

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER &  
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**ITA NO. 37/MUM/2023 (A.Y: 2011-12)**

Gobindram Jagdish Kakwani C/o Gulabani & Co. CA, 507, 5 <sup>th</sup> Floor, Shree Prasad House 35 <sup>th</sup> Road, Off Linking Road Bandra (West), Mumbai- 400050  <b>PAN: AWOPK5474C</b>	<i>vs.</i>	ITO (IT)- Ward 3(1)(1) Air India Building Nariman Point Mumbai-400021
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Ashok Sharma &amp; Shri Deepak Gulabani</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Soumendu Kumar Dash</b>
<b>Date of Conclusion of Hearing</b>	<b>:</b>	<b>05.04.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>04.07.2023</b>

**ORDER**

**PER S. RIFAUH RAHMAN (AM)**

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 18.11.2022 for the A.Y.2011-12.

**2.** Brief facts of the case are, assessee is an NRI and had not filed his return of income for the A.Y. 2011-12. The case was reopened and notices u/s. 148 of the Income-tax Act, 1961 (in short "Act") was issued and served on the assessee. In response to notice u/s. 148 of the Act, assessee had filed his return of income on 31.03.2018 declaring total income of ₹.2,22,450/-. Accordingly, notices u/s. 143(2) and 142(1) were issued and served on the assessee. In response assessee has assessee the relevant information as called for.

**3.** From the return of income filed by the assessee, Assessing Officer observed that assessee derives income under the head "income from house property" and "income from other sources".

**4.** As per the reasons for reopening, during Financial Year 2010-11, assessee had sold the property bearing No. 5 in building No. 144 and bearing No. 155, Indian Complex Gundavli, Tal. Bhiwandi vide agreement dated 31.01.2011 for sale consideration of ₹.52,50,000/-. In this regard assessee was asked to file the copy of sale deed, purchase deed, and computation of capital income. In reply assessee has submitted the relevant information.

5. The Assessing Officer observed that the assessee has taken sale consideration of ₹.52,50,000/- whereas the market value of the property was ₹.69,32,000/-. Assessing Officer also observed that assessee in his computation of capital gain has claimed deduction u/s. 54 of the Act for the purchase of new property amounting to ₹.64,00,000/- and further, he observed that assessee has only filed the copy of the allotment letter of the property in support of the claim made u/s. 54F of the Act.

6. Based on the above observations, a show cause notice was issued to the assessee why the additional income and also deduction claimed u/s. 54F of the Act should not be disallowed. In response assessee submitted as under: -

*"Property sold was for Rs. 52,50,000/-. The assessee does not agree to the market value of the said property of Rs. 69,32,000/- The assessee objects to the said valuation of Rs. 69,32,000/-. The market value was approximately the same as the sale consideration. The assessee request you to kindly reassess the market value by appointing a Valuer since the value was much less and the assessee was unable to sell the unit.*

*The assessee has claimed exemption u/s 54F of the entire capital gains made by him on the sale of unit. The assessee has invested a sum of Rs 64,00,000/- in new residential asset and documentary proof in the form of attached herein with his reply attached as Annexure 1".*

7. After considering the above submissions of the assessee, Assessing Officer rejected the same and further, observed that during the

assessment proceedings assessee objected for adoption of stamp duty valuation and requested to make a reference to District Valuation Officer for correct market value of the property. Accordingly, a reference was made to the DVO on 19.12.2018 for proper valuation. However, Assessing Officer observed that there is no likelihood that the Valuation Officer will furnish report before 31.12.2018, in order to protect the interest of the revenue Assessing Officer proceeded to adopt the value of ₹.69,32,000/- as per stamp duty valuation and proceeded to determine the capital gain and accordingly, he proceeded to adopt the value as per section 50C of the Act and also he rejected the claim made by the assessee u/s. 54F of the Act with the observation that assessee has submitted only allotment order from the builder in support of his claim. Merely submitting allotment letter is not sufficient to make the assessee to lawful owner of the property.

**8.** Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed the detailed submissions before him, for the sake of clarity it is reproduced below: -

*"The learned AO has erred in considering the market value of the property as per stamp duty valuation of Rs. 69,32,000 as the sale consideration as per the provisions of Sec 50C for the purpose of determining the long term capital gains instead of RS. 52,50,000 which is the actual sale consideration.*

1. "My submission for taking the sale consideration as the Sale Value and not the 50C and/or the Fair market Valuation as determined by the DVO:

The A.O has considered the market value of the property as per stamp duty valuation for the purpose of calculation of capital gains as per provision of 50C of the IT Act, 1961.

I did not agree to the market value of the property as per stamp duty PAR valuation and objected to the same. The A.O then referred the valuation of the D.V.O for determining the correct valuation of the fair market value of the property.

In the Interim, the A.O proceeded with the 50C valuation and computed the L.T.C.G. as Rs. 49,56,637/- instead of Rs. 32,74,637/- as determined and offered by me as Long term capital gains., which was then claimed as exempted by me u/s 54F as I had invested Rs. 64,00,000/- in a residential flat.

D.V.O vide his order no. DVO-1/MUM/CGT/2018-19/786 dated 07th March, 2019 u/s 56A r.w.s 56(2)(vii)(b) of the IT Act, 1961 determined the F.M.V of the property as Rs. 55,32,000/- Order copy of the DVO attached as Annexure 7.

The AO subsequently rectified the order passed u/s 143(3) which is the subject matter of the appeal vide order u/s 154 dated 12th March, 2019 and revised the LTCG to Rs. 35,56,637 from the figure of Rs. 49,56,637/- Rectification order u/s. 154 of the IT Act, 1961 is attached herewith as Annexure 8.

Since the agreement value is Rs. 52,50,000/- and the fair market value determined by the DVO is Rs. 55, 32,000/- and the difference is less than 10%, I plead that the valuation of Rs. 52,50,000 which is the actual sale consideration should be adopted and the long term capital gains be calculated taking the sale consideration as 52,50,000 instead of the fair market value determined by the DVO.

**Judicial Pronouncement/ Case Law - extract in support of the above submission.**

In the case of Sri Sandeep Patil Vs. ITO (ITAT Bangalore), the ITAT held that difference between the value adopted by stamp valuation authority and actual consideration is to be ignored if the same is less than 10%.

In the said case, the Ld. A.R. submitted that the Parliament itself has inserted third proviso in Section 50C(1) of the Act, as per which, if the difference between stamp value and the actual consideration is

*5% or less the same shall be ignored w.e.f. 1.4.2019. The limit of 5% has been increased to 10% w.e.f. 1.4.2021. The Ld. A.R. submitted that the effect of these amendments has been considered by the Kolkata Bench of Tribunal in the case of Chandra Prakash Jhunjhunwala (supra) and it has been held that the third proviso to section 50C should be treated as curative in nature and will apply retrospectively from 1.4.2003 i.e. from the date of insertion of section 50C in the Statute. The Ld. A.R submitted that even prior to the introduction of third proviso to section 50C(1) of the Act, the coordinate benches in other cases referred above has held that difference of less than 10% shall be ignored. In this regard, the Ld. AR. invited our attention to the decision rendered by the Mumbai bench of Tribunal in the case of John Fowler India Pvt. Ltd. (supra). Accordingly, he submitted that the difference determined by Ld CIT(A) is less than 10% of actual consideration and hence the same should be ignored.*

*Finance Act, 2018 has w.e.f. 1.4.2019 inserted third proviso to Section 50C which provides for a tolerance limit of 5% of the consideration received or accruing as a result of the transfer. The limit of 5% has been increased to 10% by the Finance Act 2020 wef 14 2021 A question arises as to whether the tolerance limit is prospective from the date of its introduction or is retrospective? if it is retrospective, it is retrospective since when? Amendment made in scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration via-dvis stamp duty valuation from 5 per cent to 10 per cent are effective from date on which section 50C, itself was introduced, ie 1-4-2003 Maria Femandes Cheryl v. ITO, International Taxation (2021) 123 taxmann.com 252 (Mumbai-Trib )]*

*The Tribunal noted that - Central Board of Direct Taxes circular No. 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 bona fide factors, and, for this reason, section 50C(1) should not come into play, it was an 'unintended consequence of section 50C(1) that even in such bona fide situations, this provision, which is inherently in the nature of an anti-avoidance provision, is invoked. Once this situation is sought to be addressed, 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*

*The Tribunal observed that - 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 bona fide 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. It is a case of a curative amendment to take care of unintended consequences of the scheme of section 50C*

*As such, I humbly plead that the valuation adopted by the AO of Rs.55,32,000 being the fair market value of the property as determined by the DVO be replaced by the actual sale consideration of Rs. 52,50,000 and the long term capital gains be calculated by taking the sale value of Rs 52,50,000*

*1. "My submission for taking the sale consideration as the Sale Value and not the 50C and/ or the Fair market Valuation as determined by the DVO:*

*The AO has considered the market value of the property as per stamp duty valuation for the purpose of calculation of capital gains as per provision of 50C of the IT Act, 1961*

*I did not agree to the market value of the property as per stamp duty valuation and objected to the same. The AO then referred the valuation of the DVO for determining the correct valuation of the fair market value of the property*

*In the Interim, the A.O proceeded with the 50C valuation and computed the LTCG as Rs. 49,56,637/- instead of Rs. 32,74,637/- as determined and offered by me as Long term capital gains, which was then claimed as exempted by me u/s 54F as I had invested Rs. 64,00,000/- in a residential flat.*

*D.V.O vide his order no. DVO-1/MUM/CGT/2018-19/786 dated 07th March, 2019 u/s 56A rws 56(2)(vii)(b) of the IT Act, 1961 determined the F.M.V of the property as Rs. 55,32,000/- Order copy of the DVO attached as Annexure 7.*

*The A.O. subsequently rectified the order passed u/s 143(3) which is the subject matter of the appeal vide order u/s 154 dated 12th March, 2019 and revised the LT.CG to Rs 35,56,637 from the figure of Rs. 49,56,637/- Rectification order u/s 154 of the IT Act, 1961 is attached herewith as Annexure 8.*

*Since the agreement value is Rs. 52,50,000/- and the fair market value determined by the DVO is Rs. 55, 32,000/- and the difference is less than 10%, I plead that the valuation of Rs. 52,50,000 which is the actual sale consideration should be adopted and the long term capital gains be calculated taking the sale consideration as 52,50,000 instead of the fair market value determined by the DVO.*

**Judicial Pronouncement/ Case Law - extract in support of the above submission.**

*In the case of Sri Sandeep Patil Vs. ITO (ITAT Banglore), the ITAT held that difference between the value adopted by stamp valuation authority and actual consideration is to be ignored if the same is less than 10%.*

*In the said case, the Ld. AR submitted that the Parliament itself has inserted third proviso in Section 50C(1) of the Act, as per which, if the difference between stamp value and the actual consideration is 5% or less the same shall be ignored w.e.f. 1.4.2019. The limit of 5% has been increased to 10% w.e.f. 1.4.2021. The Ld. AR submitted that the effect of these amendments has been considered by the Kolkata Bench of Tribunal in the case of Chandra Prakash Jhunjhunwala (supra) and it has been held that the third proviso to section 50C should be treated as curative in nature and will apply retrospectively from 1.4.2003 i.e. from the date of insertion of section 50C in the Statute. The Ld. A.R. submitted that even prior to the introduction of third proviso to section 50C(1) of the Act, the coordinate benches in other cases referred above has held that difference of less than 10% shall be ignored. In this regard, the Ld. AR invited our attention to the decision rendered by the Mumbai bench of Tribunal in the case of John Fowler India Pvt. Ltd. (supra). Accordingly, he submitted that the difference determined by Ld CIT(A) is less than 10% of actual consideration and hence the same should be ignored.*

*Finance Act, 2018 has w.e.f. 1.4.2019 inserted third proviso to Section 50C which provides for a tolerance limit of 5% of the consideration received or accruing as a result of the transfer. The limit of 5% has been increased to 10% by the Finance Act, 2020 w.e.f. 1.4.2021. A question arises as to whether the tolerance limit is prospective from the date of its introduction or is retrospective? If it is retrospective, it is retrospective since when? Amendment made in scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5 per cent to 10 per cent are effective from date on which section 50C, itself was introduced, ie 1-4-2003 Maria Fernandes Cheryl v. ITO, International Taxation [(2021) 123 taxmann.com 252 (Mumbai - Trib.)]*

*The Tribunal noted that - Central Board of Direct Taxes circular No. 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 bona fide factors, and, for this reason section 50C(1) should not come into play, it was an unintended consequence of section 50C(1) that even in such bona fide situations, this provision, which is inherently in the nature of an anti-avoidance provision, is invoked. Once this situation is sought to be addressed, 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*

*The Tribunal observed that 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 bona fide 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. It is a case of a curative amendment to take care of unintended consequences of the scheme of section 50C*

*As such, I humbly plead that the valuation adopted by the AO of Rs. 55,32,000 being the fair market value of the property as determined by the DVO be replaced by the actual sale consideration of Rs. 52,50,000/- and the long term capital gains be calculated by taking the sale value of Rs. 52,50,000/-".*

**9.** After considering the detailed submissions of the assessee, Ld.CIT(A) sustained the additions made by the Assessing Officer and made the following observation:

*"In the case of the appellant, the Stamp Duty Valuation Authority has assessed the value of the property at Rs.69,32,000/- whereas the DVO has determined the fair market value of the property at Rs.55,32,000/- Sub-section (3) of section 50C provides that in a case where the fair market value of the property determined by the DVO*

*exceeds the value of the property assessed by the Stamp Duty Valuation Authority then the value of the property assessed by the Stamp Duty Valuation Authority is to be considered as sale consideration to compute the capital gains u/s 50C of the Act. The appellant has not doubted the value of the property assessed by the Stamp Duty Valuation Authority and that determined by the DVO. Therefore, sub-section (3) is not applicable to the case of the appellant. The appellant wants to take benefit of 5% difference between the sale consideration and the value assessed by the Stamp Duty Valuation Authority. However, the appellant has compared the value determined by the DVO and the actual sale value and wants to take benefit of the difference of 5%. Further relying upon the decision of the ITAT, Bangalore in the case of Sri Sandeep Patil (supra), the appellant is also taking benefit of increased limit of 10% between both the values. From plain reading of the third proviso, it is very clear that the benefit of 5% or 10% difference is to be given for difference in the value of the property assessed by the Stamp Duty Valuation Authority and the actual sale consideration received. In the case of the appellant, the value of the property assessed by Stamp Duty Valuation Authority is Rs.69,32,000/- and the actual sale consideration is Rs.52,50,000/-, thus the difference between both the values is Rs.16,82,000/- Thus, the difference exceeds 5% or even 10% of the actual sale consideration. Thus, the appellant cannot claim the benefit of the third proviso to sub-section (1) of section 50C of the Act. As per sub-section (1) of section 50C, for the purpose of computation of capital gain, the value assessed by Stamp Duty Valuation Authority should be the full value of the consideration received as a result of transfer of the property. In view of the above discussion, the AO was correct in adopting the assessed value of Rs.69,32,000/-, as assessed by the Stamp Duty Valuation Authority, for determining the full value of consideration on sale of the property by the appellant. Thus, capital gain of Rs.49,56,637/- computed by the AO u/s.50C is upheld."*

**10.** With regard to deduction claimed u/s. 54F of the Act he rejected the claim of the assessee with the following observations: -

*"5.3.1 The facts on record show that the appellant has purchased a residential flat being flat no. 1306, in Aquina building, Andheri (East), Mumbai, for which the appellant issued a cheque of Rs.64,00,000/- on 17.11.2011. The allotment letter dated 29.07.2013 was issued by the Developer to the appellant in respect of purchase of the flat by the appellant. The appellant had sold a property being Bearing No.*

5 in building No. 144 and Bearing No. 155, Indian Complex, Gundavli, Tal, Ghiwandi by sale deed dated 31.01.2011. The deduction u/s.54F is available to the assessee if the capital gain arising from sale of the property is invested into the residential property within a period from one year before or two years after the date of transfer of such property or within a period of three years residential house is constructed. In the case of the appellant, the appellant has invested Rs.64,00,000/- in purchase of residential property by issuing a cheque dated 17.11.2011. The appellant has provided a copy of bank account maintained in Bank of India having savings account no. 000413110000026. The bank account reflected the balance of Rs. 14,62,111/- as on 09.10.2011. There was a deposit of Rs.4,00,000/- Rs.51,000/- Rs.2,00,000/- Rs.27,00,000/-, Rs.1,20,000/- and Rs.91,646/- from 13.10.2011 to 09.11.2011. Thus, the available balance as on 09.11.2011 was Rs.72,13,563/- and from this available balance, the appellant had made investment of Rs.64,00,000/- into the residential property and has claimed deduction u/s.54F of the Act. From the evidences available on record, it is seen that the appellant has sold the property on 31.01.2011 for consideration of Rs.52,50,000/- whereas the balance in the bank account as on 09.10.2011 was only Rs.14,62,111/-. The appellant has not established that the sale consideration of Rs.52,50,000/- received on the sale of the property was deposited in the bank account and the capital gain arising from sale consideration was invested in the purchase of new residential property. The investment of Rs.64,00,000/- made by the appellant by issuing cheque dated 17.11.2011 was not made from the sale consideration received on sale of the old property. Thus, the appellant did not invest the capital gain arising from the sale of the property into a residential property. Therefore, the appellant is not eligible for deduction u/s.54F of the Act.

5.3.2 The argument of the appellant is that the allotment letter in respect of purchase of new residential property was issued by the Developer on 29.07.2013 and thus, the investment in new property was made within the period stipulated in section 54F of the Act, and the appellant is eligible for deduction u/s.54F of the Act. This argument of the appellant becomes infructuous because as discussed above, on the facts of the case, the appellant is not eligible for deduction u/s.54F of the Act. Thus, the AO has rightly denied the

*deduction u/s.54F claimed by the appellant in respect of investment in residential property."*

**11.** Aggrieved assessee is in appeal before us raising following grounds in its appeal: -

*"1. The CIT(A) erred in considering the sale consideration as Rs.69,32,000/- being the stamp duty valuation of the property (50C valuation), when the D.V.O had valued it at Rs.55,32,000/- which was accepted by the assessee and the IT.O Int tax Ward 3(1)(1), Mumbai has also passed rectification order u/s 154 of the I.T. Act, 1961, accepting the value passed by the DVO as the sale consideration amount for calculation of capital gains.*

*Hence, the sale consideration to be taken as Rs. 55,32,000/- as per the order passed by the DVO dt.7th March, 2019 u/s. 55A r.w.s. 56(2)(vii)(b) of the Inc Tax Act, 1961 for the purpose of determining the capital gains.*

*2. (a)The CIT(A) erred in disallowing exemption u/s 54F on grounds that the investment made for claiming sec 54F exemption was not made from the sale consideration received on sale of the old property. All the conditions of the Section 54F of the Inc Tax Act, 1961 have been met by the Assessee. The assessee has made the investment for residential flat out of the sale consideration amount only. Also, Section 54F allows the investment to be made a year before and as such the condition that the investment to be made from the same funds is not a pre condition as has also been clarified in the case of CIT vs. Dr. PS Pasricha-ITA no 1825 of 2009.*

*As such, the exemption claimed u/s.54F may be allowed.*

*(b) The CIT(A) has erred in stating that the appellant has not established that the sale consideration of Rs.52,50,000/- received on the sale of the property was deposited in the bank account and the capital gains arising for sale consideration was invested in the purchase of new residential property.*

*3. The appellant craves, leave to add, amend, alter or modify the said grounds of appeal."*

