IN THE INCOME TAX APPELLATE
TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER)

I.T.A.
No.6912/Mum/2019
(Assessment year 2015-16)

Joseph Mudaliar Row No.12, Crystal Palace Link Road, Malad (W) Mumbai-400 064 PAN : AASPM5300R	vs	DCIT, CC-4(3), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Ashok Sharma, AR
Respondent by	Smt. Usha Gaikwad, DR

Date of hearing	18-08-2021
Date of pronouncement	14-09-2021

O R D E R

Per Saktijit Dey (JM):

This is an appeal by the assessee against order dated 30-08-2019 of learned Commissioner of Income Tax (Appeals)-52, Mumbai for the assessment year 2015-16.

2. The assessee has raised the following grounds :-

1. The Learned CIT(A) has erred in making addition of Rs. 2330694/ -difference betwen the agreement value & stamp duty value on purchase of office premises u/s 56(2)(viib),

ignoring the fact that property was booked under construction in OCT2013 when the property market price was lower.
2. The Learned CIT(A) has erred in disallowing Rs. 150000/ being development charges paid to builders for 4 flats & bank interest of Rs.173308/- paid during construction period while calculating long term capital gain, ignoring the fact that these cost were capitalized in the books, thereby increasing the long term capital gain by Rs.569723/-.
3. The Learned CIT(A) erred in charging interest U/s 234A, 234B, 234C of the I.T.Act, 1961.

3. In ground 1 assessee has challenged the addition of Rs.23,30,694/- under section 56(2)(vii)(b) of the Income Tax Act, 1961.

4. Briefly the facts are, the assessee, an individual, is stated to be engaged in the business of trading in imitation jewellery. For the assessment year under dispute, assessee filed his return of income on 30-09-2015 declaring total income of Rs.6,28,420/-. The assessee also declared current year loss of Rs.76,18,500/-. Subsequently, on 30-09-2016 assessee filed a revised return of income declaring total income of Rs.6,20,650/- and current year's loss of Rs.79,43,584/-. In course of assessment proceedings, the assessing officer, based on information available on record, noticed that in the year under consideration the assessee had purchased four immovable properties. From the details furnished, he found that the declared sale consideration shown by the assessee is lesser than the stamp duty value (market value) determined by the stamp duty authority. The difference in value in respect of the subject properties worked out to a total amount of Rs.23,30,695/-. Therefore, the assessing officer called upon the assessee to explain why said differential amount should not be added to the income of the assessee under section 56(2)(vii)(b) of the Act. In response to the show cause notice, the assessee submitted that the declared value as per the sale agreement is based on the value on the date of agreement on 30-12-2014, whereas, he submitted, the agreements were registered on 13-01-2015 and 21-01-2015. Thus,

he submitted, the difference in the market value of property as per the stamp duty authority was due to delay in registration of the sale agreements. Further, he submitted that there are various other reasons for which the declared sale consideration is the actual market value and not the stamp duty value. The assessing officer, however, did not find merit in the submissions of the assessee and added back the amount of Rs.23,30,694/- by invoking the provisions of section 56(2)(vii)(b)(ii) of the Act. Though, the assessee contested the aforesaid addition before learned Commissioner (Appeals); however, he was unsuccessful.

5. Before us, learned counsel for the assessee submitted, the difference in value of the property as per the assessee and the stamp duty authority was purely on account of slight delay in registration of the sale agreements. He submitted, as per the provisions of section 50C, the market value of the property should be reckoned as on the date of sale of agreement and not the date of registration. Without prejudice, he submitted, the difference between the agreement value and the stamp duty value determined by the stamp duty authority varies between 1% to a maximum of 9% in respect of the properties purchased. Thus, he submitted, as per the third proviso to section 50C(1) of the Act, the difference in value cannot be added to the income of the assessee even under section 56(2)(vii)(b)(ii) of the Act. Further, he submitted, it has been held by judicial authorities that the third proviso to section 50C(1) would not only apply retrospectively, but would even apply to section 56(2)(vii)(b)(ii). In support of such contention, he relied upon the following decisions:-

1. Maria Fernandes Cheryl vs ITO ITA 4850/Mum/2019 Dt 15-01-2021
2. Shri Sandip Patil vs ITO ITA 924/Bang/2019 dt 09-09-2020
3. M/s John Flower (India) Pvt Ltd vs DCIT ITA 7545/Mum/2014

4. Pankaj Anilkumar Pitale vs ACIT ITA 6813/Mum/2017 dt 19-03-2019

6. Strongly relying upon the observations of learned Commissioner (Appeals), the learned departmental representative submitted, unlike the third proviso to section 50C(1) of the Act, there is no such provision in section 56(2)(vii)(b)(ii) of the Act. Therefore, the assessee cannot be allowed the benefit of the less than 10% difference in value between the stamp duty authority and declared sale consideration. In any case of the matter, she submitted, even assuming that the third proviso to section 50C(1) of the Act would be applicable; however, it cannot apply retrospectively and particularly to the impugned assessment year.

7. We have considered rival submissions in the light of decisions relied upon and perused materials on record. The undisputed facts emanating from record are, during the year under consideration, the assessee had purchased four movable properties. Admittedly, there is a difference in value of the properties as declared in the sale agreement and as determined by the stamp duty authority. The details of the properties purchased, value declared by the assessee, value determined by the stamp duty authority and the difference in value are described hereunder in a tabular form:-

Property	Date of agreement	Agreement value	Date of Registration	Market value	Difference
501	30.12.2014	1,72,00,000	13.01.2015	1,73,42,000	1,42,000
502	30.12.2014	1,16,00,000	13.01.2015	1,16,63,500	63,500
503	30.12.2014	1,77,00,000	13.01.2015	1,77,11,000	11,000
504	30.12.2014	2,25,00,000	22.01.2015	2,46,14,194	21,14,194
				Total	23,30,694

8. As could be seen from the above, admittedly, there is a difference between the value determined by the stamp duty authority for stamp duty purpose and

the agreement value. Such difference aggregated to Rs.23,30,694/-. The learned authorized representative of the assessee has submitted before us that the variation in value in respect of property at serial no.1 is 1%; in respect of property at serial no.2 is 1.43%; in respect of property at serial no.3 is 0.99% and in respect of property at serial no.4 is 9%. Thus, the variation in the value declared by the assessee and as determined by the stamp duty authority is between 1% to 2% in respect of three properties; and in respect of one property it is 9%. Before the first appellate authority, the assessee had specifically pleaded that since the difference in value is less than 10%, no addition can be made keeping in view the third proviso to section 50C(1) and the provisions of section 56(2)(x) of the Act. Apparently, learned Commissioner (Appeals) has rejected the aforesaid contention of the assessee for two reasons. Firstly, the provisions of section 56(2)(x) would be applicable from assessment year 2019-20; and secondly, in respect of one of the properties, the difference in value works out to more than 5%. Thus, keeping in perspective the aforesaid factual position, we proceed to decide the validity of the addition made.

9. Before dealing with the substantive issue, it is necessary to look into the relevant statutory provisions. By the Finance (No.2) Act, 2009 section 50C was introduced in the statute with effect from 01-04-2010. As per the provision of section 50C(1) of the Act, where the consideration received on sale of an immovable asset by an assessee is less than the value determined by the stamp valuation authority, the value so determined would be deemed to be the full value of consideration received or accruing as a result of such transfer, for computing capital gain. By Finance Act, 2018, the third proviso to section 50C(1)

of the Act was introduced to the statute with effect from 01-04-2019, which reads as under:-

> *"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of 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 (hereafter in this section referred to as the "stamp valuation authority") 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 section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :*
>
> *xxxxxxxxxxxxxxxx*
>
> *xxxxxxxxxxxxxxxx*
>
> *Provided also that where the value adopted or assessed or assessable by the stamp valuation authority 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 section 48, be deemed to be the full value of the consideration."*
>
> "

10. Unlike section 50C of the Act, there was no corresponding provision in the Act vesting the assessing authority with power to adopt the stamp duty value as deemed sale consideration in respect of the buyer of the immovable property. However, by Finance Act, 2013, a new sub clause (b) was introduced to section 56(2)(vii) with effect from 01-04-2014, which reads as under:-

> *"(b) any immovable property,–*
>
> *(i) Without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*
>
> *(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees,*
>
> *the stamp duty value of such property as exceeds such consideration:*
>
> *xxxxxxxxxxxxxxx"*

11. As could be seen from section 56(2)(vii)(b)(ii), it empowers the assessing officer to treat the excess value determined by the stamp duty authority over and above the declared sale consideration as the deemed sale consideration and add it as income at the hands of the person buying the property. Thus, by the

aforesaid provision, a buyer of the property was also brought at par with the seller of the property as per Section 50C(1) of the Act. Prima facie, section 56(vii)(b)(ii) would get triggered once the stamp duty authority determines the value of a property in excess of the declared sale consideration. However, the crucial issue which needs to be considered is, whether the third proviso to section 50C(1) of the Act providing exception in case the difference in value is less than 10%, would be applicable to section 56(2)(vii)(b)(ii) of the Act. In this context, the argument of the learned departmental representative is, firstly, there is no provision like third proviso to section 50C(1) of the Act in section 56(2)(vii)(b)(ii) of the Act and secondly, even if there is one, it will apply prospectively.

12. As could be seen, section 56(2)(vii) in its original form was introduced by Finance Act, 2009 with effect from 01-10-2009. However, by Finance Act, 2017 it was provided that section 56(2)(vii)(2) would be applicable in respect of the specified transaction undertaken between 1st day of October, 2009 and before 1st day of April, 2017. This amendment was effective from 01-04-2017. Simultaneously with the aforesaid amendment made to section 56(2)(vii), the Finance Act, 2017 also introduced clause (x) to section 56(2) to bring within its ambit the transactions referred to in section 56(2)(vii) undertaken after 1st day of April, 2017. Clause (x) of section 56(2) was subsequently amended by Finance Act, 2018 with effect from 01-04-2019 and again by Finance Act, 2020 with effect from 01-04-2021. The relevant part of section 56(2) which is required for our purpose is extracted hereunder:-

> *"(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*
>
> *(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*
>
> *(b) any immovable property,—*

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

[69][(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to five per cent of the consideration:] Xxxxxxxxxxxxxxx"

13. Thus, as can be seen, after introduction of section 56(2)(x), applicable for transactions undertaken after 01-04-2017, by Finance Act, 2018, identical exception as provided in third proviso to section 50C(1) is also provided in sub clause (b)(B)(ii) from 01-04-2019. Interestingly, section 43CA introduced to the statute by Finance Act, 2013 with effect from 01-04-2014 also provide for adoption of the value determined by the stamp valuation authority if it is in excess of the declared sale consideration of an immovable property. However, this provision is applicable to an asset other than a capital asset. It will be further interesting to note, in the first proviso to section 43CA(1) of the Act which was introduced by Finance Act, 2018 with effect from 01-04-2019, similar exception as provided in third proviso to section 50C(1) and section 56(2)(x)(b)(B)(ii) of the Act was introduced. It will be further relevant to observe, by the Finance Act2020, the permissible limit of variation in the value has been enhanced to ten per cent from five per cent. Of course, in case of section 43CA further benefit has been granted to the assessee by enhancing the limit of variation to 20%.

14. On a conjoint reading of sections 50C, 43CA and 56(2)(x) of the Act, the legislative intention becomes absolutely clear that wherever the statute provides for adoption of the value determined by the stamp valuation authority as the deemed sale consideration, in case, it exceeds declared sale consideration,

exceptions have also been provided not to adopt the market value if the difference between the value declared by the assessee and determined by the stamp duty authority is within a permissible limit.

15. The reason for not providing such an exception in section 56(2)(vii)(b)(ii) is patent and obvious. As could be seen, the amendments to sections 50C, 56(2)(x) and 43CA providing for exception in case of marginal difference between the declared sale consideration and value determined by the stamp valuation authority were introduced to the statute by Finance Act, 2018 with effect from 01-04-2019. Meaning thereby, the legislature did not felt the necessity of introducing such an exception to section 56(2)(vii)(b)(ii) simply for the reason that such provision was applicable for a period between 1st October, 2009 to 1st April, 2017. Therefore, non-introduction of similar exception to section 56(2)(vii(b)(ii) cannot be held against the assessee. Rather, section 56(2)(vii)(b)(ii) has to be harmoniously construed along with sections 50C, 56(2)(x) and 43CA and the exceptions provided in the later three provisions have to be read into section 56(2)(vii)(b)(ii) to provide true meaning to the intention of the legislature. This, according to us, clearly answers submissions of learned departmental representative regarding absence of a provision identical to third proviso to section 50C(1) in section 56(2)(vii)(b)(ii).

16. Thus, in our considered opinion, the assessee would be eligible to get the benefit of ten per cent margin difference in the valuation between the value determined by the stamp duty authority and the declared sale consideration. Thus, if the variation between the aforesaid two values falls within the range of ten per cent, no addition can be made.

17. It is further relevant to observe, section 50C or for that matter section 56(2)(vii)(b)(ii) are identical provisions. Only difference being, 50C is applicable to the seller of an immovable property, whereas, the later provision is applicable to the buyer of the property. Therefore, a benefit given to a seller of the property in respect of marginal variation cannot be denied to the buyer of the property, since, they stand on the same footing. This aspect of the issue has also been considered by the co-ordinate bench in case of Shri Sandip Patil vs ITO (supra), wherein, the co-ordinate bench has held that there cannot be two different fair market value in respect of the very same property, i.e. one at the hands of the seller and the other at the hands of the buyer. Thus, in our view, if the difference in valuation between the value determined by the stamp duty authority and the declared sale consideration is less than 10%, no addition can be made under section 56(2)(vii)(b)(ii) of the Act.

18. Having held so, the second aspect of the issue which requires consideration is whether the exception to section 50C(1) by way of third proviso and section 56(2)(x)(b)(B) would apply prospectively or retrospectively. The issue is no more *res integra* in view of a number of decisions of different benches of the Tribunal. The Tribunal has consistently expressed the view that since the aforesaid amendments made by Finance Act, 2018 with effect from 01-04-2019 are curative in nature and beneficial provisions, it would apply retrospectively. In this context, we get support from the following decisions:-

1. Shri Sandip Patil vs ITO (supra)
2. Maria Fernandes Cheryl vs ITO (supra)

19. Thus, keeping in view the discussions hereinabove, we delete the addition of Rs.23,30,694/-. This ground is allowed.

20. In ground 2 assessee has challenged the disallowance of Rs.1,50,000/- and Rs.1,73,308/- being deduction claimed towards cost of acquisition/improvement.

21. Briefly the facts are, while computing long term capital gain the assessee claimed deduction of Rs.1,50,000/- towards other charges paid to builder and bank interest of Rs.1,73,308/-. The assessing officer disallowed the deduction claimed on the reasoning that they are not allowable under section 48 of the Act. Learned Commissioner (Appeals) also upheld such disallowance.

22. Before us, learned authorized representative submitted that the assessee has paid certain amount to builder which would go to increase the cost of acquisition. Further, he submitted, interest paid has also been capitalized in the books of account which will enhance the cost of acquisition. Thus, he submitted, deductions claimed have to be allowed. In support, he relied upon a decision of the Tribunal in the case of Parvati Devi Totlani vs ITO, ITA No. 120/JP/2019 dt 28- 02-20.

23. Per contra, learned departmental representative submitted, the deduction claimed by the assessee does not form part of the sale consideration; therefore, it cannot be treated either as cost of acquisition or cost of improvement. Further, she submitted, since the assessee has capitalized the interest, no further deduction can be allowed.

24. Having considered rival submissions and perused materials on record, we find that the other charges comprise of maintenance charges, water charges, electricity connection charges, etc. In our view, these payments cannot form part of either the cost of acquisition or cost for improvement. Similarly, details of interest expenditure have not been furnished by the assessee. Further, the assessee has failed to prove that such expenditure was incurred wholly and

exclusively for the purpose of transfer of the capital asset. That being the case, we are unable to accept assessee's claim of deduction. The decision relied upon by the learned authorized representative being based on its own facts, is not applicable to the present case.

25. Ground 3 is against interest charged under section 234A, 234B,234C of the Act. Levy of interest being consequential in nature, do not require adjudication.

26. In the result, appeal is partly allowed. Order pronounced on 14/09/2021.

Sd/- sd/-

(S.RIFAUR RAHMAN)	(SAKTIJIT DEY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt :

14/09/202

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