

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1335/SRT/2024

Assessment Year: (2014-15)

(Hybrid Hearing)

Bhikhamchand S. Shah, Kadampalli Apartment, Samroli, N.H. No.8, Post – Chikhli, Navsari, Navsari – 396521, Gujarat	Vs.	The ITO, Ward - 2, Navsari
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AEZPS9850B		
(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)

Appellant by	Shri Surji D. Chheda, CA
Respondent by	Shri Mukesh Jain, Sr. DR
Date of Hearing	08/04/2025
Date of Pronouncement	05/06/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), dated 26.10.2024 by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'CIT(A)'] for the Assessment Year (AY) 2014-15.

2. Grounds of appeal raised by the assessee are as under:

"1. The Learned CIT(A) has erred in law and in facts and confirm the addition to the extent of Rs.3,00,000/- u/s 50C of the Act.

2. The learned CIT(A) has erred in making addition ignoring the fact the difference in value adopted by the assessee and FMV (determined by the DVO) of the property u/s 50C is within the range of + / -10% as per the proviso to section 50C and applied retrospectively also.

3. The appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal."

3. The facts of the case in brief are that the assessee filed return of income for AY.2014-15 on 31.07.2014, declaring total income of Rs.25,27,770/-. The assessee attended hearings before the AO and filed various details and documents. During the year, assessee has sold immovable property at Samroli, Taluka – Chikhli, Navsari for a consideration of Rs.69,00,000/-. As per the information received from the Stamp Valuation Authority, the market value of the said property was Rs.83,74,189/-. Thus, there was difference of Rs.14,74,189/-. On being show caused as to why the said amount of Rs.14,74,189/- should not be taxed u/s 50C of the Act, the assessee did not file any reply. Hence, addition of Rs.14,74,189/- was made u/s 50C of the Act.

3.1 Aggrieved by the order of AO, the assessee filed appeal before the CIT(A), Valsad, who confirmed the addition made by AO. On further appeal, the ITAT, Surat set aside the order of CIT(A) and remitted it to file of CIT(A) to adjudicate the issue afresh on merits. Accordingly, the CIT(A) issued notice for fresh hearing and obtained submission of assessee, which is reproduced at para 5 of the appellate order. It was submitted that the impugned land was considered as NA Industrial land instead of NA Commercial land for the purpose of stamp valuation by the sub-registrar. If it is considered as land for commercial purpose, the market value would be Rs.69,46,510/- and the difference would be only Rs.46,510/-, which is within the 5% range and cannot be added u/s 50C of the Act. The CIT(A) forwarded the submission of appellant to AO and asked AO to make reference to the DVO. The DVO submitted the valuation estimating the fair

market value (FMV) at Rs.72,00,000/- as against the stamp duty valuation of Rs.83,74,189/-. Thus, the difference was Rs.3,00,000/-, which was less than 10% of the valuation by the DVO. Hence, according to appellant, no addition is liable to be made as per the 3rd Proviso of section 50C of the Act. The CIT(A) did not accept the contention of the assessee, which is at para 6.5 and 6.6 of the appellate order. He observed that 3rd Proviso was inserted by Finance Act, 2018 w.e.f. 01.04.2019 to the effect that where the valuation of stamp valuation authority does not exceed 105% of the consideration received as a result of transfer, the consideration so received shall be deemed to be the full value of consideration for the purpose of section 48 of the Act. This margin was revised upward to 110% w.e.f. 01.04.2021. The appellant's case pertains to AY.2014-15 when the said proviso had not been inserted in the Act. He, therefore, held that in absence of any provisions in the statute for providing such margin of tolerance between the valuation as per the DVO and actual sale consideration, the contention of assessee cannot be accepted. Accordingly, he directed AO to adopt the value of Rs.72,00,000/- as arrived at by the DVO as full value of consideration.

4. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee has contested the findings of CIT(A) in confirming addition of Rs.3,00,000/- and has relied on the decision of ITAT, Mumbai in cases of Maria Fernandes Cheryl vs. ITO, in ITA No.4850/Mum/2019 for AY.2011-12, dated 15.01.2021 and M/s John Fowler (India) Pvt. Ltd. vs. DCIT, in ITA No.7545/Mum/2014 for AY.2010-11, dated

25.01.2017. He submitted that since the difference is less than 10%, the addition made by the AO should be deleted.

5. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue supported the orders of lower authorities. He submitted that the 3rd Proviso to Section 50C of the Act was inserted by Finance Act, 2018 and is effective from AY.2019-20. The tolerance limit of 10% was subsequently inserted by Finance Act, 2020 w.e.f. AY.2021-22. Hence, case of the appellant for AY.2014-15 is not covered by the said insertion by the Finance Act, 2020.

6. We have heard both parties and perused the materials available on record. We have also deliberated upon the decisions relied upon by both sides. We find that the decisions of the Co-ordinate Bench of ITAT, Mumbai in cases of Maria Fernandes Cheryl (supra) and M/s John Fowler (India) Pvt. Ltd. (supra) are directly on the issue. In case of M/s John Fowler (India) Pvt. Ltd. (supra), the ITAT, Mumbai referred to the decision of the ITAT, Jaipur in case of Smt. Sita Bai Ketan vs. ITO, in ITA No.823/Jp/2023, dated 27.07.2016 and ITAT, Pune in case of Rahul Construction vs. DCIT, 38 DTR 0019 and allowed the appeal in favour of the assessee by directing the AO to adopt the value of sale consideration declared by the assessee. The ITAT, Mumbai in case of Maria Fernandes Cheryl (supra), has also decided the issue in favour of the assessee by elaborate discussion on the subject issue of tolerance band of 10% in valuations of property. It was held that similar situation needs to be addressed in entirety for the entire period in which the legal provisions had effect, and not for a specific time period only. The ITAT,

Mumbai Tribunal further held that the tolerance band for variation between the stated sale consideration vis-à-vis stamp duty valuation to 10% is curative in nature, and therefore, the provisions, even though stated to be prospective, must be held to relate back to the date when the related statutory provisions of Section 50C of the Act, i.e., 01.04.2003 was brought into the statute. We find no reason to deviate from the decisions cited supra. We have noted that as against the sale consideration of Rs.69,00,000/-, the DVO has arrived at the FMV at Rs.72,00,000/-. Therefore, the difference of Rs.3,00,000/- is within the tolerance band of 10%. Following the decisions of Tribunals cited supra, the order of CIT(A) is set aside, and AO is directed to accept the value adopted by the assessee. Hence, the grounds raised by the assessee is allowed.

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

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 05/06/2025.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 05/06/2025

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// TRUE COPY //

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat