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### ITAT rules that legislative amendment applies retroactively

Amendment was intended to prevent undue hardship to taxpayer from deemed increase in sale consideration

On 9 August 2019, the Kolkata Bench of India's Income Tax Appellate Tribunal (ITAT) [ruled](#) that a difference between the consideration received on the sale of immovable property and the valuation of the property for stamp duty purposes of up to 5% of the sale consideration could be disregarded for the purpose of computing capital gains for assessment year (AY) 2014-15, in accordance with a legislative amendment that applies as from AY 2019-20.

### Facts of the case

The taxpayer had filed an income tax return for AY 2014-15 declaring total income of INR 0 and claiming a loss of INR 11,946,383. During the assessment proceedings, the Indian assessing officer (AO) noted that the taxpayer had declared long-term capital gains of INR 12,263,576 from the sale of the property, with a total sale consideration of INR 31,500,000. The market value of the property according to the stamp duty authority was INR 32,701,950. Since the consideration received was less than the valuation for stamp duty purposes, the AO declared that the provisions of section 50C of the Income-tax Act, 1961 (ITA) applied to the transaction. Section 50C provides broadly that where the sale consideration received on the transfer of a capital asset (land, buildings or both) is less than the value determined by the stamp duty authorities, the latter amount will be deemed to be the consideration for the purposes of calculating the capital gain or loss arising on the transfer.

During the course of the assessment proceedings, the taxpayer objected to the stamp duty value adopted and requested that the case be referred to the District Valuation Officer to determine the fair market value of the property. The AO referred the case to the officer but no response was received within the required time period.

The AO applied the provisions of section 50C of the ITA and treated the market value as determined by the stamp duty authority as the consideration received. Thus, the AO increased the taxpayer's total income for AY 2014-15 by INR 1,201,950 (being the difference between the stamp duty valuation of INR 32,701,950 and the consideration received of INR 31,500,000).

The taxpayer appealed the AO's decision to the Commissioner of Income-tax (Appeals) (CIT(A)), who confirmed the addition made by the AO. The taxpayer appealed to the Kolkata Bench of the tribunal.

### Decision of the ITAT

The ITAT observed that the fundamental purpose of introducing section 50C of the ITA was to counter the concealment of sale consideration on the sale of immovable property. A disparity between the stamp duty value and sale consideration can arise because of many factors, including the location of the property, the size of the land and/or building, the shape or location of the plot, the proximity of public amenities and transport networks, and whether the sale was forced, etc.

The ITAT noted that to mitigate hardship in genuine real estate transactions, section 50C of the ITA was amended as from 1 April 2019. Finance Act 2018 introduced a third proviso into the section, stating that no adjustment will be made where the difference between the stamp duty value and the sale consideration does not exceed 5% of the sale consideration. The ITAT held that third proviso was not a substantive amendment, but rather declaratory and curative in nature. In the tribunal's view, the proviso relates to the determination of the value of property; therefore, it cannot be a substantive amendment, but instead is only a procedural change.

The ITAT referred to the decision of the Mumbai Bench of the ITAT in the [John Fowler \(India\) Pvt. Ltd. case](#), in which it was held that since the difference between the sale consideration and the stamp duty valuation was less than 10% of the stamp duty value, the stamp duty valuation should not be adopted as the full consideration. The Mumbai ITAT referred to an order of the Jaipur Bench of the ITAT in the [Smt. Sita Bai Ketan case](#), which held that where the difference between the amount of sale consideration provided by the taxpayer and the value determined by the departmental valuer was less than 10% and having regard to the fact that valuation always was a matter of estimation where some degree of difference was bound to occur, the stamp duty value should not be substituted as the sale consideration.

The Kolkata ITAT also relied on two previous decisions of the Supreme Court in which it was held that an amendment to the provisions of another section of the ITA, to the extent that it was curative and declaratory, should apply retroactively. The ITAT held that, provided it was not disputed that the purpose of a statutory amendment was to remove undue hardship to the taxpayer or to remove an apparent incongruity, the amendment should be treated as effective from the date on which the relevant provision of the original legislation was introduced. The ITAT, therefore, held that the third proviso to section 50C of the ITA applied as from 1 April 2003 (the date section 50C was introduced).

As a result, the ITAT deleted the addition made by the AO to the total income of the taxpayer because the difference between the stamp duty valuation and the sale consideration did not exceed 5% of the sale consideration.

## **Comments**

The third proviso to section 50C of the ITA was inserted as a rationalization measure to prevent hardship for the taxpayer. The courts have held that where such an intention exists, a provision that is curative and declaratory in nature and not a substantive amendment will apply retroactively.

The ITAT decision is welcome as it reinforces the principle that the intent of the legislation should be examined when determining whether legislative amendments are prospective or retroactive in nature.



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