IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 6874/MUM/2025
Assessment Year: 2018-19

Shreem Properties, 1107 ATL Corporate park Saki Vihar Road Opp L & T Powai Mumbai – 400072, Maharashtra. **PAN NO. ABQFS 5367 K** **Appellant**	***Vs.***	Dy Commissioner of Income Tax, Circle 41(1)(1), Kautilya Bhavan Bandra Kurla Complex Bandra (East) Mumbai – 400051, Maharashtra. **Respondent**

Assessee by	:	Shri Dr. K. Shivaram, Sr. Advocate & Shashi Bekal
Revenue by	:	Shri Tamil Selvam S., (Sr. AR)
Date of Hearing	:	11/05/2026
Date of pronouncement	:	18/05/2026

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Assessee is directed against order dated 12.08.2025, passed by the learned Commissioner of Income-Tax (Appeals) – National Faceless Appeal Centre, Delhi (in short, "the learned CIT(A)"), for the Assessment Year (in short 'A.Y.') 2018–19, raising following grounds:

"1. On the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 2020500 under Section 43CA being difference between agreement value and value adopted by DVO as per valuation report dated 10.10.2021.

2. The learned Commissioner of Income Tax (Appeals) has further erred in rejecting the proviso of Section 43CA (1) of the Income Tax Act by stating that the proviso of Section 43CA will not be applicable in the case of the appellant.

3. The addition of Rs. 2020500 confirmed by Commissioner of Income Tax (Appeals) is bad in law.

4. The appellant craves leave to add to alter or amend the above grounds of appeal.

2. Briefly stated, the assessee, a partnership firm engaged in the business of building construction and development, filed its return of income on 19.10.2018 declaring total income of Rs.9,22,26,450/-. The return filed by the assessee was selected for scrutiny and statutory notices under the Income-Tax Act, 1961 (in short "the Act") were issued and complied with. During the course of scrutiny assessment, the Assessing Officer observed that four immovable properties had been sold by the assessee at values lower than those adopted by the stamp valuation authorities for the purpose of stamp duty. The assessee furnished valuation reports prepared by an approved valuer; however, the Assessing Officer did not accept the same and referred the matter to the Departmental Valuation Officer ("DVO"). Since the DVO's report was not received before completion of assessment, the Assessing Officer proceeded to invoke Section 43CA of the Income-tax Act, 1961 and in the assessment order passed under Section 143(3) on 15.04.2021, made addition of

Rs.1,91,46,297/- being the difference between the stamp duty valuation and the sale consideration disclosed by the assessee.

3. In appeal, the assessee contended before the learned CIT(A) that once the matter had been referred to the DVO and the DVO's valuation was available on record, the comparison for the purpose of Section 43CA was required to be made with reference to the value determined by the DVO and not with reference to the stamp duty valuation. It was further submitted that the difference between the DVO valuation and the agreement value was within the permissible tolerance band of 10% and, therefore, no addition was warranted. However, the learned CIT(A) rejected the said contention on the ground that the safe harbour tolerance contemplated under the proviso to Section 43CA was applicable only with reference to the value adopted by the stamp valuation authority and not to the value determined by the DVO. The learned CIT(A), accordingly, restricted the addition to Rs.20,20,500/- being the differential amount between the DVO valuation and the sale consideration. The relevant finding of ld CIT(A) is reproduced as under;

> ***"5. Decision***
>
> *I have carefully perused grounds of appeal, statement of facts, assessment order, submissions made by the Appellant and other details/evidences on records.*
>
> *5.1. The only issue raised by the Appellant in the appeal is that the AO has erred in making an addition of Rs. 1,91,46,297/- u/s 43CA of the Act. In this regard, the Appellant has submitted the properties have been sold at market rate. In support of the same, the Appellant has submitted valuation report prepared by the Valuer appointed by the Appellant. The Appellant has, further, submitted that*

the value of properties as determined by the DVO (on a reference by the AO) does not exceed 110% of the consideration received on sale of such properties. In view of the same, no addition u/s 43CA was called for in terms of proviso to the said section. In support of the same, the Appellant has placed reliance on the decision of Hon'ble Jurisdictional ITAT Mumbai in the case of ***Maria Fernandes Cheryl vs ITO, ITA No. 4850/Mum/2019 (AY 2011-12) dated 15/01/2021****.*

5.1.1. I have considered the submissions made by the Appellant. I have also perused the assessment order. I find that the AO has referred the valuation of the properties to DVO for valuation. However, pending receipt of the report from the DVO, the AO has added an amount of Rs. 1,91,46,297/- u/s 43CA of the Act. I find that valuation report has since been received. Copy of the same has been furnished by the Appellant in the present proceedings. The valuation of properties as determined by the DVO as compared to the sale consideration is tabulated below for better appreciation:

S. No.	*Office No.*	*Stamp duty Value in Rs.*	*Value as determined by DVO in Rs. (A)*	*Consideration received in Rs. (B)*	*110% of (B) in Rs.*	*Addition u/s 43CA in Rs. (A)-(B) in Rs.*
1	*305*	*12488972*	*89,33,000*	*8325000*	*9157500*	*608000*
2	*405*	*12488972*	*90,12,000*	*8325000*	*9157500*	*687000*
3	*503*	*13113420*	*79,32,000*	*7862500*	*8648750*	*69500*
4	*612*	*10807433*	*78,96,000*	*7240000*	*7964000*	*656000*
					Total	*20,20,500*

Thus, it can be observed that the value of the properties for the purpose of payment of stamp duty exceeds 110% of the sale consideration. Hence, proviso to section 43CA will not be applicable in the case of the Appellant.

The Appellant has submitted that since the valuation as determined by the DVO does not exceed 110% of the sale consideration, no addition is possible in terms of proviso to section 43CA. In this regard, the Appellant has placed reliance on the decision of Hon'ble Jurisdictional ITAT Mumbai in the case of Maria Fernandes Cheryl (supra). In my considered opinion, the Appellant has misinterpreted proviso to section 43CA and also the decision of Hon'ble Jurisdictional ITAT Mumbai. Proviso to section 43CA refers to value of the property for the purpose of stamp duty payment. It does not refer to the valuation determined by the DVO. In this regard, the said proviso is reproduced below:

> *"Provided that where* ***the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty 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 computing*

profits and gains from transfer of such asset, be deemed to be the full value of the consideration."

*(*this has been increased to 110% w.e.f.01/04/2021)*

Thus, the proviso is applicable in scenarios wherein the value of the property for the purpose of payment of stamp duty (and not the value as determined by the DVO) does not exceed 105% or 110% of the sale consideration. In fact, the decision of Hon'ble ITAT Mumbai (supra) has given the decision considering the above proviso only. The decision has not considered the value as determined by the DVO. Hence, the decision of Hon'ble ITAT Mumbai (supra) is of no help to the Appellant. In view of the same, the addition u/s 43CA is modified by taking the difference between the vale as determined by the DVO and the sale consideration. This comes to Rs.20,20,500/-. The AO is directed to restrict the addition u/s 43CA to Rs.20,20,500/-only. ***Appeal is, thus, partly allowed.***

6. In the result, the Appeal is partly allowed."

4. Before us, the learned counsel for the assessee submitted that the controversy now stands squarely covered by the decision of the Special Bench of the Tribunal in *Shreyas Naynesh Modi vs. ITO* in ITA No.4453/Mum/2024 dated 23.01.2026, wherein it has been authoritatively held that once the valuation by the DVO substitutes the stamp duty valuation, the benefit of the safe harbour tolerance band is equally applicable with reference to the DVO valuation.

5. We have heard the rival submissions and carefully perused the material available on record. The undisputed factual position emerging from the record is that the assessee had transferred four immovable properties for consideration disclosed in the registered agreements, whereas the stamp valuation authority adopted a higher valuation for the purpose of stamp duty. Consequently, the Assessing Officer invoked Section 43CA of the Act. However, the valuation having been disputed by the assessee, the matter stood

referred to the DVO, who determined values substantially lower than the stamp duty valuation.

5.1 The principal issue requiring adjudication is whether the benefit of the tolerance band prescribed under the proviso to Section 43CA is to be tested with reference to the value determined by the DVO once such valuation substitutes the stamp duty valuation.

5.2 The said controversy now stands conclusively answered by the Special Bench of the Tribunal in *Shreyas Naynesh Modi vs. ITO* (supra), wherein, after an elaborate consideration of the legislative history, statutory scheme and object behind introduction of the safe harbour provisions, it has been held that once the valuation determined by the DVO replaces the stamp duty valuation, the deeming fiction contained in the statute must be carried to its logical conclusion and the tolerance band is required to be applied with reference to the DVO valuation itself. The Special Bench further held that the safe harbour provisions, being remedial and curative in nature, deserve purposive and liberal interpretation in order to mitigate hardship arising from marginal valuation differences in genuine transactions. The relevant finding of the Special Bench is reproduced as under;

> *"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 immoveable 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 sate 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.

5.3 In the present case, the learned counsel for the assessee has placed on record a comparative chart demonstrating the difference between the agreement value and the valuation determined by the DVO. The same reveals that in all the impugned transactions, the

variation between the agreement value and the DVO valuation remains within the prescribed tolerance band of 10%. The details furnished are reproduced hereunder for ready reference:

S. No.	*Office No.*	*Agreement Value*	*DVO Value (Pg 75-76)*	*Difference*	*Percentage wrt Agreement Value*
1	*305*	*83,25,000*	*89,33,000*	*6,08,000*	*7.30 percent*
2	*405*	*83,25,000*	*90,12,000*	*6,87,000*	*7.62 percent*
3	*612*	*72,40,000*	*78,96,000*	*6,56,000*	*9.06 percent*
4	*503*	*78,62,000*	*79,32,000*	*70,000*	*0.80 percent*
	Total	*3,17,52,000*	*3,37,73,000*		

5.4 Upon verification of the aforesaid figures, we find that the difference between the agreement consideration and the valuation determined by the DVO is admittedly below 10% in all the cases. Once such variation falls within the permissible safe harbour margin, no addition under Section 43CA of the Act can legally survive in view of the ratio laid down by the Special Bench in *Shreyas Naynesh Modi* (supra).

5.5 We, therefore, respectfully following the aforesaid Special Bench decision, set aside the impugned order of the learned CIT(A) and direct deletion of the addition sustained under Section 43CA of the Act. Ground No.1 raised by the assessee is accordingly allowed.

6. Since the addition itself stands deleted, adjudication of the remaining grounds raised by the assessee has been rendered academic and does not call for separate consideration.

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

Order pronounced in the open Court on 18/05/2026.

Sd/-	**Sd/-**
(RAHUL CHAUDHARY)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 18/05/2026

Kunal Kumar, P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai