आयकर अपीलीय अधिकरण,'बी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्षएवंश्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 377/CHNY/2021**

निर्धारण वर्ष/Assessment Year: 2015-16

Shri Shanmuga Sundaram Govindaraj, 19, A L Mudali Street, Nehru Nagar, Velachery, Chennai – 600 042.	vs.	**The ACIT,** Non-Corporate Circle 14, Chennai – 34.
PAN: AIDPG 5262F (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri N. Arjunraj, CA for Shri S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri Guru Bashyam, CIT

सुनवाई की तारीख/Date of Hearing : 18.07.2022

घोषणा की तारीख/Date of Pronouncement : 22.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of Revision order passed by Principal Commissioner of Income Tax - 3, Chennai in ITBA/COM/F/17/2019-20/1026703612(1) dated 17.03.2020. The assessment was framed by the ACIT, Non-Corporate Circle 14(1),

Chennai for the assessment year 2015-16 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.12.2017.

2. At the outset, it is noticed that the appeal is barred by limitation by 509 days. The order of PCIT dated 17.03.2020 was received by assessee on 17.03.2020 as per Form 36 but appeal was filed only on 07.10.2021. The ld. AR for the assessee stated that the delay was due to Covid-19 pandemic. We noted that the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. In term of the directions of Hon'ble Supreme Court, we condone the delay in filing of this appeal by assessee and admit the appeal for adjudication.

3. The only issue in this appeal of assessee is as regards to the order of PCIT assuming jurisdiction u/s.263 of the Act and consequently revising the assessment order by directing the AO to add back a sum of Rs.25 lakhs being difference in the purchase price of property as per the consideration recorded in the sale deed and value fixed as per guideline of sub registrar of the registration

department to be added as per the provisions of section 56(2)(viib)(ii) of the Act.

4. Brief facts are that the assessee is an individual engaged in the business of construction of residential and commercial buildings i.e., real estate business. The assessee filed his return of income for assessment year 2015-16 on 28.03.2017 and accordingly, assessee's case was selected for scrutiny assessment under CASS. The assessment was completed u/s.143(3) after verifying the details called for. Subsequently, the PCIT on perusal of assessment records noticed that the assessee has purchased a property for which sale deed was registered for a sum of Rs.3.25 crores but the guideline value fixed by Stamp Valuation Authority was at Rs.3.50 crores, thereby difference of Rs.25 lakhs. The PCIT in his show-cause notice issued vide letter No.ITBA/COM/F/17/2019-20/1024641209(1) dated 04.02.2020 noted that there is difference of Rs.25 lakhs along with stamp duty value of Rs.24,48,700/-, which has to be brought to tax as per provisions of section 56(2)(viib)(ii) of the Act. The assessee replied the show-cause notice and answered both the issues vide letter dated 14.02.2020 as under:-

1. On the basis of difference between registered value and stamp duty value.

The Guideline value as per the stamp duty valuation is Rs.3,50,00,000/- However the registration is done for Rs.3,25,00,000/-, thereby a difference of Rs.25,00,000/-. The erstwhile Section 56(2)vii(b)(i) is substituted by 56(2)(x)(6)(A) in which a concession is given, whereby if the difference is 5% of the consideration, the same may be ignored. In the Finance Act,2020, the 5% is increased to 10%. This amendments are curative in nature and beneficial to the assessee. Such amendments will have retrospective effect as per the judgment of Perfect Circle India Pvt Ltd vs Pr.CIT (Bombay High Court). The copy of the same is enclosed. As the 10% of Rs.3,25,00,000/- is 32,50,000/- and the difference is only Rs.25,00,00/-, Hon'ble CIT may be gracious enough in dropping the proposed action.

2. Non recording of stamp Duty Value of Rs.24,48,700/-

The Stamp duty value is properly recorded in the books of accounts and the amount has gone through the bank. We are enclosing herewith the bank statement, the ledger copy of Registration expenses and Bank book in Books of accounts. The same has been properly accounted for, no action in this record is required.

4.1 The PCIT finally noted that as regards to the difference of Rs.25 lakhs in the purchase of property as per the value registered as per sale deed and the guideline value fixed by Stamp Valuation Authority, the same was directed to be added to the total income of the assessee and order u/s.143(3) of the Act dated 26.12.2017 was modified accordingly by the PCIT. Aggrieved, assessee preferred appeal before the Tribunal.

5. Before us the ld.AR for the assessee Shri N. Arjun Raj, CA argued that the difference in the investment made by assessee of

Rs.3.25 crores and the guideline value as per stamp duty valuation fixed by Stamp Valuation Authority at Rs.3.50 crores is only to the extent of Rs.7.69%. He stated that this difference in valuation adopted by Stamp Valuation Authority is marginal and this fact has been considered by legislature lately in section 56(2)(viib)(ii) which is substituted by 56(2)(x)(b)(A) of the Act and in which a concession is given or a mark-up is given whereby if the difference is 5% of the consideration, the same has to be ignored. The ld.AR took us through the relevant provision of section 56(2)(x)(b)(A) of the Act, which reads as under:-

> 56. Income from other sources.
> (1)…….
> (2) In particular, and without prejudice to the generality of the provisions of sub-section (*1*), the following incomes, shall be chargeable to income-tax under the head ―Income from other sources‖, namely:—
> (i)……
> (ii)……
> …….
> (ix)……
> (x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-
> (a) …….
> (b) any immovable property,-
> (A) ……
> (B) for a consideration the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely
> (i) the amount of fifty thousand rupees; and
> (ii) the amount equal to ten per cent of the consideration

5.1 The ld.AR stated that this 5% difference was increased to 10% by the Finance Act, 2020 w.e.f. 01.04.2021. The ld.AR stated that as per the provisions of the Act the stamp duty value fixed by State Valuation Authority is fair market value means which is the best price which a vendor can reasonably obtain on selling of his property. In the circumstance of particular case, he argued that two similar properties even cannot fetch the same price, there is bound to some difference and for this reason, the legislature in its wisdom has recognized this fact that there is always some marginal difference in sale of even two similar properties and thereby allowed difference to the extent of 5% of the consideration by Finance Act, 2018 w.e.f. 01.04.2019 and increases by 10% by the Finance Act, 2020 w.e.f. 01.04.2020.

5.2 The ld.AR stated that this fact has been recognized by the legislature while inserting section 50C of the Act by Finance Act, 2018. The ld.AR relied on Tribunal decision of Co-ordinate Bench in the case of Maria Fernandes Cheryl vs. ITO (International Taxation) order dated 15.01.2021, [2021] 85 ITR(T) 674 (Mumbai-Trib). The ld.AR also relied on another Co-ordinate Bench decision in the case of Amrapali Cinema vs. ACIT, [2021] 190 ITD 36 (Delhi-Trib) and also Chennai Bench decision in the case of Doraiswamy Suresh

(HUF) vs. ACIT in ITA No.609/Chny/2020 dated 13.04.2022. The ld.AR stated that however these decisions relates to adjudication of provisions of section 50C of the Act, but it seems that these are pari-materia to the provisions of section 50C of the Act on principle, while applying to the purchaser, a similar provision is made in the provisions of section 56(2)(viib)(ii) of the Act and subsequently substituted by section 56(2)(x)(b)(A) of the Act. The ld.AR stated that in the present case before us, difference is that 7.69% i.e., between the stamp value adopted by some valuation authority as per guideline value and sale deed registered by assessee. The ld.AR stated that in any case, this is highly debatable issue and once there is debate and AO has taken one of the possible view, the PCIT cannot revise that assessment u/s.263 of the Act for the reason that there is no error in the order of AO at that point of time. In view of this, the ld.AR only requested that the order of PCIT revising the assessment be quashed.

6. On the other hand, the ld. CIT-DR stated that ld.AR only arguing the equity principle and equity does not apply to income tax proceedings because equity is stranger to tax jurisprudence. The ld.CIT-DR stated that provisions of section 50C of the Act are independent and similarly a deeming provision of section

56(2)(viib)(ii) of the Act as applicable in the present case are independent and once deeming provisions are to be applied, these are to be applied as it is and no violence can be done to the deeming provision.

7. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the Co-ordinate bench of this Tribunal, Mumbai Bench in the case of Maria Fernandes Cheryl, *supra,* has considered this issue in detail and further considered the Finance Act, 2018 inserting second proviso to section 50C of the Act, whereby the tolerance limit of 5% was introduced and similarly in the provisions of section 56(2)(x)(b)(A) of the Act, tolerance limit of 5% is increased, which was increased subsequently by the Finance Act, 2020 to 10%. We noted that the Co-ordinate Bench in the case of Maria Fernandes Cheryl, *supra,* has considered this issue and also considered the issue of provisions of section 43CA, 50C and 56 of the Act and held as under:-

> The Honourable Member directed the undersigned to submit a note on the larger question of retrospective applicability of third proviso of Section 50C whereby a variation of 5% wef 1.4.2019 [10% wef 1.4.2021 as Act no. 12 of 2020] is permissible in the sale consideration vis-a-vis valuation adopted by Stamp valuation authorities.
> In this regard, it is humbly submitted that the Finance Act 2018 specifically mentions that the third proviso will come into force prospectively from 1.4.2019 and likewise the Act No 12 of 2020 enhancing the variation from 5% to 10% also specifically states that the enhanced variation will be

effective from 1.4.2021. The relevant amendments and explanatory notes are reproduced below for ready reference :

The Finance Act 2018 inserted Second proviso to section 50C as under:

Amendment of section 50C. 20. In section 50C of the Income-tax Act, in sub-section (1), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2019, namely:—

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

The amendment to Section 50C is explained in Circular 8 of 2018 titled Explanatory Notes to the provisions of The Finance Act 2018 as under :

> 16. Rationalization of section 43CA, section SOC and section 56
> 16.1 Before amendment by the Act, for computing income from business profits (section 43CA), capital gains (section SOC) and other sources (section 56) arising out of transactions in immovable property, the higher of sale consideration or stamp duty value was adopted. The difference was taxed as income both in the hands of the purchaser and the seller.
> 16.2 It has been pointed out that 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 shape of the plot or location.
> 16.3 In order to minimize hardship in case of genuine transactions in the real estate sector, section 43CA, section 50C and section 56 of the Income-tax Act have been amended to provide that no adjustments shall be made in a case ITA No. 4850/Mum/2019 Assessment year: 2011-12 Page 4 of 9 where the variation between stamp duty value and the sale consideration is not more than five per cent of the sale consideration.
> 16.4 Applicability: These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years

Explanatory Notes to Finance Act 2020

Increase in safe harbour limit of 5 per cent. under section 43CA, 50C and 56 of the Act to 10 per cent..

Section 43CA of the Act, inter alia, provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall for the purpose of computing profits and gains from transfer of such assets, be deemed to be the full value of consideration. The said section also provide that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

Section 50C of the Act provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration and capital gains shall be computed on the basis of such consideration under section 48 of the Act. The said section also provides that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

Clause (x) of sub-section (2) of section 56 of the Act, inter alia, provides that where any person receives, in any previous year, from any person or persons on or after 1st April, 2017, any immovable property, for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be charged to tax under the head "income from other sources". It also provide that where the assessee receives any immovable property for a consideration and the stamp duty value of such property exceeds five per cent of the consideration or fifty thousand rupees, whichever is higher, the stamp duty value of such property

as exceeds such consideration shall be charged to tax under the head "Income from other sources".

Thus, the present provisions of section 43CA, 50C and 56 of the Act provide for safe harbour of five per cent.

Representations have been received in this regard requesting that the said safe harbour of five per cent may be increased.

It is, therefore, proposed to increase the limit to ten per cent..

This amendment will take effect from 1st April, 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

Thus, the safe harbour limit of 5% is applicable upto AY 2020-21 and 10% is specifically from AY 2021-22 onwards.

It is humbly submitted that in the present case the variation is 6.55% which is more than specified safe harbour limit of 5%.

It is further humbly submitted that

a) The value determined by Valuation officer is statutorily required to be adopted u/s 50C(2) of Act and in the present case, the AO has already referred the matter to valuation officer and the same is awaited. Hence, it is humbly submitted that deemed sale consideration may be taken as determined u/s 50C(2) of the Act
b) the third proviso is applicable prospectively especially as retrospective effect is neither mentioned in the provisions of section 50C nor in the Explanatory Notes to Finance Act 2018 issued vide Circular 8/2018 …
c) the variation permissible is only 5% as on date and the enhanced variation of 10% is applicable only from 1.4.2021.

Lastly it is also submitted that in case the Honourable Tribunal is not inclined to accept the submissions, it is requested that it may kindly be mentioned that relief is being provided as a special case and this decision may not be considered as a precedent.

7. These submissions, however, do not impress us. As noted by the Central Board of Direct Taxes circular # 8 of 2018, explaining the reason for the insertion of the third proviso to Section 50C(1), has observed that "It has been pointed out that 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". Once the CBDT itself accepts that these variations could be on account of a variety of factors, essentially bonafide factors, and, for this reason, Section 50C(1) should not come into play, it was an "unintended consequence" of Section 50(1) that even in such bonafide situations, this provision, which is inherently in the nature of an anti-avoidance provision, is invoked. Once this situation is sought to be addressed, as is the settled legal position- as we will see a little later in our analysis, this situation needs to be addressed in entirety for the entire period in which such legal provisions had effect, and not for a specific time period only. There is no good reason for holding the curative amendment to be only as prospective in effect. Dealing with a somewhat materially identical situation in the case of Rajeev Kumar Agarwal Vs ACIT [(2014) 45 taxmnann.com 555 (Agra)] wherein a coordinate bench was dealing with the question whether insertion of a proviso to Section 40(a)(i) to cure intended consequence could have retrospective effect, even though not specifically provided for, and speaking through one of us (i.e. the Vice President), the coordinate bench had, after a detailed analysis of the legal position, observed that, "Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced". Referring to this decision, and extensively reproducing from the same, including the portion extracted above, Hon'ble Delhi High Court, in the case of CIT Vs Ansal Landmark Township Pvt Ltd [(2015) 61 taxmann.com 45 (Del)], has approved this approach and observed that "(t)he Court is of the view that the above reasoning of the Agra Bench of ITAT as regards the rationale behind the insertion of the second proviso to Section 40(a)(ia) of the Act and its conclusion that the said proviso is declaratory and curative and has retrospective effect from 1st April 2005, merits acceptance". The same was the path followed by another bench of this Tribunal in the case of Dharmashibhai Sonani Vs ACIT [(2016) 161 ITD 627 (Ahd)] which has

been approved by Hon'ble Madras High Court in the judgment reported as CIT Vs Vummudi Amarendran [(2020) 429 ITR 97 (Mad)]. The question that we must take a call on, therefore, is as to what is the rationale behind the insertion of the third proviso to Section 50C(1), and if that rationale is to provide a remedy for unintended consequences of the main provision, we must hold that the third proviso to Section 50C(1) comes into force with effect from the same date on which the main provision, unintended provisions of which are sought to be nullified, itself was brought into effect. Let us understand what the nature of the provisions of Section 50C is. In terms of this provision, if the property is sold below the stamp duty valuation rate, which is often called circle rate, this stamp duty valuation report is assumed as sale consideration for the property in question, and, accordingly, capital gains tax is levied. This deeming fiction to substitute apparent sale considerations by notional consideration computed on the basis of a stamp duty valuation rate, was thus to address the issue with respect to potential evasion of taxes by understating the sale consideration amount in a sale deed. As noted by the CBDT, while explaining the justification for insertion of Section 50 C, "(t)he Finance Act, 2002, has inserted a new section 50C in the Income-tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property". Section 50C, thus, on a conceptual note, is a provision to address capital gains tax evasion on account of understatement of the consideration. Of course, the law provides, under section 50C(2), that wherever an assessee claims that the actual market rate is less than the stamp duty valuation, he can have the matter referred to a Departmental Valuation Officer for the ascertainment of the market value, but then it is a cumbersome procedure and, at the end of the day, every valuation, whether by the departmental valuation officer or under the stamp duty valuation notification, is an estimate, and there can always be bonafide variations, though to a certain limited extent, in these estimations. Unless, therefore, some kind of a tolerance band or a safe harbour provision, in respect of such bonafide variations, is implicit in the scheme of law, the assessees are bound to face undue hardships. The mechanism under section 50C proceeds on the assumption that when the sale consideration is less than the stamp duty valuation, the sale consideration is to be treated as understated. This assumption is, however, laid to rest when the variations between the stated consideration and the stamp duty valuation figure are treated as explained. 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.

7.1 Another aspect of apparent consideration, although used for the purpose of purchase or compulsory acquisition of property by Central Government u/s.269UD of the Act, Hon'ble Supreme Court in the case of C.B. Gautum vs. Union of India, (1993) 199 ITR 530 (SC) held the provisions of chapter XX-C can be resorted to only where there is a significant under valuation of the property to the extent of 15% or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15% or more. It is pertinent to note that although the observations of Supreme Court that pre-requisite for passing the order of compulsory acquisition of property by Central Government,

viz., where, in an agreement to sell an immovable property in an urban area, there is significant under valuation of the property by 15% is not incorporated in the amended provision of section 269UD of the Act but the law declared by Supreme Court is the law of the land in view of Article 141 of the constitution and the Central Government while resorting to compulsory acquisition of immovable property had adhered to test laid by Hon'ble Supreme Court. Hon'ble Supreme Court in this case, held in para 19 as under:-

> 19. We shall first discuss the question whether the provisions of Chapter XX-C confer an unfettered discretion on the appropriate authorities concerned to acquire immovable properties which are agreed to be sold in the areas to which the provisions of the Chapter are applicable. In this regard, as we have already pointed out, the very historical setting in which the provisions of this Chapter were enacted suggests that it was intended to be resorted to only in cases where there is an attempt at tax evasion by significant under-valuation of immovable property agreed to be sold. This conclusion is strengthened by Instruction N0. 1A88 issued by the Central Board of Direct Taxes of the Government of India, Ministry of Finance, Department of Revenue, which was filed in the Court by learned Attorney General. In the said document it is emphasised by the Central Board that the main objective of the provisions of Chapter XX-C is to check proliferation of black money in real estate transactions and to enforce declaration of the true value of immovable properties that are subject of transfer between the parties. The Central Board has pointed out in the said Instructions that, in administering the provisions of the said Chapter, it has to be ensured that no harassment is caused to bona fide and honest purchasers or sellers of immovable property and there is no erosion of the confidence of the public in the sense of justice and fair play of the Income Tax Department. Paragraph 3 of the Instruction makes it clear that the right of pre-emptive purchase has to be exercised by the appropriate authority only when it has good reason for acquiring the property. When the property purchased by the Central Government by an order of an appropriate authority is put up for sale the reserve price is required to be fixed at a minimum of 15% above the purchase price shown as the apparent consideration under the agreement between the parties. Thus it is pointed out by the Board that the right of pre-emptive purchase has to be exercised only if the fair market value is found to be at least 15% more than the apparent consideration. The Instruction further provides that in coming to a conclusion as aforestated a reasonable margin of probable errors in estimation

needs to be kept in view particularly as the law does not provide for any opportunity of being heard. The contents of the affidavit filed by one H.K. Sarangi, Under Secretary, Central Board of Direct Taxes, Department of Revenue is also to the effect that the provisions of the said Chapter ought to be resorted to only in cases of under valuation of immovable properties in agreements of sale to the extent of 15% or more. The said H.K. Sarangi has further pointed out that right from the time when the provisions of the said Chapter were brought into force, they are being applied in such manner that the rights and interests of third parties unconnected with the tax evasion are not affected. This has also been pointed out in the main counter affidavit of the Union of India, referred to by us earlier, in paragraph 40. The said affidavit points out that where an order is made under Sub-section (1) of Section 269UD for the purchase by the Central Government of any immovable property, there is no compulsory acquisition involved and hence no solatium is payable and that what the Chapter provides for is pre-emptive purchase of a property already offered for sale. It has been set out in the said affidavit that only properties with an apparent consideration above Rs. 10 lakhs are at present covered by the scheme which applies to only certain large metropolitan conglomeration. Transfers to a relative, on account of natural love and affection, are excluded from the provisions of the scheme. The appropriate authority consists of two Commissioners of Income Tax and one Chief Engineer from the Central Engineering Service. The said affidavit repeats that the pre- emptive purchase has to be resorted to only if the fair market value of the property concerned is found to be at least 15% more than the apparent consideration and this limit has not to be mechanically applied but a reasonable margin for probable error taken into account. The affidavit of Hemant Sarangi further states that the following types of properties should not ordinarily be purchased:
(a) cases of doubtful or disputed titles;
(b) transactions by and with Government, semi-Government Organisations, Public Sector Undertakings, Universities etc.:
(c) properties with bona fide tenancies of long standing; and
(d) properties with too many restrictions on user.

Subsequently, Hon'ble Supreme Court finally laid down the principle that where there is a significant under valuation of the property to the extent of 15% or more in the agreement of sale, as evidenced by the apparent consideration being lower than the fair market value by 15% or more, in that case only the provisions of chapter

XX-C can be resorted to. Hon'ble Supreme Court finally in para 30 held as under:-

> 30. In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the concerned parties, particularly, the intending purchaser and the intending seller must be road into the provisions of Chapter XX-C. In our opinion, before an order for compulsory purchase is made under Section 269UD, the intending purchaser and the intending seller must be given a reasonable opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned. As we have already pointed out the provisions of Chapter XX-C can be resorted to only where there is a significant under-valuation of property to the extent of 15% or more in the agreement of sale, as evidenced by the apparent consideration being the lower than the fair market value by 15% or more. We have further pointed out that although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in case of the aforesaid circumstances being established, but such a presumption is rebuttable and this would necessarily imply that the concerned parties must have an opportunity to show cause as to why such a presumption should not be drawn. Moreover, in a given transaction of an agreement to sell there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be considered to be the fair market value. For example; he might be in immediate need of money and unable to wait till a buyer is found who is willing to pay the fair market value for the property. There might be some dispute as to the title of the immovable property as a result of which it might have to be sold at a price lower than the fair market value or a subsisting lease in favour of the intending purchaser. There might similarly be other genuine reasons which might have led the seller to agree to sell the property to a particular purchaser at less than the market value even in cases where the purchaser might not be his relative. Unless an intending purchaser or intending seller is given an opportunity to show cause against the proposed order for compulsory purchase, he would not be in a position to rebut the presumption of tax evasion and to give an interpretation to the provisions which would lead to such a result would be utterly unwarranted. The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell lead to the conclusion that before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the under-valuation in the agreement for sale was not with a view to evade tax. Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to

> make a fortress out of the dictionary." Again, there is no express provision in Chapter XX-C barring the giving of a show cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269UD must be read into the provisions of Chapter XX-C. There is nothing in the language of Section 269UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269UD-reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.

7.2 Further, as discussed by Hon'ble Madras High Court in the case of CIT vs. Smt. Padmavathi, [2020] 120 taxmann.com 187 (Madras), considering the very issue of revision proceedings u/s.263 of the Act, noted that in case there is some difference between the sale consideration as per sale deed and the guideline value fixed by Stamp Valuation Authority and merely because guideline value was higher than the sale consideration shown in the sale deed, it cannot be sole reason for holding that the assessment is erroneous and prejudicial to the interest of Revenue. Hon'ble Madras High Court in para 16 held as under:-

> 16. The only reason for setting aside the scrutiny assessment was on the ground that the guide line value of the property, at the relevant time, was higher than the sale Consideration reflected in the registered document. The question would be as to what is the

effect of the guideline value fixed by the State Government. There are long line of decisions of the Hon'ble Supreme Court holding that guideline value is only an indicator and the same is fixed by the State Government for the purposes of calculating stamp duty on a deal of conveyance. Therefore, merely because the guideline was higher than the sale consideration shown in the deed of conveyance, cannot be the sole reason for holding that the assessment is erroneous and prejudicial to the interest of revenue.

7.3 In view of the above, in the present case before us, the issue is whether assessment framed by the AO is erroneous and prejudicial to the interest of Revenue for the reason that there is difference of Rs.25 lakhs between the guideline value as per stamp valuation which is Rs.3.50 crores. However, as per registered sale deed the actual consideration is Rs.3.25 crores. The assessee has disclosed the investment as per consideration declared in sale deed at Rs.3.25 crores but the PCIT was of the view that the difference of Rs.25 lakhs in view of the guideline value fixed by Stamp Valuation Authority at Rs.3.50 crores is to be accepted and added to the return of income of the assessee. We are of the view that this is highly debatable issue and even the tolerance limit of 10% is to be considered or not is again a debate. Once there is a debate, the order cannot be held as erroneous in view of the decision of Hon’ble

Supreme Court in the case of Malabar Industrial Co. Ltd., vs. CIT, (2000) 243 ITR 83. Hence, we quash the revision proceedings and allow the appeal of assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22nd July, 2022 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 22nd July, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant	2. प्रत्यर्थी/Respondent	3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त /CIT	5. विभागीयप्रतिनिधि/DR	6. गार्डफाईल/GF.