आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 5736/मुं/2019 (नि.व.2014-15)
ITA NO.5736/MUM/2019 (A.Y.2014-15)

Pushpa Lachmandas Samtani,
1/3, Kismet Building,
Opposite Sasoon Dock,
Kolaba, Mumbai-400005.
PAN: **ANQPS5181D** ...... अपीलार्थी /Appellant

बनाम Vs.

ITO-17(2)(5),
Room No. 123A, 1st Floor,
Aayakar Bhava, M.K. Road,
Mumbai-400020. ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by	:	Sh. Nishant K. Ruparel
प्रतिवादी द्वारा/Respondent by	:	Sh. Sanjay J. Sethi
सुनवाई की तिथि/ Date of hearing	:	14/06/2021
घोषणा की तिथि/ Date of pronouncement	:	24/08/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-28 Mumbai [hereinafter referred to as 'the CIT(A)'] dated 21.06.2019 for Assessment Year (AY) 2014-15.

2. The solitary issue raised by the assessee in appeal is against the addition of Rs. 15,17,800/- made under section 56(2)(vii)(b) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Sh. Nishant K. Ruparel appearing on behalf of the assessee submitted that the assessee had purchased plot of land during the period relevant to A.Y under appeal vide registered deed dated 25.03.2013 for a total consideration of Rs. 2,60,50,000/-. During the assessment proceedings, the Assessing Officer (AO) determined the market value of property as per stamp duty rate at Rs. 2,75,67,800/-. The AO made addition of the difference between stamp duty value and total consideration declared by the assessee i.e. Rs. 15,17,800/-. The ld. Authorised Representative (AR) submitted that variation in the value of consideration as declared in purchase deed and stamp duty value is merely 5.82%. The 3rd proviso to section 50C was inserted by the Finance Act, 2018 w.e.f. 01.04.2019 allows tolerance limit of 5%. The said tolerance limit was enhanced to 10% by the Finance Act, 2020 w.e.f. 01.04.2021. The Tribunal in the case of Maria Fernandes Cheryl Vs. ITO reported as 187 ITD 738 (Mum.Trib.) has held that 3rd proviso would operate retrospectively from the date on which section 50C was introduced to the Act i.e. 01.04.2003. The ld. AR pointed that similar view was taken by Delhi Tribunal in the case of Amrapali Cinema Vs. ACIT 127 taxmann.com 376.

4. On the other hand, the ld. Departmental Representative (DR) vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The ld. DR pointed that the 3rd proviso was inserted by the Finance Act, 2018 to be effective from 01.04.2019, therefore, the benefit of said proviso would not be available to the assessee in the AY under appeal.

5. Both sides heard, orders of the authorities below examined. The short point in the present appeal is whether the assessee would be eligible for benefit of 3rd proviso to section 50C(1) inserted by the Finance Act, 2018 and subsequently amended by the Finance Act, 2020. Undisputedly, the difference in the sale consideration declared by the assessee and the stamp duty value is 5.8% approximately. The co-ordinate bench in the case of Maria Fernandes Cheryl Vs. ITO (supra) while considering the similar issue held that the 3rd proviso to section 50C(1) is curative in nature, even though it is stated to be prospective, but it relates back to the date when the statutory provision of section 50C was made effective i.e. 01.04.2003. Even, the subsequent amendment to the aforesaid proviso by the Finance Act, 2020 enhancing tolerance band from 5% to 10% would be effective w.e.f. 01.04.2003. The relevant findings of the Tribunal on the issue are extracted as under:

> "7. ………………… 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. 1st 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 50C 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 1st 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."

[Emphasis added now]

7. Similar view has been taken in the case of Amrapali Cinema Vs. ACIT (supra) following the decision rendered in the case of Maria Fernandes Cheryl V/s. ITO (supra). Thus, in the light of the facts and the decisions referred above, we find merit in the submissions made by ld. AR. We have no hesitation in holding that in the instant case, since the difference between the sale consideration declared by the assessee and the stamp duty value is 5.8% (approx)., the consideration declared by the assessee should not be disturbed as the variation is within tolerance band of 10%. Consequently, the AO is directed to delete the addition.

8. The findings of CIT(A) on this issue are set-aside and the appeal of assessee is allowed.

Order pronounced in the open court on **Tuesday**, the **24th** day of August, 2021.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	(VIKAS AWASTHY)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 24/08/2021

SK, PS

<u>प्रतिलिपि अग्रेषितCopy of the Order forwarded to</u> :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar)
ITAT, Mumbai