

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

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

**I.T.A. No. 2220/Mum/2024  
(Assessment Year: 2018-19)**

<b>Meridian Construction Pvt. Ltd.</b> 112-122, Hira Bhavan, Rajaram Mohan Roy Road, Prathana Samaj, Girgaon S.O, Mumbai-400004 <b>PAN : AAACM4144Q</b>	Vs.	<b>A-DCIT, Circle-3(2)(1)</b> Aayakar Bhavan, M.K. Road, Mumbai.
<b>Assessee)</b>	:	<b>Respondent)</b>

**Assessee/Appellant by** : Ms. Ritu Kamal Kishore, CA  
**Revenue/Respondent by** : Smt. Mahita Nair, Sr. DR

**Date of Hearing** : 15.07.2024  
**Date of Pronouncement** : 29.07.2024

**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 (NFAC) dated 27.02.2024 for Assessment Year (AY) 2018-19. The assessee raised the following grounds of appeal.

*“1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeal) erred in upholding the action of the Assessing Officer in disallowing Rs 69,21,000/- u/s 43CA of the Income Tax Act, 1961, on account of difference in amount of sale consideration and value adopted by the stamp duty valuation authority for stamp duty valuation purpose.*

*2. The appellant craves leave to add to, alter, amend, modify and/or delete all or any of the foregoing grounds of appeal.*

*The appellant prays before the Hon'ble Income Tax Appellate Tribunal, Mumbai to delete the alleged additions of Rs 69,21,000/- made by the Assessing Officer and confirmed by the Learned Commissioner of Income Tax (Appeal)."*

2. The assessee is a private limited company engaged in the business of development and redevelopment of real estate. For the year under consideration the assessee filed the return of income on 30.03.2019 declaring a total income of Rs.3,14,380/-. The Assessing Officer (AO) received the information that the assessee has sold a property on 08.11.2017 for a consideration of Rs.18,00,00,000/- whereas the value of the property for the purpose of stamp duty is at Rs.18,69,21,000/-. According to the AO he had reason to believe that the income has escaped assessment and issued a notice under section 148 re-opening the assessment. The assessee submitted before the AO that the difference between the stamp duty value and the sale value is within the tolerance limit of 5% / 10% and therefore, no addition is warranted under section 43CA of the Income Tax Act (the Act). The AO however did not accept the submissions of the assessee stating that the tolerance limit of 5% / 10% cannot be applied for the year under consideration and accordingly the AO proceeded to make the addition of Rs. 69,21,000/- under section 43CA of the Act. Aggrieved, assessee filed further appeal before the CIT(A). The CIT(A) confirmed the addition made by the AO stating that the proviso to section 43CA containing the tolerance limit was introduced only by the Finance Act, 2018 w.e.f. 01.04.2019 and therefore, it is prospective only. The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The ld. AR submitted that the difference between the sale value of asset and the stamp duty value is less than 5% in the given case and therefore as per the

provisions of section 43CA it is well within the tolerance limit. The ld. AR argued that the beneficial provision of section 43CA allowing 5% / 10% tolerance limit should liberally interpreted and is to be applied retrospectively. Accordingly the ld. AR submitted that no disallowance under section 43CA is warranted.

4. The ld. DR on the other hand supported the order of the lower authorities.

5. We heard the parties and perused the material on record. Before proceeding further we will look at the relevant provisions of section 43CA.

***Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.***

***43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than 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 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 computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer:***

***Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten 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 computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:***

6. From the plain reading of above provisions, it is clear that the said provisions were introduced to tax the difference between the stamp duty value and the actual consideration received. The 1<sup>st</sup> proviso to section 43CA was inserted by Finance Act, 2018 w.e.f. 01.04.2019 wherein a tolerance limit of 5% was allowed whereby if the difference between the stamp duty value and the actual consideration is within 5% then no addition is to be made under section 43CA of the Act. This tolerance limit of 5% was increased to 10% by Finance Act, 2020

w.e.f. 01.04.2021. It is a well-settled position that beneficial provisions are to be interpreted liberally and we notice that the coordinate bench in the case of Macrotech Developers Ltd. (MDL) vs DCIT (ITA Nos. 2266 & 2239/Mum/2022 AY 2017-18 & 2018-19 dated 17.04.2023) has considered a similar issue and held that –

*042. We find that identical issue arose before the coordinate bench in case of Sai Bhargavanath Infra v Assistant Commissioner of Income-tax\* 2022] 144 taxmann.com 168 (Pune - Trib.) For assessment year 2015 – 16 wherein it has been held that:-*

*"4. We observe from plain reading of sec. 43CA that it provides in a case where consideration received or accruing as a result of the transfer by an assessee of an asset other than the capital asset being land or building is lesser than the value adopted or assessed by any Government authority for the purpose of payment of stamp duty then the difference will taxed as deemed income. At the same time, the proviso to this section states that if there is a difference of such value within 10% margin then there cannot be any addition on the pretext of deemed income and this 10% margin has been inserted by Finance Act, 2020 w.e.f. 1-4-2021. The assessment year under consideration before us is A.Y. 2015-16 that is prior to the date when the amendment took place and such 10% margin was inserted. The question therefore, arises whether this amendment effective from 1-4-2021 can even apply to prior assessment years as well. The assessee had relied on Pune Tribunal decision in ITA No. 923/PUN/2019 (supra) where the Tribunal has given retrospective effect in regard to section 43CA first proviso where the tolerance margin of 10% has been held to be applicable even for the prior assessment years. However, in this decision, reliance was placed on another decision of Bombay Tribunal in the case of Maria Fernandes Cheryl v. ITO (International Taxation) [2021] 123 taxmann.com 252/187 ITD 738 (Mum) which relates to section 50C of the Act. It was contended that section 43CA and section 50C of the Act are pari materia provisions and therefore, holding of retrospective application of section 50C is even applicable making retrospective application to section 43CA of the Act as well. The ld. A.R was unable to place on record before us any direct decision where the first proviso of section 43CA which has been brought into effect from 1-4-2021 was held to be applicable retrospectively. In such scenario, we place reliance on the doctrine enshrined in the judgment of the full bench decision of Hon'ble Supreme Court in the case of CIT v. Vatika Township (P.) Ltd. [2014] 49 taxmann.com 249/227 Taxman 121/367 ITR 466. The fact in this case was that search and seizure u/s*

132 was conducted on 10-2-2001 pursuant to which the assessment order for the block period from 1-4-1989 to 10-2-2000 was passed on 28-02-2002 at a total undisclosed income of Rs. 85,00,000/-. The tax was charged as prescribed in section 113 of the Act. Subsequently, a proviso was inserted u/s 113 by the Finance Act, 2002 w.e.f. 01-06-2002 to provide for levy of surcharge at 10%. The A.O took the view that the said amendment was clarificatory in nature and he levied surcharge by passing rectification order u/s 154 of the Act. However, the Tribunal and the Hon'ble High Court upheld the assessee's claim that the said amendment was prospective in nature and did not apply to block period falling before 01-06-2002. However, the plea of the assessee was rejected by the Hon'ble Supreme Court in CIT v. Suresh N. Gupta [2008] 166 Taxman 313/297 ITR 322 also held that the proviso to section 113 is clarificatory and hence, should be read into block assessment scheme under Chapter XIV-B with retrospective effect. Similar view was reiterated by the Hon'ble Supreme Court in CIT v. Rajiv Bhatara [2009] 178 Taxman 285/310 ITR 105 by holding the proviso u/s 113 to be retrospective in nature. Then the Supreme Court was of the view that the issue ought to be referred to a larger Bench of Five Judges. In this decision, the Hon'ble Supreme Court has given fundamental doctrine of retrospective applicability of provision. It has been held that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in terms of the Act or arises by necessary and distinct implication. The assessment creates a vested right on the assessee. The assessee cannot be subjected to re-assessment unless the provision to that effect is inserted by amendment either retrospectively or by necessary implications retrospectively. The Hon'ble Apex Court also opined that there cannot be any imposition of tax without the authority of law and such law has to be unambiguous and should prescribe liability to pay taxes in clear terms. This very principle is based on the doctrine, which means that if a particular provision of statute is not clear regarding imposition of tax or because of persons from whom the tax has to be collected, in such case the persons should not be fastened with any liability to pay tax. It was further observed that though the Chief Commissioner in their Conference suggested that there should be retrospective amendment to section 113 of the Act, the Legislature chose not to do so even though for other provisions in which the legislature in its wisdom felt the need to do so has brought in amendments made with retrospective effect. The CBDT circular No. 2002 dated 27-08-2002 also makes it clear that the amendment to section 113 is prospective. Consequently, the conclusion reached in N. Suresh Gupta (supra) treating the proviso to section 113 of the Act as clarificatory and having retrospective effect was held to be incorrect and was over-ruled.

5-6. The essence of the decision is that if any liability has to be fastened with the assessee taxpayer retrospectively then the statute and the provision must

*spell out specifically regarding such retrospective applicability. However, if the provision is beneficial for the assessee, in view of the welfare legislation spirit imbibed in the Income-tax Act, such beneficial provision can be applied in a retrospective manner. In the case of the assessee before us for the preceding assessment year i.e. A.Y. 2014-15, the difference of the consideration received from transfer of asset and the value adopted for stamp duty valuation was apparently not less than 10% tolerance margin which has been brought into effect from 1-4-2021 in the first proviso to section 43CA and therefore, the Tribunal in its wisdom had restored the matter to the file of the A.O for fresh adjudication (supra). Before us, admittedly such difference of tolerance margin is less than 10%. Now the question of applicability of this proviso of section 43CA retrospectively covering the assessment year in question i.e. A.Y. 2015-16, from the spirit of Supreme Court decision in Vatika Township (P.) Ltd. (supra) case is analysed. Now, the intent of the legislature is to provide relief to the assessee in case such difference is less than 10% which has been brought into effect from 1-04-2021 thereby providing benefit to the assessee. This being the beneficial provision therefore will even have retrospective effect and would apply to the present assessment year 2015-16. At this juncture we would also refer to the decision of Pune Tribunal in Dinar Umeshkumar More v. ITO [IT Appeal No. 1503 (Pune) of 2015, dated 25-1-2019], where the said proposition of applicability of a beneficial provision was considered in light of Hon'ble Apex Court decision in the case of Vatika Township (P.) Ltd. (supra). In the said Tribunal order, the Bench observed that if the legislature is going to confer a benefit then such an averment will have a retrospective effect. The Tribunal observed that while discussing this issue in para 33 of the said judgment, the Hon'ble Apex Court held that "We would also like to point out, for the sake of completeness, that where a benefit is conferred by legislation, the rule against a retrospective construction is different. If legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant it to be given a retrospective effect". The net effect of this judgment is that if a fresh benefit is provided by the Parliament in an existing provision, then such an amendment should be given retrospective effect. Therefore, even without going into the merits of the case by the application of first proviso to section 43CA having retrospective effect, the grounds of appeal of the assessee stands allowed."*

043. Therefore, the above decision of the coordinate bench clearly clinches the issue in favour of the assessee wherein it has been held that tolerance band of 10%

would be applicable retrospectively. We also find that similar view has also been taken in

- i. *SHRI HARISH H GANDHI VERSUS ACIT 33 (1) , MUMBAI ITA No.1244/Mum/2019 And ITA No.2603/Mum/2019*
- ii. *V.K. DEVELOPERS VERSUS THE ACIT, CIRCLE-3, PUNE. ITA No.923/PUN/2019*
- iii. *M/S. SHETH DEVELOPERS PRIVATE LIMITED VERSUS DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-4 (2) , MUMBAI AND (VICE-VERSA) TA No.1953/Mum/2020 And ITA No.1954/Mum/2020 And ITA No.11/Mum/2021 And ITA No.12/Mum/2021*
- iv. *M/S. CITY CORPORATION LIMITED, (EARLIER KNOWN AS M/S. AMANORA FUTURE TOWERS PVT. LTD.,) VERSUS DCIT, CIRCLE-1 (1) PUNE AND VICE VERSA [2022] 96 ITR (Trib) 246 (ITAT [Pune])*

044. We find that the decision of the coordinate bench in case of welfare properties private limited versus DCIT (supra) did not consider the retrospective applicability of the tolerance band provided under section 43CA of the act same was not the issue argued before it.

045. The decision of the honourable Bombay High Court in case of 111 taxmann.com 94 in case of Swanand properties private limited was only with respect to applicability of provisions of section 43CA of The act for assessment year 2005 – 06 wherein it has been held that this provisions are applicable only with effect from 1/4/2014. Therefore, it does not help the case of the revenue.

046. Accordingly we hold that if the difference between the stamp duty value of a stock in trade and the transaction value covered by the provisions of section 43CA is less than 10% even prior to 1/4/2021, does not warrant any addition in the hands of the assessee. Accordingly, we direct the learned assessing officer to delete the addition of ₹ 203,051/- made under section 43CA of the act. Ground number 4 of the appeal of the assessee is allowed.

7. The ration of the above decision is that that the tolerance limit of 5% / 10% are to be given retrospective effect i.e. from the date on which section 43CA was inserted. Therefore, in our considered view there is merit in the submission that the tolerance limit as per section 43CA is applicable in assessee's case for AY 2018-19 also. We notice that the difference between the stamp duty value and the actual consideration of Rs. 69,21,000/- is less that 5% and therefore, we are of the view

that no addition under section 43CA is warranted. Accordingly, we direct the AO to delete the addition made in this regard.

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

*Order pronounced in the open court on 29-07-2024.*

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

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

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

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

BY ORDER,

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