NDA Update – Benefit of higher tolerance under Section 50C of the Income Tax Act to apply retrospectively

The Mumbai bench of the Income-Tax Appellate Tribunal's (ITAT), in Maria Fernandes Cheryl vs. ITO International Taxation, has held that the benefit of a higher tolerance band of 10% for the difference between the sale price of a flat and the stamp duty valuation will apply with retrospective effect.

This ruling will come as a relief to the taxpayers entangled in litigation under Section 50C on capital gains arising out of sale of their flats / buildings due to sale price being lower that the stamp duty valuation.

Section 50C was introduced with effect from 01.04.2003. It provided that if the sale consideration claimed to be received by the seller is less than the stamp duty value, the latter would be considered for determining capital gains. To minimise hardships in case of genuine transactions, the Finance Act, 2018, amended Section 50C and provided that no adjustment will be made in cases where the variation between stamp duty value and sale consideration was not more than 5% of the sale consideration. This proviso was further amended by the Finance Act, 2020 enhancing the variation rate to 10%.

The Income Tax authorities submitted to ITAT that the amendment carried out by the Finance Act, 2018 / Finance Act, 2020, would come into effect only prospectively from the respective date of applicability.

The ITAT bench of Vice President Pramod Kumar and Judicial Member Saktijit Dey held that this benefit would apply retrospectively from assessment year 2003-04 when the provision of Section 50C was inserted in the Income Tax. It was stated that "the amendment in 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 5% (wef 01.04.2019) and 10% (wef 01.04.2021), **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 was introduced, 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."

The plea of the department to mention that relief is granted as a special case and this decision may not be considered as a precedent was also rejected.

(ITA No. 4850/Mum/2019 Assessment year: 2011-12, Order dated 15-01-2021)