

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B"**  
**BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपीलसं. / ITA No.923/PUN/2019**

**निर्धारणवर्ष / Assessment Year : 2016-17**

V.K.Developers, 1168/125, Gokhale Nagar, Near Gopal Krishna Mandal, Pune – 411016. PAN: AAIFV 7710 N	Vs .	The ACIT, Circle-3, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Suhas Bora – AR
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	11/07/2022
Date of pronouncement	04/08/2022

**आदेश/ ORDER**

**Per S.S.Godara, JM:**

This assessee's appeal for Assessment Year 2016-17 is directed against the Commissioner of Income Tax(Appeals)-3, Pune's order dated 12.06.2019 passed in case no.PN/CIT(A)-3/cir-3,Pn/157/2018-19, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short "the Act"].

Heard both the parties. Case files perused.

2. Coming to assessee's sole substantive grievance challenging both the learned lower authorities making section 43CA addition of Rs.12,50,490/- during the course of assessment dated 07.12.2018 and upheld in the CIT(A)'s order, we note at the outset that the same

pertains to seven(07) residential units sold / transferred in the relevant previous year.

3. We further find that the CIT(A)'s detailed discussion in para 3, page 2 as well as in para 6.3.1 page 8 takes note of the Assessing Officer's findings wherein all these "transfer" instance indicate tolerance margin(s) of less 10% as per section 43CA(1) 1<sup>st</sup> proviso. Mr.Jasnani vehemently argued that this 10% tolerance margin substituted the earlier provision of 5% by the Finance Act, 2020 w.e.f. 01.04.2021 with prospective effect whereas we are in assessment year 2016-17 only.

4. We find no merit in the Revenue's instant arguments as the legislature has incorporated similar tolerance margin(s) of 5 and 10% in section 50C(1), third proviso by the very Finance Act, 2020 w.e.f 01.04.2021. Case law [2021] 187 ITD 738 (Mum) Maria Fernandes Cheryl Vs. ITO holds the same as having retrospective effect since curative in nature. We wish to clarify the only difference between section 43CA and section 50C is that the former is applicable in case of transfer of assets other than capital assets whereas the latter provision comes into play in case of transfer of a capital asset in the specified circumstances, respectively.

5. Faced with the situation, we accept the assessee's instant sole substantive grievance to delete the impugned section 43CA addition of Rs.12,50,490/-. Ordered accordingly.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 4<sup>th</sup> August, 2022.

**Sd/-**  
**(DR. DIPAK P. RIPOTE**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(S.S.GODARA)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 4<sup>th</sup> Aug, 2022/ SGR\*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.