

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3149/MUM/2023
(Assessment Year: 2018-2019)**

Glory Shipmanagement Private Limited,

504, Abhay Steel House,
22 Baroda Street, Masjid (East),
Mumbai - 400009
[PAN: AACCG2684H]

..... **Appellant**

**Commissioner of Income Tax
(Appeals),**

Centralized Processing Centre,
Delhi

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : None
For the Respondent/Department : Shri Dr. Kishor Dhule

Date

Conclusion of hearing : 28.12.2023
Pronouncement of order : 30.01.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 24/07/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 14/09/2021, passed under Section 143(3) read with Section 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

- "1. *The Learned CIT(A) has erred in upholding the addition made by the AO u/s 56(2)(x) of the Act of Rs. 3,86,000/- on account of difference between purchase value and value determined by District Valuation Officer even though transacted amount was within tolerance limit.*"
3. When the appeal was taken up for hearing, none was present on behalf of the Appellant. After examining the issue raised in the present appeal we proceeded to adjudicate the grounds raised in the present appeal on merits after hearing the Ld. Departmental Representative and on the basis of material available on record.
4. On perusal of record, it emerges that the Appellant filed return of income for the Assessment Year 2018-19 on 16/01/2018 declaring total income of INR 12,33,870/-. The case of the Appellant was selected for scrutiny. During the assessment proceedings, the Assessing Officer noted that the Appellant had purchased an immovable property for a consideration of INR 41,00,000/- whereas the stamp duty valuation of the aforesaid property was INR 66,64,200/-. Since, the Appellant did not accept the stamp duty value, a reference was made to District Valuation Officer (DVO) under Section 55A of the Act. As per the report of the DVO, the fair market value of the aforesaid immovable property as on 30/06/2017 was INR 44,86,000/-. Thus, there was a difference of INR 3,86,000/- in the consideration paid by the Appellant for acquisition of the immovable property and the fair market value determined by the DVO. Therefore, the Assessing Officer invoked provisions contained in Section 56(2)(x)(b) of the Act to make an addition of INR 3,86,000/- in the hands of the Appellant.
5. In appeal before CIT(A), it was contended on behalf of the Appellant that the difference of INR 3,86,000/- though more than 5% of purchase consideration was below 10% of the purchase

consideration. Therefore, in terms of Section 56(2)(x)(b)(B)(ii) of the Act, no addition should have been made in the hands of the Appellant. However, the CIT(A) rejected the aforesaid contention of the Appellant holding as under:

"5. Ground no 2 is with regard to addition of Rs.3,86,000/- u/s 56(2)(x) read with section 50C and Section 55A of the Income Tax Act. The brief facts in this regard are that the assessee acquired a property at Rs.41 Lakhs whose stamp duty value was Rs.66,64,200/- The matter was referred by Assessing officer to the Departmental Valuation Officer, at the request of the assessee, to determine the fair market value of the property. The District Valuation Officer determined the FMV as on 30.06.2017 at Rs.84,86,000/-. So, there was a difference of Rs.3,86,000/-. Since, the difference exceeded by more than 5% of the purchase consideration the Assessing officer treated this difference as income from other sources u/s 56(2)(x).

5.1. The appellant had submitted a written submission on 19.07.2023, wherein it has been contended that the difference though exceeded 5% but it was below 10%. The actual difference was 9.14%. The assessee had tried to prove that the undervaluation of cost of property with regard to the stamp duty valuation and fair market value by the DVO (the least of the two) is less than 10%. The relevance of 10% has been brought here for consideration by the appellant to correlate it with the fact that the word (five per cent) in 56(2)(x)(b)(B)(ii) was later on substituted by "ten per cent". But this argument and correlation by the appellant does not appear to be correct as the word ten per cent was to be effective from 01.04.2021 i.e. from assessment year 2021-22. There was no intent, nor any specification of the fact that the word ten per cent will be effective retrospectively. There was similar amendment in third proviso of sub-section 1 of section 50C. So, the exemption limit of ten per cent is not available to the appellant for this assessment year. Under these circumstances, the assessing officer was right in making an addition of Rs.3,86,000/-." (Emphasis Supplied)

6. Being aggrieved by the above order passed by the CIT(A), the Appellant has carried the issue in appeal before us.
7. The Ld. Departmental Representative supported the order passed by

the Assessing Officer and the CIT(A) and submitted that it was admitted position that the difference between the consideration paid by the Appellant for acquiring the property and fair market value determined by the DVO was 9.14% of the purchase consideration. For the relevant assessment year, the Appellant could have been granted in terms of Section 56(2)(x)(b)(B)(ii) of the Act provided the difference was less than 5% of purchase consideration. The rate of 5% in Section 56(2)(x)(b)(B)(ii) of the Act was increased to 10% with effect from 01/04/2021 and was, therefore, not applicable to the Assessment Year 2018-19 before us.

8. We have given thoughtful consideration to the submission advanced by the Learned Departmental Representative. However, we find that identical contentions raised by the Revenue stands rejected by the Mumbai Bench of the Tribunal in the case of Joseph Mudaliar Vs. Deputy Commissioner of Income Tax : [2021] 130 taxmann.com 250 (Mumbai - Trib.) 191 ITD 719 (Mumbai - Trib.)[14-09-2021] wherein it was held as under:

"9. Before dealing with the substantive issue, it is necessary to look into the relevant statutory provisions. By the Finance (No.2) Act, 2009 section 50C was introduced in the statute with effect from 1-4-2010. As per the provision of section 50C(1) of the Act, where the consideration received on sale of an immovable asset by an assessee is less than the value determined by the stamp valuation authority, the value so determined would be deemed to be the full value of consideration received or accruing as a result of such transfer, for computing capital gain. By Finance Act, 2018, the third proviso to section 50C(1) of the Act was introduced to the statute with effect from 1-4-2019, which reads as under:-

'50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "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 purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :

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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.'

10. Unlike section 50C of the Act, there was no corresponding provision in the Act vesting the assessing authority with power to adopt the stamp duty value as deemed sale consideration in respect of the buyer of the immovable property. However, by Finance Act, 2013, a new sub clause (b) was introduced to section 56(2)(vii) with effect from 1-4-2014, which reads as under:-

"(b) any immovable property,-

(i) Without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) 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:

** ** *

11. As could be seen from section 56(2)(vii)(b)(ii), it empowers the assessing officer to treat the excess value determined by the stamp duty authority over and above the declared sale consideration as the deemed sale consideration and add it as income at the hands of the person buying the property. Thus, by the aforesaid provision, a buyer of the property was also brought at par with the seller of the property as per section 50C(1) of the Act. Prima facie, section 56(vii)(b)(ii) would get triggered once the stamp duty authority determines the value of a property in excess of the declared sale consideration. However, the crucial issue which needs to be considered is, whether the third proviso to section 50C(1) of the Act providing exception in case the difference in value is less than 10%, would be applicable to

section 56(2)(vii)(b)(ii) of the Act. In this context, the argument of the learned departmental representative is, firstly, there is no provision like third proviso to section 50C(1) of the Act in section 56(2)(vii)(b)(ii) of the Act and secondly, even if there is one, it will apply prospectively.

12. As could be seen, section 56(2)(vii) in its original form was introduced by Finance Act, 2009 with effect from 1-10-2009. However, by Finance Act, 2017 it was provided that section 56(2)(vii)(2) would be applicable in respect of the specified transaction undertaken between 1st day of October, 2009 and before 1st day of April, 2017. This amendment was effective from 1-4-2017. Simultaneously with the aforesaid amendment made to section 56(2)(vii), the Finance Act, 2017 also introduced clause (x) to section 56(2) to bring within its ambit the transactions referred to in section 56(2)(vii) undertaken after 1st day of April, 2017. Clause (x) of section 56(2) was subsequently amended by Finance Act, 2018 with effect from 1-4-2019 and again by Finance Act, 2020 with effect from 1-4-2021. The relevant part of section 56(2) which is required for our purpose is extracted hereunder:-

"(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, —

(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 five per cent of the consideration:]

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13. Thus, as can be seen, after introduction of section 56(2)(x), applicable for transactions undertaken after 1-4-2017, by Finance Act, 2018, identical exception as provided in third proviso to section 50C(1) is also provided in sub clause (b)(B)(ii) from 1-4-2019.

Interestingly, section 43CA introduced to the statute by Finance Act, 2013 with effect from 1-4-2014 also provide for adoption of the value determined by the stamp valuation authority if it is in excess of the declared sale consideration of an immovable property. However, this provision is applicable to an asset other than a capital asset. It will be further interesting to note, in the first proviso to section 43CA(1) of the Act which was introduced by Finance Act, 2018 with effect from 1-4-2019, similar exception as provided in third proviso to section 50C(1) and section 56(2)(x)(b)(B)(ii) of the Act was introduced. It will be further relevant to observe, by the Finance Act 2020, the permissible limit of variation in the value has been enhanced to ten per cent from five per cent. Of course, in case of section 43CA further benefit has been granted to the assessee by enhancing the limit of variation to 20%.

14. On a conjoint reading of sections 50C, 43CA and 56(2)(x) of the Act, the legislative intention becomes absolutely clear that wherever the statute provides for adoption of the value determined by the stamp valuation authority as the deemed sale consideration, in case, it exceeds declared sale consideration, exceptions have also been provided not to adopt the market value if the difference between the value declared by the assessee and determined by the stamp duty authority is within a permissible limit.

15. The reason for not providing such an exception in section 56(2)(vii)(b)(ii) is patent and obvious. As could be seen, the amendments to sections 50C, 56(2)(x) and 43CA providing for exception in case of marginal difference between the declared sale consideration and value determined by the stamp valuation authority were introduced to the statute by Finance Act, 2018 with effect from 1-4-2019. Meaning thereby, the legislature did not felt the necessity of introducing such an exception to section 56(2)(vii)(b)(ii) simply for the reason that such provision was applicable for a period between 1st October, 2009 to 1st April, 2017. Therefore, non-introduction of similar exception to section 56(2)(vii)(b)(ii) cannot be held against the assessee. Rather, section 56(2)(vii)(b)(ii) has to be harmoniously construed along with sections 50C, 56(2)(x) and 43CA and the exceptions provided in the later three provisions have to be read into section 56(2)(vii)(b)(ii) to provide true meaning to the intention of the legislature. This, according to us, clearly answers submissions of learned departmental representative regarding absence of a provision identical to third proviso to section 50C(1) in section 56(2)(vii)(b)(ii).

16. Thus, in our considered opinion, the assessee would be eligible to get the benefit of ten per cent margin difference in the valuation between the value determined by the stamp duty authority and the declared sale consideration. Thus, if the variation between the aforesaid two values falls within the range of ten per cent, no addition can be made.

17. It is further relevant to observe, section 50C or for that matter section 56(2)(vii)(b)(ii) are identical provisions. Only difference being, 50C is applicable to the seller of an immovable property, whereas, the later provision is applicable to the buyer of the property. Therefore, a benefit given to a seller of the property in respect of marginal variation cannot be denied to the buyer of the property, since, they stand on the same footing. This aspect of the issue has also been considered by the co-ordinate bench in case of Shri Sandip Patil v. ITO (supra), wherein, the co-ordinate bench has held that there cannot be two different fair market value in respect of the very same property, i.e. one at the hands of the seller and the other at the hands of the buyer. Thus, in our view, if the difference in valuation between the value determined by the stamp duty authority and the declared sale consideration is less than 10%, no addition can be made under section 56(2)(vii)(b)(ii) of the Act.

18. Having held so, the second aspect of the issue which requires consideration is whether the exception to section 50C(1) by way of third proviso and section 56(2)(x)(b)(B) would apply prospectively or retrospectively. The issue is no more res integra in view of a number of decisions of different benches of the Tribunal. The Tribunal has consistently expressed the view that since the aforesaid amendments made by Finance Act, 2018 with effect from 1-4-2019 are curative in nature and beneficial provisions, it would apply retrospectively. In this context, we get support from the following decisions:-

1. Sandip Patil (supra)

2. Maria Fernandes Cheryl (supra)

19. Thus, keeping in view the discussions hereinabove, we delete the addition of Rs. 23,30,694/-. This ground is allowed."

9. On perusal of the above it can be seen that it was held by the Tribunal that the permissible limit of variation in the value specified in the third proviso to Section 50C(1) and Section 56(2)(x)(b)(B) of the Act, which was enhanced to 10% from 5% by the Finance Act,

2018 with effect from 01/04/2019, shall apply retrospectively from the date of introduction of the provision since the aforesaid amendments were curative/beneficial in nature. To the same effect is the decision of the Tribunal in the case of Assistant Commissioner of Income Tax Vs. Sunil B Dalal: [2022] 145 taxmann.com 313 (Mumbai - Trib.) wherein, while granting the benefit of tolerance band of 10% for the Assessment Year 2018-19, the Tribunal held as under:

16. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer. He submitted that 10% tolerance band limit adopted by the learned CIT (A) is applicable from A.Y. 2021-22 and not from A.Y. 2018-19. He submitted that the increase in tolerance band does not apply retrospectively. It was further stated that all the judicial precedent relied upon by the assessee has not reached finality and are not applicable for the impugned assessment year and therefore, the deletion of addition by the learned CIT (A) relying upon those decision is incorrect.
17. The learned Authorized Representative supported the order of the learned CIT(A). He relied on the decision of the co-ordinate Bench in case of Maria Fernandes Cheryl (supra), wherein it is held that the prescribed tolerance band of 10% applies retrospectively. He further referred to the several judicial precedent relied upon before the learned CIT(A) as well as the decision of the co-ordinate Benches in case of Joseph Mudaliar v. Dy.CIT [2021] 130 taxmann.com 250/191 ITD 719 (Mum.), John Flower (India) (P.) Ltd. v. Dy. CIT [IT Appeal No. 7545 (Mum.) of 2014, dated 24-7-2017] and Pankaj Anilkumar Pitale v. ACIT [IT Appeal No. 6813 (Mum.) of 2017, dated 19-3-2019]. Accordingly, he submitted that there is no infirmity in the order of the learned CIT(A) in deleting the addition applying 10% tolerance band limit for this assessment year.

18. *We have carefully considered the rival contentions and perused the orders of the lower authorities. Referred facts shows that Assessee has purchased 7 properties. Sale consideration in all the properties is 28,78,28,500/- and stamp duty value is Rs. 26,96,75,300/-. Thus difference of Rs. 1,81,53,200/- was made by the LD AO u/s 56(2) (x) of The Act. The LD CIT found that out of 7 properties in case of 6 properties the difference between the agreed consideration and stamp duty value is approximately 6%. In the 7th property, such difference was 14.50 %. Therefore, he confirmed the addition of 7th properties and deleted the addition with respect to 6 properties holding that Proviso to section 50C inserted with effect from 1-4-2019 by the Finance Act 2018 allowed the tolerance band of 5%. It was held to be applicable retrospectively. Further, by the Finance Act 2020 with effect from 1-4-2021 in the same proviso the tolerance band is replaced by increasing it to 10%. Therefore, when there is no change in the wording of the proviso but only tolerance band is increased it should also apply retrospectively.*
19. *Coordinate bench in case of Maria Fernandes Cheryl (supra) has already held that the amendment made by Introducing proviso [Introduction of tolerance band of 5 % and later on 10%] applies with effect from 1-4-2003 when the provision of section 50C were introduced.*
20. *Further introduction of tolerance band is for removing the hardship in the section. once a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced as held by Hon Supreme Court in CIT v. Alom Enterprises Ltd. [2009] 185 Taxman 416/319 ITR 306/227 CTR 417.*

21. In view of above, respectfully following the decision of the coordinate bench in Maria Fernandes Cheryl (supra) we do not find any infirmity in the orders of the Id CIT (A) in applying the tolerance band limit of 10 % in the impugned assessment year also and thereby deleting the addition of Rs. 1,51,20,900/-. Accordingly, Ground no 2 is dismissed."

10. Consistent with the view taken by the Tribunal in the above decisions, we hold that the benefit of tolerance band of 10% shall be available to the Appellant for the Assessment Year 2018-19. Since, in the present case, admittedly the variation is purchase consideration and the fair market value is 9.14%, no addition was warranted in terms of Section 56(2)(x)(b)(B)(ii) of the Act. Accordingly, addition of INR 3,86,000/- made by the Assessing Officer, which was confirmed by the CIT(A), is deleted. Accordingly, Ground No. 1 raised by the Appellant is allowed.
11. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 30.01.2024.

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.01.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai