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Taxation of Real Estate Transactions – Under Income Tax and Service Tax

Introduction

We see a boom in construction of real estate and bank/ financial institutions are providing home loans to buyers of residential houses. Home loans are easily available on fulfilment of certain criteria. This resulted in more real estate transactions because everyone in our country has a dream to have his own house. Real Estate transactions are taxed under Income Tax, Service Tax and VAT. Taxes are to be paid by the seller but burden of some taxes i.e. service tax and VAT passes on to buyer. The following paragraphs highlights the taxation of real estate transactions under all the Acts.

Taxation of Real Estate Transactions under Income Tax Act.

Income Tax are charged on real estate transaction under three heads. The relevant sections are :

Section 43 CA under Profits and Gains from business or profession

Section 50C under Capital Gains

Section 56(2)(vii)(b) under Income from other sources

Section 50C under Capital Gains

Income Tax Act, 1961 provides;

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) Without prejudice to the provisions of sub-section (1), where—

- (a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;
- (b) the value so adopted or assessed or assessable] by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

[*Explanation 1*].—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

[*Explanation 2.*—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.]

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

Points to be considered

1. Section 50C is applicable from the AY 2003-04
2. Section 50C is applicable on transfer of Land or Building or Both only.
3. Land or building or both should be held as Capital Assets whether related to business or not.
4. The capital assets may be long term or short term.
5. Section 50C is applicable only to compute gains under Capital Gains chapter.
6. Section 50C is applicable only in case where sale consideration is less than the value as per Stamp authority.
7. The value as per Stamp authority may be adopted or assessed or assessable.
8. The word "assessable" has been inserted w.e.f.01.10.2009

Chargeability of Tax on capital Gains

If section 50C is applicable on satisfaction of aforesaid points then value as per stamp authority shall be taken as full value of consideration for computing Capital gains Capital Gains is chargeable to Income Tax in the Assessment year relevant to previous year in which transfer took place.

Consequences where value as per Stamp authority is disputed.

1. Where value is disputed under Stamp Act.

If the value is disputed by assessee under stamp Act then the value finally determined or accepted by stamp authority is taken as full value of consideration.

Once the value is disputed under stamp Act, the assessee can not dispute the value under Income Tax Act.

2. Where value is disputed under Income tax Act

If the assessee claims under Income Tax, provided the value is not disputed under Stamp Act, that value adopted by stamp authority is more than the fair market value of capital assets, Then AO is duty bound to refer the matter to Valuation officer to determine the value of capital assets.

Determination of Full value of consideration on receipt of value as per valuation officer

1. If the value determined by valuation officer is less than the value as per stamp authority – Take lesser value i.e. value determined by valuation officer, for the purpose of computation of Capital Gains.
2. If the value determined by valuation officer is more than the value as per stamp authority – Take lesser value i.e. value as per stamp authority.

Section 43 CA under Profits and Gains from business or profession

Income Tax Act, 1961 provides;

43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset

Points to be considered

1. Section 43CA is applicable from the AY 2014-15
2. Section 43CA is applicable on transfer of Land or Building or Both only.
3. Land or building or both should be held as Business Assets (other Than Capital Assets).
4. Section 43CA is applicable only to compute Income under Profit and Gains from Business or Profession chapter.
5. Section 43CA is applicable only in case where sale consideration is less than the value as per Stamp authority.
6. The value as per Stamp authority may be adopted or assessed or assessable.

Chargeability of Tax on Income under the Head Profit and Gains from Business or Profession

If section 43CA is applicable on satisfaction of aforesaid points then value as per stamp authority shall be taken as full value of consideration for computing Income under PGBP. Income is chargeable to Income Tax in the Assessment year relevant to previous year in which transfer took place.

Full Value of Consideration

Full Value of Consideration for the purpose of computing income should be determined as per the provisions of section 50C of the Income Tax Act.

All the provisions related to determination of full value of consideration after disputing value as per stamp authority are applicable as provided in section 50C.

Exceptions

There are one exception to determine the full value of consideration for the purpose of computing income u/s 43CA

Where date of agreement and date of registration are different : Section 43CA(3) provides that where date of agreement and date of registration are not same, the seller may take the stamp duty value as on date of agreement as full value of consideration for computing income u/s 43CA.

As per section 43CA(4) exception shall apply only in those cases where amount of consideration or part thereof has been received by any other mode other than cash on or before the date of agreement.

In other words no cash towards consideration has been received on or before the date of agreement.

Section 56(2)(vii)(b) under Income from other sources

Income Tax Act, 1961 provides;

56(2)(vii)(b) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons any immovable property, —

- (i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;
- (ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

Points to be considered

1. Section 56(2)(vii)(b) is applicable where any immovable property is received by an individual or HUF.
2. Immovable property received without consideration attracts section 56(2)(vii)(b)(i) w.e.f 01.10.2009
3. Immovable property received for inadequate consideration attracts section 56(2)(vii)(b)(ii) w.e.f AY 2014-15
4. Section 56(2)(vii)(b) is applicable where stamp duty value is more than Rs.50,000/-
5. Difference of more than Rs.50,000/- should be calculated for each immovable property.
6. If the difference is more than Rs.50,000/-, the whole difference is chargeable to tax under the head Income from other sources.
7. Income is chargeable to tax in assessment year relevant to previous year in which immovable property is received.

Exceptions

Exceptions as provided in section 43CA(3) & (4) is also applicable for this section where property is received for inadequate consideration.

Disputing Stamp Duty value

Value adopted, assessed or assessable may be disputed as per the provisions of section 50C and stamp duty value shall be the value redetermined by stamp authority or Valuation officer as the case may be.

TDS on purchase of Immovable Property – Section 194IA

w.e.f.01.06.2013 every transferee shall deduct TDS @ 1% on payments made or amount credited to a resident transferor whichever is earlier, on transfer of immovable property (other than agricultural land in rural area). TDS is to be deducted if consideration paid or payable is Rupees Fifty Lacs or more.

Transferee is not required to comply the provisions related to TAN.