

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**SHRI SANJAY GARG, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 65/Kol/2024  
Assessment Year: 2018-19**

**Shri Amit Shrivastva,**

Flat No. 1302, Liva Roca  
Gulmohar Cross Road, No. 12,  
JVPD, Vile Parle (West),  
Mumbai - 400049  
[PAN: BHEPS3231D]

.....**Appellant**

**vs.**

**The Assessment Unit,  
National Faceless  
Assessment Centre (NFAC),  
Delhi**

..... **Respondent**

**Appearances by:**

Assessee represented by : Akkal Dudhwewala, FCA  
Department represented by : Archana Gupta, Addl. CIT, Sr. DR

Date of concluding the hearing : 01.10.2024

Date of pronouncing the order : 18.11.2024

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2018-19 dated 29.11.2023, which has been passed against the Assessment Order u/s 147 read with section 144B of the Act, dated 10.03.2023.

1. In this case, the matter was reopened on the basis of information that the appellant had purchased immovable property at Rs.

2,33,00,000/- of which the stamp duty value was Rs. 2,52,60,000/-. The differential between the two values (Rs. 19,60,000) was added u/s 56(2)(x)(b) of the Act by the Ld. AO.

1.1 Before the Ld. CIT(A), the appellant pleaded that the differential was less than 10% but more than 5% (being the tolerance available for the assessment year in question) and hence for the year under consideration the safe harbour limit of 5% only would apply and since the impugned amount was more than that limit, he sustained the addition.

2. Aggrieved with this action, the appellant has approached that ITAT with 3 grounds of appeal of which the substantive ground is as under:

*“The Ld. CIT(A) erred in law and on facts in confirming the addition u/s 56(2)(x)(B)(ii) of Rs. 19,60,000/-.”*

2.1. Before us, the primary contention by the Ld. AR was that the changes about through the Finance Act, 2020 raising the tolerance band from 5% to 10% was curative in nature and hence would apply to earlier assessment years also. For canvassing this point he relied on the following cases:

(i) CIT Vs. Vummudi Amarendran (120 taxmann.com 171 (Mad HC)

(ii) Nisha Gupta Vs. ITO (ITA No. 379/Kol/2023) [ITAT Kol]

(iii) Joseph Mudaliar Vs. DCIT (130 taxmann.com 250) (ITAT Mum)

(iv) Jivrajbhai Kalubhai Miyani Vs. ITO (150 taxmann.com 69) (ITAT Surat)

2.3 The Ld. DR relied on the findings of the authorities below and stated that clear words contained in the statute should not be substituted to infer retrospectivity.

3. We have carefully considered the submissions and gone through the documents placed before us. In this case, it is clearly visible that the differential in value to more than 5% and less than 10%. To see whether

the amendment enhancing the safe harbour from 5% to 10% effected from 01.04.2021 could be applied to this year or not. In this regard, we are persuaded by the findings recorded in the cases cited in paragraph 2.1 (supra), especially the case of Joseph Mudaliar (supra) being a case for AY 2015-16, which states that the enhancement of safe harbour limit from 5% to 10% was curative in nature and hence would apply to earlier years also. Furthermore, there is a finding to this effect in the case of Nisha Gupta (supra) as under:

*“5. After hearing the rival contentions and perusing the material on record, we find that the difference between the sale consideration and stamp value as per the Stamp Valuation Authority is less than 10% and therefore, the difference falls within the range of 10% as provided under Section 56 read with Section 50C of the Act. Therefore, the same cannot be added in view of the third proviso to Section 50C(1) of the Act. The case of the assessee finds support from the decision of Coordinate Bench in the case of Joseph Mudaliar vs DCIT reported in [2021] 130 taxmann.com 250 (Mumbai-Trib. Wherein a similar question has been decided in favour of the assessee. The operative part of the decision is extracted as under:*

*“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.”*

6. Since the facts of the case before us are materially same as involved in the case decided by the Coordinate Bench, we therefore, respectfully following the same set aside the order of ld. CIT(A) and direct the AO to delete the addition.”

4. Respectfully following the decision in the coordinate Bench of the Tribunal in the case of Nisha Gupta (supra), it is held that the safe harbour limit of 10% would apply to the year under consideration and the impugned addition cannot, accordingly, be sustained.

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

Order pronounced in the open court on 18.11.2024

Sd/-  
**[Sanjay Garg]**  
**Judicial Member**

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

Dated: 18.11.2024.  
AK, PS

*Copy of the order forwarded to:*

1. Madhu Devi Saraf
2. Asst. Commissioner of Income Tax, Central Circle – 3(3), Kolkata
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches