

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &  
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No. 1881/Mum/2024  
(Assessment Year: 2018-19)**

<b>Shree Saisiddhi Export LLP</b> 126, 1 <sup>st</sup> Floor, Amrit Diamond House, Near Panchratna Building, Opera House, Mumbai-400004. <b>PAN : ACZFS2993K</b>	Vs.	<b>ITO, Ward-20(3) (1),</b> Piramal Chamber, Lalbaug, Parel, Mumbai-400012.
<b>Assessee)</b>	:	<b>Respondent)</b>

**Assessee/Appellant by** : Shri Himanshu Gandhi, CA  
**Revenue/Respondent by** : Shri R.R. Makwana, Sr. DR

**Date of Hearing** : 18.07.2024  
**Date of Pronouncement** : 26.07.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 16.02.2024 for the AY 2018-19. The assessee raised the following grounds of appeal.

*“1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in passing ex-party order dated 16.02.2024 on wrong assumption that appellant had not filed submission before the compliance date of 15.02.2024, whereas appellant had filed a submission alongwith paper book on 10.02.2024 vide Ack no. 1018663891100224.*

*2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming addition of Rs. 3080661/- under section 56(2)(x) of Income Tax Act, 1961.*

*3. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that the Stamp Duty value adopted by the Ld. AO for making addition u/s 56(2)(x) is based on wrong working and difference is within 10% tolerance limit.*

*4. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider property transferred in AY 2015-16, therefore, the addition u/s 56(2)(x) cannot be made in AY 2018-19 and when there is timing difference between agreement fixing consideration and registration, then the stamp value as per agreement fixing consideration need to be considered and not the value as on registration.*

*5. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that assessee order passed before the expiry of due date of filing show cause reply is also bad in law and required to be quash.*

*6. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming charging of Interest under section 234A and 234B of Income Tax Act, 1961.*

*7. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming initiation of penalty proceedings u/s 270A of the Income Tax Act, 1961.*

*8. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

2. The assessee is a partnership firm and filed the return of income for AY 2018-19 on 25.10.2018 declaring a total income of Rs. 1,970/-. The case was selected for scrutiny and statutory notices were duly served on the assessee. During the assessment proceeding, the Assessing Officer (AO) noticed that the assessee has purchased a property on 20.03.2018 for a consideration of Rs. 6,04,52,650/- as per the registered purchase deed whereas the value for stamp duty purposes were at Rs.6,35,33,311/-. The AO made an addition of the different amount of Rs.30,80,661/- under section 56(2)(x) of the Income Tax Act, 1961 (the Act).

Aggrieved the assessee preferred further appeal before the CIT(A). The assessee did not respond to the notices issued by the CIT(A) and therefore, the CIT(A) confirmed the addition by passing an ex-parte order.

3. We heard the parties and perused the material on record. The AO made the addition towards difference between the stamp duty value and the purchase consideration as addition under section 56(2)(x) of the Act. In this regard, we notice that the difference amount of Rs. 30,80,661/- is working out to be 4.84% which is less than the tolerance limit as inserted by the Finance Act, 2018. It is a settled law that when 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. Accordingly the tolerance limit though was introduced by Finance Act 2018 the same is to be considered as effective from 01.04.2003 when the provision of section 50C were introduced. In this regard we place reliance on the decision of the Co-ordinate Bench in the case of ACIT Vs. Sunil B. Dalal (2022) 145 taxmann.com 313 (Mum. Trib.) where it has been held that

*“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.”*

4. In assessee's case also the facts are identical and therefore, respectfully following the above decision of the Co-ordinate Bench, we are of the considered view that the addition made by the AO under section 56(2)(x) of the Act is not sustainable. Accordingly, we direct the AO to delete the addition made in this regard.

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

*Order pronounced in the open court on 26-07-2024.*

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**