IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "H(SMC)" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 4012/Mum/2025
Assessment Year : 2017-18

Harneetkaur Baljeetsingh Saluja, Flat No. 11, 3rd Floor, Kanwal Apartments, Four Bunglows, Andheri (W), Mumbai-400053. PAN : AAHPS2102E	vs.	Income Tax Officer, Ward-24(21)(1), Piramal Chambers, Lalbaugh, Mumbai-400013.
(Appellant)		(Respondent)

For Assessee :	NONE
For Revenue :	Shri Pravin Salunkhe, Sr.DR

Date of Hearing :	30-07-2025
Date of Pronouncement :	31-07-2025

O R D E R

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'], dated 16-05-2025, pertaining to Assessment Year (AY) 2017-18.

2. None appeared on behalf of the assessee nor any adjournment application was filed. Considering the limited matter under consideration,

it was decided to proceed with the matter basis material available on record and after hearing the Ld.DR.

3. Briefly the facts of the case are that assessment in this case was completed u/s. 147 r.w.s. 144B of the Income Tax Act, 1961 ('the Act'), vide order dt. 26-05-2023, wherein the AO brought to tax the difference between the purchase consideration of the property acquired by the assessee at Rs. 81,75,000/- and value adopted by the stamp duty authority at Rs. 88,69,500/- amounting to Rs. 6,94,500/-, invoking the provisions of section 56(2)(vii)(b) of the Act.

4. The assessee thereafter carried the matter in appeal before the Ld.CIT(A), who has since sustained the said order and the findings of the AO and against the said order, the assessee is in appeal before us.

5. On perusal of the grounds of appeal taken by the assessee, it is noticed that in one of the grounds of appeal, the assessee has challenged the action of the Ld.CIT(A) in sustaining the action of the AO stating that since the difference between apparent consideration and stamp duty valuation is less than 10%, the same is within the tolerance limit as prescribed under 3rd proviso to Section 50C(1) of the Act where it equally applies in the context of section 56(2)(vii) of the Act and no addition should therefore be made in the hands of the assessee.

6. In this regard, during the course of appellate proceedings before the Ld.CIT(A), the assessee has submitted that since the apparent consideration is Rs. 81,75,000/- and the stamp duty value is Rs. 88,69,500/- and the difference comes to 8.5% which is within 10% tolerance limit as per the provisions of section 50C of the Act which

equally applicable to section 56(2)(vii) of the Act, no addition can be made. It was submitted that though the provision of permitting difference has been made effective from 1st April, 2019 and enhanced from 5% to 10% from 1st April, 2021, the same is applicable even to the earlier transactions and in support of the same, reliance was placed on the decisions of the Co-ordinate Benches of the Tribunal, namely, in the case of Global Shoes and Accessories vs. CIT, in ITA No. 2251/Del/2023, pertaining to AY. 2015-16, DCIT vs. SGP Exim Pvt. Ltd., in ITA No. 2005/Chny/2019, pertaining to AY. 2012-13 and Maria Fernandes Cheryl vs. ITO, International Taxation-2(3)(1), Mumbai in ITA No. 4850/Mum/2019, pertaining to AY. 2011-12.

7. The Ld. CIT(A) considered the submissions of the assessee and stated that the limit u/s. 50C of the Act is also applicable to section 56(2)(vii) of the Act, which was introduced by the Finance Act, 2018 effective from 1st April, 2019 i.e., AY. 2019-20 and the said amendment allowed 5% variation between annual transaction value on stamp duty value, invoking additional tax implications. However, the assessee's case is pertaining to AY. 2017-18 and prior to this amendment, any difference between the declared consideration and the stamp duty value would lead to tax consequences and, therefore, the contention so advanced by the assessee was not accepted and the additions so made by the AO were confirmed.

8. We therefore find that the limited issue basis which the assessee has been denied the benefit of enhanced tolerance limit of 10% is that the amendment to section 50C applies prospectively and cannot be applied retrospectively and in particular, for the impugned assessment year 2017-18.

9. Heard the Ld.DR and purused the material available on record. We find that it is a consistent position taken by the various Benches of the Tribunal and some of which have been referred to by the assessee before the Ld.CIT(A) that the tolerance limit of 10% which has been brought on the statute from 1st April, 2021 are curative in nature and must be held to relate back to the date of insertion of the statutory provisions of section 50C which admittedly applies with equal force to section 56(2)(vii) of the Act. In this regard, we can gainfully refer to the decision of the Coordinate Mumbai Benches in case of Maria Fernandes Cheryl *(supra)* and the relevant findings therein read 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 is no good reason for holding the curative amendment to be only as prospective in effect. Dealing with a somewhat materially identical situation in the case of Rajeev Kumar Agarwal Vs ACIT ((2014) 45 taxmnann.com 555 (Agra)) wherein a coordinate 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 (Le. 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, "(r)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 assessees 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 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 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.e. 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.

9. We have noted that as against the stated consideration of Rs 75,00,000, the stamp duty valuation of the property is Rs 79,91,500. The difference is just Rs 4,91,500, which is about 6.55% of the stated sale consideration. As the difference between the stated consideration vis-à-vis the stamp duty valuation is admittedly less than 10% of the stated consideration in this case, and in the light of the above discussions, we are of the considered view that Section 50C will have no application in the matter. The enhancement in capital gain computation, as made by the Assessing Officer, thus stands disapproved. The assessee gets the relief accordingly."

10. In light of aforesaid discussion, in the instant case, we find that difference between sale consideration and the stamp duty valuation being less than 10%, the same is within the tolerance limit and, therefore, the

addition so made and sustained by the Ld.CIT(A) amounting to Rs 6,94,000/- is hereby directed to be deleted.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 31-07-2025.

Sd/-	Sd/-
[RAHUL CHAUDHARY]	[VIKRAM SINGH YADAV]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai,
Dated: 31-07-2025

TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai