55A of the Act despite requisition by the assessee to this effect.

4. The brief facts as noted by the A.O is that the assessee had filed return of income disclosing total income of Rs.1,98,39,040/-. The A.O notes that the assessee is engaged in the business of real estate promoter & developer during the relevant year under consideration. The A.O noted that the assessee company is developing housing project on land owned by it and it is also developing flats on land owned by other persons or companies. The A.O notes that the return filed by the assessee was selected for scrutiny through CASS. Thereafter, he issued statutory notices. According to the A.O, the assessee responded to the notices and had filed replies to the queries as per the terms of the notice. The A.O has added Rs.54,88,952/- u/s 43CA of the Act by holding as under:

> "3.1 It is noticed from the details of sales during the year that in some cases the assessee has shown consideration received as a result of transfer of immovable property at a price which is less than the value adopted for the purpose of payment of stamp duty in respect of such transfer. The assessee was requested to submit the details of the properties sold along with the stamp duty value applicable on them. In reply, the assessee submitted the details of the properties sold by it during the year. On perusal of the details submitted it is noticed that with regard to five(5) properties the assessee has shown sales consideration in its books of accounts at Rs. 1,77,90,600/-, however, the stamp duty value at the time of agreement was Rs.2,32,79, 552/-. The assessee was requested to explain why the amount of Rs.2,32,79,552/- should not be considered as full value of consideration and the differential amount of Rs.54,88,952/- should not be added u/s 43CA of the Act.
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> 3.2 The assessee could not furnish any cogent explanation regarding the applicability of section 43CA of the Act in its case. As per the provisions of section 43CA, where the consideration received or accrued as a result of transfer of land or building or both is less than the stamp duty value, the stamp duty value shall be adopted as full value of consideration for computing business income. In the instant case as the date of agreement and the date of registration are different and the assessee has received a part of the consideration by way other than the cash prior to the date of agreement, the stamp duty value has been considered as the value prevailing at the date of agreement. Hence, the value of Rs. 1,77,90,600/- shown by the assessee for the sales consideration is found to be non-acceptable and the sales consideration has been considered at Rs.2,32,/9,552/-, Accordingly, the differential amount of Rs.54,88,952/-(Rs. 2,32,79,552/- - Rs.1,77,90,600/-) is disallowed u/s 43CA of the Act and added back to the total income of the assessee."

5. Aggrieved by the aforesaid order of the A.O, the assessee preferred an appeal before the ld. CIT(A) who was pleased to confirm the same by holding as under:

> "The 2nd ground of appeal is regarding the addition of Rs.54,88,952/- made by the AO u/s.43CA on account of the difference between the sale value of properties as disclosed in the books and the stamp duty circle rate as assessed by Stamp Duty Authority.

The basic facts of the case are that the appellant has shown, in the books of accounts, the sale value of five properties, during the previous year, at Rs.1,77,90,600/-. The valuation of these five properties as per the stamp duty circle rate is Rs.2,32,79,552/- The sale consideration shown by the appellant and has not been disputed by the valuation as per the Stamp Duty authority appellant. The difference amount of Rs.54,88,952/- has been added by the A.O under the provision of section 43CA.

As per the provision of section 43CA, the value assessed by the Stamp Duty authority, on transfer of land or building shall be deemed to be the full value of the consideration received by the appellant on transfer of such properties. Accordingly, the AO has treated the sale value of these properties as per stamp duty rate at Rs.2,32,79,552/- and thereby has made an addition of the difference amount of Rs.54,88,952/-.

Before me it has been contended by the A/R of the appellant that the property market was down during the relevant previous year and therefore, the assessee was facing difficulty in selling those properties. Therefore, the said five properties have been sold at lower rate. Further it has been stated that if the AO was not satisfied with the explanation offered then the case could have been referred by him to the DVO for valuation purposes.

I have perused the submissions of the A/R of the appellant and the findings of the AO in the assessment order. In this case, it is undisputed that the properties have been sold by the assessee below the stamp duty valuation rate. It is further contended that if the AO was not satisfied with the explanation of the assessee then he could have referred the matter to the Valuation Cell. In this regard, the A/R of the appellant during the course of the appellate proceedings, was asked to file a copy of the letter which they had filed before the AO objecting to the adoption of the stamp duty rate as the full value of the consideration received by the assessee for computing the taxable income. The A/R was also asked to file a copy of the letter wherein the specific request had been made to the AO for referring the property to the Valuation Cell. However, the appellant has failed to produce the said letter regarding the objection to the adoption of sale consideration as per the section 43CA before the AO.

The A/R of the appellant could also not file the copy of the letter filed by them disputing the provision of section 43CA and requesting for referring the matter to the Valuation Cell. It is therefore, noted that other than the general explanation offered no specific objection has been filed by the appellant before the AO. Request for referring the case to the Valuation Cell has also not been made by the appellant before the AO. The language of the statute is clear in this regard and specific objection has to be made by the appellant before the AO. Even during the course of appellate proceedings, no such request has been made by the appellant before the undersigned. In the absence of the same, the deeming provision of section 43CA gets attracted and the sale consideration for the five properties has to be adopted as per the valuation of Stamp Duty authority. Accordingly, the value adopted by the AO of Rs.2,32,79,552/- is hereby confirmed. Therefore, the addition made u/s.43CA of Rs.54,88,952/- is also confirmed."

6. Aggrieved by the aforesaid action of the Ld. CIT(A), the assessee is before us.

7. We have heard both the parties and perused the records. At the outset, the Ld. AR of the assessee, Shri Miraj D. Shah, has submitted that the A.O has made the addition of Rs.54,88,952/- by invoking the provision of section 43CA of the Act on the basis that in the case of Five (5) flats, the value of sales recorded in its books of

account were lower than the value adopted for charging stamp duty on registration of such flats. According to the Ld. AR, during the assessment proceedings, the assessee disputed the valuation made by the Stamp Duty Authorities and claimed that the Market Value of the property was much less than the Stamp Duty value assessed in the depressed market. According to the Ld. AR, in fact, the assessee advertised in the news paper to find the buyers of unsold flats at a lower price having location disadvantage compared to other flats in the building/project. According to the Ld. AR, the assessee, therefore, requested the A.O. that he may refer the case to the Valuation Officer (DVO) according to the provisions u/s 55A of the Act and pleaded before the A.O that invoking blindly the provisions u/s 43CA and making additions based on the deeming provision would cause hardship to the assessee in genuine transfer of flats. Further, according to the Ld. AR, the A.O ignored the request made by the assessee for referring the issue to the DVO and without mentioning the same (*the aforesaid request for referring to DVO*) in the assessment order has passed the impugned addition which has been upheld by the Ld. CIT(A). In this context, the Ld. AR drew our attention to the Hon'ble Calcutta High Court decision in the case of Sunil Kr. Agarwal vs. CIT in GA No.3686 of 2013 ITAT No.221 of 2013 vide judgment dt. 13.03.2014 wherein it was held that even if, the assessee does not make prayer to the A.O for referring the valuation to the DVO while disputing the valuation of the property made by the Stamp Duty Authority, then A.O being a quasi-judicial authority was duty bound to act fairly and suo-moto refer the matter to the DVO. Therefore, the Ld. AR submitted that the valuation of the flats in question should have been referred by the A.O/CIT(A) to the DVO. Per contra, the Ld. DR relied on the decision of the Ld. CIT(A) and does not want us to interfere in the impugned order passed by the Ld. CIT(A).

8. Therefore, the short question is whether the A.O ought to have acceded to the request of the assessee to refer the dispute in respect of valuation of five (5) flats to the DVO in order to ascertain the fair market value of the property on the date of sale. This issue is no longer res integra. The Hon'ble Calcutta High Court in the case of Sunil Kr. Agarwal (supra), has held as under:

"We have considered the rival submissions advanced by the learned advocates appearing for the parties. The submission of Ms. Ghutghutia that the requirement of clauses a) and (b) of sub-Section 2 of Section 50C has not been met by the assessee, can hardly be accepted. The requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question ITA No. 2157/Kol/2016 Subrata Daw, AY 2012-13 is whether the requirement of clause (b) of sub-Section 2 of Section 50C was evidently met. The only question is whether the requirement of clause (a) of sub-Section 2 of Section 50C was met by the assessee.

We have already set out hereinabove the recital appearing in the Deeds of Conveyance upon which the assessee was relying. Presumably, the case of the assessee was that price offered by the buyer was the highest prevailing price in the market. If this is his case then it is difficult to accept the proposition that the assessee had accepted that the price fixed by the District Sub Registrar was the fair market value of the property. No such inference can be made as against the assessee because he had nothing to do in the matter. Stamp duty was payable by the purchaser. It was for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the assessing officer should, in fairness, have given an option to the assessee to have the valuation made by the departmental valuation officer contemplated under Section 50C. As a matter of course, in all such cases the assessing officer should give an option to the assessee to have the valuation made by the departmental valuation officer.

For the aforesaid reasons, we are of the opinion that the valuation by the departmental valuation officer, contemplated under Section 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer is made by the learned advocate representing the assessee, who may not have been properly instructed in law, the assessing officer, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law."(emphasis given by us).

9. Therefore in the light of the aforesaid facts and circumstances of the case and relying on the decision of the Hon'ble High Court in Sumit Kr. Agarwal, supra, we set aside the order of the Ld. CIT(A) and remand the matter back to the AO with a direction to refer the valuation of flats to DVO for determination of the fair market value as on the date of sale of the property after giving opportunity to the assessee and thereafter to adopt the consideration of five (5) flats in question in accordance to law.

10. The Ld. AR, thereafter, drew our attention to the additional ground of appeal raised by the assessee which reads as under:

> *"For that the deduction u/s 80IB(10) be allowed on the entire income including any income (if any) determined u/s 43CA of the IT Act, 1961."*

11. According to the Ld. AR the assessee had claimed deduction u/s 80IB of the Act for the project 'Binayak Enclave' and income from the sale of these flats are also eligible for deduction u/s 80IB of the Act. Therefore, according to the Ld. AR, even after the issue is referred to DVO; and consequently the DVO determines value of the property and still if some amount is sustained as addition, then that amount which is added as deemed income should get the benefit of deduction under section 80IB of the Act. In other words if there is any enhancement happening due to addition made after reference to the DVO, then assessee should be given the benefit of the deduction under Chapter VI-A on the enhanced amount if any. For that, he has relied on the logic stated in the Circular No.37/2016 issued by the CBDT on 2nd November 2016. Though the Board has accepted in the ibid Circular disallowance made u/s 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, and which resulted in enhancement of the profits of the eligible business, and *that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance*.

12. We find force in the submission of the Ld. AR that if the income/profits from the sale of flats, in question, falls in the eligibility project for claiming deduction 80IB(10) of the Act, then even if there is any enhancement in the income of the assessee by virtue of valuation made by the DVO, then the A.O after examination of this fact should give the benefit of the deduction under Chapter VI-A on the enhanced amount if any, in accordance to law.

13. Without prejudice to the above, according to the Ld. AR, if the difference between the agreement value and the value determined by the DVO, is less than 10%, then no addition should be made and for that he relied on the decision of the Tribunal

in the case of Radhika Sales Corporation vs. Addl. CIT in ITA No.1474/PUN/2016 for A.Y 2011-12 decided on 16.11.2018 wherein the Tribunal held that if the difference in the value declared by the assessee and the value determined by the DVO is less than 10%, then no addition may be made by holding as under:

"5. Similar issue had come up before the Tribunal in the case of Radhika Sales Corporation (supra). The Tribunal deleted the addition by observing as under:

"5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The solitary issue raised in the appeal by the assessee is against the addition of Rs.10,38,000/- on account of difference in Long Term Capital Gain declared by the assessee and computed by the Assessing Officer after considering the DVO's valuation report. It is an undisputed fact that the assessee has disclosed sale consideration of the land as Rs.1,10,00,000/-. During the scrutiny assessment proceedings reference was made to DVO for the valuation of property. The DVO vide report dated 30-12-2013 determined the fair market value of the property as Rs.1,20,38,000/-. The difference between actual sale consideration declared by the assessee and the fair market value determined by the DVO is approximately 9.43%. We find that the Co-ordinate Bench of the Tribunal in the case of Dattatraya Kerba Lonkar Vs. Deputy Commissioner of Income Tax (supra) after considering various decisions including the decision rendered in the case of Rahul Constructions Vs. Deputy Commissioner of Income Tax (supra) and the judgment of Hon'ble Patna High Court in the case of Bimla Singh Vs. Commissioner of Income Tax (supra) has held as under:

"8. We find merit in the submission of Ld. A.R. The difference between the fair market value determined by the DVO and actual sale consideration is Rs.7,14,530/- i.e slightly more than 2 per cent of the sale consideration. The co-ordinate Bench of the Tribunal in the case of Rahul Construction V/s. DCIT (supra) has held that where difference between the sale consideration declared by the assessee and fair market value as determined by the DVO u/s 50C is less than 10 percent, the Assessing Officer was not justified in substituting the value determined for sale consideration disclosed by the assessee. The Co-ordinate Bench after considering the provisions of Section 50C of the Act and the provision of section 23A and 24(5) of the Wealth Tax Act held as under :-

"13. A combined reading of the above provisions shows that the valuation adopted by the DVO is subject to appeal and the same is not final. In the instant case we find that as Aagainst the value of Rs. 28,73,000/- adopted by the stamp valuation authorities, the DVO has determined the FMV on the date of transfer at Rs. 20,55,000/- . This itself shows that there is wide variation between the two values. Further, the value adopted by the DVO is also based on some estimate. We find that the difference between sale consideration shown by the assessee at Rs.19,00,000/- and the FMV determined by the DVO at Rs.20,55,000/- is only Rs. 1,55,000 which is less than 10 per cent. The Courts and Tribunals are consistently taking a liberal approach in favour of the assessee where the difference between the value adopted by the assessee and the value adopted by the DVO is less than 10 per cent.

14. We find that the Pune Bench of the Tribunal in the case of Asstt. CIT V/s. Harpreet Hotels (p) Ltd. vide ITA Nos. 1156-1160/pn/2000 and relied on by the learned counsel for the assessee had dismissed the appeal filed by the Revenue where the CIT(A) had deleted the unexplained investment in house construction on the ground that the difference between the figure shown by the assessee and the figure of the DVO is hardly 10 percent.

15. Similarly, we find that the Pune Bench of the Tribunal in the case of ITO V/s. Kaaddu Jayghosh Appasaheb, vide ITA No.441/PN/2004 for the asst. yr 1992-1993 and relied on by the learned counsel for the assessee following the decision of the J&K High Court in the case of Honest Group of Hotels (P) Ltd. V/s CIT (2002) 177 CTR (J&K) 232 had held that when the margin between the value as given by the assessee and the Departmental valuer was less than 10 per cent , the different is liable to be ignored and the addition made by the A.O cannot be sustained.

16. Since in the instant case such difference is less than 10 per cent and considering the fact that valuation is always a matter of estimation where some degree of difference bound to occur, we are of the considered opinion that the A.O. in the instant case is not justified in substituting the sale consideration at Rs.20,55,000 as Against the actual sale consideration of Rs.19,00,000/- disclosed by the assessee. We, therefore, set aside the order of the CIT(A) and direct the A.O. to take Rs.19,00,000/- only as the sale consideration of the property. The grounds raised by the assessee are accordingly allowed."

9. The ld. A.R of the assessee has further placed reliance on the decision of Hon'ble Patna High Court in the case of Bimla Singh V/s. CIT (supra) wherein Hon'ble High Court has held that difference between the cost of construction shown by the assessee and as determined by the Assessing Officer being less than 15 per cent, the same is to be ignored for the purposes of addition. The Hon'ble Delhi High Court in the case of CIT V/s. Sadna Gupta 352 ITA 595 held that unless and until there was some other evidence to indicate that extra consideration had flowed in transaction for purchase of property, report of DVO could not form basis of any addition on part of revenue. In absence of any evidence no reliance could be placed on the report of DVO for making addition.

10. Thus, in view of the fact that the difference between sale consideration and the market value determined by the DVO is not substantial and is approximately little over 2 per cent of the actual sale consideration, we find no reason for rejecting actual sale consideration mentioned in the Sale Deed for determining long term capital gain. Accordingly, the ground No.1 raised in appeal by the assessee is allowed. The Assessing Officer is directed to adopt actual sale consideration as mentioned in the Sale Deed as a fair market value for determining the long term capital gain."

6. In the light of the facts of the case and the decisions discussed above, we find merit in the submissions of assessee. In the present case, since difference between the value declared by the assessee and the value determined by the DVO is less than 10%, no addition in respect of Long Term Capital Gains is warranted. The findings of Commissioner of Income Tax (Appeals) on this issue are accordingly, set aside and the appeal of assessee is allowed."

14. We note that the Finance Act 2018 has inserted a proviso to sub-section (1) of section 43CA providing 5% tolerance limit in variation between declared sale consideration *vis-a-vis* stamp duty value then no addition is warranted. Similar proviso was inserted by the Finance Act 2018 to sub-section (1) to section 50C of the Act. The said tolerance limit band was enhanced from 5% to 10% by the Finance Act 2020 w.e.f. 01/4/2021. The Tribunal in the case of Maria Fernandes Cheryl vs. ITO (International Taxation) reported as 123 taxmann.com 252 (Mumbai) after considering various decision and the CBDT Circular No. 8 of 2018 dated 26-12-2018 held, that the amendment is retrospective in nature and relates back to the date of insertion of statutory section to the Act. The relevant extract of the observations made by the Bench reads as under:

" 7. …… The insertion of the third proviso to Section 50C(1) provides for this tolerance band with respect to a certain degree of variations between the stamp duty valuation and the stated consideration of an immovable property. In other words, as long as the variations are within the permissible limits, the anti-avoidance provisions of Section 50C do not come into play. As we have noted earlier, the CBDT itself accepts that there could be various bonafide reasons explaining the small variations between the sale consideration of immovable property as disclosed by the assessee vis-à-vis the stamp duty valuation for the said immovable property. Obviously, therefore, disturbing the actual sale consideration, for the purpose of computing capital gains, and adopting a notional figure, for that purpose, will not be justified in such cases. On a conceptual note, an estimation of market price is an estimation nevertheless, even if by a statutory authority like the stamp duty valuation authority, and such a valuation can never be elevated to the status of such a precise computation which admits no variations. The rigour of Section 50C(1) was thus relaxed, and very thoughtfully so, to take these bonafide cases of small variations between the stated sale consideration vis-à-vis stamp duty valuation, out of the scope of adjustments contemplated in the computation of capital gains under this anti-avoidance provision. In our humble understanding, it is a case of a curative amendment to take care of unintended consequences of the scheme of Section 50C. It makes perfect sense, and truly reflects a very pragmatic approach full of compassion and fairness, that just because there is a small variation between the stated sale consideration of a property and stamp duty valuation of the same property, one cannot proceed to draw an inference against the assessee, and subject the assessee to practically prove his being truthful in stating the sale consideration. Clearly, therefore, this insertion of the third proviso to Section 50C(1) is in the nature of a remedial measure to address a bonafide situation where there is little justification for invoking an anti-avoidance provision. Similarly, so far as enhancement of tolerance band to 10% by the Finance Act 2020, is concerned, as noted in the CBDT circular itself, it was done in response to the representations of the stakeholders for enhancement in the tolerance band. Once the Government acknowledged this genuine hardship to the taxpayer and addressed the issue by a suitable amendment in law, the next question was what should be a fair tolerance band for variations in these values. As a responsive Government, which is truly the hallmark of the present Government, even though the initial tolerance band level was taken at 5%, in

response to the representations by the stakeholders, this tolerance band, or safe harbour provision, was increased to 10%. There is no particular reason to justify any particular time frame for implementing this enhancement of tolerance band or safe harbour provision. The reasons assigned by the CBDT, i.e., "the variation between stamp duty value and actual consideration received can occur in respect of similar properties in the same area because of a variety of factors, including the shape of the plot or location," was as much valid in 2003 as it is in 2021. There is no variation in the material facts in this respect in 2021 vis-à-vis the material facts in 2003. What holds good in 2021 was also good in 2003. If variations up to 10% need to be tolerated and need not be probed further, under section 50C, in 2021, there were no good reasons to probe such variations, under section 50C, in the earlier periods as well. We are, therefore, satisfied that the amendment in the scheme of Section 50 C(1), by inserting the third proviso thereto and by enhancing the tolerance band for variations between the stated sale consideration vis-à-vis stamp duty valuation to 10%, are curative in nature, and, therefore, these provisions, even though stated to be prospective, must be held to relate back to the date when the related statutory provision of Section 50C, i.e. 1st April 2003. In plain words, what is means is that even if the valuation of a property, for the purpose of stamp duty valuation, is 10% more than the stated sale consideration, the stated sale consideration will be accepted at the face value and the anti-avoidance provisions under section 50C will not be invoked.

8. Once legislature very graciously accepts, by introducing the legal amendments in question, that there were lacunas in the provisions of section 50C in the sense that even in the cases of genuine variations between the stated consideration and the stamp duty valuation, anti-avoidance provisions under section 50C could be pressed into service, and thus remedied the law, there is no escape from holding that these amendments are effective with effect from the date on which the related provision, i.e., Section 50C, itself was introduced. These amendments are thus held to be retrospective in effect. In our considered view, therefore, the provisions of the third proviso to Section 50C (1), as they stand now, must be held to be effective with effect from 1st April 2003. We order accordingly. Learned Departmental Representative, however, does not give up. Learned Departmental Representative has suggested that we may mention in our order that "relief is being provided as a special case and this decision may not be considered as a precedent". Nothing can be farther from a judicious approach to the process of dispensation of justice, and such an approach, as is prayed for, is an antithesis of the principle of "equality before the law," which is one of our most cherished constitutional values. Our judicial functioning has to be even-handed, transparent, and predictable, and what we decide for one litigant must hold good for all other similarly placed litigants as well. We, therefore, decline to entertain this plea of the assessee."

As has been aptly explained above, the rational for holding newly inserted proviso to sub-section (1) to section 50C of the Act as curative in nature, hence, having retrospective application, the same analogy would apply to the provisions of Section 43CA of the Act. Both the sections are similarly worded except that both the sections have application on different sets of assessee. As has been pointed earlier, Section 43CA gets attracted where the consideration received or accrues as a result of transfer of an asset (other than a capital asset) being land or building or both. Whereas, provisions of section 50C operates where the consideration received or accrues as a result of transfer of a capital asset being land or building or both. Both the sections induce deeming fiction to substitute actual sale consideration with notional value of asset based on Stamp Duty valuation. Further, a perusal of Circular 8 of 2018 (supra) would show that identical reasons have been given in Para 16 for 'Rationalization of Sections 43CA and 50C'. The proviso has been inserted and

subsequently tolerance band limit has been enhanced to mitigate hardship of genuine transactions in the real estate sector. Ergo, in the light of reasoning given for insertion of the proviso and exposition by the Tribunal for retrospective application of the said proviso, I have no hesitation in holding that the proviso to sub-section (1) to section 43CA and the subsequent amendment thereto relates back to the date on which the said section was made effective i.e. 01/4/2014."

15. In the light of the submission of the assessee on this aspect, and taking into consideration the Tribunal's decision in the case of Radhika Sales Corporation (Supra), we are of the opinion that the proviso explaining the tolerance limit has to be read retrospectively, therefore, if the difference between the declared value by the assessee and the value decided by the DVO is less than 10%, no addition is warranted. With the aforesaid observations, the issue raised by the assessee is disposed off and the A.O is directed to assess the income of the assessee as per the directions given (supra) on this issue and in accordance to law.

16. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 25th August, 2021.

Sd/-	Sd/-
(P. M. Jagtap)	(A. T. Varkey)
Vice-President	Judicial Member

Dated: 25.08.2021
RS

Copy of the order forwarded to:

1. Appellant- M/s Karb Associates Pvt. Ltd., 4, Ho Chi Minh Sarani, Kolkata.
2. Respondent – DCIT, Circle-8(1), Kolkata
3. The CIT(A)- 3 , Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata