IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.282/Del/2017
Assessment Year : 2012-13

M/s. Amrapali Cinema, C/o-Sh. Anil Kumar Goel, 90, Ram Nagar, Hapur Road, Meerut. PAN-AABFA7846D	Vs	ACIT, Circle-I, Income Tax Office, Near Bhainsali Ground, Delhi Road, Meerut.
APPELLANT		**RESPONDENT**
Appellant by	Sh. Sanjiv Sapra, FCA.	
Respondent by	Sh. Ashok Gautam, Sr. DR	
Date of Hearing	01.04.2021	
Date of Pronouncement	28.04.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee for the assessment year 2012-13 is directed against the order of learned CIT(A), Meerut dated 21.11.2016. The assessee has raised following grounds of appeal:-

1. "That on the basis of circle rate in force in July 2011 when the initial payments of Rs.5,00,000/- & 15,00,000/- were received by cheque dt 06-07-2011 & 18-07-2011 respectively, the provision of section 50C are not even attracted in assessee's case.

2. That the Ld CIT (A) is not justified in law and on facts of the case in issuing enhancement notice by invoking section 50C and directing the AO to rework the capital gains in accordance with the Fair Market value determined by DVO at Rs 8,89,63,168/- against the actual sales consideration of Rs.8,78,00,000/- as per sale deed.

3. That the resulting addition of Rs 11,63,168/- (Rs 8,89,63,168 - 8,78,00,000) in the computation of taxable capital gain in pursuance of direction of Ld CIT (A) being unwarranted and uncalled for under the facts and circumstances of the case be kindly deleted.

4. That the objections raised by the assessee vide its submissions dt 18-11-2016 with reference to valuation report of the DVO vis-a-vis valuation report of the Government approved valuer have not been properly appreciated by the Ld CIT (A) and which have been ignored by him by holding them to be of general nature."

2. The only effective ground is against the valuation of property u/s 50C of the Income Tax Act, 1961 ("the Act") by adopting the value as assessed by the DVO before the Ld.CIT(A).

3. Facts giving rise to the present appeal are that case of the assessee was selected for scrutiny assessment and assessment u/s 143(3) of the Act was framed vide order dated 31.10.2014. While framing the assessment, the Assessing Officer observed that the assessee had discontinued its business of cinema hall with the name of Amrapali Cinema at Garh Road and sold the entire immovable property. It was further observed that the assessee declared long term capital gains amounting to Rs.4,57,09,500/-. The Assessing Officer declined the claim of the assessee for indexation, as on 01.04.1981 and computed long term capital gain at Rs.8,67,93,779/-, hence assessed income at Rs.8,64,30,235/- against the return income of Rs.4,43,45,956/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions of the assessee, partly allowed the appeal of the assessee whereby Ld.CIT(A) allowed the claim of the assessee regarding indexation of fair market value at 01.04.1981. However, in respect of fair market value, Ld.CIT(A) observed that as per stamp valuation of property, the value was found at Rs.9,38,45,440/- and the assessee claimed the sale consideration at Rs.8,78,00,000/-. The matter was referred to DVO who determined the fair market value at Rs.8,89,63,168/-. Ld.CIT(A) adopted the same.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in further appeal before this Tribunal.

6. Ld. Counsel for the assessee vehemently argued that Ld.CIT(A) is not justifying in referring the matter to the DVO. He submitted that Ld.CIT(A) as well as the DVO fail to appreciate the fact that looking to the location of the property and encumbrance thereon the Fair market value as assessed by the Stamp Valuation Authority is not justified. He further contended that a higher variation by Stamp authority would not *ipse facto* make the assessee liable to pay higher tax if the assessee is able to demonstrate that the value as assessed by Stamp Valuation Authority is higher than the actual prevailing market rate after considering the location and other factors that may influence the value of the property. In the present case, the DVO has not made any exercise to come to a justifiable conclusion. He further contended that even if it is assumed without prejudice to its contention of the assessee that the value as

adopted by the DVO is the correct fair market value. In the light of the judicial pronouncement and even in that event also, Ld.CIT(A) ought not to have adopted the valuation as assessed by the DVO as the difference between the value adopted by the DVO and the value declared by the assessee is lesser than 5%. In support of this contention, Ld. Counsel for the assessee placed reliance on the decision of the Co-ordinate Bench of this Tribunal rendered in the case of *Maria Fernandes Cheryl vs ITO [2021] 123 taxmann.com 252 (Mum.-Trib.).*

7. On the contrary, Ld. Sr. DR, Sh. Ashok Gautam vehemently opposed these submissions and supported the order of the authorities below.

8. We have heard the rival contentions and perused the material available on record. We find that there is no dispute with regard to fact that fair market value determined by the DVO at Rs. 8,89,63,168/- against the actual sale consideration of Rs.8,78,00,000/- as disclosed in Sale Deed. The resulting difference is Rs.11,63,168/- which is 1.02%. The Co-ordinate Bench of this Tribunal in the case of *Maria Fernandes Cheryl vs ITO* (supra) has held 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 ITA No. 4850/Mum/2019 Assessment year: 2011-12 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 (i.e. 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, "(t)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 ITA No. 4850/Mum/2019 Assessment year: 2011-12 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 ITA No. 4850/Mum/2019 Assessment year: 2011-12 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 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 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."

9. Respectfully following the same, we direct the Assessing Officer to delete the addition. Thus, Grounds of appeal raised by the assessee in this appeal are allowed.

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

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 28th April, 2021.

Sd/-	***Sd/-***
(G.S. PANNU)	**(KUL BHARAT)**
VICE PRESIDENT	**JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI