

# CNK & Associates LLP

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Domestic Tax –Judicial Decisions

## In Brief

*Agricultural land situated in a rural area is not a capital asset, and accordingly the provisions of section 56(2) are not applicable when the same is purchased below the fair market value*

*The amendment permitting Tolerance band of 10% variation u/s 50C will be considered as applicable with retrospective effect*

***Yogesh Maheshwari Vs DCIT  
125 taxmann.com 273 (Jaipur)***

### ***Facts***

Assessee was an individual deriving income from capital gains and other sources. During the course of search proceedings initiated against the assessee, it was noted that the assessee had acquired certain agricultural land situated in a rural area, at consideration lower than the stamp duty. The Assessing Officer added the differential amounts under the head “Income from other sources”. The assessee contented that since the agricultural land was in a rural area, the provisions of section 56(2)(vii)(b) would not apply. The CIT(A) upheld the order of the Assessing officer. Being aggrieved by the CIT(A)’s order, the assessee preferred an appeal to the Tribunal.

### ***Held***

The provisions of section 56(2)(vii)(b) are applicable only in the context of immovable properties (being land or property or both) held as capital assets. In the instant case, the agricultural land does not qualify as a capital asset, on account of the specific exclusion contained in section 2(14). The Assessing Officer was therefore directed to delete the addition made.

***Maria Fernandes Cheryl Vs ITO  
123 taxmann.com 252***

### ***Relevant Facts***

The assessee sold her flat for a consideration of Rs. 75 lakhs, and capital gains on such sale were accordingly determined and offered to tax. The stamp duty valuation for this property was Rs. 79.92 lakhs. The Assessing Officer reopened the completed assessment and applied section 50C for the purpose of computing the capital gains which were computed on the basis of sale consideration being adopted at Rs. 79.92 lakhs.

On appeal, the CIT(A) dismissed the appeal of the assessee. Aggrieved, the assessee preferred an appeal with the Tribunal.

### ***Held***

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. When the variations between

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the sale consideration and the stamp duty valuation is within the tolerance band, sale consideration actually received would be accepted as final and, in such cases, stamp duty valuation even though more than actual sale consideration would be ignored. The insertion of the third proviso to section 50C(1) provides for tolerance band of 10% between the stamp duty valuation and the stated consideration of an immovable property. In other words, as long as the variation is within the permissible limits, the anti-avoidance provisions of section 50C do not come into play. The Tribunal held that the amendment made by the Finance Act 2020 permitting variations up to 10% would be applicable retrospectively.

## ***Contact Us***

### ***Mumbai***

Mistry Bhavan, 3rd Floor,  
Dinshaw Vachha Road, Churchgate  
Mumbai 400 020  
Tel No. +91 22 6623 0600

### ***Mumbai (Suburban Office)***

501/502, Narain Chambers,  
M.G. Road, Vile Parle (East)  
Mumbai 400 057  
Tel No +91 22 6250 7600

### ***Ahmedabad***

Tel. No. +91 79 2630 6530

### ***Bengaluru***

Tel. No.+91 80 2535 1353

### ***Chennai***

Tel No. +91 44 4384 9695

### ***New Delhi***

Tel No.+91 11 2735 7350

### ***Vadodara***

Tel. No. +91 265 234 3483

### ***Dubai***

Tel. No. +971 04 355 9533

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