**12.** At the time of hearing, Ld. AR of the assessee submitted that based on the request of the assessee, Assessing Officer has referred the valuation to the DVO. However, DVO report was received subsequent to the completion of the assessment. Accordingly, Assessing Officer passed rectification order u/s. 154 of the Act by adopting the DVO value. In this regard he brought to our notice Para No. 10 of the order of the Ld.CIT(A) who has denied the claim of the assessee by rejecting the claim made by the assessee as per 3<sup>rd</sup> Proviso to section 50C of the Act. In this regard he brought to our notice Page No. 60 of the Paper Book which is the final valuation report and submitted that the DVO value is less than the stamp duty valuation. Therefore, the finding given by the Ld.CIT(A) is not as per the facts on record. He submitted that the difference between the sale value declared by the assessee and the DVO value is less than 10% and he submitted that the difference of 5% was already available to the assessee. However, the legislature has increased the percentage to 10% w.e.f 01.04.2019, the courts have held that this is a beneficial provision and the benefit is applicable retrospectively.

**13.** With regard to deduction u/s. 54F of the Act he submitted that Ld.CIT(A) rejected the claim of the assessee based on his observation that the assessee has not utilized the sale consideration to make the

investment in the new property. He submitted that this is contrary to the provisions of section 54F of the Account. As per the proviso it allows investment to be made a year before and two years after the sales. Therefore, it is not mandatory that the same fund should be utilized. However, he submitted that in this case assessee has utilized the sale proceeds of the old property and he prayed that appeal filed by the assessee may be allowed.

**14.** On the other hand, Ld. DR relied on the findings of the Ld.CIT(A) on both the issues and brought to our notice Page No. 10 to 18 of the Ld.CIT(A) order.

**15.** Considered the rival submissions and material placed on record, we observe that Ld.CIT(A) has denied the benefit claimed by the assessee in relation with proviso to 50C of the Act. Ld.CIT(A) by referring to sub section 3 of section 50C he denied the benefit claimed by the assessee. However, we observe that as per section 50C sub-section (3) where the value ascertained under sub-section (2) i.e. DVO value exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be

taken as the full value of consideration received or accruing as a result of transfer.

**16.** As per the above 50C(3), it is clear that in case the value determined by the DVO is more than the stamp duty valuation, the value determined by the stamp valuation authority should be adopted. In the given case the DVO value is less than the stamp duty valuation. Therefore, the conclusion reached by the Ld.CIT(A) is not proper.

**17.** With regard to benefit claimed by the assessee under 3<sup>rd</sup> Proviso, as per 3<sup>rd</sup> proviso to section 50C *"the value adopted or assessed or assessable by the stamp valuation authority does not exceed 110% 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 purpose of section 48, be deemed to be the full value of the consideration"*. This proviso is applicable only when the Assessing Officer adopts the value as per stamp valuation. We observe that the value determined by the DVO is ₹.55.32 lakhs and the actual sale consideration is ₹.52.05 lakhs the difference is 2,82,000/- (which is 5.37%). Therefore section 50C(3) is applicable in this case and the value to be adopted for the sale consideration is ₹. 55.32 lakhs as determined by "DVO". With

regard to submission of the Ld.AR that the application of 3<sup>rd</sup> proviso as discussed above, this has no relevance to the present case, since this proviso will be applied only when the Assessing Officer adopts the stamp duty valuation. Accordingly, this ground of appeal is partly allowed.

**18.** With regard to Ground No. 2, Ld.CIT(A) has observed that assessee has not utilized the sale consideration out of old property in investing in the new property. As per the provision of section 54 and 54F of the Act, the assessee has been allowed to make the investment in buying the new property in one (1) year before or two (2) years after the transfer of the property. Nowhere there is a discussion of investment of the sale proceeds of the old property in the new property. Therefore, we are not inclined to agree with the findings of the Ld.CIT(A). Accordingly, the ground raised by the assessee is accordingly, allowed.

**19.** In the result, appeal filed by the assessee partly allowed.

Order pronounced in the open court on 04<sup>th</sup> July, 2023.

Sd/-  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Mumbai / Dated 04.07.2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**