IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.484/Kol/2022
Assessment Year: 2018-19

Sandeep Kumar Poddar 210, Jamunalal Bajaj Street, Burrabazar, Kolkata-700007. (PAN: AEOPP1265N)	Vs.	Income Tax Officer, Ward-44(1), Kolkata.
(Appellant) **(Respondent)**		

Present for:

Appellant by : Shri Abhisek Bansal, Advocate
Respondent by : Shri Vijay Kumar, Addl. CIT

Date of Hearing : 27.12.2022
Date of Pronouncement : 13.03.2023

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1043632005(1),dated 28.06.2022 passed against the assessment order by Income Tax Officer, National e-Assessment Centre, Delhiu/s. 143(3) read with sections 143(3A) & 143(3B) of theIncome-tax Act, 1961 (hereinafter referred to as the "Act") Act,dated 07.03.2021.

2. Assessee has taken seven grounds of appeal in which the moot point relates to addition made in respect of difference of stamp duty value and the actual consideration for which, in the given set of facts, whether it falls within the tolerance band of 10% available under section 56(2)(x) of the

Act by applying it retrospectively by treating it as clarificatory in nature.

3. Brief facts of the case are that assessee vide its return of income on 27.08.2018 reported total income of Rs.82,60,280/-. Case of the assessee was selected for limited scrutiny including the issue relating to investment in immovable property. During the year under consideration, assessee had purchased a property for which the actualtransaction value is of Rs.82,91,250/-. Stamp duty value of the said property is taken at Rs.87,83,700/-. Both these amounts are uncontroverted and undisputed. In the assessment proceedings, the difference between the two amounting to Rs.4,92,450/- has been added to the total income of the assessee as income from other sources by the Ld. AO, u/s. 56(2)(x) of the Act, since it does not fall within the tolerance band of 5% as available under the said section. In the course of assessment proceeding, assessee referred to the amendment made by Finance Bill, 2020 wherein safe harbour limit (tolerance band) of 5% has been increased to 10% and, therefore submitted that difference between stamp duty value and the actual consideration, if it is less than 10%, it has to be ignored.

3.1. Assessee placed reliance on the decision of coordinate bench of ITAT, Kolkata in the case of *Chandra Prakash Jhunjhunwala v. DCIT in ITA No. 2351/Kol/2017 dated 09.08.2019 for AY 2014-15*. However, Ld. AO proceeded with the addition and completed the assessment. Aggrieved, assessee went in appeal before the ld. CIT(A).

3.2. Before the Ld. CIT(A), it was asserted by the assessee that Ld. AO has ignored the amendment by Finance Act, 2020 to section 56(2)(x) wherein the safe harbour limit (tolerance band) has been increased from 5% to 10% and as such if the difference between valuation for stamp duty and the actual consideration is 10% or less, the same shall be ignored. According to the assessee, in the present case,valuation for the purpose of stamp duty is Rs.87,83,700/- and the actual transaction value is Rs.82,91,250/-, the difference of Rs.4,92,450/- is less than 10% limit as prescribed in the said section and cannot be added as income from other sources. The difference is at 5.93% (Rs.4,92,450/Rs. 82,191,250 x 100) of the actual consideration.

3.3. Assessee placed reliance on the decision of Coordinate Bench of ITAT, Mumbai in the case of *John Flower (India) Pvt.Ltd. in ITA No. 7545/Mum/2014 for AY 2010-11 dated 25.01.2017* wherein it was held that if the difference between the valuation adopted by the stamp duty valuation authority and that declared by the assessee is less than 10%, the same should be ignored and no adjustment shall be made.

3.4. Ld. CIT(A) sustained the addition made by the Ld. AO by observing that "*In view of the above provisions of the Act, it is evident that before the amendment w.e.f. 01.04.2019 (relevant to AY 2019-20), in the relevant assessment year 2018-19, even the 'five' percent tolerance limit was not applicable. The appellant's submission that the amendment is retrospective in nature has no substance. It is to be noted that the 'five' percent limit was further amended to 'ten' percent w.e.f. 01.04.2021. Further, amendment w.e.f. 01.04.2021*

*made it abundantly clear that the 'five' percent limit will be applicable only between AY 2019-20 to AY 2020-21. From AY 2021-22 onwards, the limit of 'ten' percent is applicable. Hence, in the relevant year, the tolerance limit was only Rs.50,000/-."*Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, Ld. Counsel for the assessee narrated the facts as stated above and placed reliance on the decision of Coordinate Bench of ITAT, Kolkata in the case of *Karb Associates Pvt. Ltd. v. DCIT in ITA No. 1941/Kol/2019 dated 25.08.2021* which in turn has placed reliance on the decision of Coordinate Bench of ITAT, Mumbai in the case of *Maria Fernandes Cheryl v. ITO(Int'l Tax) 123 taxmann.com 252 (Mum)* after considering various decisions as well as *CBDT Circular No. 8 of 2018, dated 26.12.2018.*

4.1. Ld. Counsel strongly asserted that difference between stamp duty valuation and the actual consideration amounting to Rs.4,92,450/- which comes to 5.93% falls within the tolerance bandof 10% under the amended provisions of section 56(2)(x) of the Act and, therefore, no addition is called for in this respect. According to him, the amendment is clarificatory/curative in nature and is to be applied retrospectively.

5. Per contra, Ld. Sr. DR submitted that the amendment made by Finance Act, 2020 to section 56(2)(x) of the Act is effective from 01.04.2021 i.e. relevant to AY 2021-22 and not the present year under consideration i.e. AY 2018-19. He thus, placed reliance on the order of both, the ld. AO and the Ld. CIT(A).

6. We have heard the rival contentions and perused the material available on record. It is noted that the amendment to section 56(2)(x) of the Act brought in by Finance Act, 2020 of increasing tolerance limit from 5% to 10% is w.e.f. 01.04.2021.The point for consideration before us in the present appeal is, if this increase in tolerance limit is to be treated as clarificatory/curative in nature having retrospective application or otherwise. Admittedly, quantification of the difference between the valuation for stamp duty and the actual consideration is undisputed.

6.1. Before delving on the issue in hand, the relevant provisions of section 56(2)(x) of the Act are extracted below:

> "*Income from other sources.*
>
> *56(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 any of the head "Income from other sources", namely-*
>
> *(i) ....*
>
> *(ii) ......*
>
> *...........*
>
> *(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,-*
>
> *(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*
>
> *(b) any immovable property, -*
>
>> *(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;-*
>>
>> *(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."*

6.2. We note that Finance Act, 2020 enhanced the tolerance band from 5% to 10% w.e.f. 01.04.2021. This issue has been elaborately dealt with by the Coordinate Bench of ITAT, Mumbai in the case of *Maria Fernandes Cheryl (supra)* which has been subsequently followed by the Coordinate Bench of ITAT, Kolkata in the case of *Karb Associates Pvt. Ltd. (supra)*.Since we have nothing more to add or improve upon the observations and finding given by the Coordinate Bench of ITAT Mumbai, we extract the relevant observationsand finding below for ease of reference:

> *" 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."

6.3. Finding given by Coordinate Bench of ITAT, Kolkata in *Karb Associates Pvt. Ltd. (supra)* on the above is reproduced as under:

> *"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 on this issue in accordance to law."*

7. Considering the submissions made by the assessee and the undisputed facts relating to quantum of difference and by placing reliance on the observations and finding of the Coordinate Bench of ITAT, Mumbai in the case of *Maria Fernandes Cheryl (supra)*followed in the case of *Karb Associates Pvt. Ltd. (supra)*, we unhesitatingly hold that the amendment of increasing the tolerance bandfrom 5% to 10% under section 56(2)(x) brought in by Finance Act, 2020 had to be read retrospectively being clarificatory/curative in nature and, therefore, since the difference between the valuation for stamp duty and the actual consideration is less than 10%, which in the present case is 5.93%, no addition is called for. Accordingly, grounds taken by the assessee in this respect are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 13thMarch, 2023.

Sd/-	Sd/-
(Rajpal Yadav)	(Girish Agrawal)
Vice President	Accountant Member

Dated: 13th March, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. CIT(A), NFAC, Delhi
4. ITO, National e-Assessment Centre, Delhi.
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata