

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.354/Ind/2025
Assessment Year:2019-20

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| Subhash Chandra Agrawal, Galla Mandi, Vidisha | <u>बनाम/</u> Vs. | ITO, Vidisha |
| (Assessee/Appellant) | | (Revenue/Respondent) |
| PAN: AFRPA8769A | | |
| Assessee by | Shri Ashish Goyal & Shri Jaideep Jain, ARs | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 23.02.2026 | |
| Date of Pronouncement | 27/02/2026 | |

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 24.01.2025 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-2, Gurugram ["CIT(A)"] which in turn arises out of intimation of assessment dated 23.09.2019 passed by learned CPC, Bengaluru ["AO"] u/s 143(1) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2019-20, the assessee has filed this appeal on following grounds:

"1. The Ld. AO was not justified in passing the order, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

2. The Ld. CIT(A) was not justified in confirming the order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.

3. The Ld. CIT(A) was not justified in confirming the addition of Rs. 33,80,000/- as capital gain u/s 50C of the Act.

4. The appellant carves leave to add, amend or modify any of the grounds of appeal."

2. The background facts leading to present appeal are such that the assessee-individual filed his return of income of AY 2019-20 declaring a total income of Rs. 37,13,460/- inclusive of taxable capital gain of Rs. 27,85,291/- from sale of an immovable property. The AO processed assessee's return u/s 143(1) after assessing total income at Rs. 70,93,460/- inclusive of taxable capital gain of Rs. 61,65,291/-. In effect, the AO made an addition/upward adjustment of Rs. 33,80,000/- in taxable capital gain/total income. Aggrieved, the assessee carried matter in first-appeal but did not get success. Now, the assessee has come in next appeal before us.

3. The facts apropos to the impugned addition/upward adjustment of Rs. 33,80,000/- made by AO can be fit in a narrow compass and require a very limited mention. The assessee sold an immovable property for actual consideration of Rs. 46,20,000/- and declared resultant capital gain of Rs. 27,85,291/- after deduction of cost, etc. The Valuation of property was done by Stamps Authority at Rs. 80,80,000/- (the assessee mistakenly reported Valuation of Stamps Authority at Rs. 80,00,000/- in the Schedule of Capital Gain in return of income filed to department, Ld. AR asserted this mistake of assessee in open court with regret on behalf of assessee). Therefore, while

processing return of assessee u/s 143(1), the AO invoked section 143(1)(a)(ii), adopted the figure of Rs. 80,00,000/- as full value of consideration in terms of section 50C and, accordingly, made an addition/upward adjustment of Rs. 33,80,000/- [Rs. 80,00,000 (-) Rs. 46,20,000] to the taxable gain/total income of assessee. The relevant portion of intimation of assessment issued by AO u/s 143(1) is scanned and re-produced below:

✓ Note: Please refer to this office communication dated and 12-JUN-20 sent to the email ID and mani91401@gmail.com. As there has been no response/the response given is not acceptable the adjustments(s) as mentioned below are being made to the total income as per the provisions of section 143(1)(a)

| (ii) Incorrect Claim u/s 143(1)(a)(ii) | | | | | |
|--|-------------|--|-----------------------------|--------------------|----------|
| SI.No | Schedule | Error Description | Amount in Income Tax Return | Amount as computed | Variance |
| 1 | Schedule SI | The amount entered in Schedule SI are inconsistent with the corresponding amounts entered in Sch CG/ Sch OS. | 557058 | 1233058 | 676000 |
| 2 | SCHEDULE CG | There is inconsistency in the LTTCG amounts /Totals entered in schedule CG OR Taxpayer is claiming deductions u/s 54 which are more than the amounts allowable as per the respective sections. | 2785291 | 6165291 | 3380000 |

4. In the backdrop of these facts, Ld. AR harped on **Ground No. 1** raised by assessee to contend that the impugned addition/upward adjustment made by AO is outside the scope of section 143(1)/143(1)(a)(ii) and hence illegal and liable to be annulled.

5. In support of his contention, Ld. AR relied upon following decisions:

(i) **Prabha Anil Gandhi Vs. ADIT, ITA No. 1647/Mum/2023 (ITAT, Mumbai):**

"7. Considered the rival submissions and material placed on record, we observe that based on the information submitted by the assessee before Centralized Processing Centre and the Assessing Officer (CPC) has considered

the various informations available on record and proposed the additions u/s 50C of the Act. After considering the findings of the Ld. CIT(A) and submissions of the assessee we are in agreement that the proposed addition u/s 50C is beyond the mandate u/s 143(1) and the same can be processed only u/s 143(3) of the Act. Considering the fact that the issue involved in Section 50C is adoption of stamp duty valuation in place of actual consideration. It is deeming provision wherein assessee, the other party, has certain rights to object like request for referring the case to DVO. The Centralized Processing Centre cannot make addition without giving proper opportunity to the assessee, it is possible only u/s. 143(3) of the Act. Therefore, for the overall justice, we were inclined to remit this issue back to the file of the jurisdictional Assessing Officer. However, we are aware of the fact that in order to initiate the proceedings u/s 143(3) of the Act the Assessing Officer has to initiate the proceedings u/s 143(2) of the Act as per the limitation period. Assessing Officer may proceed with other remedies available on record."

(ii) Shri Inder Jeet Malik Vs. ADIT, ITA No. 1024/Del/2022 (ITAT, Delhi):

"5. I have heard the parties and perused the materials on record. The basic issue requiring consideration is, whether the addition made under section 50C(1) can fall within the ambit of adjustments provided under section 143(1)(a) of the Act. It is noticed; the following adjustments can be made while processing the return under section 143(1) of the Act:

"Assessment.

143. (1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:--

(a) the total income or loss shall be computed after making the following adjustments, namely: -

- (i) any arithmetical error in the return;*
- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return;*
- (iii) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;*
- (iv) disallowance of expenditure 68[or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;*
- (v) disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.--Deductions in respect of certain incomes", if the return is furnished beyond the due date specified under sub-section (1) of section 139;*

- (vi) *addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return."*

6. *No doubt, in the present case adjustment has been made under sub-clause (ii) to section 143(1)(a). The expression "incorrect claim apparent from any information in the return" has been explained under Explanation to section 143(1)(a) of the Act and reads as under:*

"Explanation- For the purposes of this sub-section-

(a) "an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return-

- (i) of an item, which is inconsistent with another entry of the same or some other item in such return;*
- (ii) in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or*
- (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;*

7. *On a conjoint reading of section 143(1)(a)(ii) along with Explanation, it becomes very much clear that the addition under section 50C(1) cannot be in the nature of incorrect claim as provided in Explanation to section 143(1)(a)(ii) of the Act. This is so because, section 50C has to be read as a whole and cannot be restricted to sub-section (1) alone. It is fairly well settled; a deeming provision has to be taken to its logical end. Undoubtedly, section 50C is a deeming provision. Though, sub-section (1) of section 50C provides for substituting the stamp duty value as deemed sale consideration in place of the declared sale consideration, however, sub-section (2) carves out an exception by providing that if the assessee objects to the stamp duty value, the valuation has to be referred to the Department Valuation Officer (DVO) and in case the value determined by the DVO is lower than the stamp duty value, the value determined by DVO has to be considered for computing capital gain in terms with sub-section (3) of section 50C. Therefore, sub-section (1) to section 50C cannot be considered in isolation. By making an adjustment of the nature contemplated under sub-section (1) to section 50C, that too, by CPC, the Department takes away a valuable statutory right given to the assessee to object to the value determined by stamp valuation authority.*

8. *Therefore, such type of adjustment, in my considered opinion, cannot be made under section 143(1)(a) of the Act. This is so because, at the stage of processing of return under section 143(1)(a), if such an adjustment is made, the assessee does not get an opportunity to object, as per section 50C(2) of the Act. More so, when conditions of the 1st and 2nd proviso to section 143(1)(a) are not complied. Therefore, I hold that the addition made by CPC under section 50C(1) of the Act by way of adjustment*

under section 143(1)(a)(ii) is unsustainable. Accordingly, I delete the addition."

(iii) Amit Sabharwal Vs. ADIT, ITA No. 5292/Del/2024 (ITAT, Delhi):

*"4. The Ld. Authorized Representative (hereinafter, the 'AR') contended that once the assessee had filed his objection to the show cause notice for proposed adjustment under section 143(1) of the Act, the proper recourse available with the AO was to refer the matter to the DVO for needful valuation and subsequent actions thereafter. However, the AO did not follow the proper procedure, once the same had been objected by the assessee, provided under section 50C of the Act; therefore the AO could not make any adjustment under section 50C(1) of the Act. To buttress the argument, the Ld. AR placed reliance on the decision in the case of **Inder Jeet Malik in ITA No. 1024/Del/2022 (order dated 26.07.2022)**. It was categorically submitted that the present case got squarely covered by the decision of the Co-ordinate Bench in the case of **Inder Jeet Malik (supra)**.*

5. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR), placing reliance on the finding of the first appellate authority requested for dismissal of the appeal on the reasoning that the said adjustment tantamount to the wrong claim under section 143(1) of the Act

*6. We have heard both parties at length and have perused the material available on record. The Co-ordinate Bench of Tribunal in the case of **Inder Jeet Malik (supra)** has held as under:*

XXX [Paras 5 to 8 of the decision – This decision is already re-produced in preceding para]

*7. We are of the considered view that this case is squarely covered by the decision of the Co-ordinate Bench of Tribunal in the case of **Inder Jeet Malik (supra)**. We therefore, following the reasoning given by the Coordinate Bench in the case of **Inder Jeet Malik (supra)**, hold that the no adjustment/addition under section 50C of the Act can be made while processing the ITR under section 143(1) of the Act. Accordingly, we delete the addition of Rs. 36,51,250/-."*

6. Per contra, Ld. DR for revenue opposed submission of Ld. AR by raising two-fold contentions:

(i) Firstly, it is submitted that before making impugned addition/upward adjustment, the AO issued an intimation to assessee under 1st Proviso

to section 143(1)(a) inviting objection of assessee but the assessee did not file any response which could have been considered by AO in terms of 2nd Proviso to section 143(1)(a). Therefore, when the assessee has not filed any response to AO, the assessee cannot be allowed to plead that the addition/upward adjustment made by AO was beyond the scope of section 143(1)/143(1)(a)(ii). Ld. DR pointed out that in the case of **Amit Sabharwal (supra)** relied by Ld. AR, the assessee filed response to AO, this fact is clearly discernible from first sentence of Para 4 of the order of ITAT (re-produced above). Further, in other two decision relied by Ld. AR, it is not ascertainable as to whether the assessee filed any response to the AO or not. But in any case, Ld. DR contended, when the assessee did not file response to AO, the assessee cannot take such plea now.

- (ii) Secondly, the CIT(A) has made following observation in impugned order:

"6.6 Moreover, the appellant has contended that the matter had to be referred to the Department Valuation Officer (DVO) and in case value determined by the DVO is lower than the stamp duty value, the value determined by DVO has to be considered capital gain in terms with sub-section (3) of section 50C. However, the appellant has contended that the matter had to be referred to the DVO but in this regard no true and correct documentary evidence or cogent reasons are provide before the appellant authority as to why the matter has to be refer to DVO."

7. In rejoinder, the Ld. AR submitted that the issue raised by the assessee goes to the very jurisdiction of the AO to make an adjustment under section 143(1)(a)(ii). He contended that a jurisdictional defect remains

a defect irrespective of whether or not the assessee files a response to the intimation issued under the 1st Proviso to section 143(1)(a). The failure of the assessee to respond cannot confer jurisdiction upon the AO to make an adjustment which is otherwise beyond the scope of section 143(1)(a)(ii). It was thus urged that the impugned adjustment under section 50C, being outside the permissible ambit of section 143(1)(a)(ii), is liable to be annulled notwithstanding the alleged non-filing of response by assessee.

8. We have heard rival submissions and perused the material available on record including the judicial precedents cited before us. The short controversy for adjudication is whether or not the impugned adjustment of Rs. 33,80,000/- made by AO by invoking section 50C while processing the return u/s 143(1) falls within the permissible scope of section 143(1)(a)(ii). We find that this issue is no longer res integra. The co-ordinate Benches of the Tribunal in ***Prabha Anil Gandhi (supra)***, ***Inder Jeet Malik (supra)*** and ***Amit Sabharwal (supra)*** have consistently held that substitution of stamp-duty value u/s 50C, being a deeming fiction coupled with statutory rights of objection and reference to DVO under sub-section (2) of section 50C, cannot be treated as an "incorrect claim apparent from information in the return" so as to permit adjustment u/s 143(1)(a)(ii). Such determination requires examination beyond the return and involves a debatable issue, which can be undertaken only in regular assessment proceedings and not at the stage of processing u/s 143(1).

9. As regards the objection of the Ld. DR that the assessee did not file response to the intimation issued by AO under 1st Proviso to section 143(1)(a), we find merit in the rejoinder of the Ld. AR that absence of response cannot enlarge the statutory scope of section 143(1)/143(1)(a)(ii). If an adjustment is otherwise beyond jurisdiction, the same does not become valid merely because the assessee failed to object at the processing stage.

10. In view of above discussion and respectfully following the decisions of the co-ordinate Benches cited by Ld. AR as noted above, we hold that the impugned addition/upward adjustment of Rs. 33,80,000/- made u/s 50C while processing the return u/s 143(1) is unsustainable in law. The same is directed to be deleted. **Ground No. 1 of the assessee is allowed.** Since we have allowed Ground No. 1 of assessee, other grounds become infructuous and do not require any adjudication from us.

11. **Before parting we may make it clear that we are not expressing any view on the merit of the addition. Further, the AO is at liberty to initiate proceeding under any other provision of law to deal the same issue.**

12. Resultantly, this appeal is allowed.

Order pronounced in open court on 27/02/2026

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 27/02/2026

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore