Income-tax w.r.t. Real Estate Transactions – Select Issues and Recent Developments

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Topics not covered here but to be discussed

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5	Amendment to S. 2(42A) dealing with holding period of immovable property
6	Is period of holding to be computed w.r.t. date of allotment or date of registration or date of possession
7	Indexation w.r.t. date of payment or date of acquisition

Topics not covered here but to be discussed

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Synopsis

Synopsis – Recent Developments

- **Recent Developments** –
  - Holding period for immovable property - amendment to section 2(42A)
  - Holding period for stock-in-trade converted into capital asset
  - Computation of annual value of building or land appurtenant thereto held as stock-in-trade – Section 23(5)
  - Taxation of fair market value of inventory on the date of its conversion into a capital asset – Section 28(via)
  - Stamp Duty Value to be full value of consideration for transfer of an asset (other than capital asset) being land or building or both – Section 43CA
  - Provision amended to provide initial receipt by banking channel –Section 43CA
  - Tolerance limit introduced in 43CA
  - Taxation of Joint Development Agreement – Section 45(5A)
  - Stamp duty value on date of agreement to be seen - Proviso to section 50C
  - Tolerance limit introduced in section 50C – Proviso to section 50C

Synopsis – Recent Developments

- **Recent Developments** –
  - Lock-in period for bonds qualifying under section 54EC
    - Is the amendment prospective or retroactive or retrospective
  - Forfeiture of advance received – taxable as IFOS
  - Base date shifted from 1.4.1981 to 1.4.2001
  - Receipt of immovable property without consideration or for inadequate consideration – Section 56(2)(x)(b)
  - TDS on payment of rent by certain individuals or HUF – Section 194IB
  - TDS on payment under Specified Agreement – Section 194IC

Select Issues

- **Section 2(42A)**
  - Does holding period of two years apply to transfer of a flat under construction
  - Computation of holding period w.r.t. date of letter of allotment or w.r.t. date of coming into existence of the house or date of possession
  - Are shares of a co-operative society "building" and therefore shares held for a period of 24 months before the date of transfer will qualify as a long term capital asset
  - Transfer of land and building – one being short term and other being long term
  - Meaning of `month' for the purpose of computation of holding period

Select Issues

- **Section 23**
  - Is the amendment to Section 23(5) prospective or retrospective?
  - Is annual value of building held as stock-in-trade chargeable to tax by virtue of insertion of S. 23(5)
- **Section 45**
  - Applicability of s. 50C to 45(3) – introduction of asset into partnership firm
  - Year of taxability when land converted into stock-in-trade and flats in building constructed on such land were sold

Select Issues

- **Section 48**
  - Is indexation to be computed w.r.t. date of acquisition or w.r.t. dates of payment
- **Section 49**
  - In case of acquisition by a mode referred to in S. 49 – indexation w.r.t. date of holding by previous owner or w.r.t. date of holding of the assessee
- **Section 50**
  - Rate of tax
  - Exemptions under Ss. 54F and 54EC
  - Set off of losses
  - Asset acquired but not put to use
  - Applicability of S. 50C to transfer of asset forming part of block of assets
- **Section 50C**
  - Is the proviso to section 50C retrospective or prospective or retroactive
  - Does introduction of tolerance limit by the proviso over rule earlier decisions

Select Issues

- **Section 54**
  - Is non-deposit in Capital Gains Account Scheme a technical / venial breach
  - Does acquisition of tenancy rights amount to purchase of house
  - When is having an allotment letter sufficient compliance for the purpose of s. 54
  - Is acquisition of a flat under construction a case of "purchase" or "construction"
  - Will purchase of house under construction before the date of transfer qualify under section 54
  - Can adjoining residential units used as one house still qualify as one house after the amendment
  - Will benefit under s. 54 be denied on the ground that agreement for acquisition of flat itself provided for delivery of possession after 3 years
  - Section 50C w.r.t. section 54
  - Is nexus of funds required for claiming exemption under section 54

Select Issues

- **Section 54 …**
  - Is `exchange' a purchase or construction or neither
  - Will purchase on credit qualify – non deposit in CGAS either

Select Issues

- **Section 54F**
  - Will transfer of tenancy rights qualify for exemption under s. 54 or under s. 54F
  - Section 50C w.r.t. section 54F
  - Acquisition of new house in the name of family member only (implication under Benami Act as well)
  - Acquisition of new house in joint name of assessee and family member
  - Simultaneous claim of Ss. 54, 54F and 54EC
  - Delay in receiving possession for reasons beyond control of assessee
  - Will joint ownership of two flats be a disqualification for claiming deduction under s. 54F
  - Gift of a house just before the date of transfer of asset giving rise to capital gains – to satisfy the conditions laid down in the proviso
  - Commencement of construction before date of transfer

Select Issues

- **Section 54F**
  - Commencement of construction before date of transfer –
    - Whether qualifies for exemption under s. 54F
    - If yes, whether cost incurred before the date of transfer also qualifies for exemption under s. 54F
- **Section 54EC**
  - Joint ownership
  - What is relevant - date of tender of cheque or date of allotment of bonds?
  - Can investment be made within 6 months from date of receipt of consideration
- **Section 55**
- Substitution of fair market value w.r.t. position of asset as on 1.4.2001 or as on date of transfer
  - Encumbrance created later
  - Encumbrance cleared post 1.4.2001 but was existing on 1.4.2001

Select Issues

- **Tenancy rights**
  - Are they capital assets
  - Can consideration for transfer be taxed as IFOS
  - Taxability of consideration received by owner for granting consent to transfer tenancy by one tenant to another
  - Cost of acquisition of house while computing capital gains arising on transfer of house received in lieu of tenancy rights
  - Is 50C applicable to transfer of tenancy rights

Applicability of S. 50C to transactions covered by S. 45(3)

Background of 45(3) and 50C

- When a person transfers a capital asset to a firm or an association or persons or body of individuals in which he is or becomes a partner or member and such transfer is by way of capital contribution or otherwise then the profits or gains arising from such transfer are chargeable to tax as income of the previous year in which such transfer takes place and for the purpose of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset [section 45(3)].

- In a case where capital asset being land or building or both is transferred for a consideration which is less than the stamp duty value thereof Section 50C deems stamp duty value of capital asset transferred to be full value of consideration for the purposes of section 48.

Background of 45(3) and 50C

- In a case where a person transfers land or building to a partnership firm in which he is a partner and the value recorded in the books of the firm is less than the stamp duty value of the asset so transferred, a question arises as to whether capital gains will be computed with reference to value recorded in the books of the firm or with reference to stamp duty value of the asset transferred.

- Is this a case of fiction on fiction?

- A question which arises is whether section 45(3) and section 50C operate in different fields or in the same field. If the two operate in different fields, which one of the two provisions is applicable? Alternatively, can one say that this is a situation which is covered by both the provisions?

Ingredients for applicability of section 50C

- For section 50C to be attracted following conditions need to be cumulatively satisfied viz. –
  - there is a transfer of a capital asset;
  - the capital asset transferred is land or building or both;
  - the transfer is for a consideration;
  - such consideration is lower than the stamp duty value of the asset transferred
- If all the above conditions are satisfied then, for the purposes of section 48, stamp duty value of the asset transferred is deemed to be full value of consideration received or accruing as a result of the transfer.
- Therefore, basic requirement for applicability of section 50C is that the consideration for transfer is a quantified amount which has to be compared with stamp duty value of the asset transferred.

Are conditions of section 50C satisfied?

- Let us examine the satisfaction of conditions when a partner introduces a capital asset held by him into a firm – is this a transfer and is there a quantified consideration for such a transfer?
- The Supreme Court, in the case of **Sunil Siddharthbhai v CIT [(1985) 156 ITR 509 (SC)]**, has held that introduction of a capital asset by a partner into a firm amounts to a transfer. However, consideration for such a transfer is a share in future profits of the firm and a share in net assets of the firm upon its dissolution. Thus, Supreme Court held that in such a case consideration lies in the womb of the future and therefore capital gains are not chargeable to tax in such a case.
- In order to overcome the ratio of the decision of the Apex Court, section 45(3) was introduced.

Are conditions of section 50C satisfied?

- Section 45(3) deems value recorded in the books of the firm to be the full value of consideration for the purposes of section 48. Therefore, the deeming fiction is created for the purposes of section 48 and not for other provisions of the Act.

- It is possible to argue that the basic conditions required to be satisfied for applicability of section 50C are not satisfied.

Ratio of Madras High Court in Bossotto Brothers Ltd. 8 ITR 41 (Mad)

- Assuming that the provisions of section 50C are applicable to the transaction under consideration then we have a situation where two provisions are applicable to the transaction under consideration. Madras High Court has in the case of **CIT v. Bossotto Brothers Ltd. 8 ITR 41 (Mad HC)** held that when two provisions of a taxing statute are applicable to an assessee, the assessee has a right to choose which one of the two would apply to its case.
  - "It seems that if a case properly comes within section 10 of the 1922 Act, there is no question of having to choose between that section and some other section in the Act. Being a taxing statute, the Act should receive a strict construction, that is, a construction in favour of the subject, and not in favour of the Crown. ***If a case appears to be governed by either of two provisions, it is clearly the right of the assessee to claim that he should be taxed under that one which leaves him with a lighter burden***."

Legislature ought to have specifically made 50C applicable to 45(3)

- Section 45(3) is on statute prior to introduction of section 50C. If legislature intended to make the provisions of section 50C applicable to situation covered by section 45(3) as well, the Legislature ought to have stated so specifically. This proposition is supported by the observations of the Apex Court in the following two cases –

Legislature ought to have specifically made 50C applicable to 45(3)

- **M. K. Ranganathan And Another vs Government Of Madras And Others 1955 AIR 604 SC**

  There is also a presumption against implicit alteration of law and that is enunciated by Maxwell on Interpretation of Statutes, 10th Edition, at page 81 in the following terms:- "One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness......................... This passage from Maxwell was approved of by Their Lordships of the Privy Council in Murugian, P. v. Jainudeen, C. L.(1) and Their Lordships agreed that the law was correctly stated in the passage just cited. To the same effect are also the observations of the Court of Appeal in National Assistance Board v. Wilkinson(1) where it was held that the Statute is not to be taken as affecting a fundamental alteration in the general law unless it uses words pointing unmistakably that conclusion.

Legislature ought to have specifically made 50C applicable to 45(3)

- **M. K. Ranganathan And Another vs Government Of Madras And Others …**

  In that case at page 658 Lord Goddard, C.J. observed:- (1) [1954] 3 Weekly Law Reports 682, 687, (2) [1952] 2 Q.B. 648 "But it may be presumed that the legislature does not intend to make a substantial alteration in the law beyond what it expressly declares. In Minet v. Leman(1), Sir John Romilly, M. R. stated as a principle of construction which could not be disputed that ***'the general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched'*** ".

- **A. C. Sharma vs Delhi Administration 1973 AIR 913 SC**
  - "While construing a statute one has also to bear in mind the presumption that the Legislature does not intend to make any substantial alteration in the existing law beyond what it expressly declares or beyond the immediate scope and object of the statute."

Carlton Hotel v. ACIT [(2009) 122 TTJ 515 (Lucknow)]

- Lucknow Bench of the Tribunal has in the case of **Carlton Hotel v. ACIT (2009) 122 TTJ 515 (Lucknow)** has upheld the second view. Tribunal was dealing with provisions of s. 50C prior to its amendment by Finance (No. 2) Act, 2009 when the words "assessable" was introduced with effect from 1.10.2009. The Tribunal held as under –
  - "Sec. 45(3), s. 50C and s. 55A operate in different spheres and they can be invoked when conditions laid down in those sections are satisfied. Invoking of power contained in one of these sections does not come into conflict with each other. .... On the other hand, where a transfer covered under s. 45(3) is sought to be registered by the firm and stamp duty is paid by the parties then provisions of s. 50C could still be invoked even that case may be covered under s. 45(3). In that case, provisions of s. 45(3) would not be applicable but it is only s. 50C which can alone be invoked as there is a registration of sale deed under Registration Act. ***Thus, where a sale transaction is registered by paying stamp duty then it is only s. 50C which can operate. In that situation s. 50C would override s. 45(3). Sec. 45(3) is a general provision and s. 50C is a special provision which would override s. 45(3)*** if the sale deed is sought to be registered by paying stamp duty. ...."

Observations of SC in Sunil Siddhartbhai v. CIT [156 ITR 509(SC)]

- *It is true that when a partner hands over a business asset to the partnership firm as his contribution to its capital, he cannot be said to have effected a sale. But while the transaction may not amount to a sale, can it be described as a transfer of some other kind! The definition of 'transfer' in section 2(47) is inclusive merely and does not exhaust other kinds of transfer. In its general sense, the expression 'transfer of property' connotes the passing of rights in the property from one person to another. In one case, there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property. In a third case, there may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other -persons. An exclusive interest in properly is a larger interest than a share in that property. To the extent to which the exclusive interest is reduced to a shared interest it would seem that there is a transfer of interest. Therefore, when a partner brings in his personal asset into the capital of the partnership firm as his contribution to its capital, he reduces his exclusive rights in the asset to shared rights in it with the other partners of the firm. While he does not lose his rights in the asset altogether what he enjoys now is an abridged right which cannot be identified with the fullness of the right which he enjoyed in the asset before it entered the partnership capital. It is apparent, therefore, that when a partner brings in his personal asset into a partnership firm as his contribution to its capital, an asset which originally was subject to the entire ownership of the partner becomes now subject to the rights of other partners in it.*

Observations of SC in Sunil Siddhartbhai v. CIT [156 ITR 509(SC)]

- *It is not an interest which can be evaluated immediately, it is an interest which is subject to the operation of future transactions of the partnership, and it may diminish in value depending on accumulating liabilities and losses with a fall in the prosperity of the partnership firm. **The evaluation of a partner s interest takes place only when there is a dissolution of the firm or upon his retirement from it**.*

- *It has some times been erroneously said that the right of a partner to a share in the assets of the partnership firm arises upon dissolution of the firm or upon the partner retiring from the firm. What is envisaged here is merely the right to realise the interest and receive its value. What is realised is the interest which the partner enjoys in the assets during the subsistence of the partnership firm by virtue of his status as a partner and in accordance with the terms of the partnership agreement. It is because that interest exists already before dissolution, that the distribution of the assets on dissolution does not amount to a transfer to the erstwhile partners. What the partner gets upon dissolution or upon retirement is the realisation of a pre-existing right or interest. It is nothing strange in the law that a right or interest should exist* in praesenti *but its realisation or exercise should be postponed. Therefore, what was the exclusive interest of a partner in his personal asset is, upon its introduction into the partnership firm as his share to the partnership capital, transformed into a shared interest with the other partners in that asset.*

Observations of SC in
Sunil Siddhartbhai v. CIT [156 ITR 509(SC)]

Qua *that asset, there is a shared interest. During the subsistence of the partnership the value of the interest of each partner* qua *that asset cannot be isolated or carved out from the value of the partner's interest in the totality of the partnership assets. And in regard to the latter, the value will be represented by his share in the net assets on the dissolution of the firm or upon the partner's retirement. When a partner retires or the partnership is dissolved what the partner receives is his share in the partnership. What is contemplated here is a share of the partner* qua *the net assets of the partnership firm. On evaluation that share in a particular case may be realised by the receipt of only one of all the assets. What happens here is that a shared interest in all the assets of the firm is replaced by an exclusive interest in an asset of equal value. That is why it has been held that there is no transfer. It is the realisation of a pre-existing right. The position is different when a partner brings his personal asset into the partnership firm as his contribution to its capital.*

Accordingly, ***when the assessee brought the shares of the limited companies into the partnership firm as his contribution to its capital there was a transfer of a capital asset within the terms of section 45****.*

Observations of SC in
Sunil Siddhartbhai v. CIT [156 ITR 509(SC)]

As to the question whether the assessees could be said to have received any consideration within the meaning of that term in the scheme of the capital gains under the Act, ***the consideration for the transfer of the personal assets is the right which arises or accrues to the partner during the subsistence of the partnership to get his share of the profit from time to time and, after the dissolution of the partnership or with his retirement from the partnership to get the value of a share in the net partnership assets as on the date of the dissolution or retirement after a deduction of liabilities and prior charges****. At the time when the partner transfers his personal asset to the partnership firm, there can be no reckoning of the liabilities and losses which the firm may suffer in the years to come. In the circumstances,* ***the consideration which a partner acquires on making over his personal asset to the partnership firm as his contribution to its capital cannot fall within the terms of section 48****. And as that provision is fundamental to the computation machinery incorporated in the scheme relating to the determination of the charge provided in section 45 as held in* **CIT *v.* B.C. Srinivasa Setty *[(1980) 128 ITR 294 (SC)]*** *such a case must be regarded as falling outside the scope of capital gains taxation altogether.*

Observations of SC in
Sunil Siddhartbhai v. CIT [156 ITR 509(SC)]

The assessee had also contended that no profit or gain could be said to arise to a partner when he brings his personal asset into a partnership. The revenue's objection to such contention could not be sustained as it constituted one aspect of the questions which have been referred in these cases. The point rests on considerations purely of law and is fundamental to the question whether capital gain arises to an assessee upon the transfer of his shares to the partnership firm as his capital contribution. The consideration, as stated above, which a partner receives when he makes over his personal asset to the partnership as his capital contribution is the right of a partner during the subsistence of the partnership to get his share of profits from time to time and after the dissolution of the partnership or with his retirement from the partnership to receive the value of the share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges. Having regard to the nature and quality of the consideration which the partner may be said to acquire on introducing his personal asset into the partnership firm as his contribution to its capital, it cannot be said that any income or gain arises or accrues to the assessee in the true commercial sense which a businessman would understand as real income or gain. Accordingly, inasmuch as the consideration received by the assessee on the transfer of his shares to the partnership firm does not fall within the contemplation of section 48 and further that no profit or gain can be said to arise for the purposes of the Act these cases fall outside the scope of section 45 altogether.

Carlton Hotel (P.) Ltd. – [(2017) 88 taxmann.com 257 (Allahabad)]

- Aggrieved by the decision of the Lucknow Bench of the Tribunal in the case of **Carlton Hotel (supra)**, Revenue preferred an appeal to the Allahabad High Court.
- The Allahabad High Court held that –
  - there existed all facts and circumstances to show prima facie that entire transaction of contribution to partnership is a sham and a fictitious transaction and an attempt to device a method to avoid tax;
  - even the terms and conditions of the partnership fortify the above inference;
  - in the present case, in the garb of entering into a partnership and taking recourse to some earlier laws, an attempt was made to avoid execution of a registered document which would have needed stamp duty to the State and, as a result thereof, there could have been an occasion for payment of tax under the Act;

Carlton Hotel (P.) Ltd. – [(2017) 88 taxmann.com 257 (Allahabad)]

- the requirement of registration needs consideration in the light of the fact that contribution of immovable property as partnership asset by a person is a `transfer' and has the effect of extinguishing or limiting rights and interest of the owner partner and, therefore, such a non-testamentary document is within the ambit of section 17(1)(b) of the Act, 1908;
- the Tribunal has not looked into the matter with regard to colorable device and sham transaction of partnership, which was an issue directly raised by revenue right from the stage of ACIT and onwards, and for that purpose matter requires to be remanded to the Tribunal.
- the Court set aside the order passed by the Tribunal.
- SC has dismissed the SLP filed by the assessee against the decision of the Allahabad High Court – **Carlton Hotel P. Ltd. v. CIT [2017(11) TMI 808- SC]**

Article in [2013] 31 taxmann.com 148 (Article) Authored by the Member who authored the order of Lucknow Bench of ITAT

- Subsequently, in an article on the issue being discussed, reported in **[(2013) 31 taxmann.com 148 (Article)]** by Mr. D. C. Agrawal, the Author of the article who coincidentally happens to be the Author of the decision of the Lucknow Bench in Carlton Hotels wherein it has been held that section 50C being special provision would override section 45(3) of the Act. However, in the said Article the Learned Member has taken a view that section 50C of the Act creates a general (larger) deeming fiction whereas section 45(3) of the Act carves out a small area for deeming full value of consideration as per entries in the books of the firm. This being special deeming provision, will prevail over general deeming provision of section 50C.

DCIT v. Amartara Pvt. Ltd. [ITA No. 6050/Mum/2016; Assessment Year: 2012-13; order dated 29.12.2017]

- Very recently, Mumbai Bench of ITAT has in the case of **DCIT v. Amartara Pvt. Ltd. [ITA No. 6050/Mum/2016; Assessment Year: 2012-13; order dated 29.12.2017]** has after considering the ratio of the said decision of the Lucknow Bench of ITAT in Carlton Hotel (P.) Ltd. has taken a contrary view.

- The Mumbai Bench of the Tribunal has held as under –
  - "We find merit in the argument of the assessee for the reason that the provisions of section 45(3) deals with special cases of transfer of capital asset where the profits or gains arising from the transfer of capital asset by way of "capital contribution or otherwise" shall be chargeable to tax in the previous year in which such transfer takes place and for the purpose of section 48, the amount recorded in the books of account of the firm shall be deemed to be the full value of consideration received or accruing as a result of transfer.

DCIT v. Amartara Pvt. Ltd. [ITA No. 6050/Mum/2016; Assessment Year: 2012-13; order dated 29.12.2017]

  - Since the Act itself is provided for deeming consideration to be adopted for the purpose of section 48 of the Act, another deeming fiction provided by way of section 50C cannot be extended to compute deemed full value of consideration as a result of transfer of capital asset. This legal proposition is further supported by the decision of the Hon'ble Supreme Court in the case of **CIT v. Moon Mills Ltd.** (supra) wherein it was observed that one deeming fiction cannot be extended by importing another deeming fiction.

  - Therefore, we are of the considered view that the profits or gains arising from the transfer of a capital asset by a partner to a firm in which he is or becomes a partner by way of capital contribution, then for the purpose of section 48, the amount recorded in the books of account of the firm shall be deemed to be full value of consideration received or accruing as a result of transfer of a capital asset.

DCIT v. Amartara Pvt. Ltd. [ITA No. 6050/Mum/2016; Assessment Year: 2012-13; order dated 29.12.2017]

- A plain reading of provisions of section 45(3) makes it clear that it comes into operation only in special cases of transfer between partnership firm and partners and in such circumstances, a deemed full value of consideration shall be considered for the purpose of computation of capital gain as per which the amount recorded in the books of account of the firm shall be taken as full value of consideration.
- Though the provisions of section 45(3) is not a specific provision which overrides the other provisions of the Act, importing a deeming fiction provided in section 50C of the Act cannot be extended to another deeming fiction created by the statute by way of section 45(3) to deal with special cases of transfer between partnership firm and partners and in such cases, the Act provides for computation mechanism of capital gain and also provides for consideration to be adopted for the purpose of determination of full value of consideration.

DCIT v. Amartara Pvt. Ltd. [ITA No. 6050/Mum/2016; Assessment Year: 2012-13; order dated 29.12.2017]

- The AO cannot import another deeming fiction created for the purpose of determination of full value of consideration as a result of transfer of capital asset by importing the provisions of section 50C of the Act.
- The CIT(A), without appreciating the facts, simply upheld the addition made by the AO by following the decision of ITAT, Lucknow Bench in the case of ACIT v. Carlton Hotel (P.) Ltd. where the ITAT has simply observed that the provisions of section 50C override the provisions of 45(3) but has not given categorical finding.
- The ITAT has given its findings under different facts considering the fact that when a document is registered under the provisions of Registration Act, 1908, the value determined by the stamp duty authority shall be replaced to determine full value of consideration.
- Therefore, we reverse the finding of the CIT(A) and delete the addition made towards re-computation of long term capital gain on account of transfer of capital asset into partnership firm.

Decisions following Amartara Pvt. Ltd.

- The following cases have followed the ratio of the decision of the Mumbai Bench of Tribunal in the case of Amartara Pvt. Ltd.
  - **ITO v. Sheila Sen, Shri Nirmalendu Sen – [2018(9) TMI 1809 – ITAT – (Kol. – Trib.)]**
  - **ACIT v. Moti Ramanand Sagar – [2019(3) – TMI 636 – ITAT – Mum.- Trib.)]**

- Against the decision of the Mumbai Bench of the Tribunal in the case of Amartara Pvt. Ltd. (supra), Department has preferred an appeal to the High Court which is pending removal of objections.

Intention of the Legislature

- Section 45(3) was introduced on the statute by the Finance Act, 1988. The very same Finance Act also introduced Section 45(4). Section 45(4) provides for transfer by way of distribution of capital assets on dissolution of a firm or otherwise. Section 45(4) deems fair market value on the date of distribution to be the full value of consideration.
- Therefore, the Legislature, in its wisdom, thought it appropriate that in the situation covered by 45(3) value credited in the books be deemed to be full value of consideration and in situation covered by 45(4) fair market value be deemed to be full value of consideration.
- Therefore, the Legislature never intended that the fair market value be charged to tax in a case which is covered by Section 45(3) and Section 50C brings to tax stamp duty value which is nothing but "true market value".
- Applicability of provisions of Section 50C to a situation covered by Section 45(3) would be contrary to the intention of the Legislature.

Amendments to Section 50C made by the Finance Act, 2016 and by Finance Act, 2018

General background of Section 50C

- Section 50C is a special provision for computing capital gains arsing on transfer of a capital asset being land or building or both. This section is effective from assessment year 2003-04. It applies to all assessees. The section provides that in a case where the transfer by an assessee of a capital asset being land or building or both is for a consideration which is less than the stamp duty value adopted or assessed or assessable by the Stamp Valuation Authority then in that case the value adopted or assessed or assessable by the Stamp Valuation Authority will be considered to be the full value of consideration for computing capital gains arising on transfer of such asset.

- Generally, in a transaction of transfer of land or building or both ('asset") there is a considerable time gap between the date when the vendor agrees to sell the asset and the date of actual transfer by way of a registered instrument to the buyer. The price is fixed between the parties at the time of entering into an agreement to sell. Thereafter, the buyer investigates the title of the vendor, payment is made and the document of transfer, generally, a conveyance is executed and registered in favour of the buyer.

General background of Section 50C …

- Based on the language of section 50C, prior to its amendment by the FA, 2016, it was possible to take a view that the stamp duty value as on the date of transfer has to be compared with the consideration stated in the instrument of transfer and if the stamp duty value as on the date of transfer is more than the consideration stated in the instrument of transfer, the stamp duty value is to be regarded as full value of consideration for computing capital gains arising on transfer of such asset.

- Even when section 50C did not have a provision similar to the one contained in the proviso to section 56(2)(vii)(b)(ii) or the one contained in sub-sections (3) and (4) of section 43CA of the Act, the Tribunal has in the following cases held that in a case where the date of agreement for transfer is different from the date of transfer, the stamp duty value as on the date of agreement and not the stamp duty value as on the date of transfer is to be considered as full value of consideration.

Cases holding SDV on date of agreement to be full value of consideration

- Kodani Satya Srinivas Vijayawada v. ACIT (ITAT – Visakhapatnam)
  (ITA No. 556 & 557/Vizag/2008; AY : 2006-07; Date of order: 2.7.2010)

- Lahiri Promoters v. ACIT (ITAT – Visakhapatnam)
  (ITA No. 12/Vizag/2009; AY : 2006-07; Date of order: 22.6.2010)

- ITO v. Modipon Ltd. (ITAT – Delhi)
  (ITA No. 2049/Del/2009; AY : 2005-06; Date of order: 9.1.2015)

- Mohd. Imraan Baug v. ITO (ITAT – Hyderabad)
  (ITA No. 1942/Hyd/2014; AY : 2006-07; Date of order: 27.11.2015)

- Moole Rami Reddy v. ITO (ITAT – Visakhapatnam)
  (ITA No. 311/Vizag/2010; AY : 2006-07; Date of order: 10.12.2010)

- Parekh Marketing Ltd. v. ACIT (ITAT – Mumbai)
  (ITA No. 4307/Mum/2013; AY : 2008-09; Date of order: 26.5.2015)

Insertion of 2 provisos to Section 50C by FA, 2016

- The Finance Act, 2016 has amended the provisions of section 50C of the Act by inserting the following two provisos with effect from 1.4.2017–

  "**Provided that** where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

  Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer."

Insertion of third proviso to section 50C by FA, 2018

- The Finance Act, 2018 has further amended the provisions of section 50C of the Act by inserting the following third proviso with effect from 1.4.2019 i.e. effective Assessment Year 2019-20 –

  "**Provided also that** *where the value adopted or assessed or assessable by the stamp valuation authority 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 section 48, be deemed to be the full value of the consideration.*"

- Third proviso to section 50C(1) provides that stamp duty value of the capital asset transferred will be deemed to be full value of consideration only if stamp duty value exceeds 105 per cent of the consideration received or accruing as a result of transfer.

Explanatory Memorandum to the FB, 2016

- The Explanatory Memorandum to the Finance Bill, 2016 states as under –
- "**Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property**
  - Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building or both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in-trade.

    It is proposed to amend the provisions of section 50C so as to provide 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 computing the full value of consideration.

Explanatory Memorandum to the FB, 2016 …

- It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.

- These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply to assessment year 2017-18 and subsequent years."

First proviso to s. 50C v. 43CA(3)

First Proviso to s. 50C	Sub-section (3) of section 43CA
Provided that where the date of the agreement fixing the ***amount*** of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.	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.

Second proviso to s. 50C v. 43CA(4)

Second Proviso to s. 50C	Sub-section (4) of section 43CA upto its amendment by FA, 2018 w.e.f. 1.4.2019
Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received ***by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account***, on or before the date of the agreement for transfer.	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 **Note**: FA, 2018 has w.e.f. 1.4.2019 substituted the above underlined words for "by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account"

Issues arising out of the amendments made by FA, 2016

- Will the amended provisions apply only to agreements entered into after the amended provisions became effective or to transfers chargeable to capital gains after the amendment becomes effective irrespective of the date of agreement.

- In view of the fact that the amendment to section 50C is prospective with effect from the assessment year 2017-18, does it mean that the ratio of various decisions of the Tribunal mentioned in earlier slide need to be disregarded and that the legal position, prior to 1.4.2017, was that the stamp duty value on the date of transfer is to be compared with the amount of consideration stated in the document of transfer.

- Can it be argued that the provisos inserted by the Finance Act, 2016 to section 50C are clarificatory and therefore retrospective.

Issues arising out of the amendments made by FA, 2016 …

- Can it be contended that the amendment merely tries to plug the loophole in the existing provision.

- Will the provisions of proviso apply to an agreement which fixes not the amount of consideration but the value of consideration eg. Development agreement for sharing area between the parties?

- The provisions may still not apply to a case of a transfer where the entire consideration is non-monetary because the second proviso as a precondition requires that the amount of consideration or a part thereof should be received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account. Therefore, transfers by way of a journal entry will not grant benefit under section 50C whereas the same will be covered by provisions of section 43CA.

Is the proviso inserted by FA, 2016 retrospective?

- Ahmedabad Tribunal in the case of **Dharamshibhai Somani v. ACIT [(2016) 161 ITD 627 (Ahd. – Trib.)(SMC)] (ITA No. 1237/Ahd/2013; AY 2008-09; order dated 30.9.2016)(Ahd Trib SMC)** was dealing with the case of an assessee who had entered into an agreement to sell certain agricultural land on 29th June, 2005 for a consideration of Rs. 45 lakh. The final sale deed was executed on 24th April, 2007. The delay in registration was due to time taken for procedure of converting agricultural land into non-agricultural land for the purchaser who was a private limited company.

- The AO computed capital gains on transfer of land by adopting stamp value prevalent on the date of registration in April 2007 which was much higher than the consideration agreed to under the agreement to sell dated 29th June, 2005.

- The assessee contended that in the facts of his case, the stamp duty value of 2007 is not relevant to determine the capital gains tax liability.

- Aggrieved, the assessee filed an appeal to CIT(A) who upheld the action of the AO.

Dharamshibhai Somani v. ACIT(Ahd Trib SMC) – holds the proviso to be retrospective

- The Ahmedabad Bench of the Tribunal, in the case of **Dharamshibhai Somani v. ACIT [(2016) 161 ITD 627 (Ahd. – Trib.)(SMC)]**(ITA No. 1237/Ahd/2013; AY 2008-09; order dated 30.9.2016)(Ahd Trib SMC) held that –
  - The present amendment, being an amendment to remove an apparent incongruity which resulted in undue hardships to the taxpayers, should be treated as retrospective in effect;
  - The proviso to section 50C should also be treated as curative in nature and with retrospective effect from 1st April, 2003, i.e. the date effective from which Section 50C was introduced.

- The Tribunal has observed that the amendment is one step short of what ought to have been done in as much as the amendment, in tune with the judge made law, ought to have been effective from the date on which the related legal provisions were introduced.

- The Tribunal also observed that the amendment is optional to the assessee.

Dharamshibhai Somani v. ACIT(Ahd Trib SMC) – observes that the proviso inserted by FA, 2016 is optional to the assessee

- The Tribunal has made the following observations which are to the effect that the amendment is optional to the assessee –
  - "The amendment in Section 50C was brought in to provide relief to the assessee in a situation in which the stamp duty valuation of a property has risen between the date of execution of agreement to sell and execution of sale deed, as is the norm rather than exception, but the real estate market is now traversing through a difficult phase and there can be situations in which there is a fall in the stamp duty valuation rates with the passage of time. Such a situation has actually arisen in many places in the country, such as in Gurgaon, New Delhi and even in Dehradun (Uttarakhand) and some other places. It is therefore possible that, at first sight, first proviso to Section 50C may seem to work to the disadvantage of the assessee in certain situation in the event of the word `may' being construed as mandatory in application, but then one cannot be oblivious to the fact that this proviso states that "the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement **may** be taken for the purposes of computing full value of ….

Dharamshibhai Somani v. ACIT(Ahd Trib SMC) – observes that the proviso inserted by FA, 2016 is optional to the assessee...

  - … consideration for such transfer (emphasis supplied)" making it clearly optional to the assessee and that in any event, what has been brought by the lawmakers as a measure of relief to the taxpayers cannot be construed as resulting in a higher tax burden on the tax payers. Of course, assuming my understanding of this statutory provision is in harmony with the legislative intention, insertion of the words "**at the option of the assessee**" between '**stamp valuation authority on the date of agreement may**" and "**be taken for the purposes of computing full value of consideration for such transfer**", in the first proviso to Section 50C(1) could have made the legal provision even more unambiguous.

Division Bench decisions on the lines of Dharamshibhai Somani [(2016) 161 ITD 627 (Ahd. – Trib.)(SMC)]

- **Amit Bansal v. ACIT [(2018) 100 taxmann.com 334 (Delhi – Trib.)]**
- **Devendra J. Mehta v. ACIT [(2017) 77 taxmann.com 282 (Rajkot – Trib.)]**
- **Goldgerg Finance Pvt. Ltd. v. ACIT [(2017) 78 taxmann.com 123 (Mumbai – Trib.)]**
- **Hari Mohan Das Tandon v. Pr. CIT [(2018) 91 taxmann.com 199 (Allahabad – Trib.)]**
- **Rahul G. Patel v. DCIT [(2018) 97 taxmann.com 598 (Ahmedabad-Trib.)]**
- **Smt. Chalasani Naga Ratna Kumari v. ITO [(2017) 79 taxmann.com 104 (Visakhapatnam – Trib.)]**

Tolerance Limit introduced in section 50C

- Prior to its amendment by the Finance Act, 2018, section 50C provided that where a person transfers a capital asset being land or building or both and if the consideration received or accruing as a result of transfer was less than the stamp duty value of the capital asset transferred then for the purpose of computing capital gains, stamp duty value was to be regarded as full value of consideration.
- Finance Act, 2018 has inserted a third proviso to section 50C(1) which provides that stamp duty value of the capital asset transferred will be deemed to be full value of consideration only if stamp duty value exceeds 105 per cent of the consideration received or accruing as a result of transfer.
- Third Proviso has been inserted with effect from assessment year 2019-2020.

Position prior to introduction of tolerance Limit in section 50C

- Prior to the amendment there was a controversy as to whether the provisions of section 50C applied or not if the difference between stamp duty value of the asset transferred and the consideration for which the transfer is effected did not exceed a particular percentage.
  - Honest Group of Hotels Pvt. Ltd. v. CIT [(2012) 12 Taxman 464 (J&K)][10%]
  - John Fowler India Pvt. Ltd. v. DCIT [TS-6184-ITAT-2017 (Mum.-Trib.)][10%]
  - Rahul Constructions Co. v. ITO [(2012) 21 taxmann.com 435 (Pune-Trib.)][10%]
  - Smt. Sita Bai Khetan v.ITO [(2017) 88 taxmann.com 377 (JP – Trib.)] [10%]
  - Suresh C. Mehta v. ITO [(2013) 35 taxmann.com 230 (Mum.-Trib.)][15%]
  - Krishna Enterprises v. Addl.CIT [ITA No. 5402 of 2014, dated 23.11.2016](Mum.-Trib.)] [10%].
- Consequent to the amendment, the ratio of the aforesaid decisions will no longer apply and a variation of upto 5% of the sale consideration will be available.

Position prior to introduction of tolerance Limit in section 50C

- As far as period upto AY 2018-2019 is concerned, either the ratio of the aforesaid judgments, favorable to the taxpayer, will apply or atleast a variation of 5% ought to be permitted based on subsequent amendment.
- Option for approaching Valuation Officer, under section 50C(2), for valuing property in question continues to be available even subsequent to the amendment.

Particulars	Situation 1	Situation 2
Consideration as per agreement of transfer	10,000	10,000
Stamp duty value	12,000	10,400
Stamp duty value as a percentage of declared consideration	120%	104%
Whether stamp duty value exceeds 105% of consideration as per agreement of transfer	Yes	No
Consideration for computing capital gains	12,000	10,000

Applicability of provisions of Section 50C to exemption under Ss. 54 / 54EC / 54F

Text of Section 50C

Section 50C - Special provision for Full Value of Consideration in certain cases.

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.

Text of Section 50C

Provided that *where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer: (inserted by FA, 2016 wef 1.4.2017)*

Provided further that *the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer. (inserted by FA, 2016 wef 1.4.2017)*

Provided also that *where the value adopted or assessed or assessable by the stamp valuation authority 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 section 48, be deemed to be the full value of consideration. (inserted by FA, 2018 wef 1.4.2019)*

Text of Section 50C …

(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.

Text of Section 50C …

[**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.]

Non-applicability to rights in land / building

Provisions of S. 50C do not apply to "rights in land & building". Consequently, the provisions do not apply to transfer of booking rights by the assessee.

- **ITO v. Yasin Moosa Godil [2012] 18 ITR 253 (Ahd.)(Trib.) [Rights of a buyer of a flat under construction]**
- **Smt. Devindraben I. Barot *v. ITO* ([2016] 70 taxmann.com 235 (Ahmedabad - Trib.)** - Section 50C would have no application where assessee has transferred only rights in impugned land which cannot be equated to land or building or both.
- **ITO v. Tara Chand Jain [2015] 63 taxmann.com 286 (Jaipur - Trib.)** – 50C does not apply to a case where the ownership of the land is with the State Government. The land is acquired and the assessee is merely a Kashtkar, this clearly shows that the assessee is only having the limited rights in the land sold. The limited rights of Kashtkar on the land cannot be equated with the ownership of land or with building or with both. The Act clearly recognizes the distinction between the land or building or any right in the land or building under section50C. Thus, the Act has given the separate treatment to land, building and rights in the land. [Para 6.10]

Non-applicability to holding through a company

Provisions of S. 50C do not apply to transfer of immovable property held through a company.

- **Bhoruka Engineering Industries Ltd. v. DCIT [(2013) 36 taxmann.com 82 (Karnataka HC)]** – In this case, the AO tried to lift the corporate veil and held that the transfer of land through the medium of transfer of shares will attract provisions of section 50C. The action of the AO was upheld by the CIT(A) and the Tribunal. On appeal to the HC, it was held that the provisions of section 50C do not apply to transfer through the medium of transfer of shares. The observation of the HC are as under –
  - 25. As set out above, the transaction is real, valuable consideration is paid, all legal formalities are complied with and what is transferred is the shares and not the immovable property. The finding of the Assessing Authority that it is a transfer of immovable property is contrary to law and contrary to the material on record. They committed a serious error in proceeding on the assumption that the effect of transfer of share is transfer of immovable property and therefore, if the veil of the company is lifted what appears to them is transfer of immovable property. Such a finding is impermissible in law. Unfortunately, three authorities committed the very same mistake which is ex-facie, illegal, contrary to settled legal position and therefore, requires to be set-aside.

Non-applicability to holding through a company

Provisions of S. 50C do not apply to transfer of immovable property held through a company.

- **Irfan Abdul Kader Fazlani v. ACIT [itatonline.org] (Mum.)(Trib.)**
- The assessee held shares in a company called Kamala Mansion Pvt. Ltd. The company owned flats in a building known as Om Vikas Apartments, Walkeshwar Road, Mumbai. The shares were sold by the assessee for Rs. 37.51 lakhs and capital gains were offered on that basis. The AO & CIT(A) held that by the sale of shares in the company, the assessee had effectively transferred the immovable property belonging to the assessee and that it was an indirect way of transferring the immovable properties being the flats in the building. He accordingly '*pierced the corporate veil*', invoked s. 50C and computed the capital gains by adopting the stamp duty value of the flats. On appeal by the assessee to the Tribunal, HELD allowing the appeal:

Non-applicability to holding through a company

Provisions of S. 50C do not apply to transfer of immovable property held through a company.

- *S. 50C applies only to the transfer of a "capital asset, being land or building or both", "assessed" by any authority of a State Government for stamp duty purposes. The expression "transfer" has to be a direct transfer as defined u/s 2(47) which does not include the tax planning adopted by the assessee. S. 50C is a deeming provisions and has to be interpreted strictly in accordance with the spirit of the provision. On facts, the subject matter of transfer is shares in a company and not land or building or both. The assessee did not have full ownership on the flats which are owned by the company. The transfer of shares was never a part of the assessment of the Stamp duty Authorities of the State Government. Also, the company was deriving income which was taxable under the head 'income from property' for more than a decade. Consequently, the action of the AO & CIT(A) to invoke s. 50C to the tax planning adopted by the assessee is not proper and does not have the sanction of the provisions of the Act.*

Are provisions of s. 50C applicable to transfer of depreciable assets forming part of block of assets?

- S. 50C applies to transfer of land or building or both. Land is not a depreciable asset. However, if the assessee transfers building which was forming part of a block of assets a question would arise as to whether the provisions of s. 50C are applicable to the transfer of such building. There could be two situations - one could be that even after the building is transferred the block continues to exist and the other could be a situation in which as a result of the transfer of the building the block ceases to exist and the provisions of s. 50 also come into play. In the first situation where the block would continue to exist, s. 43(6)(c) defines `written down value' as opening WDV of the block as adjusted by actual cost of assets purchased during the previous year and reduced by moneys payable in respect of any asset falling within that block which is sold during the previous year. As per Explanation 4 to s. 43(6)(c), the expression "moneys payable" and "sold" shall have the same meanings as given in Explanation below sub-section (4) of section 41. As per the said Explanation, "moneys payable" in respect of any building, etc when it is sold is the price for which it is sold i.e. the actual sale consideration. Therefore, it appears to be quite an arguable proposition to contend that as long as the block continues to exist even after sale of building the provisions of s. 50C will not get attracted.

Are provisions of s. 50C applicable to transfer of depreciable assets forming part of block of assets?...

- As regards the second situation where the block ceases to exist as a result of sale of building the position is governed by the decision of Mumbai Special Bench of Tribunal in the case of ITO v. United Marine Academy [130 ITD 113 (Mum)] wherein it is held that provisions of s. 50C are applicable to transfer of depreciable capital assets covered by s. 50. According to the Tribunal, legal fiction created under s. 50C is for "full value of consideration" and the legal fiction created under s. 50 is for "cost of acquisition". Hence, both the fictions operate in different fields and do not conflict with each other. It would be relevant to note that before the Special Bench the assessee had argued for the first time that the block had not ceased to exist and there was positive WDV as per s. 43(6)(c). However the Special Bench of ITAT did not adjudicate this point as assessee had himself accepted before the lower authorities that the block had ceased to exist. Hence, the issue as stated above (i.e. the first situation) has not been determined by the Special Bench.

- Where all the assets are transferred and the block ceases to exist, then as per s. 50(2) there is no requirement of existence of any "excess" and consequently provisions of ss. 48, 49 and 50C would be applicable.

Applicability of provisions of S. 54F vis-à-vis S. 50C

- S. 50C applies when an assessee transfers a capital asset being land or building or both and the full value of consideration for transfer of such capital asset is less than the value thereof assessed or assessable by an authority of a State Government for the purpose of levy of stamp duty ("stamp duty value"). The section has been introduced because the common belief is that the real consideration for transfer is more than the consideration stated in the document of transfer. In the event of the stamp duty value being greater than the full value of consideration s. 50C deems the stamp duty value to be the full value of consideration for the purpose of s. 48.

- Section 54F provides roll over benefit to the assessee if, within the time limit prescribed by the said sections and subject to the satisfaction of conditions mentioned therein, he purchases or constructs a residential house. The entire capital gains arising on transfer of original asset is exempt if the cost of acquisition of the new house purchased or constructed is greater than or equal to the net consideration.

Applicability of provisions of S. 54F vis-à-vis S. 50C …

- In a case where the stamp duty value of the asset transferred is greater than the consideration of the asset transferred, can the entire capital gains be claimed to be exempt under s. 54F? If yes, whether the assessee is required to invest the consideration accruing or received as a result of the transfer or is he required to invest an amount equivalent to the stamp duty value of the asset transferred? In other words, the question which arises is whether the capital gains referred to in s. 54F(1) is the capital gain computed after giving effect to the provisions of s. 50C or is it the capital gains computed before giving effect to the provisions of s. 50C. The argument could be that the difference between stamp duty value and the consideration accruing or received as a result of transfer is unaccounted income which is sought to be brought to tax and there cannot be any exemption in respect of unaccounted income.

Applicability of provisions of S. 54F vis-à-vis S. 50C …

- The issues stated in the above paragraph can be better explained by way of an illustration. An assessee transfers land whose indexed cost of acquisition is Rs. 50 for a consideration of Rs. 110. The stamp duty value of the land transferred is Rs. 160. Expenditure incurred on transfer is Rs. 10. Therefore, long term capital gains accruing to the assessee is Rs. 100 (Rs. 160 - Rs 10 - Rs 50). If the provisions of s. 50C are not applicable, the capital gains would be Rs. 50 (Rs 110 - Rs 10 - Rs 50). Now, the questions being raised are can the assessee claim entire capital gain of Rs. 100 to be exempt under s. 54F or will the exemption under s. 54F be restricted to Rs. 50? If the entire capital gain of Rs. 100 can be claimed to be exempt under s. 54F, what is the amount which the assessee should utilize to purchase or construct the new residential house - should it be Rs. 100 or Rs. 150?

Applicability of provisions of S. 54 and 54F vis-à-vis S. 50C…

- The exemption under s. 54F is with reference to net consideration. The term `net consideration' has been defined in Explanation to s. 54F as under –

  "**Explanation :** For the purposes of this section,—

  "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."

- In a case where the capital asset transferred is land or building or both and the stamp duty value of the asset so transferred is greater than the consideration received or accruing as a result of the transfer, S. 50C deems the stamp duty value of the asset transferred to be full value of consideration. This deeming fiction is for the purpose of s. 48.

- Even the entire capital gains can be exempt provided the conditions specified in the respective sections are satisfied. The question which arises for consideration is whether the fiction created by s. 50C travels even to ss. 54, 54EC and 54F or whether the fiction is only for purpose of s. 48.

50C does not apply to 54F – Gyan Chand Batra (Jp. Trib.)

- In Gyan Chand Batra vs. ITO [133 TTJ 482 (Jp)] the Jaipur Bench of the Tribunal held that deeming fiction as provided in s. 50C in respect of the words 'full value of consideration' is to be applied only to s. 48 and, therefore meaning of full value of consideration as referred to in Explanation to s. 54F(1) is not governed by the meaning of the words 'full value of consideration' as mentioned in s. 50C.
- The Tribunal was dealing with a case where the assessee had transferred land which was a long term capital asset. The stamp duty value of land transferred was more than the agreed consideration. The assessee had purchased new residential house and the cost of acquisition of the new residential house was more than the stamp duty value. The amount utilized for purchase of house before due date of filing return of income was greater than consideration received on transfer but lower than the stamp duty value of the flat transferred. The assessee made claim for exemption under s. 54F for the first time before CIT(A). It was contended that the amount utilized for purchase of new residential house exceeded the net consideration. If stamp duty value was regarded as net consideration then too a substantial part of capital gain computed was exempt under s. 54F. It was in this factual background that the Tribunal made the following observations -

Ratio of Gyan Chand Batra (Jp. Trib.)

"Sec. 50C provides a deeming provision for considering the full value of consideration as the value adopted for stamp duty. In modern statutes, the expression 'deem' is used a great deal and for many purposes. It is at times used to introduce artificial conceptions which are intended to go beyond legal principles or to give an artificial construction of a word or phrase. Thus the artificial meaning of full value of the consideration has been given in s. 50C of the IT Act for the purpose of s. 48 of the IT Act. One is entitled to ascertain the purpose for creating a statutory fiction. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone fiction can operate. The legislature in its wisdom has referred to s. 48 of IT Act in s. 50C for adopting the same value as fair market value. Hence, the deeming fiction as provided in s. 50C in respect of the words 'full value of consideration' is to be applied only for s. 48 of the IT Act. The words 'full value of consideration' as mentioned in other provisions of the Act are not governed by the meaning of full value of consideration as contained in s. 50C of the IT Act.

Ratio of Gyan Chand Batra (Jp. Trib.) …

In Explanation to s. 54F(1), it is mentioned that net consideration means the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of full value of consideration in Explanation to s. 54F(1) will not be governed by meaning of words 'full value of consideration' as mentioned in s. 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under s. 48. Sec. 54F(1) says that capital gains is to be dealt with in accordance with the provisions of sub-cls. (a) and (b) of s. 54F(1). In the instant case, the cost of new asset is not less than the net consideration thus the whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in s. 54F(4) also that net consideration which is not appropriated towards the purchase of new asset the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus deduction under s. 54F is clearly applicable. Deeming provisions as mentioned in s. 50C will not be applicable to s. 54F so far as the meaning of full value of consideration is concerned as deeming provision mentioned in s. 50C is for specific asset and for the purpose of s. 48. Hence the assessee is entitled for deduction under s. 54F."

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)]

- It is respectfully submitted that the ratio of the above decision needs reconsideration because for the proposition that the full value of consideration means consideration as per document of transfer, the Tribunal has relied upon the decision of the Delhi High Court in the case of CIT v. Smt Nilofer Singh [309 ITR 233 (Del)]. In the case before the Delhi High Court, the provisions of s. 50C were not applicable at all.
- It needs to be noted that the Bangalore Bench of the Tribunal has in the case of **Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)]** has held that the assessee will be entitled to exemption under s. 54F only with reference to capital gains computed without giving effect to provisions of s. 50C. Therefore, the Tribunal has held that in a case where s. 50C applied and the stamp duty value was taken to be full value of consideration, the entire capital gains can never be claimed to be exempt under s. 54F. The assessee, after being given maximum permissible exemption under s. 54F, will be liable to pay tax on capital gains which will be equivalent to the difference between stamp duty value of the property transferred and the full value of consideration received or accruing as a result of the transfer. According, to the Tribunal this was the only way to harmonise the various provisions of the Act and give effect to the intent of the legislature.' The Tribunal held as follows-

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)] …

"The first limb of s. 45(1) pinpoints at the profits or gains arising from the transfer of a capital asset effected during the previous year. The second limb of the section provides for the amount to be excluded from the profits or gains referred in the first limb of the section. It is obvious that one has to compute the "profits or gains" as per the provisions of the Act and thereafter compute the exemption as provided under the relevant exemption sections and exclude the same from the "profits and gains" so computed. Needless to mention that, the computation of the capital gain has to be in accordance with s. 48 and computation of exemptions in accordance with the relevant exemption sections. Sec. 45(1) is a charging section therefore while interpreting the section strict construction principle is applicable. The provisions of the charging sections must be interpreted as per the language used therein and when the words of the statute are in themselves precise and unambiguous, no more exercise is necessary than to expound those words in their natural and ordinary sense. Therefore, it is apparent that the submissions of the Authorized Representative that "the provisions of s. 48 are not something that are to be determined before the exemption provisions, as the exemption provisions by virtue of the link with s. 45(1) operate simultaneously with the operation of s. 45(1)" does not hold any water. The processes of arriving at the capital gains and the exemptions are distinct and separate.

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)] …

- One does not override the other. By virtue of s. 45(1), a charge is created for levy of tax on the profits or gains arising out of the transfer of capital asset effected during the previous year coupled with certain exemptions. The exemption ss. 54, 54B, 54D, 54EA, 54EB, 54F, 54G and 54H, are self-contained sections which also include the method of computation of the exemption. The manner in which the profits or gains arising out of the transfer of the capital asset are to be computed as mentioned in s. 48 which goes without saying that the charge is on the profits or gains so computed. While computing the profits or gains as per s. 48, the deeming provision embedded in s. 50C has to be given effect to. The charge is created on the enhanced profits or gains arrived at from the fiction of s. 50C.
- Sec. 54F is an exemption provision and a complete code in itself. Since it is a complete code in itself, the computation of eligible exemption has to be worked out within its framework as far as possible. Being an exemption provision, beneficial interpretation has to be given. However, in any interpretation, the maxim "ut res magis valeat quan pareat" should be kept in mind. The construction which would reduce the legislation to a futility should be avoided; and alternative that will introduce uncertainty, fiction or confusion into the working of the system should be rejected. An interpretation which leads to unworkable results and absurdity should be avoided.

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)] …

- As far as arriving at the exemption allowable under s. 54F, one has to strictly follow the provisions of the section and compute the exemption accordingly without imposing any section creating a legal fiction into the section. The main ingredients of the statute to be dealt with to compute the exemption allowable under these sections are : (1) the "capital gain" arising from the transfer of any long-term capital asset, (2) net consideration in respect of the original asset, (3) extent of the net consideration invested in the new asset. The "capital gains" and the "net consideration" have to be worked out within the framework of s. 54F, without imposing any fiction created by any other section. Thus, the capital gains arising from the transfer of any long-term capital asset for the purpose of s. 54F have to be worked out applying s. 48 without imposing s. 50C into it. As regards to net consideration, the section itself has made it clear in the Explanation the method in which it has to be arrived at. Needless to mention that the words "such capital gain" and "capital gains" mentioned in s. 54F(1)(a) and (b) refer to "the capital gains" arising from the transfer of any long-term capital asset worked out as mentioned in s. 54F(1) r/w s. 48 and not worked out as mentioned in s. 45(1) r/w ss. 48 and 50C. When this interpretation is adopted, every provision of the chapter will fall in line without producing any absurd result and thereby giving a fruitful purpose for the enactments.

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)]

- Alternatively, as canvassed by the Authorized Representative, if the term "capital gain" in s. 54F is arrived at by imposing s. 50C, then the intention for introducing s. 50C would be defeated, because whatever may be the capital gain arrived at by imposing s. 50C would be exempt, if the net consideration, however meager it may be, is invested in the new asset."

- The Tribunal has, therefore, held that for the purpose of s. 54F, capital gain has to be computed in accordance with provisions of s. 48 without applying s. 50C.

- Aggrieved by the decision of the Tribunal, the assessee preferred an appeal to the Karnataka High Court. The Karnataka High Court has in the case of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)]. The substantial questions of law referred to the High Court were as under –

  "(b) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in holding that the "Capital gains" and "the Net Consideration" have to be worked out within the frame work of section 54F of the Act, without imposing any fiction created by any other section and that the capital gains arising from the transfer of any long term capital asset for the purpose of section 54F has to be worked out applying section 48 without imposing section 50C into it?

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] …

(c) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contentions that provisions of Section 54F(1)(a) of the Income Tax Act will become unworkable, if the construction placed thereon, would require the consideration as per section 50C of the Act to be taken to work out the amount of exemption of the capital gains in other words whether it is correct to hold that the operation of legal fiction under section 50C of the Act has to be restricted only for the purpose of section 48 of the Act as wrongly interpreted by the Income Tax Tribunal and not to be applied for the entire Chapter VI E relating to taxation of capital gains, especially to Section 45 of the Income Tax Act?

(d) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contention that the term capital gain in section 54F has to be arrived by imposing section 50C of the Act in order to comply with the provisions of charging section 45 of the Income Tax Act?

(e) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contention that the harmonious construction of section 54F of the Act and section 45(1) of the Act along with computational provisions of Section 48 read with section 50C of the Act can only be achieved if the provisions of Section 54F are given its natural and literal meaning and not a strained meaning by subjecting it to the provisions of section 50C of the Act

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] …

(f) Whether on the facts and the circumstances of the case the Income Tax Tribunal is correct in law in holding that the denial of benefit of exemptions under section 54F(1)(a) on condition of compliance, by referring to Section 50C of the Act by the Lower authorities as being correct?

(g) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in holding that the legal fiction created by virtue of section 50C in determining the Capital gain cannot be extended to Section 54F of the Act and that Section 54F of the Act has to be applied only for the definite and limited purpose for which it is created?"

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] …

- The Court considered that the assessee had sold an asset whose stamp duty value was Rs. 36,00,000 for Rs. 20,00,000. The assessee had purchased new residential house for Rs. 24,00,000. The extra amount of Rs. 4,00,000 was stated by the assessee to have been invested out of agricultural and other income which could not be demonstrated. The agreement for purchase of new house was for Rs. 20,00,000 but its valuation was Rs. 24,00,000. The Court held as follows –

  "7. The assessee before the Assessing Authority had stated that he has invested Rs.20,00,000 out of the sale consideration and further investment of Rs.4,00,000/- of agricultural income towards construction of the house at Gangavathi. The total amount shown to be invested for construction of house at Gangavathi is Rs.24,00,000/-. The Assessing Authority has disallowed the benefit of exemption of Rs. 4,00,000, That part of the order of the Assessing Authority and the Appellate Authority does not appear to be sound and proper. *The ultimate object and purpose of Section 50C of the IT Act is to see that the undisclosed income of capital gains received by the assessees should be taxed and the law should not encourage and permit the assessee to peg down the market value at their whims and fancy to avoid tax. In other words, the ultimate object is to curb the growth of black money. When the capital gain is assessed on notional basis, whatever amount invested in new residential house within the prescribed period, under Section 54F of IT Act the entire amount invested, should get the benefit of deduction*

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] …

irrespective of the fact that the funds from other sources are utilized for new residential house. In that context, whatever total amount actually invested by the assessee for construction of house at Gangavathy should be deducted irrespective of the fact that part of the funds invested are from other sources and not from the capital gain that view or the matter, the amount assessable Towards net capital gain should be Rs.1033404."

- From the above mentioned decision of the High Court it appears (though it is not stated in clear terms) that the Court has held that the claim for exemption under s. 54F need not be restricted to capital gains worked out under s. 48 without applying provisions of s. 50C. This appears from the fact that the Court has granted exemption under s. 54F of Rs. 24,00,000 which exceeds long term capital gains computed under s. 48 without applying provisions of s. 50C.

- The Hyderabad Bench of ITAT
- in the case of ITO v. Kondal Reddy Mandal Reddy (ITA No. 848/Hyd/2016; AY 2010-11; Order dated 13.5.2016) has followed the decision of the Karnataka High Court and held that the exemption can be granted even with reference to capital gains computed by adopting stamp duty value as full value of consideration.

The two views

- The Jaipur Bench of the Tribunal has in the case of Prakash Kumavat v. ITO [49 SOT 160 (Jaipur)] has followed the decision of Jaipur Bench in the case of Gyan Chand Batra (supra). The Tribunal has stated that the ratio of the Bangalore Bench in Gouli Mahadevappa (supra) is same as that in the case of Gyan Chand Batra. It is respectfully submitted that this is not correct. Also, this decision was rendered before the decision of Karnataka High Court in the case of Gouli Mahadevappa (supra).
- The two views which could be possible are - one that the assessee is not entitled to claim exemption under s. 54F with reference to difference between stamp duty value and the consideration accruing or arising as a result of the transfer. Second view could be that the assessee is entitled to claim exemption under s. 54F with reference to capital gains computed after applying provisions of s. 50C provided of course he has invested in purchase or construction of the house amount equivalent to the stamp duty value of the asset transferred. The second view is based on the proposition that the legal fiction must be carried to its logical conclusion. The second view appears to be a better view though the assessee in this alternative may be expected to invest more than what he has received on transfer of original asset. This, however, is a consequence of deeming fiction created by s. 50C. The legislature has never intended that the benefit of exemption should be denied with reference to increased capital gain as a result of stamp duty value being greater than the consideration received or accruing as a result of transfer..

The two views …

- If one interprets `net consideration' for the purpose of s. 54F to be consideration received or accruing as a result of transfer and not stamp duty value then an assessee may be able to avoid the rigors of s. 50C by investing a meagre amount of net consideration in purchase of new residential house. Say for example, in a case where the stamp duty value of the asset transferred is Rs. 1010 but the consideration received or accruing as a result of transfer is Rs. 110 and the indexed cost of acquisition is Rs. 10 - the long term capital gain accruing to the assessee will be Rs. 1000 (Rs. 1010 - Rs 10) and the assessee can by investing Rs. 110 claim the entire capital gain to be exempt if one interprets net consideration to mean only consideration received or accruing as a result of transfer without giving effect to provisions of s. 50C. Also, this would create a disparity between assessee claiming exemption under ss. 54 and 54EC as against an assessee who is claiming exemption under s. 54F because ss. 54 and 54EC require an assessee to invest capital gains in purchase / construction of a new house / specified bonds.

- To conclude, it appears that the assessee will be entitled to claim exemption under s. 54F with reference to entire capital gains computed after giving effect to s. 50C provided, ofcourse, his investment is greater than or equal to stamp duty value of the property transferred as reduced by expenditure incurred in connection with transfer.

Applicability of provisions of S. 50C to exemption under S. 54

- Section 54 provides roll over benefit if the long term capital gain arising on transfer of a capital asset being a residential house is invested in purchase or construction of a new residential house within the time period mentioned in the section and subject to satisfaction of conditions mentioned in the section.

- In the event of capital asset transferred being land or building or both, section 50C provides that the stamp duty value of the same (i.e. land or building or both transferred) should, for the purposes of section 48, be considered to be full value of consideration instead of consideration accruing or arising as a result of transfer.

- In other words, if stamp duty value is greater than the consideration as per document of transfer then capital gain is to be computed with reference to stamp duty value.

Applicability of provisions of S. 50C to exemption under S. 54 …

- In order to avail roll over benefit under Sections 54 / 54EC, assessee is required to invest the capital gain in purchase or construction of new residential house or in bonds (section 54EC) within the time prescribed in Sections 54 / 54EC.

- The question which arises for consideration is whether the amount of capital gain which is required to be invested is to be computed with reference to full value of consideration as per document of transfer or by considering provisions of Section 50C.

- Section 50C by a fiction regards stamp duty value to be full value of consideration. The assessee has not received this amount, therefore, the question arises as to how will the assessee invest what has not been received. Is the law expecting assessee to do the impossible !!

Ratio of Jagdish C. Dhabalia v. ITO [ITA No.981 of 2016; Order dtd. 12.3.2019]

- This issue has very recently been considered and adjudicated upon by the Bombay High Court in the case of **Jagdish C. Dhabalia v. ITO [ITA No. 981 of 2016; Order dated 12th March, 2019]**.

- The Hon'ble Bombay High Court has held that the amount to be invested will be the amount of capital gains with reference to Section 50C even though the amount of capital gains may be greater than the consideration accruing or arising as a result of transfer.

- The facts of the case before the Court were –
- The assessee held 25% undivided share in a plot of land which was transferred under a sale deed dated 29.9.2007 under which the assesee received a sum of Rs. 25 lakh by way of sale consideration.

Ratio of Jagdish C. Dhabalia v. ITO
[ITA No.981 of 2016; Order dtd. 12.3.2019]

- The assessee invested the entire Rs. 25 lakh in bonds qualifying for exemption under S. 54EC.
- In the return of income, the assessee claimed long term capital gain of Rs. 21,19,344 and claimed full exemption of such capital gain under s. 54EC.
- For the purpose of levying stamp duty, stamp duty authorities valued the plot of land transferred at Rs. 3,04,70,810. The assessees share therein was Rs. 76,17,702.
- The AO in the assessment order dated 29.12.2010 determined long term capital gain to be Rs. 49,47,344.
- Before CIT(A) assessee contended that since entire consideration of Rs. 25 lakh was invested in bonds the assessee must get full exemption from capital gain irrespective of deemed sale consideration under Section 50C of the Act.
- CIT(A) allowed the appeal filed by the assessee.
- Aggrieved, revenue preferred an appeal to the Tribunal which appeal was allowed.

Ratio of Jagdish C. Dhabalia v. ITO
[ITA No.981 of 2016; Order dtd. 12.3.2019]

- The Tribunal held that for purpose of exemption under Section 54EC the deeming fiction contained in 50C of the Act cannot be ignored. The assessee could claim exemption only in relation to investment made in the specified bond and not qua the entire capital gain.
- Aggrieved, the assessee preferred an appeal to the High Court where the following substantial question of law came up for consideration of the Court –
  - Whether, in the facts and circumstances of the case, and in law, the Tribunal was right, while reversing the order of CIT in confirming the action of the assessing officer in taxing capital gain, to the extent of the enhanced and notional sale consideration under section 50C of the Act, inspite of the fact that the Appellant had invested the entire sale consideration accruing on transfer of the immovable property in the prescribed bonds in terms of Section 54EC of the Act?

Ratio of Jagdish C. Dhabalia v. ITO
[ITA No.981 of 2016; Order dtd. 12.3.2019]

- The arguments on behalf of the revenue were –
  - The interpretation advanced by the assessee would render the provisions of section 50C redundant;
  - The exemption provision should be strictly construed; and
  - Assessee can claim exemption only in relation to investment made in specified bond and not beyond.
- The Court referred to provisions of Sections 45(1), 50C and 54EC held as under -
- In plain terms, the stamp valuation assessment by the stamp duty officer of the State Government would be deemed to be the sale consideration of capital asset, replacing the declared sale consideration, if it happens to be less than stamp duty valuation. For the purpose of charging capital gain in view of section 45, to be computed as provided in section 48, this deemed consideration would be applied.

Ratio of Jagdish C. Dhabalia v. ITO
[ITA No.981 of 2016; Order dtd. 12.3.2019]

- We do not find any conflict or any incongruent consequences of applying the provisions of section 50C for the purpose of computation of capital gain tax after claiming exemption under section 54EC of the At. The deeming fiction under section 50C of the Act, must be given its full effect and the court shouold not boggle the mind while giving full effect to such fiction. WE are not opposing the proposition canvassed byt the Counsel fo the Assessee that deeming fiction must be applied in relation to the situation for which it is created. However, while giving effect to the deeming fiction contained under section 50C of the Act for the purpose of computation of capital gain under section 48, for which section 50C is specifically enacted, the automatic fallout thereof would be that the computation of the assessee's capital gain and consequently the computation of exemption under Section 54EC, shall have to be worked out on the basis of substituted deemed sale consideration of transfer of capital asset in terms of section 50C of the Act.

Ratio of Jagdish C. Dhabalia v. ITO
[ITA No.981 of 2016; Order dtd. 12.3.2019]

- Any other interpretation, particularly one canvassed by the learned counsel fo the assessee, would render the provisions of section 50C redundant. In a situation like the one on hand, even if for the purpose of section 48, in terms of section 50C of the Act, the sale consideration deemed to have been received by the assessee may be much higher than one declared in the sale deed, the assessee would claim no further capital gain tax liability by simply claiming to have made investment in specified asset the full declared sale consideration.
- Under such circumstances we do not find that the Tribunal has committed error in interpreting the relevant statutory provision. Income-tax appeals are therefore dismised.

Eligibility to claim deduction under Section 54 if LTCG arising on sale of more than one houses is invested in purchase of one house

Whether restriction under section 54 on investing gains from sale of 'multiple' houses

- **Section 54**
- The provisions of section 54 grant exemption from long term capital gains if, subject to satisfaction of conditions mentioned in these sections, the assessee purchases or constructs a new house within the time period mentioned in the said sections and if the other conditions are satisfied.
- However, it was not uncommon for assessees, as a practice, to invest in two houses and claim the benefit of deduction under section 54 of the Act in respect of both the houses so purchased. This, indeed lead to lot of litigation on this issue.
- An amendment was made vide Finance (No. 2) Act, 2014 in the provisions of sections 54 and 54F to provide that the exemption will be available if the investment is made in one residential house in India. This amendment was made applicable from AY 2015-16 and subsequent assessment years.

Applicability of S. 50C to transfer of depreciable assets forming part of block of assets?

- **Section 54**
- However, a question arises as to what happens in a reverse case where there are gains from sale of multiple houses and such gains are invested in one residential house?

Many to one – ratio of ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

- **ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]**
- **Facts:**
- The assessee sold 3 residential flats, and claimed long term capital gain arising on such transfer to be exempt under section 54 of the Act.
- The assessee contended that all the 3 flats were located on the same floor when purchased and therefore constituted one house.
- Since the vendor had purchased it under 3 separate agreements the same were sold to the assessee and were purchased by him vide 3 separate agreements and consequently were also sold vide 3 separate agreements.
- There were 3 separate maintenance bills issued by the Society. There were 3 share certificates in respect of each of these flats. However, there was a common electricity meter.

Many to one – ratio of ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

- **ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]**
- **Treatment by the AO**
- The AO rejected the contention of the assessee that the three flats constituted one house on the ground that there were 3 separate agreements for purchase/sale of flats and the assessee was paying maintenance charges for each of the three flats.
- The AO disallowed the exemption under section 54 to the extent it pertained to two flats and held that exemption under section 54 is allowable only in respect of long term capital gain arising on transfer of one flat.

Many to one – ratio of ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

- **<u>Treatment by the CIT(A)</u>**
- The CIT(A) allowed assessee's claim for the following reasons –
  - Relying on the decision of the Bombay High Court in the case of **CIT v. Devdas Naik [(2014) 49 taxmann.com 30 (Bom.)]** for the proposition that
    - Generally, it may be possible to find a bigger residential unit and that requires combining two or more adjoining flats into one unit. However, that does not mean that each flat is in itself a separate residential unit. What is to be seen is whether the adjoining flats were actually united and used as a common single unit or not. Execution of separate agreements cannot decide this issue. The flats were constructed in such a way that adjustment units of flats can be combined into one. The acquisition of flats may be done independently but eventually there is a single unit and house for the purpose of residence.

Many to one – ratio of ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

- **<u>Treatment by the CIT(A):</u>**
- The CIT(A) allowed assessee's claim for the following reasons –
  - Relying on the decision of the Allahabad High Court in the case of **Shiv Narain Choudhary v. CIT [108 ITR 104 (All. HC)]** for the proposition that
    - *"self contained dwelling units which are contiguous and situated in the same compound and within a common boundary and having unity of structure could be regarded as one house"*

Many to one – ratio of ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

- **Treatment by the CIT(A):**
  - Relying on the decisions of the Mumbai Bench of the Tribunal in the case of **DCIT v. Ranjit Vithaldas [(2012) 23 taxmann.com 226 (Mum. – Trib.)]** and also **Rajesh Keshav Pillai v. ITO [(2011) 44 SOT 617 (Mum. – Trib.)]** for the propositions that –
    - LTCG arising on transfer of multiple residential houses can be invested in purchase / construction of one residential house – **Ranjit Vithaldas (supra)**
    - No restriction is placed in section 54 that the exemption is allowable only in respect of sale of one residential house. Even if assessee sells more than one residential houses in the same year and the capital gain is invested in a new residential house, the claim for exemption cannot be denied if the other conditions of section 54 are fulfilled – **Rajesh Keshav Pillai (supra)**

Many to one – ratio of ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

- **Decision of the CIT(A):**
  - Exemption under Section 54 will be available in respect of transfer of any number of long term capital assets being residential houses if other conditions are fulfilled - **Rajesh Keshav Pillai (supra)**
- There is no restriction placed in section 54 that exemption is allowable only in respect of sale of one residential house.
- There is an inbuilt restriction that capital gain arising from sale of residential house cannot be invested in more than one residential house. However, there is no restriction that capital gain arising from sale of more than one residential flat cannot be invested in one residential house.
- The CIT(A) allowed the appeal filed by the assessee.

Many to one – ratio of ACIT v. Bipin N. Sagar [ITA No. 1507/M/2017 (Mum.)]

- **Decision of the Tribunal:**
- The CIT(A) has given a detailed finding and passed a very reasoned order after following the Hon'ble Bombay High Court on this issue.
- The Tribunal upheld the order of the CIT(A) as the assessee was using all the 3 flats as compact unit and has only one electricity bill for all the three flats.
- The issue is covered by the decision of the Bombay High Court in the case of **CIT v. Devdas Naik [(2014) 49 taxmann.com 30 (Bom. HC)]** as relied by the Learned CIT(A).

Many to one – ratio of DCIT v. Ranjit Vithaldas [(2012) 137 ITD 267 (Mum.)]

- **DCIT v. Ranjit Vithaldas [(2012) 137 ITD 267 (Mum.)]**
- **Facts:**
- The assessee held 25% in two flats. Both the flats were sold by the assessee along with his three brothers in two different years and invested the capital gains earned in respect of the transfer of two houses in the construction of one residential house.
- The assessee treated both the flats sold by him as one residential house and submitted that the two flats were in proximate buildings in Worli and the same constituted one residential house as the four brothers were using both the flats for residential purpose. The assessee also submitted that though the flats were not contiguous, both had been used as one residential house and therefore the same should be treated as one house in view of the decision of the Allahabad High Court in the case of **Shiv Narain Chaudhary v. CWT [108 ITR 104 (All.)]**.

Many to one – ratio of DCIT v. Ranjit Vithaldas [(2012) 137 ITD 267 (Mum.)]

- **Treatment by the AO:**
- The AO did not accept the claim of the assessee that both the flats (sold by the assessee along with his brothers) constituted one residential house as the two flats were located in different buildings and were situated on different roads.
- The AO also observed that the assessee, in respect of one of the flats claimed exemption in one year i.e. the assessee treated the same as self occupied property. In respect of the other flat the assessee did not offer any income under the head income from house property and treated the said house as used for the purpose of business and therefore exemption in respect of this flat could not be allowed under section 54 of the Act.
- **Decision of the CIT(A):**
- On assessee's appeal, the CIT(A) observed that the flats were not contiguous they were part of one and the same residential house and which was accepted as one house by the CIT(A) in the case of assessee's brother.

Many to one – ratio of DCIT v. Ranjit Vithaldas [(2012) 137 ITD 267 (Mum.)]

- **Decision of the Tribunal:**
- The Tribunal held that the two flats could not be treated as one residential house. However, as regards claim of exemption, the Tribunal held that there is no restriction under section 54 that exemption is allowable only in respect of sale of one residential house. Even if the assessee sells more than one residential house in the same year and the capital gain is invested in a new residential house, the claim cannot be denied if the other conditions are fulfilled. Observations of the Tribunal as follows:
  - *The exemption u/s 54 is available if capital gain arising from transfer of a residential house is invested in a new residential house within the prescribed time limit. Thus there is an inbuilt restriction that capital gain arising from the sale of one residential house cannot be invested in more than one residential house. However, there is no restriction that capital gain arising from sale of more than one residential houses cannot be invested in one residential house.*

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- *In case, capital gain arising from sale of more than one residential houses is invested in one residential house, the condition that capital gain from sale of a residential house should be invested in a new residential house gets fulfilled in each case individually because the capital gain arising from sale of each residential house has been invested in a residential house. Therefore,* ***even if two flats are sold in two different years, and the capital gain of both the flats is invested in one residential house, exemption u/s 54 will be available in case of sale of each flat provided the time limit of construction or purchase of the new residential house is fulfilled in case of each flat sold****.*

Many to one – ratio of Rajesh Keshav Pillai v. ITO [(2011) 44 SOT 617 (Mum.)]

- **Rajesh Keshav Pillai v. ITO, [(2011) 44 SOT 617 (Mum.)]**
- **Facts of the case:**
- The assessee, an individual, owned two flats, both of which were purchased on 05-01-2001. During previous year 2005-06 i.e. on 29-05-2005 and 16-06-2005 sold both the flats and earned long-term capital gains therefrom.
- The assessee invested the gain on sale of flats in two different flats. Since the total investment in two flats was more than the total gains on sale of two flats, the assessee claimed the entire capital gains as exempt under the provisions of section 54 of the Act.
- **Treatment by the AO:**
- The assessing officer held that the assessee was entitled to claim exemption under section 54 only in respect of sale of one flat and the corresponding investment in one flat.

Many to one – ratio of Rajesh Keshav Pillai v. ITO [(2011) 44 SOT 617 (Mum.)]

- **Decision of the CIT(A):**
- The CIT(A) upheld the view of the assessing officer.
- **Decision of the Tribunal:**
- *There is no restriction placed any where in the section 54 that exemption is available only in relation to sale of one residential house. Therefore, in case the assessee has sold two residential houses, being long-term assets, the capital gain arising from the second residential house is also capital gain arising from the transfer of a long-term assets being a residential house. The provisions of section therefore will also be applicable to the sale of second residential house and similarly to a third residential house and so on. Whenever the exemption available to restricted to one asset, a suitable provision is incorporated in the relevant section itself. For instance section 23(2) exempts income from a property consisting of a house or a part of house which is in occupation of the assessee or*

Many to one – ratio of Rajesh Keshav Pillai v. ITO [(2011) 44 SOT 617 (Mum.)]

- *which could not be occupied by the assessee because of his employment/business/profession being carried on at some other place. Based on*
- *such provisions contained in section 23(2), income from any number of properties being residential houses which are self-occupied will have to be treated as exempt. But a restriction has been placed in section 23(4) which provides that where the property referred to in sub-section (2) consists of more than one residential houses, exemption would be available only in respect of one house and other self-occupied residential houses will be treated as let out.*

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- *There is no such provision in section 54 to restrict the exemption of capital gain only to sale of one residential house. The authorities below have taken the view that whenever more than one option is given to the assessee the word used is "any". The reference has been made to the provisions of section 54E etc. We find from perusal of the said sections that the word "any" has been used because the assessee has option to invest in any of the assets mentioned therein. For instance, section 54E provides exemption in respect of capital gain arising from transfer of a long-term capital asset if whole or any part of the net consideration is invested in any specified assets within six months from the date of transfer. Since the specified assets were more than one, the word "any" has been used because the exemption will be available if the investment is made in any of the specified assets. The situation in section 54 is different.*
- *Considering the language used in section 54(1), in our view exemption will be available in respect of transfer of any number of long-term capital assets being ...ses if other conditions are fulfilled.*

Many to one – ratio of Venkat Ramana Umareddy v. DCIT [ITA No. 522/Hyd./2012]

- **Venkat Ramana Umareddy v. DCIT (ITA No. 522/Hyd/2012)**
- **Facts of the case:**
- The assessee earned capital gains on sale of land and house property and utilised the same in purchase of new residential house and claimed exemption under sections 54 and 54F of the Act.

- **Treatment by the AO:**
- The AO rejected the claim of the assessee and held that for claim of exemption under section 54 and 54F of the Act, the assessee has to invest in two houses.

- **Decision of the CIT(A):**
- The CIT(A) dismissed the appeal of the assessee

Many to one – ratio of Venkat Ramana Umareddy v. DCIT [ITA No. 522/Hyd./2012]

- **<u>Decision of the Tribunal:</u>**
- *At the cost of repetition, we would like to reiterate that sec. 54 and 54F apply under different situations. While sec. 54 applies to long- term capital gain arising out of transfer of long-term capital asset being a residential house, sec. 54F applies to long term capital gain arising out of transfer of any long-term capital asset other than a residential house. However, the condition for availing exemption under both the sections is purchase or construction of a new residential house within the stipulated period. <u>There is also no specific bar either u/s 54 and 54F or any other provision of the Act prohibiting allowance of exemption under both the sections in case the conditions of the provisions are fulfilled. In the facts of the present case, since long term capital gain arises from sale of two distinct and separate assets viz., residential house and plot of land and the assessee has invested the entire capital gain in purchase of a new residential house, in our view, he is entitled to claim exemption both u/s 54 and 54F of the Act.</u>*

Many to one – ratio of Venkat Ramana Umareddy v. DCIT [ITA No. 522/Hyd./2012]

- **<u>Decision of the CIT(A):</u>**
- The Commissioner upheld the action of the AO.

- **<u>Decision of the Tribunal:</u>**
- The Tribunal held that since the details regarding claim of exemption under section 54F were not examined at the time of original assessment, the re-opening of assessment was justified.
- As regards, assessee's claim that gains were long-term in nature and eligible for exemption, the Tribunal observed that on 22.02.2006, the assessee had merely paid advance to the builder for booking of the flat.
- The Development/Permission Certificate was granted by the Municipal Commissioner only on 17.11.2006 which meant that even the construction had not commenced till such date.

Many to one – ratio of Venkat Ramana Umareddy v. DCIT [ITA No. 522/Hyd./2012]

- Further, the occupancy certificate was granted on 18.02.2009 meaning thereby that the assessee had not acquired the right to occupy the flat.
- The assessee had therefore not held the capital asset for more than 3 years.
- Even the construction had not started upto 17.11.2006 and the property was sold on 28.0.2009.
- Based on the above, the Tribunal held that the gains were short-term capital gains

Deposit in Capital Gain Account – Mandatory or Directory requirement

Background of provisions dealing with requirement to deposit amount in Capital Gains Account

- Subject to satisfaction of conditions mentioned in sections 54 and 54F, long term capital gains arising on transfer of a long term capital asset of the nature specified in these sections is exempt if the assessee has within a period of one year before the date of transfer or two years after the date of transfer purchased a new residential house or has within a period of three years after the date of transfer of original asset constructed a new residential house.

- One of the conditions for claiming exemption under sections 54 and 54F is that the amount of capital gain which has not been appropriated or utilised for the purposes of purchase / construction of a new residential house should be deposited in a Capital Gains Account. Such deposit has to be made by due date of filing return of income under section 139(1) of the Act.

Background of provisions dealing with requirement to deposit amount in Capital Gains Account

- A question arises as to whether the provisions of section 54 / 54F requiring deposit in Capital Gains Account are a mandatory provision or is non-deposit in such capital gains account a mere technical / venial breach of the provisions.
- In the following cases, it has been held that non-deposit in Capital Gains Account is a mere technical / venial breach of the provisions and if the assessee has within the time period mentioned in section 54/54F purchased / constructed a new residential house then the claim for deduction under these sections should not be denied –
  - Ajeet Kumar Jaiswal v. ITO (Hyd)
  - Kishore H. Galaiya v. ITO [137 ITD 229 (Mum.)]
  - Mrs. Seema Sabharwal v. ITO [169 ITD 319 (Chandigarh)]
  - Jagan Nath Singh Lodha v. ITO [85 TTJ 173 (Jodhpur)]
  - Ashok Kapasiawala v. ITO [155 ITD 948 (Ahd.)]
  - Sunayna Devi v. ITO [167 ITD 135 (Kol.)]

Background of provisions dealing with requirement to deposit amount in Capital Gains Account

- However, it needs to be noted that in the following cases it has been held that the provisions dealing with deposit of amounts in Capital Gains Account Scheme are substantive provisions and non compliance with these provisions will result in denial of claim of deduction under sections 54/54F –
  - Humayun Suleman Merchant v. Chief CIT [(2016) 73 taxmann.com 2 (Bom.)]
  - "Failure to deposit the amount of consideration not utilized towards the purchase of new flat in the specified bank account before the due date of filing return of income u/s 139(1) is fatal to the claim for exemption. The fact that the entire amount has been paid to the developer/builder before the last date to file the ROI is irrelevant. Therefore, the claim of exemption u/s. 54F was prima-facie not in accordance with law".
  - Rasiklal M. Parikh v. ACIT [(2017) 88 taxmann.com 732 (Bom.)]
  - Smt. Basaribanu Modi Rafiq. Latiwala v. ITO [(2017) 81 taxmann.com 62 (Mum.-Trib.)]
  - R. Jayabharathi v. ITO [(2017) 81 taxmann.com 6 (Chennai-Trib.)(SMC)]
  - Sushil Kumar Bafna v. ITO [(2017) 81 taxmann.com 50 (Indore-Trib.)]

Acquisition of a flat in a building under construction amounts to construction

- In the following cases it has been held that acquisition of a flat in a building under construction amounts to construction of a house by the assessee –
  - CIT v. Mrs. Hilla J.B. Wadia [216 ITR 376 (Bom.)]
  - ACIT v. Smt. Sunder Kaur Sujan Singh Gadh [3 SOT 206 (Mum.)]
  - Kishore H. Galaiya v. ITO [137 ITD 229 (Mum.)]
  - Mustansir I Tehsildar v. ITO [ITA No. 6108 Mum 2017; (Mum.)]
  - ACIT v. Sagar Nitin Parikh [ITA No. 6399 Mum 2011; (Mum.)]

Legal title not necessary for claim of deduction under Ss. 54 / 54F

- In the following cases it has been held that acquisition of a flat in a building under construction amounts to construction of a house by the assessee –
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  - Kishore H. Galaiya v. ITO [137 ITD 229 (Mum.)]
  - Mustansir I Tehsildar v. ITO [ITA No. 6108 Mum 2017; (Mum.)]
  - ACIT v. Sagar Nitin Parikh [ITA No. 6399 Mum 2011; (Mum.)]