IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 2060/MUM/2024
Assessment Year: 2015-16

Vidhi Enterprises, 504, Parshwa Kunj, Malviya Road, Vile Parle East, Mumbai-400057. **PAN NO. AAGFV 4334 C** **Appellant**	**Vs.**	Dy. CIT, Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400051. **Respondent**

ITA No. 2151/MUM/2024
Assessment Year: 2015-16

ACIT, 32 1, 202, 2nd floor, Kautilya Bhavan G Block BKC, Bandra East, Mumbai-400051. **Appellant**	**Vs.**	Vidhi Enterprises, 504, Parshwa Kunj, Malviya Road, Vile Parle East, Mumbai-400057. **PAN NO. AAGFV 4334 C** **Respondent**

Assessee by	:	Mr. Snehal Shah
Revenue by	:	Mr. Prashant Barate, Sr. DR

Date of Hearing	:	11/11/2024
Date of pronouncement	:	28/11/2024

ORDER

PER OM PRAKASH KANT, AM

These cross appeals by the assessee and Revenue are directed against order dated 23.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2015-16.

2. The grounds raised by the assessee are reproduced as under:

> ***GROUND 1: UPHOLDING THE RE-OPENING OF U/S.147 IS NOT BAD IN LAW***
>
> *1.1 The Hon'ble CIT (A) failed to appreciate the fact that proceedings initiated under section 147 are bad in law.*
>
> *1.2 The appellant craves leave to add amend alter or modify the ground or grounds of appeal before the hearing.*
>
> ***GROUND 2: UPHOLDING THE ADDITIONS RS.53,98,500/- ON ACCOUNT OF DIFFERENCE IN AGREEMENT VALUE AND VALUATION AS PER STAMP DUTY.***
>
> *2.1 In the facts and circumstances of the case The Hon'ble CIT(A) has erred in upholding the addition made on account of the difference in Agreement Value and Valuation as per stamp duty authority without considering submissions made by your appellant in the case.*
>
> *2.2 The Hon'ble CIT (A), failed to appreciate the settled position of law brought to the record that in case of difference in stamp duty valuation and agreement value up to 10% is acceptable as provided in applicability of S-43CA is applicable in the case.*
>
> *2.3 The Hon'ble CIT (A), failed to appreciate the fact that the appellant submitted adequate documents to establish that the premises sold were not completed and/or completed with many defects in construction/terms of sale agreement of said property.*
>
> *2.4 The Hon'ble CIT (A), failed to appreciate the fact that the stamp duty valuation fixed by stamp duty authority for the exactly the place where project is redeveloped in Chandivali is more than agreement value of the property.*

2.5 The appellant craves leave to add amend alter or modify the ground or grounds of appeal before the hearing.

GROUND 3: UPHOLDING THE DISALLOWANCE OF RS.20,61,200/- ON ACCOUNT OF LIFT PARKING MACHINE INSTALLATION AS A CAPITAL EXPENDITURE

3.1 In the facts and circumstances the Hon'ble CIT (A) erred in upholding the disallowance made by Learned Assessing Officer by disallowing the revenue expenditure of Parking Machine Charges of Rs.20,61,200/- as capital expenditure.

3.2 The Hon'ble CIT (A) failed to deal with incorrect classification made by the Learned Assessing Officer as capital expenditure though expenditure incurred on Installation of Parking Lift Machine is clearly revenue in nature on fact of this case as Appellant is merely a developer.

3.3 The Hon'ble CIT(A) has erred in stating that no evidence is submitted by the assesse ignoring the fact that Learned Assessing Officer has verified the incurrence of expenditure.

3.4 Hon'ble CIT(A) has erred in holding that such expenditure is capital in nature ignoring the fact that assessee is a real estate developer and had installed the Parking Machine Lift which will be used by unit purchaser in the said IT Park and which is part of cost of construction hence it will be in the nature of Revenue expenditure itself.

3.5 The appellant craves leave to add amend alter or modify the ground or grounds of appeal before the hearing.

GROUND 4: UPHOLDING THE DISALLOWANCE OF RS.1,59, 500/- ON ACCOUNT OF DISALLOWANCE OF BC EXPENSES AS A CAPITAL EXPENDITURE

4.1 In the facts and circumstances the Hon'ble CIT (A) erred in upholding the disallowance made by Learned Assessing Officer by disallowing the revenue expenditure of BMC Expenses of Rs.1,59,500/- as capital expenditure.

4.2 The Hon'ble CIT (A) failed to deal with incorrect classification made by the Learned Assessing officer as capital expenditure though expenditure incurred in the form of BMC Expenses is clearly revenue in nature on fact of the case as assesee is merely a developer.

4.3 The Hon'ble CIT(A) has erred in stating that no evidence is submitted by the assessee ignoring the fact that Learned Assessing Officer has verified the incurrence of expenditure.

4.4 Hon'ble CIT(A) has erred in holding that such expenditure is capital in nature ignoring the fact that assessee is a real estate developer and had incurred BMC Expenses for the said IT Park and which is part of cost of construction hence it will be in the nature of Revenue expenditure itself.

4.5 The appellant craves leave to add amend alter or modify the ground or grounds of appeal before the hearing.

GROUND 5: UPHOLDING THE DISALLOWANCE OF RS.5,42,798/- ON ACCOUNT OF DISALLOWANCE OF SOCIETY EXPENSES AS A CAPITAL EXPENDITURE

5.1 In the facts and circumstances the Hon'ble CIT (A) erred in upholding the disallowance made by Learned Assessing Officer by disallowing the revenue expenditure of Society Expenses of Rs.5,42,798/- as capital expenditure.

5.2 The Hon'ble CIT (A) failed to deal with incorrect classification made by the Learned Assessing officer as capital expenditure though expenditure incurred in the form of Society Expenses is clearly revenue in nature on fact of the case as assesee is merely a developer and had redeveloped the existing IT Park.

5.3 The Hon'ble CIT(A) has erred in stating that no evidence is submitted by the assesse ignoring the fact that Learned Assessing Officer has verified the incurrence of expenditure.

5.4 Hon'ble CIT(A) has erred in holding that such expenditure is capital in nature ignoring the fact that assessee is a real estate developer and had redeveloped the existing IT Park and hence the expenses incurred for society of the said IT Park and hence is part of cost of construction and it will be in the nature of Revenue expenditure itself.

5.5 The appellant craves leave to add amend alter or modify the ground or grounds of appeal before the hearing.

GROUND 6: UPHOLDING THE DISALLOWANCE OF RS.3,63,24,288/-ON ACCOUNT OF DISALLOWANCE OF BAD DEBTS

6.1 In the Facts and circumstances of the Case the Hon'ble CIT(A) erred in upholding the disallowance of Rs.3,63,24,288/- made

by the Learned Assessing Officer on account of disallowance of Bad Debts without considering the submission made by assessee for the facts of the case.

6.2 The Hon'ble CIT (A) erred in dealing the legal and facts of the case that bad debts are allowed merely on the basis of the claim of bad debts in Profit & Loss Account by the assessee.

6.3 The Hon'ble CIT(A) has erred in stating that no evidence is submitted by the assesse ignoring the fact that Learned Assessing Officer has verified that Income pertaining to said bad debts to the tune of Rs.3,63,24,288/- has been offered for taxation and no evidence was sought before making a statement that no income has been offered for tax.

6.4 The appellant craves leave to add amend alter or modify the ground or grounds of appeal before the hearing.

2.1 The grounds raised by the Revenue are reproduced as under:

1. "Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of proportionate cost of Rs. 19067212/- out of opening steck for the goods sold during the year, based on the financial statement which were unaudited and despite of assessee's failure to file return of income for the AY. 2015-16."

3. Briefly stated facts of the case are that the assessee was engaged in the business of real estate development including development of Technology Park. For the year under consideration the assessee did not file its regular return of income. In view of information with the Department that assessee had sold immovable property for a sale consideration of Rs.6,78,98,500/- but neither filed the return of income nor declared any income and therefore, assessment was reopened u/s 147 of the Income-tax Act, 1961 (in short 'the Act') by way of issuing notice u/s 148 of the Act. In response, the assessee filed return of income declaring loss of

Rs.4,47,728/-, although after the stipulated period provided under the notice u/s 148 of the Act. Before completing the reassessment, the Assessing Officer issued a draft assessment order in the form of show cause notice, but same was not responded by the assessee. Consequently, the reassessment was completed on 22.03.2022 wherein total income of the assessee was assessed at Rs.6,41,04,198/-. Aggrieved, the assessee filed appeal before the Ld. CIT(A) but ld CIT(A) allowed only part relief to the assessee.

4. Aggrieved, both the assessee and the Revenue are before the Income-tax Appellate Tribunal (in short 'the Tribunal') by way of raising grounds as reproduced above.

5. Before us, the assessee filed a Paper Book containing pages 1 to 145.

6. In ground No. 1, the assessee has challenged the validity of reassessment proceedings. The relevant finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

> *"Ground 1: In this ground of appeal the appellant has stated that the reopening U/s 147 is bad in law and AO cannot make addition on other issues which did not form part on the reasons recorded. As evident from the assessment order the initiation of proceedings U/s 147 is as per law. AO has rightly initiated proceedings as per the Act. Moreover, once assessment is reopened U/s 147, AO can assess other issues which may come to his notice during the course of reassessment. Reliance is placed on Hon'ble ITAT Ahmedabad decision in the case of Gujarat - State Financial Corporation Vs CIT 2011 as reported in TIOL-614-ITAT Ahmedabad:*
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> *In this context Section 147 is reproduced as under :-*

" If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the AO may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the deprecation allowance or any other allowance or deduction for such assessment year.

Explanation - For the purposes of assessment or reassessment or recomputation under this section, the AO may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148 have not been complied with"

In view of the above, this ground is noted as dismissed."

6.1 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. It is undisputed that despite sale proceedings the assessee did not file return of income. Under Explanation -2 below the provisions of section 147 of the Act, non-filing of return of income also invite reopening of assessment proceedings. Further, the Ld. CIT(A) has also dismissed the arguments of the assessee that Assessing Officer cannot make addition on the other issues which did not form part of reasons recorded citing the decision of the Co-ordinate Bench in the case of Gujarat State Financial Corporation v. CIT (supra). Accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute. The ground No. 1 of the appeal of the assessee is accordingly dismissed.

7. In the ground No. 2 of the appeal, the assessee is aggrieved with the addition of Rs.53,98,500/- sustained by the Ld. CIT(A) for

the amount of difference between agreement value and stamp duty valuation of the property sold. The relevant finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

> *"Ground 2: Regarding the addition of Rs 53,98,500/- on account of sale of property. The appellant has stated that the difference in agreement value and stamp duty valuation does not exceed 10% and hence addition for the same cannot be made and cited certain case laws to claim that the difference in the sale value should be considered not exceeding 10% as mentioned in the Finance Act, 2020.*
>
> *Before proceeding provisions of section 43CA of the act as inserted by Finance act 2013, w.e.f. 01.04.2014 relevant to AY 2014-15 is as under:-*
>
> *43CA. Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.-*
>
> *(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.*
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> *(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1)*
>
> *(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.*
>
> *(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset.".*
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> *The new proviso was inserted to subsection 1 of section 43CA by finance act 2018 w.e.f. 01.04.2019 which read as "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 five 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." The said benefit 5% is increased to 10% by Finance act 2020 w.e.f. 01.04.2021.

Hence, it is clear that as per section 43CA of the Act which was inserted in the Finance Act, 2013, w.e.f. 01.04.2014, if the asset is sold for a consideration less than stamp duty value then difference in price of the asset sold (consideration) and the stamp duty value of the asset, should be taxed as business income in the hands of the transferor. The present case is related to A.Y. 2015-16 which is prior to the date when the amendment took place. Here it is to be noted, the relaxation in this regard was first made in Finance Act, 2018, w.e.f. 01.04.2019, wherein if the difference is not more than 5% of the asset sold than the stamp duty valuation of the asset, the difference should not be added as business income.

The case laws cited does not come to the rescue of the appellant and are not squarely applicable in the case as the same are applicable w.e.f 01-04-2019. Considering the facts of the case and provisions of section 43CA of the Act it is opined that the appellant has violated provisions of section 43CA and is liable to be taxed.

In view of the above the addition made is upheld and the ground is noted as dismissed."

7.1 We have heard rival submission of the parties and perused the relevant material on record. The section 43CA has been inserted by the Finance Act, 2013, w.e.f. 1/4/2014, which prescribe for substituting the full value of sale consideration of asset other than capital asset i.e. stock-in-trade by stamp duty value if same is less than stamp duty value, while computing profit and gains from such transfer of assets and addition u/s 43CA is required to be made for such difference in stamp duty value and sale consideration of the property. Further a proviso to the section has been inserted w.e.f. 1/4/2019 which prescribe that where stamp duty value is higher upto 5% of the sale consideration, no addition is required u/s 43CA of the Act. This percentage of difference has been enhanced to 10% w.e.f. 1/4/2021. The Ld. CIT(A) upheld the addition mainly for the

reason that relaxation of 10% difference in agreement value and stamp duty value was introduced subsequent to the assessment year involved in the case of the assessee. According to the Ld. CIT(A) said amendment is not retrospective, whereas the assessee referred to the decision of the Co-ordinate Bench of the Tribunal in the case of **M/S. FEBER CONSTRUCTION,,MUMBAI in ITA No. 198/M/201**9 and decision in the case of **Maria Fernandes Cheryl Vs. ITO187 ITD 738 (Mum. Trib.).** Thus, the limited issue before us is whether the relaxation of 10% difference in agreement value and stamp duty value could not be applied in the instant assessment year which is prior to assessment year 2019-2020. The relevant finding of the Tribunal in the case of M/s Feber Construction (supra) is reproduced as under:

> *"8. As regards the submission of the assessee for granting relief wherein there is only marginal difference, I find that it may be gainful to refer to the following proviso which has been inserted in section 43CA(1) with effect from 1.4.2019.*
>
> *Section 43CA(1).*
> *Where the consideration received or acquiring 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 purpose 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 five percent 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 consideration."*

9. The above proviso has been inserted by the Finance Act, 2018 with effect from 1/4/2019. A cardinal principle of interpretation is to look at the mischief, the act, the amendment, the proviso is aimed to remove or take care of. In the present case I find that proviso was inserted to grant relief where there is only a 5% variation in the agreement value and stamp value. In such circumstances the proviso granted relief in as much as the difference of 5% is to be ignored and the deeming provision of section 43-CA shall not be invoked. I find that this proviso is aimed at mitigating the hardship or the mischief which was caused to the taxpayer on the invocation of deeming provisions of section 43- CA where there is marginal variation upto 5%. In this view of the matter in my considered opinion this proviso shall take retrospective effect. Hence I hold that in cases where the variation is up to 5% no addition shall be made by the assessing officer by invoking the provisions of section 43-CA. Accordingly, the matter stands remitted to the file of assessing officer. The assessing officer shall restrict the disallowances only to those cases where the variation exceeds 105%. Needless, the assessee shall be granted adequate proportionate being heard."

7.2 Similarly, the relevant finding of the Tribunal in the case of Maria Fernandes Cheryl (supra) is reproduced as under:

"*7. These submissions, however, do not impress us. As noted by the Central Board of Direct Taxes circular # 8 of 2018, explaining the reason for the insertion of the third proviso to Section 50C(1), has observed that "It has been pointed out that 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". Once the CBDT itself accepts that these variations could be on account of a variety of factors, essentially bonafide factors, and, for this reason, Section 50C(1) should not come into play, it was an "unintended consequence" of Section 50(1) that even in such bonafide situations, this provision, which is inherently in the nature of an anti-avoidance provision, is invoked. Once this situation is sought to be addressed, as is the settled legal position- as we will see a little later in our analysis, this situation needs to be addressed in entirety for the entire period in which such legal provisions had effect, and not for a specific time period only. There dating good reason for holding the curative amendment to be only as prospective in effect. Deal Vs ACIT ((2014) materially identical situation in the case of Rajeev Kumar Agarwaling ACT (2014) 45 taxmmann.com 555 (Agra)) wherein a Rordinate bench was dealing with the question whether insertion of a proviso to Section 40(a)(i) to cure intended consequence could have retrospective effect, even though not specifically provided for, and speaking through one of us (ie. the Vice President), the coordinate bench had, after a detailed analysis of the legal position, observed that, "Now that the legislature has been compassionate enough to cure these shortcomings of provision, and thus obviate the unintended hardships, such an*

amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically, the insertion of second proviso must be given retrospective effect from the point of time when the related legal provision was introduced". Referring to this decision, and extensively reproducing from the same, including the portion extracted above, Hon'ble Delhi High Court, in the case of CIT Vs Ansal Landmark Township Pvt Ltd [(2015) 61 taxmann.com 45 (Del)], has approved this approach and observed that "(t)he Court is of the view that the above reasoning of the Agra Bench of ITAT as regards the rationale behind the insertion of the second proviso to Section 40(a)(ia) of the Act and its conclusion that the said proviso is declaratory and curative and has retrospective effect from 1st April 2005, merits acceptance". The same was the path followed by another bench of this Tribunal in the case of Dharmashibhai Sonani Vs ACIT [(2016) 161 ITD 627 (Ahd)] which has been approved by Hon'ble Madras High Court in the judgment reported as CIT Vs Vummudi Amarendran [(2020) 429 ITR 97 (Mad)]. The question that we must take a call on, therefore, is as to what is the rationale behind the insertion of the third proviso to Section 50C(1), and if that rationale is to provide a remedy for unintended consequences of the main provision, we must hold that the third proviso to Section 50C(1) comes into force with effect from the same date on which the main provision, unintended provisions of which are sought to be nullified, itself was brought into effect. Let us understand what the nature of the provisions of Section 50C is. In terms of this provision, if the property is sold below the stamp duty valuation rate, which is often called circle rate, this stamp duty valuation report is assumed as sale consideration for the property in question, and, accordingly, capital gains tax is levied. This deeming fiction to substitute apparent sale considerations by notional consideration computed on the basis of a stamp duty valuation rate, was thus to address the issue with respect to potential evasion of taxes by understating the sale consideration amount in a sale deed. As noted by the CBDT, while explaining the justification for insertion of Section 50 C, "(1)he Finance Act, 2002, has inserted a new section 50C in the Income-tax Act to make a special provision for determining the full value of consideration in cases of transfer of immovable property". Section 50C, thus, on a conceptual note, is a provision to address capital gains tax evasion on account of understatement of the consideration. Of course, the law provides, under section 50C(2), that wherever an assessee claims that the actual market rate is less than the stamp duty valuation, he can have the matter referred to a Departmental Valuation Officer for the ascertainment of the market value, but then it is a cumbersome procedure and, at the end of the day, every valuation, whether by the departmental valuation officer or under the stamp duty valuation notification, is an estimate, and there can always be bonafide variations, though to a certain limited extent, in these estimations. Unless, therefore, some kind of a tolerance band or a safe harbour provision, in respect of such bonafide variations, is implicit in the scheme of law, the assessens are bound to face undue hardships. The mechanism under section 50C proceeds on the assumption that when the sale consideration is less than the stamp duty

valuation, the sale consideration is to be treated as understated. This assumption is, however, laid to rest when the variations between the stated consideration and the stamp duty valuation figure are treated as explained. 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-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 bonafide cases of small variations between the stated sale consideration vis-à-vis stamp dury 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 of tolerance band or safe harbour provision. The reasons assigned by the CBDT, Le., "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 50 C(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.ec. 1" 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 50 C 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 1" 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."

7.3 In view of the above precedents, the relaxation of the 10% is applicable even for assessment years prior to assessment year 2022-23. In the case of the assessee stamp duty value of the property is of Rs.6,78,98,500/- whereas agreement value is of Rs.6,25,00,000/- and thus the difference is of Rs.53,98,500/- which in terms of percentage over the stamp duty value works out

to 8.64%. Since, the difference in stamp duty value and sale consideration of agreement value being less than 10%, which has been held to be retrospective by the Tribunal in the decisions cited above, therefore, respectfully following the same, we set aside the finding of the Ld. CIT(A) on the issue in dispute and delete the addition made by the Assessing Officer. The ground No. 2 of the appeal of the assessee is accordingly allowed.

8. The ground No. 3 of the appeal of the assessee relates to disallowance of Rs.20,61,200/- sustained by the Ld. CIT(A) holding that expenditure incurred on lift parking machine installation is a capital expenditure. The finding of the Ld. CIT(A) on the issue in dispute is reproduced as under :

> *"Ground 3: In this ground of appeal the appellant has stated that the AO erred in disallowance of revenue expenditure of parking machine charges as capital expenditure.*
>
> *As evident from the assessment order the AO made addition of Rs.*
>
> *20,61,200/-, considering the fact that the expense. made by the appellant was not revenue in nature and it was clearly a capital expenditure, as parking lift makes way for more build up area. It is one-time expense to create the asset for enduring benefit.*
>
> *In this regard the appellant has submitted that the firm is into the real estate business and has undertaken development of Information Technology Park.*
>
> *Installation of Parking Machine was done at the site i.e. at the Information Technology Park and not for the personal use of the firm. Hence, installation of the parking machine is only and only revenue expenditure and in any case, cannot be considered as capital expenditure of the firm.*
>
> *During the appeal proceedings, the appellant has not furnished any supporting documents which could support its view that the parking machine was installed in the Information Technology Park site. Hence,*

this ground of the appellant to delete the addition of Rs. 20,61,200/- is not considered.

Hence, this ground is noted as dismissed."

8.1 We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute is whether the expenditure incurred on installation of parking machine is in the nature of capital expenditure or revenue expenditure. This characterization depends on whether the lift parking machine has been used by the assessee as its asset for rendering services to the unit holders or it has been handed over to the society comprising of the unit holders as part of the units sold. Since before the Ld. CIT(A) the assessee could not furnish the supporting documents, therefore, the Ld. CIT(A) dismissed the grounds of the appeal of the assessee. Before us, the Ld. counsel for the assessee submitted willingness of the assessee to produce all the relevant documents, accordingly, the issue in dispute is restored back to the file of the Ld. CIT(A) for deciding afresh after considering the necessary submission of assessee along with supporting documents. The ground No. 3 of the appeal of the assessee is accordingly allowed for statistical purposes.

9. The ground No. 4 of the appeal relates to disallowance of Rs.1,59,500/- on account of BMC expenses held as capital expenses. The relevant finding of the Ld. CIT(A) is reproduced as under:

"Ground 4: The appellant stated that AO erred in treating the expenses as deposits, the ledger extract of the deposit was tendered during the course of assessment proceedings as the said amount was lying with BMC as deposits was adjusted against the expenses.

The appellant stated that it is normal practice with the BMC that they deduct the expense from the existing deposits and the developers accounts those deduction as expense over the period of time. During the appeal proceedings the appellant was asked to provide details alongwith documentary evidence of when it got adjusted. However, no supporting documentary evidences has been submitted. The onus is on the appellant to prove the claims. The appellant cannot shrug off his responsibility just by saying the documents are with court receiver or BMC. Appellant should have approached the court receiver of BMC to produce a copy of it. Further in the era of Technology all the transactions are entered in tally or other software's. Failure on part of appellant to produce shows that the appellant does not have any evidences in support of his claim. Hence, the appeal of the appellant to allow the BMC deposit of Rs. 1,59,500/-, as revenue expense is not considered.

Hence, this ground is noted as dismissed."

9.1 We have heard rival submissions of the parties and perused the relevant material on record. The contention of the assessee that amount lying with the BMC as deposit has been adjusted against the expenses but before the Ld. CIT(A) the assessee failed to file any supporting documentary evidence. Before us, the Ld. counsel for the assessee has expressed willingness of the assessee to produce all such documents to justify that the BMC expenses were revenue in nature. In view of submission of the assessee, we feel in appropriate to grant one more opportunity and restore this issue back to the file of the Ld. CIT(A) for deciding afresh after considering submission of the assessee along with the supporting documentary evidences. The ground No. 4 of the appeal of the assessee is accordingly allowed for statistical purposes.

10. The ground No. 5 of the appeal of the assessee relates to disallowance of Rs.5,42,798/- on account of society expenses held as capital expenditure. The relevant finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

> *"Ground 5 : In this ground of appeal the appellant appeals that the Assessing Officer erred in treating the expenses as deposits (not revenue expenditure) and the ledger was submitted by them which showed the deposit was submitted as the said amount given as a deposit to the society, being a redevelopment project deposits, which the society got adjusted against the expenses. The appellant also stated that it is normal that for real estate developers the Society deposits at the time of redevelopment, are in the nature of revenue expenditure. As evident from the assessment order, apart from the ledger statement and the financial statement (unaudited), the appellant has not submitted any supporting documentary evidences during the course of assessment proceedings as well as during the appeal proceedings. The onus is on the appellant to prove the claims. The appellant cannot shrug off his responsibility just by saying the documents are with court receiver or BMC. Appellant should have approached the court receiver or BMC to produce a copy of it. Further in the era of Technology all the transactions are entered in tally or other software's. Failure on part of appellant to produce shows that the appellant does not have any evidences in support of his claim. Hence, the appeal of the assessee to allow the Society deposit of Rs. 5,42,798/-, as revenue expense is not considered.*
>
> *Hence, this ground is noted as dismissed."*

10.1 The Ld. counsel for the assessee submitted that at the time of re-development had been society deposits were adjusted against the expenses which are in the nature of revenue. But we find that before the Ld. CIT(A) no supporting documentary evidences were filed on behalf of the assessee and therefore the Ld. CIT(A) dismissed the ground of the assessee. Before us, the Ld. counsel for the assessee has submitted that assessee is willing to file all the necessary supporting documentary evidences. In view of his submission, we set aside the order of the Ld. CIT(A) on the issue in

dispute and restore the matter back to him for deciding afresh after taking into consideration necessary supporting documentary evidences. The ground No. 5 of the appeal is accordingly allowed for statistical purposes.

11. The ground No. 6 of the appeal relates to disallowance of Rs.3,63,24,361/- on account of disallowance of bad debts. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"Ground 7: In this ground the appellant states that the bad debt of Rs. 1,19,82,638/-of M/s A.S. Enterprises, Rs. 1,98,41,650/- of Smt. Kanchan Manekar and Rs. 45,00,000/- of M/s Pankaj Enterprises, were claimed/u/s 36(1)(vii) of the Act, and stated that as per the amendment in 1989 post insertion of explanation to the section, law itself is clear that once bad debt is debited to P&L accounts, bad debt shall be considered as allowed. In this regard, appellant quoted the relevant provision of the section.*
>
> *In this regard reliance is placed on the Hon'ble Supreme Court in the case of TRF Ltd. vs. CIT (2010) 323 ITR 397 (SC), which states that bad debt can be written off, only if the assessee had offered income to the extent of the debt in previous years.*
>
> *In the present case, the appellant has not showed that Rs. 3,63,24,288/- was offered to tax in which A. Ys. Apart from the above, the AO in his remand report has stated that appellants' claim of bad debts are inadmissible for the following reasons:*
>
> *A.S. Enterprises: As seen from the balance sheet filed by the assessee as on 31-03-2015, this of Rs. 1,40,76,562/- is shown as receivable which is also evidenced from the ledger extract. How the assessee can claim some part as written off and show certain part as receivable in the balance sheet.*
>
> *2 Kanchan Manekar: The assessee has provided only ledger extract during the course of assessment as well as the remand proceedings and no supporting documentary evidences has been submitted. From the ledger extracts it is found that the opening balance as on 04-04-2014 is at Rs.3,98,41,650/- and payments from February 2015 to 30-03-2015 were at Rs.2,00,00,000/-, the last latest payment being Rs. 1,20,00,000 on 30-03-2015. The assessee within a span of day that is on 31-03-2015 has written off a sum of Rs.1,98,41,650/-, which is strange. When the payer continues to pay the installments even up to 30-03-2015, the receivable balance of Rs. 1,98,41,650/- cannot become bad debt within a*

day. Hence this claim of bad debt of Rs. 1,98,41,650/- by the assessee is disallowed and added back to the computation of income.

This disallowance/addition of business expenses is resulting in assessment of the income of the assessee in the form of income from business.

3. Pankaj enterprises: The assessee has provided only ledger extract during the course of assessment as well as the remand proceedings and no supporting documentary evidences has been submitted."

In view of the above facts, the appellants' appeal for allowing writing off of bad debt u/s 36(1)(vii) of the Act is not considered.

Hence this ground is noted as dismissed."

11.1 We have heard rival submission of the parties and perused the relevant material on record. The assessee in its books of accounts debited bad debt written off in respect of three parties namely AS Enterprises (Rs.1,19,82,638/-); Smt. Kanchan Manekar (Rs.1,98,41,650/) and M/s Pankaj Enterprises (Rs.45,00,000/-). As per the provisions of the Act, for claiming the deduction in respect of bad debt written off in the books of accounts, following two conditions are required to be fulfilled, ***firstly***, debt in question should be written off as irrecoverable in the books of account for relevant previous year and ***secondly***, the amount of debt must be taken into account while computing income during the current previous year or in earlier years. The Ld. CIT(A) has referred to the decision of the Hon'ble Supreme Court in the case of TRF Ltd.(supra), wherein two conditions mentioned above have been rendered. However, the Ld. CIT(A) concluded that assessee had not shown that said amount of Rs.3,63,24,288/- was offered to tax either in the current previous year or earlier previous years i.e.

second condition. Before us, the Ld. counsel for the assessee submitted that the during remand proceeding , the AO has duly verified the corresponding part of income offered by the assessee and he disagreed only for the reason the part of debt can't be treated as written off when remaining part is receiable. We have gone through the finding of the Assessing Officer. The AO in his remand report has noted that debt in the case of 'AS Enterprises' and 'Kanchan Manekar' has been partly written off. In case of third debtor also the ledger account has been verified. The AO has not disputed that it was not a business debtor. In our opinion, the debt written off is allowable when same is written off in books of account of the assessee, irrespective whether it was not bad in view of the Assessing Officer. Accordingly, we reject the finding of the ld CIT(A) on the issue in dispute and set-aside the same. The ground No. 6 of appeal of the assessee is accordingly allowed.

12. Now, we take up the sole ground of the appeal of the Revenue. The relevant finding of the Ld. CIT(A) is reproduced as under:

> *"Ground 8: Regarding the addition of Rs. Rs.D1,90,67,2121- on account of sales during the year, the AO derived the amount from the opening and closing stocks declared by the appellant in its financial. The appellant submitted that the AO had considered the sales by taking difference between opening and closing stock, however, AO did not consider the cost of the project conceded by them. Appellant submitted the unaudited financial stated for F.Y. 2014-15, which shows that there was sales of Rs.6,25,00,000/-, during the year.*
>
> *During the appeal proceedings the submission of the appellant was perused. The appellant has submitted that " Under Income Tax Act, 1961 there is no specific provisions pertaining to allowance or disallowance of opening stock and as such Opening Stock has not been defined specifically in Income Tax Act, 1961, however in the general term it can*

be said that the amount and value of the products or materials that a company has available for sale or use at the beginning of an accounting period. Your Appellant is in real estate business and engaged in the development of the IT Park and all the cost incurred up to the 31st of March 2014 for construction of the units in IT Park forms the opening stock.

Disallowance of the opening stock debited to P&L (Difference between opening stock & Closing Stock) here implies that the cost of the construction of the premises sold during the year and incurred in previous periods are disallowed. In your appellants case the major cost of the project was incurred in previous periods and same can be understood upon perusal of the financial statement. In your appellants case Learned Assessing Officer is considering the sale of the premises, whereas not taking in account the cost of sales despite understanding the fact that your appellant is in real estate business and sale is of the immovable property, wherein construction and other costs are considerably high, the action here tantamount to double taxation.

Considering the submission of the appellant this ground of appeal is allowed

Hence, this ground is noted as allowed."

12.1 We have heard rival submission of the parties and perused the relevant material on record. The only issue in dispute is whether the opening stock debited into the books could be disallowed in the year under consideration. Evidently, the said expenses incurred in the earlier years and therefore, cannot be disallowed in the year under consideration unless same is not appearing as closing stock in the earlier year. Accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and we uphold the finding of the Ld. CIT(A). The sole ground of the Revenue is accordingly dismissed.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes whereas appeal of the Revenue is dismissed.

Order pronounced in the open Court on 28/11/2024.

Sd/-	**Sd/-**
(SANDEEP SINGH KARHAIL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/11/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai