



IN THE INCOME TAX APPELLATE TRIBUNAL  
SPECIAL BENCH 'J (SMC)', MUMBAI

BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT,  
SHRI SAKTIJIT DEY, VICE PRESIDENT AND  
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA NO. 4453/MUM/2024 : A.Y. : 2018-19

Shreyas Naynesh Modi  
5B/602, 6<sup>th</sup> Floor, Warden Court,  
79/81, Tejpal Auditorium,  
August Kranti Marg, Mumbai 400 034.  
PAN : ADFPM4090C (Appellant)

Vs. Income Tax Officer-23(3)(6),  
Mumbai. (Respondent)

Appellant by : S/Shri Vimal Punmiya a/w  
Himanshu Gandhi, Bharat  
Kumar & Nitesh Jain

Respondent by : Shri Pankaj Kumar, CIT-DR

Date of Hearing : 13/11/2025

Date of Pronouncement : 23/01/2026

**ORDER**

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

This Special Bench is constituted to decide the following issue :-

*“Whether in the facts and circumstances of law, appellant is entitled to the benefit of reduction of 10% safe harbour limit (difference between the value adopted by Stamp Value Authority and sale consideration received by appellant) over and above the value adopted by Departmental Valuation Officer under section 56(2)(x) of the I.T. Act?”*

**Brief facts :**

2. The appellant-assessee is an individual. The appellant filed his Return of Income (RoI) for the assessment year 2018-19 declaring a total income of Rs.8,06,960/-. The

case was selected for scrutiny on account of alleged receipt of a specific information pointing to tax evasion. The Assessing Officer ('AO' for short) issued statutory notices under Section 143(2) and 142(1) of the Income Tax Act, 1961 ('Act' for short), in response to which the appellant filed his reply and furnished information as asked for. From the details supplied by the appellant, it was disclosed that the assessee had purchased a flat situated at Warden Court, August Kranti Marg, Mumbai on 12.04.2017 for a consideration of Rs.2,65,00,000/-. The assessee had obtained a Valuation Report in respect of the flat from a Registered Valuer, M/s. M.A. Toke. The Valuer, by his report dated 02.05.2017, had determined the Market Value (MV) of the property on the date of transaction at Rs.2,50,00,000/-. It is undisputed that as per the Stamp Duty Valuation (SDV), the flat was valued at Rs.3,79,15,000/-. The AO has noticed that the assessee did not challenge the valuation made by the Stamp Valuation authority at the time of registration of the Conveyance.

3. Be that as it may, during the assessment proceedings, the assessee challenged the applicability of Section 56(2)(x) of the Act and requested the matter to be referred to a Departmental Valuation Officer (DVO) as contemplated under Section 55A of the Act. The reference was accordingly made and the DVO submitted his report dated 11.06.2021 determining the Fair Market Value (FMV) of the property at Rs.2,81,13,000/-.

4. The AO by an order dated 03.08.2021 proceeded to make the addition to the extent of the difference between the Fair Market Value (FMV) determined by the DVO and the consideration as shown by the assessee on the date of registration of the Conveyance. The AO thus made an addition of Rs.16,13,460/- as 'income from other sources'.

5. In appeal, it was contended on behalf of the appellant that the impugned addition could not have been made by taking recourse to Section 56(2)(x) of the Act.

It was contended that, in any event, the consideration of Rs.2,65,00,000/- is within the permissible limit of 10% as compared to the valuation made by the DVO. It was contended that thus the impugned addition could not have been made having regard to the safe harbour limit of 10%. In short, it was contended that the safe harbour limit would also apply vis-à-vis the FMV determined by the DVO and not necessarily in relation to the SDV as determined by the ready reckoner.

6. It was alternately contended that the appellant was only holding 50% share as the flat was purchased jointly with his wife and the addition in the appellant's hands be restricted to 50%.

7. The CIT(A) has dismissed the appeal by order dated 13.05.2024. The CIT(A) has found that the claim of the appellant of valuation being within the permissible limit of 10% having been brought about by Finance Act, 2018 w.e.f. 01.04.2019 was not applicable to financial year 2017-18 relevant to the assessment year in question. It is this order which is the subject matter of challenge in the present appeal.

8. The Division Bench hearing the appeal vide order dated 06.03.2025 has noticed three decisions of the co-ordinate Bench in the case of *Jayarajbhai A. Jodhani vs DCIT (ITA No. 2420/Ahd/2016 dated 19.02.2021)*, *Rama Jogi Reddy Sanepalli vs ITO (ITA No. 34/Bang/2019 dated 15.02.2019)* and *B.S. Sanjay (HUF) vs ITO (ITA No. 1141/Bang/2018 dated 04.05.2018)* holding that the 10% safe harbour rule can be applied in relation to the FMV determined by the DVO. The Division Bench dealing with the present appeal has expressed its disagreement with the said view. The Division Bench has observed that the 10% variation can be considered only in relation to the stamp duty valuation and not the FMV determined by the DVO. In that view of the matter, the Division Bench by order dated 06.03.2025 has required this appeal to be placed before the Special Bench. The President by an order dated 18.09.2025 has directed the appeal to be placed before the Special Bench.

Rival submissions :

9. We have heard the learned counsel for appellant and the learned DR for the respondent-Revenue. With their assistance we have gone through the record.

10. It is submitted by the learned AR that the valuation determined by the DVO under Section 50C(2) of the Act replaces the SDV under Section 50C(1) of the Act. He, therefore, submitted that the safe harbour provision as introduced by the third proviso ought to be applied vis-à-vis FMV determined by the DVO. The learned AR has taken us through the chronology of events by which the provisions as contained in Section 50C, 43CA and 56 of the Act were introduced. It is submitted that all these sections create deeming fiction which are required to be taken to their logical end. He submitted that these provisions should be interpreted purposively/liberally as the object for introduction of these provisions is to mitigate the hardship where the consideration agreed is lower than the SDV. He submitted that both the SDV as per the ready reckoner as well as the FMV determined by the DVO are in the nature of estimates and, therefore, there is no reason why the 10% safe harbour limit should not be applied in relation to the valuation made by the DVO also. It is submitted that even assuming that two interpretations are possible, the one favourable to the assessee is required to be preferred. He submitted that this Tribunal in various decisions, including the decision in the case of *Maria Fernandes Cheryl vs ITO, ITA 4850/Mum/2019 dated 15.01.2021* has held that the provisions apply retrospectively as they are curative in nature. He submitted that this Tribunal in case of *Jayarajbhai A. Jodhani, Rama Jogi Reddy Sanepalli and B.S Sanjay (HUF) (supra)* has already granted relief when the agreement value was within permissible limit in relation to the valuation by the DVO. It is submitted that the FMV determined by the DVO replaces the SDV once the reference is made. It is submitted that a liberal interpretation has to be made as Section 50C of the Act is beneficial in nature. He pointed out that the Division Bench in this case has not given any reason to take a different view except

referring to the provisions of Section 56(2)(x) of the Act which mentions about the stamp duty valuation.

11. The learned AR has placed reliance on the decision of this Tribunal in (i) *Smt. Charu Aggarwal vs DCIT, 140 Taxmann 588 (Chd Trib)*, (ii) *Golden Tulip Hospitality P. Ltd. Vs DCIT, 178 Taxmann 440 (Asr Tribunal)*, (iii) *Shree Maya Real Estate Pvt. Ltd. Vs DCIT, ITA Nos. 227 & 228/Nag/2022 dated 02.09.2024* and (iv) *B.S. Sanjay (HUF) (supra)*. Further reliance is placed on the decision of Bombay High Court in *CIT vs Raman Kumar Suri, [2013] 29 taxmann.com 231 (Bombay)* in which it has been held that the safe harbour provisions are intended to avoid hardship to genuine transactions. Reliance is placed on the decision of Gujarat High Court in *Dr. Rajivraj Ranbirsingh Choudhary vs ACIT, 393 ITR 650 (Gujarat)* holding that the provisions are retrospective and curative in nature. The learned AR further placed reliance on para 16 of the explanatory note to Finance Act, 2018 to submit that the introduction of safe harbour limit is essentially in view of rationalisation of Section 43CA, 50C and 56 of the Act. The learned AR has also referred to certain guidelines for valuation of immovable property issued by the Director of Income Tax in 2009.

12. The learned DR has submitted that the third proviso to Section 56(2)(x) of the Act cannot apply to assessment year 2018-19 to which the appeal relates. It is next submitted that even otherwise the third proviso speaks of the stamp duty value of immovable property which has to be interpreted strictly. He, therefore, submitted that the decisions holding that the third proviso to Section 56(2)(x) of the Act would apply also in relation to the FMV determined by the DVO do not lay down the law correctly. It is submitted that the Division Bench vide referral order dated 06.03.2025 has rightly come to the conclusion that the safe harbour limit of 10% can only be applied in relation to SDV in view of the clear wording of the third proviso to Section 50C(1) of the Act and the corresponding Section 56(2)(x)(b)(B)(ii) of the Act. The learned DR pointed out that in para 9.2 of the referral order, the Division Bench has

noticed the relevant provisions and the phraseology used therein. He submitted that merely because the valuation made by the DVO gets substituted as the FMV/SDV cannot be further extended to hold that the safe harbour limit of 10% would also apply in relation to the FMV determined by the DVO. The learned DR was at pains to point out that the decisions which take a contrary view in favour of assessee have not dealt with the aspects which have been noticed by the Division Bench in the referral order.

Consideration :

13. We have carefully considered the rival circumstances and the submissions made. In this case, it is not in dispute that in relation to the DVO's valuation of Rs.2,81,13,000/-, the sale consideration of Rs.2,65,00,000/- is at variance of 6.09%, i.e. within 10% limit. The only question is whether for the purposes of applicability of safe harbour limit, the FMV determined by the DVO can also be taken into consideration. Although in the present reference we are concerned with the impugned addition made under Section 56(2)(x) of the Act as 'income from other sources', there are cognate provisions, viz. Section 50C and Section 43CA which govern similar situation of an attempt to address undervaluation of property transactions. Therefore, a brief reference to the legislative history may not be out of place. Section 50C of the Act was introduced by Finance Act, 2002 w.e.f. 01.04.2003 to curb under-reporting of sale consideration and to bring uniformity using the SDV. The section essentially introduces a deeming fiction [see decision of Jammu & Kashmir High Court in *Honest Group of Hotels (P.) Ltd. Vs CIT, [2002] 123 Taxman 464 (J&K)*]. The first and the second proviso to Section 50C(1) of the Act came to be introduced by Finance 2016 w.e.f. 01.04.2017 to deal with different situations where the date of agreement differs from the date of its registration. These provisos have been held to be curative and retrospective in nature by the Gujarat High Court in the case of *Dr. Rajivraj Ranbirsingh Choudhary (supra)*. Then comes the third proviso with which we are presently concerned, which was introduced by the Finance Act, 2018 w.e.f 01.04.2019. In this

regard, it is significant to note that the learned CIT(A) has gone mainly on the ground that the said proviso does not apply to assessment year 2018-19, as in the opinion of the learned CIT(A), the proviso applies from assessment year 2019-20. In this regard, it is significant to note that the Division Bench in para 9.1 of the referral order dated 06.03.2025 has already held that the amendment is curative and retrospective in nature. The issue referred to this Special Bench is also not on the question whether the amendment is retrospective in nature. Therefore, it is neither necessary nor possible to dwell on the same. Thus, the only question with which we are dealing with is about the applicability or otherwise of the safe harbour limit in relation to the FMV determined by the DVO.

14. The third proviso to Section 50C and the cognate Section 56(2)(x) of the Act was introduced by the Finance Act, 2018. The explanatory note 16 to the same reads as under :-

***“16. Rationalization of section 43CA, section 50C and section 56***

*16.1 Before amendment by the Act, for computing income from business profits (section 43CA), capital gains (section 50C) and other sources (section 56) arising out of transactions in immovable property, the higher of sale consideration or stamp duty value was adopted. The difference was taxed as income both in the hands of the purchaser and the seller.*

*16.2 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 shape of the plot or location.*

*16.3 In order to minimize hardship in case of genuine transactions in the real estate sector, section 43CA, section 50C and section 56 of the Income-tax Act have been amended to provide that no adjustments shall be made in a case where the variation between stamp duty value and the sale consideration is not more than five per cent of the sale consideration.*

*16.4 Applicability: These amendments take effect from 1st April, 2019 and will, accordingly, apply in relation to the assessment year 2019-20 and subsequent assessment years.”*

15. It can thus clearly be seen that the proviso was introduced after acknowledging the fact that the variation between the stamp duty value and the actual consideration received can occur in respect of similar properties in the same area because of a variety of factors including shape of the plot or location. The proviso was introduced in order to minimise the hardship in respect of genuine transactions in the real estate sector. It is necessary to note that the Section 56(2)(x) incorporates deeming fiction which has to be taken to its logical end. It is necessary to note that the FMV determined by the DVO is also as much an estimate as the SDV although the FMV may be in relation to the specific property which is the subject matter of the sale consideration. However, this alone cannot eliminate an element of estimate.

16. Guidelines for valuation of immovable properties 2009 issued by the Directorate of Income Tax defines the terms “Market Value” and “Fair Market Value” in para 4.23 as under :-

*“4.23 Market Value and Fair Market Value*

*“Market Value” is the price that a willing purchaser would pay to a willing seller for a property, having due regard to its existing conditions, with all its existing advantages and its potential possibilities when laid out in its most advantageous manner.*

*“Fair Market Value” is the estimated price which any asset in the opinion of WTO/VO would fetch, if sold in the open market on the valuation date.*

*The terms “Market Value” and “Fair Market Value” are synonym except the word “Fair” introduces an element of a hypothetical market. The expression “if sold” does not contemplate actual sales or actual state of market. The expression “Open Market” does not contemplate a purely hypothetical market exempt from restriction imposed by law. The fair market value excludes sentimental value*

***advertisement, brokerage, stamp-duty, commission etc. for affecting the sale transaction.”***

(Emphasis supplied)

17. It is well settled that valuation of an asset involves some amount of guess work and estimation. No valuer can pinpoint the actual value of an asset. Therefore, there would always be difference between the value determined by two or more independent valuers. There cannot be a more glaring example of this position than the present case, where three sets of valuation of the very same property determining the value at different figures are available on record. The sale consideration, on the contrary, is the actual consideration which is paid by a willing purchaser to a willing seller having regard to the nature and facilities enjoyed by the property and the market rate prevailing. We further note that once the assessee disputes the SDV and solicits a reference to the DVO, the valuation made by the DVO replaces the SDV for all practical purposes. The object behind introducing the Safe Harbour Rule is for the purpose of discounting the difference between the actual and deemed sale consideration, if it is within permissible limits. As stated earlier, the value determined by the DVO merely substitutes the deemed sale consideration as per ready reckoner value of SVA. Therefore, the Safe Harbour Rule in terms of third proviso to section 50C(1) and in other similar provisions including 56(2)(x) will apply to the value determined by the DVO.

18. The Division Bench of this Tribunal in the case of *Jayarajbhai A. Jodhani (supra)*, *Rama Jogi Reddy Sanepalli (supra)* and *B.S. Sanjay (HUF) (supra)* has given the benefit of the safe harbour limit in relation to the FMV determined by the DVO. In *Rajivraj Ranbirsingh Choudhary (supra)* before the Gujarat High Court although the issue was in relation to unexplained investments, the High Court in para 9 of the decision has observed that as per catena of decisions, DVO's valuation report can be said to be an opinion and there might be some variation in the calculation.

19. The Division Bench in the present vide referral order has relied on the phraseology used in the relevant proviso which speaks of the valuation made by the stamp authority, while expressing disagreement with the view of the Division Bench in several other decisions of this Tribunal. On a careful consideration of the relevant provisions, we are in agreement with the view expressed by the Division Bench of this Tribunal in *Jayarajbhai A. Jodhani (supra)*, *Rama Jogi Reddy Sanepalli (supra)* and *B.S. Sanjay (HUF) (supra)* giving the benefit of safe harbour limit also in relation to the FMV determined by the DVO. It is well settled that only the charging provisions of a tax law are required to be strictly interpreted. The third proviso, which was introduced to mitigate the hardship in respect of genuine transactions such as entered into by the assessee, has to be interpreted in a purposive/liberal manner so as to effectuate the intention behind the introduction of the said proviso. Looked from this angle, we find that once the FMV determined by the DVO replaces the SDV, that deeming proviso has to be taken to its logical end.

Conclusion :

20. In that view of the matter, the issue is answered in the affirmative.

21. The appeal shall now be placed before the Division Bench for disposal according to law.

Order pronounced in the open court on 23/01/2026.

Sd/-  
(VIKRAM SINGH YADAV)  
ACCOUNTANT MEMBER

Sd/-  
(SAKTIJIT DEY)  
VICE PRESIDENT

Sd/-  
(JUSTICE (RETD.) C.V. BHADANG)  
PRESIDENT

Mumbai; Dated : 23/01/2026

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The PCIT/CIT concerned
4. DR, ITAT, Mumbai
5. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai