IN THE INCOME TAX APPELLATE TRIBUNAL

"H (SMC)" BENCH, MUMBAI

BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND

SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no. 3074/Mum./2024

(Assessment Year : 2018–2019)

Tushar Ramnath Shetty
104, B Wing,
Vaastu Shanti Rajmata Jijabai Marg,
Andheri East, Mumbai - 400093 ……. Appellant
PAN-CCEPS2845H

v/s

The Income Tax Officer
Ward 23(3)(1), Mumbai – 400012. ……. Respondent

Assessee by : Shri Sanjay Parikh, CA
Revenue by : Shri Akhatar Hussain Ansari, Sr. DR

Date of Hearing – 04/09/2024	Date of Order – 12/09/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

1. The present appeal has been filed by the assessee challenging the impugned order dated 05/04/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["*learned CIT(A)*"], for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: –

1. *"The learned Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)] erred on facts and in law in confirming the addition made by the Additional/Joint/Deputy/Assistant Commissioner of*

Income/Income Tax Officer, National Faceless Assessment Centre, Delhi (AO) u/s. 56(2)(x) of Rs. 5,58,000/-.

2. *The learned CIT(A) and the AO erred in not appreciating that the difference in value as per Stamp Duty Authorities and as per Agreement was on account of the area wrongly stated by the appellant's advocate in the Agreement. Hence, the addition of Rs. 5,58,000/- as made by the AO may be deleted.*

3. *While upholding the addition u/s. 56(2)(x) of Rs. 5,58,000/-, the learned CIT(A) erred in holding that the appellant neither furnished the sale agreement dated 19.06.2017 nor the sale deed in support of the appellant's claim. 4) Appellant prays that the addition made by the AO of Rs. 5,58,000/- u/s. 56(2)(x) and confirmed by the CIT(A), may be deleted.*

4. *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal. The sole grievance of the assessee, in the present appeal, is against the addition made under section 56(2)(x)(b) of the Act, being the difference between the consideration and stamp duty value of the immovable property acquired by the assessee."*

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case pertaining to the aforesaid issue are that the assessee is an individual and for the consideration filed his return of income on 20/07/2018 declaring a total income of Rs.5,12,340. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, upon perusal of the details filed by the assessee, it was observed that the assessee has purchased the property on 19/06/2017 at a purchase consideration of Rs.90,00,000, which is less than the stamp duty value of Rs.95,58,000. It was further noticed that the excess of stamp value is Rs. 5,58,000, which is more than the higher of 5% of the purchase consideration and Rs. 50,000. Accordingly, the Assessing Officer ("*AO*") vide order dated

24/03/2021 passed under section 143(3) read with section 143(3A) and 143(3B) of the Act made an addition of Rs. 5,58,000 under section 56(2)(x) of the Act.

4. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and confirmed the addition of Rs. 5,58,000 made by the AO by applying the deeming provisions of section 56(2)(x)(b) of the Act. Being aggrieved, the assessee is in appeal before us.

5. Before proceeding further, it is pertinent to note the relevant provisions of section 56(2)(x)(b) of the Act, as existing during the year under consideration, and the same reads as follows: –

> *"(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 the head "Income from other sources", namely :—*
> *(i) ....*
> *.....*
>
> *(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*
> *(a).....*
> *(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 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:"*

6. It is pertinent to note that sub-clause (B) of section 56(2)(x)(b) was amended by the Finance Act, 2018, w.e.f. 01/04/2019, and the amended sub-clause (B) of section 56(2)(x)(b) of the Act, reads as follows: -

"(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:"

7. Further, vide Finance Act 2020, w.e.f. 01/04/2021, sub-clause (B) of section 56(2)(x)(b) of the Act was again amended, and the tolerance limit was increased from 5% to 10% of the consideration. Accordingly, it is evident that as per the amended provisions of section 56(2)(x)(b) of the Act, since the excess of stamp duty value over the purchase consideration, i.e. Rs. 5,58,000 is less than the 10% of the consideration, i.e. Rs.9,00,000, therefore the provisions of section 56(2)(x)(b) of the Act are not applicable. As per the learned DR, the amendment mentioned above does not apply to the year under consideration, i.e. the assessment year 2018-19 and is prospective in its application.

8. We find that a similar issue came up for consideration before the coordinate bench of the Tribunal in Sandeep Kumar Poddar v/s ITO, [2023] 151 taxmann.com 18 (Kol.-Trib.), wherein the coordinate bench following another decision of the Tribunal in Maria Fernandes Cheryl v/s ITO, [2021] 123 taxmann.com 252 (Mum.-Trib), decided the issue in favour of the taxpayer and held that amendment of increasing the tolerance band from 5% to 10% under section 56(2)(x) of the Act shall be applicable retrospectively, as the amendment is clarificatory/curative in nature. The relevant findings of

the coordinate bench, in the decision mentioned above, are reproduced as follows: –

> *"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. 1-4-2021.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) and (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. 1-4-2021. 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 (P.) 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 bona fide 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 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. 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 bona fide 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 50C(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 (P.) 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 (P.) Ltd. (supra), we unhesitatingly hold that the amendment of increasing the tolerance band from 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.

9. Therefore, respectfully following the decision of the coordinate bench of the Tribunal cited supra, since in the present case, excess of stamp duty value over the purchase consideration is less than 10% of the consideration, we are of the considered view that the provisions of section 56(2)(x)(b) of the Act are not applicable to the present case. Since on this short ground only the assessee is entitled to relief, the other contentions raised in the present appeal become academic at this stage and therefore are left open. Thus, the addition made under section 56(2)(x) of the Act is deleted. As a result, the impugned order is set aside and grounds raised by the assessee are allowed.

10. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 12/09/2024

Sd/-	**Sd/-**
PRASHANT MAHARSHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 12/09/2024
Karishma J. Pawar, (Stenographer)

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai