आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं
श्री संजय अवस्थी, लेखा सदस्य
के समक्ष
Before

SRI RAJPAL YADAV, VICE-PRESIDENT
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No.: 1391/KOL/2023
Assessment Year: 2018-19

ACIT, Circle-7(1), Kolkata.....Appellant

Vs.

Ashiana Housing Limited.....Respondent
[PAN: AADCA 9093 P]

Appearances:

Department represented by: *Subhro Das, Addl. CIT.*

Assessee represented by: *Rajat Agarwal, CA.*

Date of concluding the hearing : September 3rd, 2024
Date of pronouncing the order : November 18th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case, the appellant filed his return of income for AY 2018-19 on 30.09.2018 at a total income of Rs. 33,41,38,850/-. It is seen that through assessment order dated 31.05.2021, the Assessing Officer (hereinafter referred to as ld. 'AO') made several additions out of which two of them are before us through the following grounds of appeal:

> *1. WHETHER on the facts and in the circumstances of the case the Learned CIT(A) erred in law as well as in fact in allowing the future development expenses amounting to Rs. 3,36,36,334/- whereas such liability has not crystallized during the relevant previous year and unascertained liabilities*

are not allowable as the Assessee is following the mercantile system of accounting?

2. WHETHER on the facts and in the circumstances of the case the Learned CIT(A) erred in law as well as in fact in allowing the addition of Rs. 25,62,729/- i.e. the difference between valuation adopted by the Stamp valuation authority and declared by the appellant is less than 110% whereas as per section 43CA difference between valuation adopted by the Stamp valuation authority and declared by the appellant needs to be added?

3. That the appellant craves leave to add, alter, amend or adduce any ground(s) at or before the date of hearing."

1.1. Before us, the appellant has filed detailed written submission on the two substantive grounds of appeal and a paper book running into 217 pages. The first issue pertains to an addition of Rs. 3,36,36,334/- on account of future development expenses. It has been explained that provision for cost to be incurred are ascertained liabilities and created in pursuance to "IND AS 37" and ICDS X accounting standards. By way of further explanation, it has been averred that the appellant is engaged in real estate development and at the time of handing over possession of units of housing projects, a few incomplete works remained after such handing over of possession. It has been stated that the revenue from this real estate development business was recognized on the project completion method and provision was made for expenses to be incurred in respect of the projects which were already completed in the year under consideration and revenue of the same was duly recognized. It has been further explained that such expenses, to the extent they were in respect of flats sold, were debited to the profit & loss account; whereas the expenses to the extent they were in respect of unsold flats were added to the cost of unsold flats shown in the closing stock. In light of this, it has been averred, since these expenses were pertaining to the projects, the revenue of which was recognized in the year under consideration by following the project completion method, the deduction for the same was appropriately claimed in the accounts. The ld. A/R pointed out that this issue dates back to several preceding assessment years and the matter pertaining to AY 2012-13, on this very same issue, even travelled up to the Hon'ble Calcutta High

Court. The Hon'ble Calcutta High Court confirmed the order of Hon'ble ITAT in favour of the assessee on this issue as under:

> *"After elaborate hearing the learned Advocates for the parties and carefully perusing the order passed by the learned Tribunal we find grievances raised by the revenue as against the order passed by the Commissioner of Income Tax (Appeals) is only on one issue as to whether the CIT(A) erred in law as well as on facts in accepting the assessee's future development expenses claimed by ignoring the fact that the same was in the nature of mere provision for unascertained liability only. The learned Tribunal after considering the factual position has approved the findings recorded by the CIT(A). In fact before the learned Tribunal the revenue could not pinpoint any distinction on facts or on law in respect of the findings recorded by the CIT(A).*
>
> *Thus we are convinced to hold that there is no substantial question of law arising for consideration in this appeal.*
>
> *Accordingly, the appeal fails and dismissed."*

Respectfully following the order of the Hon'ble Calcutta High Court in the appellant's own case on this very same issue ground no. 1 is decided in favour of the assessee and against the Revenue. Accordingly, this ground raised by the Revenue is dismissed.

1.2. The second issue pertains to an addition of Rs. 25,62,729/- being the difference between valuation adopted by the Stamp Valuation Authority and declared by the appellant. The Ld. A/R has pointed out that in the tax audit report itself it was mentioned, and the same was noticed by the ld. AO, that there were 29 units sold whose aggregate value adopted or assessable as per stamp duty authorities amounted to Rs. 7,36,67,037/-. This was against an aggregate consideration received of Rs. 6,94,66,311/-. The differential value amounting to Rs. 42,00,726/- was added back u/s 43CA of the Act. The action of ld. AO in adding the impugned amount u/s 43CA of the Act was partially confirmed by the ld. CIT(A) on the ground that it was only in the case of five properties that the sale consideration received was less than 110% of stamp duty value during the relevant assessment year. Ld. CIT(A) accordingly, directed the deletion of an amount of Rs. 25,62,729/- (impugned amount). The ld. A/R has averred that there was an amendment to sec 43CA of the Act

by the Finance Act, 2020 through which the tolerance band for deviation between actual sale price and stamp duty valuation was increased from 5% to 10%. The ld. A/R relied on several authorities in support of his claim. Our attention was drawn to the case of *Shri Sandeep Kumar Poddar vs. ITO* in *ITA No. 484/KOL/2022* order dated 13.03.2023, in which the Coordinate Bench of ITAT, Kolkata has adjudicated on an identical issue as under:

> *"6.2. We note that Finance Act, 2020 enhanced the tolerance band from 5% to 10% w.e.f. 01.04.2021. 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 Pvt. 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 observations and 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 bonafide reasons explaining the small variations between the sale consideration of immovable property as disclosed by the assessee vis-a-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 bonafide cases of small variations between the stated sale consideration vis-a-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 bonafide 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 visa-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 50 C(1), by inserting the third proviso thereto and by enhancing the tolerance band for variations between the stated sale consideration vis-a-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, antiavoidance 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 ofjustice, 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 subsection (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 Pvt. Ltd. (supra) on the above is reproduced ass 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 flami Fernandes Cheryl (supra) followed in the case of Karb Associates Pvt. 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."

1.3. The ld. D/R was not able to place on record any contrary order of any ITAT or even any Hon'ble High Court of to enable us to take a view contrary to the findings in the case of *Shri Sandeep Kumar Poddar (supra)*.

2. Accordingly, this ground of the Revenue is dismissed and the claim of the appellant is allowed on this issue in principle in as much as the 10% tolerance band has to be allowed. However, the ld. AO is directed to verify the quantum of difference between actual sale price and the stamp duty valuation of the properties in question and allow relief in all cases which fall under the tolerance band of 10% as mentioned in the first and second proviso to Section 43CA of the Act.

3. In the result, with these remarks, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 18th November, 2024.

Sd/-	*Sd/-*
[**Rajpal Yadav**]	[**Sanjay Awasthi**]
Vice President	Accountant Member

Dated: 18.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***ACIT, Circle-7(1), Kolkata.***
2. ***Ashiana Housing Limited, 5F, Everest House, 46/C, Chowringhee Road, Kolkata, West Bengal, 700071.***
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata