

**Special provision for Full
Value of Consideration in
certain cases - Section 50C
of the Income Tax Act, 1961
(Updated)**

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Section 50C....

Sub-sec (1)

- Where on transfer of a **capital asset**
- value so adopted or assessed [or assessable]

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 (stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer,

shall, for the purposes of sec 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Amendment in Sec. 50C made by the Finance (No.2) Act, 2009.

With a view to preventing the leakage of revenue, section 50C has been amended by the Finance (No.2) Act, 2009. The amended version provides that where the consideration received or accruing as a result of the transfer of land and/or building is less than the value adopted or assessed or assessable by an authority of the State Govt. for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain.

Note: *For the purpose 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 was referred to such authority for the purpose of the payment of stamp duty.*

Effective date: w.e.f.1st October, 2009 and shall, accordingly, apply in relation to the transactions undertaken on or after such date.

Insertion of words “assessable“ have prospective application

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CIT vs R. Sugantha Ravindran [2013] 32 taxmann.com 274 (Madras)

Held that insertion of words "or assessable" by amending Sec. 50C w.e.f. 01.10.2009 is neither a clarification nor an explanation to the already existing provision and **it is only an inclusion of new class of transactions namely the transfers of properties without or before registration.**

Before introducing the said amendment, only the transfers of properties where the value adopted or assessed by the stamp valuation authority were subjected to Section 50C application. However after introduction of the words "or assessable" after the words "adopted or assessed", such transfers where the value assessable by the stamp valuation authority are also brought into the ambit of Section 50C.

Thus such introduction of new set of class of transfer would certainly have the prospective application only and not otherwise.

Also see Circular No. 5/2010, dated 3-6-2010

Contd....

Section 50C.....

Sub-sec (2)

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

(a) value adopted or assessed [or assessable] by the stamp valuation authority under sub-section (1) $>$ 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,

then The AO may refer the valuation of the capital asset to Valuation Officer and where any such reference is made, the provisions of 16A(2)/(3)/(4)/(5)/(6), 23A(1)(i)/(6)/(7), 24(5), 34AA, 35 & 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 AO u/s 16A(1) of that Act.

Contd....

Section 50C.....

Sub-sec (2).....

□ **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.

Contd....

Section 50C.....

Sub-sec (3)

Subject to the provisions contained in sub-sec (2), where

the value ascertained
under **sub-sec(2)**

is less than

the value adopted or assessed [or
assessable] by the **SVA** referred
to in sub-sec (1)

then, 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**

Section 50C.....

Sub-sec (3).....

value determined by DVO

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value adopted for stamp
duty purposes

A

Then value determined by DVO shall be taken as FVC received or accruing as a result of the transfer [as per Sub-section (2)]

value determined by DVO

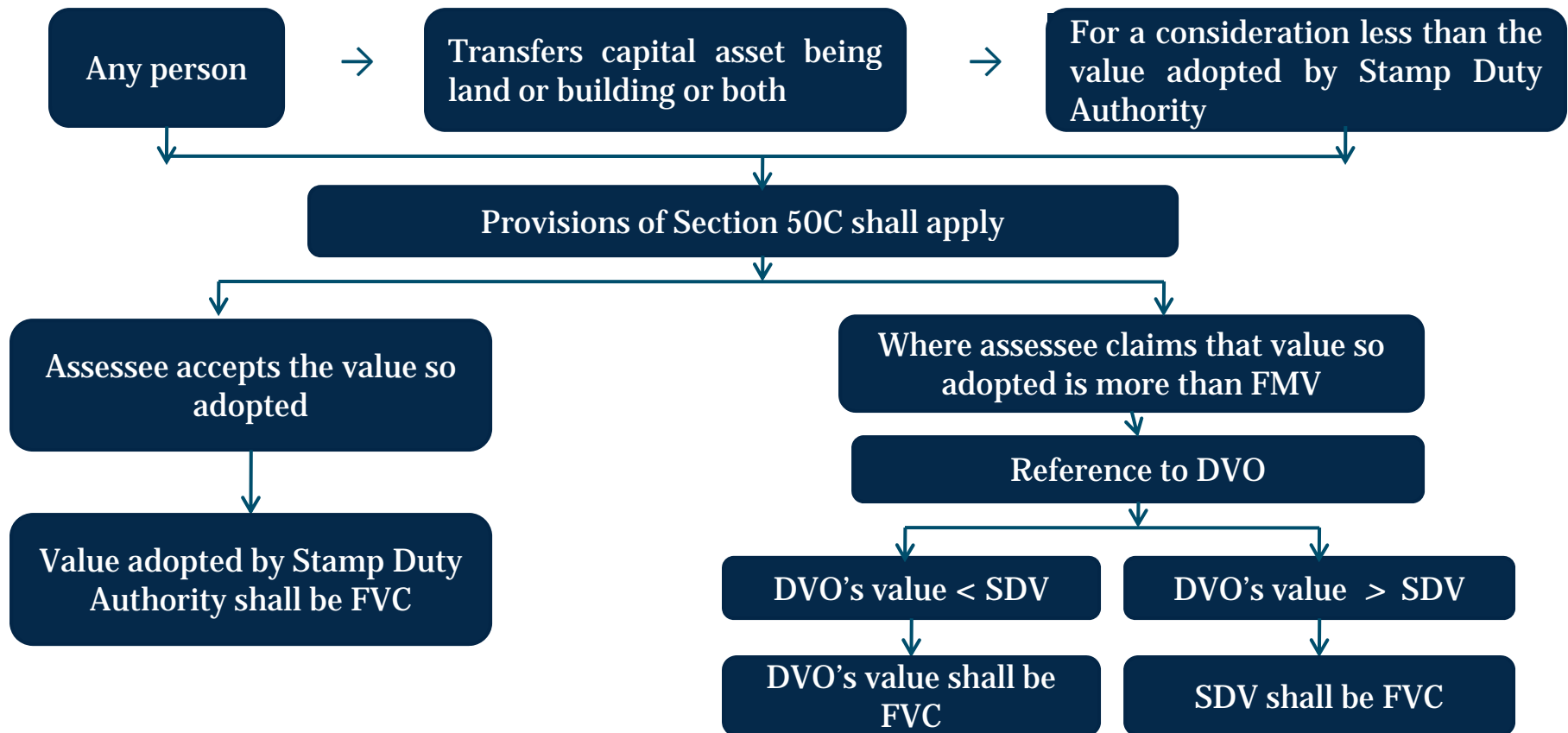
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value adopted for stamp
duty purposes

B

Then the value so adopted by Stamp Valuation Authority shall be taken as FVC received or accruing as a result of the transfer [as per Sub-section (3)]

An Overview of Section 50C



Note: The value so adopted by stamp valuation authority u/s 50C(1) is not disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

Section 155(15) - Rectification

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- If the Stamp duty value is subsequently **revised in any appeal or revision.**
- The AO shall **amend the order of assessment** taking the value so revised as full value of consideration for the computing CG.
- Provision of **S. 154 shall apply.**
- Period of 4 years shall be reckoned **from the end of the P.Y. in which the order of appeal or revision is passed.**

Applicability of Section 50C on stock-in-trade/Business assets

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- Prior to Amendment by **Finance Act, 2013**
- Various judicial pronouncements held that the provisions of Section 50C are not applicable where property is treated as business asset and not as capital asset.
- However, **Section 43CA** is inserted by Finance Act, 2013, **w.e.f. 1-4-2014.**

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

Applicability of Section 50C/ 43CA viz-a-viz Section 56(2)(vii)(b) as amended by Finance Act, 2013

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Section 56(2)(vii)(b)(ii) [Inserted by Finance Act, 2013, w.e.f. 1-4-2014]

- Where an **Individual** or **HUF** receives from any person or persons, an immovable property,
- For a consideration less than stamp duty value and
- Stamp Duty Value > Consideration, by an amount exceeding Rs. 50,000/-
- Taxable amount- Stamp duty value less Consideration

Applicability of Section 50C/ 43CA viz-a-viz Section 56(2)(vii)(b) as amended by Finance Act, 2013.....

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Cost of Acquisition - Section 49(4)

Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax u/s 56(2) (vii)/ (viiia),

the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of Section 56(2)(vii)/ (viiia).

Section 50D – FMV to be full value of consideration in certain cases [Inserted by Finance Act, 2012 w.e.f. 1st April, 2013]

Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is **not ascertainable or cannot be determined**, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

ISSUES-
SECTION 50C

Section 50C is within legislative competence

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Section 50C is within the legislative competence and it is not violative of Article 14 of the Constitution of India. **Bhatia Nagar Premises Co-operative Society Ltd. vs Union of India [2011] 334 ITR 145 (Bombay)S**

Section 50C does not apply to transfer of “leasehold rights” as it is not “land or building”.

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- ❑ Lease right in a plot of land can not be included within scope of 'land or building or both' and, thus, in case of transfer of leasehold rights in land, provisions of section 50C cannot be invoked. **Atul G. Puranik vs. ITO [2011] 11 taxmann.com 92 (ITAT-Mum.)**
- ❑ Transfer of rights in land and building is different from transfer of land and building and as section 50C of the Act applies only to a capital asset, being land or building or both, it cannot be made applicable to lease rights in a land. **ACIT Vs. Shrikishan Dass, ITA No. 915/ Del/ 2012, Date of pronouncement: 07.06.2013, ITAT - Delhi Bench**

Whether reference to DVO is mandatory.....?

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- **AO has to apply his mind on the validity of the objection** raised by the assessee that the value adopted u/s 50C(1) exceeds FMV on the date of transfer.
- AO may either accept the valuation of the approved valuer filed by the assessee or refer the question of valuation to DVO as per Sec. 55-A.
- In all these events, **AO has to record valid reasons**, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO u/s 55-A as a matter of course, without considering the report of approved valuer submitted by the assessee.
- In all such cases, the reasons recorded by the AO may be questioned by the assessee or the department as the case may be.

CIT vs Chandra Narain Chaudhri [2013] 38 taxmann.com 275 (Allahabad)

Whether reference to DVO is mandatory.....?

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- The valuation by the DVO u/s 50C, is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty.
- The legislature has taken care to provide adequate machinery to give a fair treatment to the taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused.
- Even in case where assessee has not raised any objection, the AO discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

Sunil Kumar Agarwal Vs CIT 2014-TIOL-871-HC-KOL-IT

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Whether reference to DVO is mandatory.....?

- AO is required to refer matter to valuation officer in terms of section 50C(2)(a) where assessee has claimed that value of land and building assessed by stamp valuation authority exceeded FMV of property. **Sarwan Kumar vs ITO [2014] 45 taxmann.com 16 (Delhi - Trib.)**
- In case assessee objects value of asset adopted by AO for computing capital gain, AO ought to refer valuation of asset to valuation officer. **S. Muthuraja vs CIT [2013] 37 taxmann.com 352 (Madras)**
- Assessee can request for reference to DVO if assessee has objection to adoption of value as fixed by Special Deputy Collector (Stamps) as FVC received on transfer of property and AO is not justified if he does not accede to assessee's request. **B.N. Properties Holdings (P.) Ltd. vs Asstt. CIT [2010] 6 ITR (Trib.) 1 (Chennai-ITAT)**

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Whether reference to DVO is mandatory.....

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- If there is strong objection from the assessee's side without challenging the stamp duty valuation, then valuation should be referred to Valuation Officer, who is an expert and who can do the correct valuation. **Ajmal Fragrances & Fashions (P.) Ltd. Vs Asstt. CIT [2009] 34 SOT 57 (Mum.-ITAT)**

- Where the assessee objects to stamp duty valuation, the AO is required to call for report of DVO, and even if the valuation report is received after the assessment, the value determined may be rectified u/s 154.

[Mrs. Nandita Khosla v. ITO Taxman 344 (ITAT-Mum.)[2011], [Kanai Lal Sharma Vs ACIT TIOL-324-ITAT-(Kol) (2011)]

- Also see **K.K. Nag Ltd. Vs Addl. CIT [2012] 22 taxmann.com 37 (Pune-ITAT), Pawan Kumar Agarwal vs Asstt. CIT [2013] 37 taxmann.com 446 (Lucknow - Trib.), Anil Kumar Jain vs ITO [2013] 34 taxmann.com 258 (Delhi - Trib.) & ITO v. Shiv Kumar Rangwani (2014) 57 (II) ITCL 2 (Jod-Trib)**

Section 50C is applicable to depreciable assets

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On harmonious interpretation of sec 50 and sec 50C, it is clear that there is no exclusion of applicability of one fiction in a case where other fiction is applicable. Thus, provisions of sec 50C can be applied to the transfer of depreciable capital assets covered by sec 50 and in computing the capital gain arising from the transfer by adopting the stamp duty valuation. **ITO v. United Marine Academy 9 ITR 639 (Mum. ITAT) (2011)**

Also see **Smita Conductors Ltd. vs Dy. CIT [2014] 41 taxmann.com 514 (Mumbai - Trib.)**

Legal fiction created by sec. 50C is limited to purposes of sec.48 alone and does not displace legal fiction created by sec. 69, 69A & 69B

Subash Chand v. ACIT [2012] 49 SOT 732 (Chandigarh-ITAT)

The **consideration, which is deemed by sec. 50C** to have been received by the transferor, **is for the limited purpose of computation of capital gain u/s 48 and for no other purpose.** It cannot and does not mean that the said amount of consideration has been actually received by the assessee or actually paid by the transferee to him so as to be available in his hands for investments or for meeting the expenses. "Deemed consideration" u/s 50C for computation of capital gain u/s 48 is quite different from actual consideration or actual availability of money for the purpose of making investments or for meeting the expenses. Deemed consideration within the meaning of sec. 50C cannot and does not mean that the amount of deemed consideration has actually been paid by the transferee or actually received by the assessee.

Also see Rajdeep Builders vs Asstt. CIT [2012] 21 taxmann.com 254 (Chd.-ITAT)

Contd....

- The deeming fiction of Sec. 50-C could not be applied for ascertaining the undisclosed investment of assessee under Sec. 69-B. Further, in absence of any evidence for applying s 69B, difference b/w value for purpose of stamp duty and value shown in sale deed cannot be added in the income of assessee.

ITO v. Fitwell Logic System (P.) Ltd. 1 ITR (TRIB.) 286 (Delhi) [2010]

CIT-II Vs Harley Street Pharmaceuticals Ltd TIOL-391-(Ahm) (2011)

DVO's report is binding on AO

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- ❑ Held that_ the AO had to proceed with assessment in conformity with estimate given by DVO even if the DVO had valued a property lower than that of Registration Authority. **Jalan Chemical Industries (P.) Ltd. vs ITO [2014] 43 taxmann.com 229 (Kolkata - Trib.)**
- ❑ Held that generally, when the Assessing Officer has obtained the D. V. O. report then the same is binding. **CIT vs Dr. Indra Swaroop Bhatnagar [2013] 30 taxmann.com 293 (Allahabad) and Sri Pattabhiram v. ITO [2014] 148 ITD 282 (Visakhapatnam - Trib.)**
- ❑ Where FMV assessed by DVO is lower than stamp duty valuation, value adopted by DVO has to be adopted for computing LTCG. **ITO vs Gita Roy [2012] 19 taxmann.com 121 (Kol.)**
- ❑ Also see **Suresh C. Mehta vs ITO [2013] 35 taxmann.com 230 (Mumbai - Trib.)**

Section 50C not applicable where Stamp duty value is lower than declared by assessee in the sale deed.

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Punjab Poly Jute Corpn. Vs Asstt. CIT [2009] 120 ITD 233 (ASR.)

- Section 50C comes into play only when there is valuation at a higher value for stamp valuation purposes by the State Authority than declared by assessee in the sale deed.
- When there is such difference noticed, valuation adopted by the stamp valuation authority has to be substituted with the sale consideration of such property mentioned in the sale deed.
- In the present case, the property registered at particular rate, which is adopted for registration purpose and there is no question of replacing the valuation adopted by the stamp valuation authority with the DVO for the purpose of computing the capital gain.
- The purpose of section 50C is that the property, which is under transfer from the assessee to another person, should have been assessed at higher value for stamp valuation purpose than that received by the assessee.
- Since the stamp valuation authority had accepted the consideration declared by the assessee in sale deed, there is no question of once again referring the matter to the DVO.

Also see **Asstt. CIT vs Anjali Dua [2013] 33 taxmann.com 593 (Delhi - Trib.)**

Opportunity to assessee/ Valuation Officer

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- A proper opportunity is required to be provided to the assessee to raise objections pertaining to the report submitted by D.V.O. Non-provisioning of opportunity is violation of the principle of natural justice. **Manvendra Singh vs CIT [2014] 42 taxmann.com 149 (Allahabad)**
- as per the statutory scheme, when the report /order of Valuation Officer u/s 50C(2) is objected to by assessee, the CIT (Appeals) or ITAT are obliged to extend an opportunity of hearing to such Valuation Officer. **CIT vs Prabhu Steel Industries Ltd. [2013] 36 taxmann.com 393 (Bombay)**
- While computing capital gains u/s 45, FVC has to be taken as per circle rates prescribed by the State Government for the purpose of stamp valuation unless the AO has material in his possession to prove that the assessee had received higher amount than the circle rates.
Adoption of the DVO's report without providing opportunity of being heard is also against the principles of natural justice. **ADIT v. Ranjay Gulati -TIOL -528 (ITAT-Delhi)(2011)**

Property sold to third party cannot be the basis for determining the capital gain for sale to sister concern.

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The Taxing Authorities are not entitled to, in determining whether the receipt is liable to be taxed or not, ignore the legal character of the transfer, which is a source of receipt and to proceed on what they record as substance of the matter. The taxing authorities are entitled and are now bound to determine true legal character resulting from transaction.

The property sold to a third party cannot be the basis for determining the capital gain tax in respect of a sale in favour of the sister concern. **CIT vs Velankani Information Systems (P.) Ltd. [2013] 35 taxmann.com 1 (Karnataka)**

Penalty u/s 271(1)(c) viz-a-viz Section 50C

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- Where assessee had offered actual amount received on sale of property for taxation, revenue authorities were not justified in passing penalty order under section 271(1)(c) by adopting higher sale consideration under section 50C on basis of stamp duty valuation of said property. **CIT vs Madan Teatres Ltd. [2014] 42 taxmann.com 26 (Calcutta)**
- Merely applicability of sec 50C will not prove escapement of Income. **ITO vs Shri Haresh Chand Agarwal, HUF, Date of Order: ITA No.282/Agra/2013, Date of Order: 20.12.2013, ITAT-Agra**

Revenue cannot take recourse to section 50C in case of purchaser of property

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- Held that Sections 50-C is applicable to the seller and provides that the valuation made by the Stamp Valuation Authority is to be deemed as the consideration received by the seller. **CIT v. Vishal Sushilkumar Poddar, Tax Appeal No. 2296 of 2009 dated June 22, 2011**

Also see

- a. **CIT vs Meghajibhai Popatbhai Virani [2013] 35 taxmann.com 100 (Guj.)**
- b. **CIT vs Sarjan Realities Ltd. [2013] 40 taxmann.com 398 (Guj.)**
- c. **ITO vs Mrs. Inderjit Kaur [2012] 19 taxmann.com 66 (Chd.-ITAT)**
- d. **ITO vs Venu Proteins Industries [2010] 4 ITR(T) 602 (Ahd.-ITAT)(MAG)**

DVO cannot blindly base his valuation of property on circle rates

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- The valuation by the stamp valuation authority is based on the circle rates. These circle rates adopt uniform rate of land for an entire locality, which inherently disregards peculiar features of a particular property. Even in a particular area, on account of location factors and possibilities of commercial use, there can be wide variations in the prices of land. However, circle rates disregard all these factors and adopt a uniform rate for all properties in that particular area.

If the circle rate fixed by the stamp valuation authorities was to be adopted in all situations, there was no need of reference to the DVO under s. 50C(2).

Ravi Kant vs ITO [2007] 110 TTJ 297 (Delhi-ITAT)

Contd....

DVO cannot blindly base his valuation of property on circle rates.....

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- Held that the circle rate as stipulated u/a 50C can become the starting point of an inquiry but cannot be the sole concluding reason to hold that there was understatement of sale consideration.

CIT v. Khoobsurat Resorts (P.) Ltd. [2013] 256 CTR 371 (Delhi)

CIT vs Hanuman Prasad Ganeriwala [2014] 43 taxmann.com 133 (Delhi)

Deduction u/s 54F in case notional gain is invested

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- Where capital gain is assessed on notional basis u/s 50C, whatever amount is invested in new residential house within prescribed period u/s 54F, entire amount so invested would get benefit of exemption irrespective of fact that funds from other sources are also utilized for new residential house. **Gouli Mahadevappa vs. ITO [2013] 33 taxmann.com 47 (Karnataka)**

Other Issues....

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- Value adopted or assessed by any authority of the State Government for purpose of payment of stamp duty in respect of land or building at the time of execution of the transfer deed cannot be taken as sale consideration received for the purpose of section 48. **CIT v. Smt. Shweta Bhuchar 192 Taxman 67 (P&H) [2010]**
- For the purpose of section 50C, the valuation has to be adopted in case of transfer of land and building together jointly and not separately. **J. Anjaneya Sharma vs CIT [2014] 42 taxmann.com 182 (Andhra Pradesh)**

Other Issues....

- ❑ Where there is nothing on record to show that the assessee received consideration for the sale of the property in excess of that which has shown in the agreement to sell.
The actual sale consideration recorded in the agreement to sell and received by the assessee could not be substituted by the value as adopted by the DVO u/s 55A for the purpose of computing the capital gains chargeable to tax. **Dev Kumar Jain V ITO 309 ITR 0240 (Del) [2009]** see also **CIT v Smt. Nilofer I. Singh 309 ITR 0233 (Del) [2009]**

- ❑ In absence of any material to effect that assessee had received any amount over and above value on which stamp duty was payable, FVC would be value adopted for purpose of stamp valuation. **ITO v. Ms. Namita Singh 15 taxmann.com 19 (ITAT-Delhi) [2011]**

Other Issues....

- **For applicability of Sec. 50C, assessee's own name need not appear in revenue records as owner of land**

Section 50C nowhere states that the assessee should be directly owner. Moreover, the transaction had been owned by the assessee and it had been so returned by her in the income-tax return. Therefore, the assessee could not plead that she was not the owner and she did not transfer the said land and, therefore, no capital gain was assessable in her hand. **ITO vs Smt. Sushma Gupta [2011] 44 SOT 568 (Delhi-ITAT)**

REFERENCE TO
VALUATION OFFICER
U/S 55A

Reference to Valuation Officer u/s 55A....

With a view to ascertaining the FMV of a capital asset for the purposes of this Chapter, the AO may refer the valuation of capital asset to a Valuation Officer—

- a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the AO is of opinion *that the value so claimed **is at variance with its fair market value.***” (amendment by Finance Act. 2012)
- b) in any other case, if the AO is of opinion—
 - i. that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf ; or
 - ii. that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

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Reference to Valuation Officer u/s 55A....

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Where any such reference is made, the provisions of sub-sec. (2), (3), (4), (5) and (6) of sec. 16A, clauses (ha) and (i) of sub-sec. (1) and sub-sec. (3A) and (4) of sec. 23, sub-sec. (5) of sec. 24, sec. 34AA, sec. 35 and sec. 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the AO under sub-sec. (1) of sec. 16A of that Act.

Explanation.—In this section, “Valuation Officer” has the same meaning, as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Issues-Sec. 55A

- Where valuation report of approved valuer submitted by assessee suffered from grave infirmity, inasmuch as it did not take into account a number of items used by assessee for construction of property, AO can adopt the value determined by DVO. **Krishan Kumar Jhamb v. ITO 179 Taxman 141 (P& H) [2009]**



THANK YOU...!!

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