

# Taxability of Real Estate transactions

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# Understatement of consideration

- What is the recourse available with the AO ?
- Can AO refer to the Valuation Officer for ascertaining FMV of the transferred capital asset ?
- What are the consequences if the Valuation Officer arrives at a value higher than the stated consideration ?

# Reference to Valuation Officer

- Section 55A of the Income tax Act, 1961
- Specific powers to the AO for referring to the Valuation Officer if in the opinion of AO the value of the asset as claimed by the assessee is less than the FMV of the asset.
- Reference only for the purpose of ascertaining FMV for the purpose of Chapter IV of the Act

# Reference to Valuation Officer

- Reference in the case of property purchased or constructed, etc
- Addition by the AO u/s 69, 69B, 69A of the Act which fall in Chapter VI which is outside the purview of section 55A
- *Amiya Bala Paul 262 ITR 407 (SC)*
- Section 142A introduced by The Finance (No. 2) Act, 2004 w.r.e.f. 15-11-1972

# Section 142A

- To estimate the value of any investment referred to in section 69, 69B, 69A of the Act
- Introduced by The Finance (No. 2) Act, 2004 but made effective from 15-11-1972
- Proviso to the effect that section not to apply to assessments which have become final & conclusive before 30<sup>th</sup> day of September, 2004

*ACIT v. Shakti Bldrs (2005) 93 ITD269(ITAT-DEL)*

# Valuation for Stamp Duty

- Actual consideration < Value for Stamp Duty
- Actual consideration that passed between the parties is a question of fact to be determined in each case having regard to the facts & circumstances of the case.

*Dinesh Kr Mittal v. ITO (1992) 193 ITR 770 (All)*

- Section 50C introduced by The Finance Act, 2002 w.e.f. 1-4-2003

# Section 50C

- Value for the purpose of stamp duty, deemed to be the full value of the consideration from transfer of the capital asset for calculating capital gains
- In case the value is disputed before the AO and the stamp duty valuation has not been disputed; the AO may refer to a Valuation Officer for ascertaining FMV

# Issues in section 50C

- Consequences in case value arrived at by the Valuation Officer is:
  - less than stamp duty valuation
  - more than the stamp duty valuation
- In case the stamp duty valuation is disputed before the concerned authority; Section 155(15)
- Section 50C applicable only to the seller but 142A may be invoked to make addition in the hands of the buyers.
- How the seller can avail benefit u/s 54/ 54EC

# Questions

- Whether AO can refer a capital asset to the Valuation Officer for ascertaining the FMV of the asset ?
- What are the consequences in case the Valuation Officer arrives at a FMV higher than the stated consideration ?

# Reference to DVO

- **55A** : For assessment of capital gains
- **142A** : For ascertaining cost of acquisition of property
- **50C** : In case stamp duty valuation is more than the stated consideration & the assessee does not accept the same for assessment of capital gains.

# Consequences of higher valuation by DVO

## Section 142A(3)

On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment

# Consequences of higher valuation by DVO

## Section 50C

- Consequences in case value arrived at by the Valuation Officer is:
  - less than stamp duty valuation
  - more than the stamp duty valuation
- In case the stamp duty valuation is disputed before the concerned authority; Section 155(15)

# Understatement of consideration

- Whether valuation report is an evidence sufficient for making addition?
- Whether addition on the basis of valuation report can be made in the hands of buyer or seller ?

# Understatement of consideration

- **Section 52(2):**  
FMV of the asset transferred exceeds the stated consideration by 15% than FMV be taken as the full value of consideration for the transfer.
- **K.P. Verghese V. ITO.(1981) 131 ITR 597 (SC)**  
Onus on the revenue to show that the FMV of the asset exceeds the stated consideration but also that the consideration had been understated and the assessee had actually received more than what was declared by him.
- **Section 52 deleted from the statute by The Finance Act, 1987**

# Consequences

- K.P. Verghese v. ITO (1981) 131 ITR 597 (SC)
- CIT v. George Handerson & Co. Ltd (1967) 66 ITR 622 (SC)
- CIT v. Gillander Arbuthnot & Co ( 1973) 87 ITR 407 (SC)
- CIT v. Rakesh Kumar, SLP (civil) No. 3330 / 1982 (1988) 171 ITR (ST) 47 (SC)

# Understatement of consideration

- Expert valuer confirming the valuation as per the sale deed
- Valuation officer of the department arrived at a higher value
- Lordships Sabyasachi Mukherji and S.Ranganathan JJ. Dismissed departments special leave petition against the orders of the Delhi High Court holding that no understatement of value was proved

*CIT v. Rakesh Kumar 171 ITR (ST) 47 (SC)*

*ACIT v. Shakti Bldrs (2005) 93 ITD269(ITAT-DEL)*

# Understatement of consideration

- AO can substitute actual sale consideration in place of stated consideration, if there is evidence to show that the assessee had indeed received higher amount

Inderpal Singh Ahuja v. CIT (2006) 103 ITD 271  
(ITAT-Asr)

# FMV ascertained by DVO

- No addition can be made only on the basis of FMV of the asset acquired but
- Addition can be made u/s 69B in case inference can be drawn on the basis of material on record that the assessee has invested more amount
- Addition to the stated consideration made u/s 69B held to be valid & the finding of ITAT regarding value of the property upheld being a finding of fact

Smt Amar Kumari Surana v. CIT (1996) 89 Taxman 544  
(Raj)

# Understatement of consideration

- Agreement as well as other documents seized during the course of search stating amounts more than the sale consideration as per the sale deed
- Held; The court cannot come to the conclusion that the price mentioned in the sale deed is not correct unless it is proved that the amount stated in the agreement was paid

CIT v. K.C. Agnes and others  
(2003) 262 ITR 354 (Ker)

# Issues in section 50C

- Finality as regards consequences of variation as per section 50C not binding.  
**Ravi Kant v. ITO (ITA No. 3671 of 2006) dt 13/7/07 (Delhi)**
- Provision yet to be tested in the light of decision in the case of **K.P. Verghese V. ITO.(1981) 131 ITR 597 (SC)**

# Conclusion

- AO can refer such cases to Valuation Officer
- FMV determined by the DVO may result in addition:
  - u/s 69B in the hands of the buyer
  - : u/s 50C in the hands of the seller
- Decision of ITAT in this regard may be very crucial because the value of the asset is a finding of fact
- Case of the assessee needs to be properly built and argued

# Profit on sale of property used for Residence

## Section 54

### Basic Conditions

- Individual or HUF
- Transfer of long term capital asset
- buildings or lands appurtenant thereto
- Residential house
- The income of which is chargeable under the head "income from house property"

### Compliance for exemption

- Purchase a residential house
  - one year before
  - two year afterthe date of transfer
- constructed a residential house
  - with in period of 3 yearafter the date of transfer
- Restriction on transfer of new asset

# Exemption U/s 54

Capital Gains  $>$  Cost of the new residential house

- diff liable to tax u/s 45.

Capital Gains  $\leq$  Cost of the new residential house

- No taxability u/s 45.

# New Asset

- Not to be transferred within a period of 3 years of its purchase or construction as the case may be
- In case transferred:
  - Gain to be short term capital gain
  - Cost of acquisition depends upon extent of exemption availed at the time of its acquisition
    - if fully exhausted - Nil
    - Otherwise - Balance

# Profit on sale of capital asset other than residential house

## Section 54F

### Basic Conditions

- Individual or HUF
- Transfer of long term capital asset
- Other than residential house

### Compliance for exemption

- Purchase a residential house
  - one year before or
  - two year afterthe date of transfer or
- constructed a residential house
  - with in period of 3 yearafter the date of transfer
- Eligibility as well as other conditions to be fulfilled

# Conditions for section 54F

- Assessee should not own more than one residential house other than the new asset on the date of transfer of the original asset
- Should not purchase/ construct any other residential house within two years / three years respectively of the transfer of the original asset
- New asset not to be transferred before three years from the date of its purchase/ construction, in case transferred LTCG exempted earlier to be taxed in the year of sale

# Exemption U/s 54F

Net consideration  $>$  Cost of the new residential house  
- diff liable to tax u/s 45.

Net consideration  $\leq$  Cost of the new residential house  
- No taxability u/s 45.

# Diff between 54 & 54F

- Transfer of residential house ; any other capital asset
- Restriction on ownership of one residential house at the time of transfer u/s 54F
- Net sale consideration to be invested for exemption u/s 54F
- Restriction on purchase within 2yrs / construction within 3yrs of any other residential house u/s 54F
- In case sale of new asset within 3 yrs:
  - Section 54: Cost of acquisition of the asset to be adjusted with the amount of exemption availed
  - Section 54F: LTCG taxable in the year of sale of the new asset

# Cost of plot

- Whether cost of plot for the purpose of construction of residential house is considered for benefit u/s 54/ 54F ?
- Cost of land is the integral part of the cost of residential house
- *Circular No. 667 dt 18/10/1993*

# Issues in section 54/ 54F

- Benefit restricted for either purchase or construction of a residential house or both can be considered jointly ?
- Benefit available for both jointly
- *BB Sarkar v. CIT 132 ITR 150 (cal)*

# Purchase of more than one house

- Whether benefit u/s 54 is available for purchase of more than one house ?
- Section 54/54F : “a residential house”
- Whether “a” here denotes “one”

# Purchase of more than one house

- *Benefit restricted to only one house*  
*KC Kaushik v. ITO (1990) 185 ITR 499*  
*(Bom)*
- *KG vyas v. ITO 16 ITD 195 ( ITAT- Mum)*
- The controversy and the judicial precedents above was on section as it stood before amendment by The Finance Act, 1982 where benefit was restricted to “a house property for the purpose of his own residence”

# Purchase of more than one house

- **The General Clauses Act, 1897:**  
**Section 13(2):** "words in the singular shall include the plural, and *vice versa*"
- The article "a" is not necessarily a singular term. It is often used in the sense of any, and when so used it may be applied to more than one individual object- **National Union Bank v. Copeland 4NE 794**
- *Two adjacent flats; Held allowable; D. Anand Basappa v. ITO (2004) 91 ITD 53 (Bang.)*
- *Held allowed only for one flat; Gulshanbanoo R. Mukhi v. JCIT (2002) 83 ITD 649 (ITAT- Mum)*
- *Held: Not allowable except in the case of adjacent & contiguous flats; ITO v. Mrs Sushila M. Jhaveri 107 ITD 327 (ITAT- Mum. SB)*

# Land & building

- Land purchased in 1991
- Residential house constructed thereon in 1995
- Sold in 1996
- Whether gain is short term or long term  
*CIT v. lakshmi b Menon (2003) 184 CTR 52 (Ker)*  
*Capital gains to be determined seperately*

# Execution of sale deed

- Payment made but sale deed could not be executed within 2 yrs; whether assessee is entitled to benefit u/s 54 ?
- Legal transfer not mandatory, payment of consideration coupled with taking over of possession is more important

*CIT v. Dr Laxmichand (1995) 211 ITR 804 (Bom)*

*CIT v. Shahzada Begum (1988) 175 ITR 397 (AP)*

# New house in wife's name

- Capital gains from sale of residential house property in the name of husband
- New residential house purchased in the name of wife
- Exemption u/s 54 allowable

*CIT v. Natrajan (2006) 287 ITR 271  
(Mad)*

# Section 54F

- Pre condition that assessee should not own more than 1 residential house
- Share in a joint property is 'owned wholly or partly' whereas in section 54F the word is 'owned'
- For denial of exemption u/s 54F the assessee should own a complete residential house and does not include shared interest in a residential house

*ITO vs Rasik Lal N Satra (2006) 98 ITD 335 (Mum)*

# Acquisition of share in property

- Assessee purchases 15% share in the residential house property in which he was already staying
- Exemption u/s 54 cannot be denied

*CIT vs Chandan ben Magan Lal (2000) 245 ITR 182  
(Guj)*

*CIT vs TN Arvinda Reddy (1979) 120 ITR 46 (SC)*

# Non residential use of house

- House purchased / sold u/s 54 / 54F although being a residential house is being utilized for non-residential purposes
- Mere non-residential use of residential house would not render property ineligible for benefit u/s 54/ 54F

*Mahavir Prasad Gupta (2006) 5 SOT 353 (Del)*

*Amit Gupta v. DCIT (2006) 6 SOT 403 (Delhi)*

# Purchase of residential house outside India

- Whether assessee entitled to exemption u/s 54/ 54F
- Held: No, Income Tax Act, 1961 applies only to India  
*Leena J Shah v. ACIT (2006) 6 SOT 721 (Ahd)*
- Held: Yes, section 54 does not impose any bar on acquisition outside India  
*Prema P Shah v. ITO 282 ITR (ITAT) (Mum.)*

# Collaboration agreement

- Whether repurchase of a part of the property sold will entitle assessee to claim benefit u/s 54
- Held, yes

*CIT v. Phiroze H. Patel (1994) 205 ITR 377 (Bom)*

# Construction whether before or after the date of transfer

- Whether construction of house property can be completed before the date of transfer of the original asset

- Held, No

*Smt Shantaben P. Gandhi (1981) 129 ITR 218 (Guj)*  
*CIT v. JR Subramanya Bhat (1987) 165 ITR 571*

- Whether it can be started before the date of transfer

- Held, Yes

*CIT v. HK Kapoor (1998) 150 CTR 128 (All)*

# Payment for SFS/ CGHS flat

- Whether to be taken as construction or purchase of residential house
- To qualify for construction
- *Circular No. 471 dt 19-10-1986*
- *Circular No. 672 dt 16-12-1993*

# Purchase/ construction

- Property being developed by the builder under collaboration agreement
- Assessee to get some portion of the dwelling unit
- Whether time limit of 2 yrs or 3 yrs would apply ?
- The case would fall under purchase of property by way of construction  
*ITO v. Abbas Ali Shiraz (2006) 5 SOT 422 (Bang.)*
- Construction may be by a third party  
*CIT v. Uma Budhia (2004) 141 Taxman 39 (Kol.)*

# Construction with in 3 years

- Assessee has made payments out of the capital gains with in the stipulated time
- Builder failed to hand over the property with in the prescribed time
- Exemption u/s 54/ 54F cannot be denied

*CIT vs RC Sood (2000) 108 Taxman 227 (Del)*

*CIT vs Ms Hille JB Wadia (1995) 216 ITR*

# Incomplete house

- Capital gains invested in construction of residential house within the stipulated time
- More funds required to complete the construction in a particular manner
- Assessee entitled to exemption as the utilization of the capital gains is complete
- **Ajay Goyal v. ITO (ITA No 493 of 2004 dt 9-5-2005)**

# Transformation of an asset

- Assessee books a flat with DDA/ becomes member of a CGHS in 2001
- Possession of the flat is given to the assessee in 2003
- Flat sold in 2005
- Capital gain; whether long term or short term

*Flat is only an incidental right flowing from the shareholding in the CGHS*

*CIT vs Jindas Parchand Gandhi (2005) 279 ITR 552  
(Guj)*

# Link capital gain & investment

- Capital asset sold resulting in long term capital gains and sale proceeds utilized for business.
- New residential house property purchased after getting the same financed from bank
- Other stipulations for exemption complied
- Whether assessee entitled to deduction u/s 54
- **Ajit Vaswani v. (2001) CIT 117 Taxman 123 (Delhi) (Mag.)**

# Death of the assessee

- Legal heirs entitled to exemption if conditions satisfied

*CV Ramanathan (1980) 155 ITR 191 (Madras)*

*Mir Ghulam Ali Khan (1987) 165 ITR 228 (AP)*

- Deposit in Capital Gains Scheme A/C inherited by the legal heirs
- No obligation to utilize the same for purchase or construction of the residential house because the same is not income but estate devolving upon the legal heirs.

*Circular No. 743, dt 13-7-1989*

# Benefit u/s 54/ 54F

- Benefit only for new construction or for remodeling & renovation also covered
- Benefit not restricted to new construction alone

*CIT v. ar Mathavan pillai (1996) 219 ITR 696 (Ker)*

*CIT v. Narsimhan PV (1990) 181 ITR 101 (Mad)*

- Mere extension of old existing house would not mean construction. The construction must be real one and not a symbolic construction.

*CIT v. Pradeep Kumar (2006) 153 Taxman 138 (Madras)*

# Farm House

- Whether a farm house can be considered as a residential house for the purposes of section 54/54F
- Land appurtenant to a building is a question of fact
- Land appurtenant thereto implies lands which are necessary for the effective enjoyment of the building as a residential house
- Tests as per judicial precedents

*S Radha Krishnan vs CIT (1984) 145 ITR 170 Madras)*

*CIT vs M Kalpagam (1997) 227 ITR 733 (Madras)*

*CIT vs Zaibunisa Begum (1985) 151 ITR 320 (AP)*

*L & T vs Trustees (1988) 4 SCC 260*

# Indexation

- Father purchased house property for Rs1.16 lac in the year 1983.
- Father died in the year 2004 and son Mr. X inherits the property.
- Mr. X sells the property in Nov,05 for Rs5.00 lacs.
- Cost Inflation Index:
  - 1983-84: 116
  - 2004-05: 480
  - 2005-06: 497
- Taxability under the head capital gains:
  - Short term/ long term
  - Cost of acquisition
  - indexation

# Capital asset acquired u/s 49

- Explanation (iii) to Section 48:  
Indexed cost of acquisition means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1-4-81 which ever is later.
- Date from which indexation to be done ?
- From the date of acquisition of the previous owner;  
**Pushpa Sofat 81 ITD 1 (ITAT-Chd)**
- From the date of inheritance; **Kishore Kanungo 102 ITD 437 (ITAT-Mum)**

# Capital Gains Tax Scheme

## Section 54(2)

- unutilized amount of capital gains
- Deposit in an account
- With any specified bank or institution
- Scheme notified in official gazette by Central Government
- Before the date of furnishing ITR u/s 139(1)
- Proof of such deposit to be furnished alongwith the ITR.
- Withdrawal for purchase/construction of new house.
- Unutilized amount chargeable to tax as the income of the previous year in which the period of three years expires.

# Capital Gains Scheme

- Funds given as advance instead of depositing in the Capital Gains Scheme
- Later received back
- Property purchased during the stipulated time
- Whether benefit u/s 54 or 54F will be available to the assessee
- *"Deminimus non curat lex"*  
*Rupali R Desai v. ACIT (2005) 273 ITR 109 (ITAT-MUM)*
- *Exemption u/s 54F not available*  
*Taranbir Singh Sahni v DCIT(2006)5 SOT 417 (Delhi)*

# Section 54EC

- Long term capital gains not to be charged on investment in certain bonds at any time within a period of 6 months from the date of transfer
- Specified asset wef 1/4/2006:
  - National Highway Authority of India
  - Rural Electrification Corporation Limited
- Advance invested in specified bonds, while transfer takes place subsequently
  - Whether assessee entitled to benefit u/s 54EC
  - *Circular No. 359 dt 10-5-1983*
- Bonds transferred / security for loan with in 3 yrs

# Section 54GA

- Shifting from urban area to any SEZ
- Capital gains arising from transfer of land & building, plant & machinery exempt from tax in case utilised for establishment of undertaking in SEZ
- The capital gains to be utilised within 1 yr before or 3 yrs after the date of transfer for:
  - Purchase of plant & machinery
  - Land & building
  - Other expenses as may be specified by the CG
- SEZ may be in an urban area or any other area

# SEZ

- Section 54GA inserted by the Special Economic Zones Act, 2005 wef 10/2/2006
- Unprecedented privileges:
  - Section 10AA
  - Section 115JB(6)
  - Section 115-O
- Section 10AA amended wref 10/2/2006 by substituting sub-section 4 by Finance Act, 2007

# Agricultural Land

- What is agricultural land?
  - Whether agricultural or not is essentially one of fact & circumstances of each case; **Sarifabib Mohamed Ibrahim v. CIT (1993) 204 ITR 631 (SC)**
  - Determining factors; **CIT v. Siddharth J. Desai (1983) 139 ITR 628 (Guj)**
  - Forest land; **Kalpetta Estates Ltd v. CIT (1990) 185 ITR 318 (Ker)**

# Agricultural Land

- Capital asset (Section 2 (14))
  - Municipality having population of 10k or more
  - Within the notified area (not being more than 8 KM from local limits)
- Notification No. SO 10(E) dt 6/1/1994 as amended by Notification No. SO 1302 dt 28/12/1999

# Implications

- How the distance to be measured?
- Whether nearest municipality or as per revenue records?

# Agricultural land

- Rural agricultural land not a capital asset u/s 2(14)
- Compulsory acquisition not liable to tax u/s 10(37)
- Exemption of capital gains from sale of land in case other agricultural land purchased within 2 yrs

# Agricultural land

## Section 10(37)

- Compulsory acquisition under any law **or**
- The consideration for transfer is determined/ approved by C.Govt./ RBI
- Agricultural land belongs to Indvl/ HUF
- Land used for agriculture for the past 2 yrs by the assessee or his parents
- Consideration / compensation is received on or after 1/4/2004
- Asset may be short term or long term capital asset

# Exemption of capital gains on land used for Agricultural purposes

## Section 54B

1. Land used for agricultural purposes for the last 2 years by assessee or his parents.
2. Land purchased for agricultural purposes within a period of 2 years from transfer.
3. Capital gains to the extent utilized for the new asset exempt.
4. New asset not to be transferred for a period of 3 years
5. In case transferred cost of acquisition to be after adjusting capital gains exemption availed
6. Unutilized amount to be deposited in the capital gains scheme a/c

# Issues

## Section 54B

- Exemption only to individual
- The asset may be short term or long term
- Vendee may have purchased the land for any other purpose  
*CIT v. Savita Rani (2004) 270 ITR40 (P&H)*
- Land purchased may be in urban area

# Agricultural Land

- Capital asset:
  - Section 2(14)
  - Section 10(37)
  - Section 54B
- In case the same is held as stock in trade?

# Conversion of capital asset into stock in trade

## Section 45(2)

Fair Market Value of the asset on the date of conversion to be deemed to be full value of consideration.

Capital Gains deemed to be income of the year in which such stock in trade is sold.

# Conversion of stock in trade into a capital asset

- How capital gains to be ascertained ?
- How the period for which asset is held to be calculated ?
- Date on which asset was acquired will be the date of purchase of the asset
- Kalyani Exports & Investments Pvt Ltd v. CIT (2001) 78 ITD 95 (Pune)

# Transfer of capital asset

- By partner to firm
- By firm to partner
- *Sunil Sidharthbhai v. CIT (1985) 156 ITR 509 (SC)*  
*CIT v. B.C.Srinivasa Setty 128 ITR 294 (SC)*
- Section 45(3) & 45(4) brought into the statute by Finance Act, 1987 wef 1/4/1988

# Transfer by Partner to the Firm

## Section 45(3)

Transfer of capital assets  
by partner to the firm  
as capital contribution or otherwise.

Amount recorded in the books of accounts  
of the firm to be treated as full value of  
the consideration.

Capital Gains taxable accordingly.

# Transfer by Firm to the Partner

## Section 45(4)

Transfer by firm to the partner

by way of distribution of capital asset on dissolution of firm or otherwise

shall be chargeable to tax in the hands of the firm.

Fair Market Value of the asset to be deemed to be the full value of consideration.

# Issues in section 45(3) & (4)

- Transfer of capital asset by the partner to firm & vice-versa
- In case of partner to firm: Value recorded in the books of the firm
- In case of firm to partner: FMV of the capital asset
- Whether section 45(4) applies to retirement as well ?
- Whether section 45(4) operative without amendment in definition of transfer in section 2(47)

# Admission of a partner

- Partner transfers a capital asset to the firm
- A new partner is admitted who brings in his capital asset into the firm
- Proprietorship converted into partnership
- New partner admitted in an existing firm wherein firm possesses capital asset

# Admission of a new partner

- Firm possessing capital asset
- A new partner is admitted
- Whether there is any capital gain
- Held, yes
- *CIT v. Bhanodya Ind. (2002) 253 ITR 350 (AP)*

# Admission after revaluation

- Revaluation of assets & liabilities of the firm
- A new partner is admitted into the firm
- Subsequently old partners retire
- Whether any liability of capital gains
- Held, No
- *CIT v. Kunnamkulam Mill Board (2002) 257 ITR 544 (Ker)*

# Retirement of partner from firm

- Applicability of section 45(4)
- Partnership firm is not a separate legal entity
- Status prior to amendment by the Finance Act, 1987
  - *CIT v. Banke Lal Vaidya (1971) 79 ITR 594 (SC)*
  - *CIT v. Diwan Cine Corp. (1968) 68 ITR 240 (SC)*
  - *Malabar Fisheries v. CIT (1979) 120 ITR 49 (SC)*

# Section 45 (4)

- Whether transfer ?
- Whether retirement of a partner covered ?
- *Held, Yes*  
*CIT v. A.N. Naik Associates (2004)*  
*265 ITR 346 (Bom.)*
- *Similar circumstances: Held, No*  
*CIT v. Machines & Mopeds (2005) 281*  
*ITR 52 (M.P.)*

# Family arrangements

- Whether transfer of property in family settlement is chargeable to capital gains tax?
- Family arrangements made voluntarily to resolve the disputes among members of a family did not amount to transfer.
- No capital gain arises from the transaction
- *CIT vs AL Ramanathan 245 ITR 494 (Madras)*

# Family settlement

- Bona fide settlements to resolve family disputes and rival claims.
- Fair & equitable distribution of properties
- Voluntary and not induced by fraud, coercion or undue influence
- Arrangement may even be oral
- A document containing the terms & recital of the family arrangement requires registration
- Registration not mandatory for Memorandum prepared after the arrangement has already been done for the purpose of record or court
- Settlement without registration may not be accepted as evidence but the same can be admissible as a corroborative evidence of the transaction.
- Disputes:
  - Should be bonafide
  - May be present or possible
  - May not involve legal rights

**Kale v. DDC AIR 1976 SC 807**

# Family Arrangements

- Cost of acquisition in the hands of the member receiving the asset after the settlement
- Cost to the previous owner and not the amount mentioned in the family settlement deed

**CIT v. Shanti Chandran (2003) 127  
Taxman 475 (Mad)**

# Mode of Computation of Capital Gains

## Section 48

Full value of the consideration received or accruing as a result of transfer of capital asset less.

- (i) expenditure incurred wholly & exclusively in connection with such transfer.
- (ii) the cost of acquisition of the asset & the cost of improvement there to.

# Interest on borrowings

- Revenue expenditure
- Allowable u/s 57 or u/s 24 of the Act
- Balance interest can be taken as allowable deduction for calculation of capital gains
- *CIT v. Mithlesh Kumari (1973) 92 ITR 9 (Del)*  
*Addl CIT v. K.S.Gupta (1979) 119 ITR 372*  
*CIT v. Mithreyi Rai (1989) 152 ITR 247 (Ker)*  
*Vasanji Sons & co Pvt Ltd (1975) 99 ITR 148 (Del)*

# Developers of Real Estates

- Transactions take place over years.
  - Pre-launch
  - Booking of apartment
  - Buyer's agreement
  - Sale deed
- When income to be recognised in the hands of the developer ?

# Real Estate Sales

- Point of time when all significant risks and rewards of ownership can be considered as transferred.
  - Transfer of legal title to the buyer
  - Giving possession to the buyer under an agreement for sale.
  - Buyer's agreement at initial stages of construction

# Agreement

- Agreement to sell may have the effect of transferring all risks & rewards of ownership to the buyer inspite of:
  - Legal title not transferred
  - Possession not given to the buyer.
- Agreement is legally enforceable
- Significant risk transferred
- Price risk considered to be significant risk
- Buyer has legal right to sell without any condition or such conditions which do not materially effect his right

# Sellers obligations

- No substantial acts to complete under the contract
- Obligation to perform substantial acts;
  - Revenue to be recognised on proportionate basis
  - % completion method to be adopted
  - AS-7; Constructions Contracts to be followed

# Recognition of Revenue & Expenses

If outcome of contract can be reliably estimated

- Revenue & Costs pertaining to the contract should be recognized by the % completion method

- Implication

Total Revenue -

Total Costs \_\_\_\_\_

Profit \_\_\_\_\_ ?

- Based on % of work completed

Revenue, Cost, Profits, etc.

up to the reporting date to be treated in F.S.

# Issues

- (1) What is a reliable estimate of outcome of transaction ?
- (2) Revenue from contract how ascertained
- (3) How to ascertain cost of the contract ?
- (4) % of work completed
- (5) How to deal with expected losses ?
- (6) If reliable estimates not possible ?

# Reliable estimates possible

Total Revenue can be reliably measured

- a) Economic benefits will flow to the enterprise
- b) Contract cost attributable to the contract can be clearly identified and reliably measured
- c) Stage of completion can be reliably measured

# Forfeiture of earnest money

- Capital asset acquired in FY 1995-96 for Rs.10 Lacs
- Advance of Rs.3 lacs received during FY 2005-06 against sale of the said property for Rs.25 lacs
- Buyer could not make the payment of balance amount and the earnest money is forfeited.
- Treatment ?

# Advance money received

## Section 51

- Advance money received & retained
- To be deducted from the cost or FMV in computing cost of acquisition

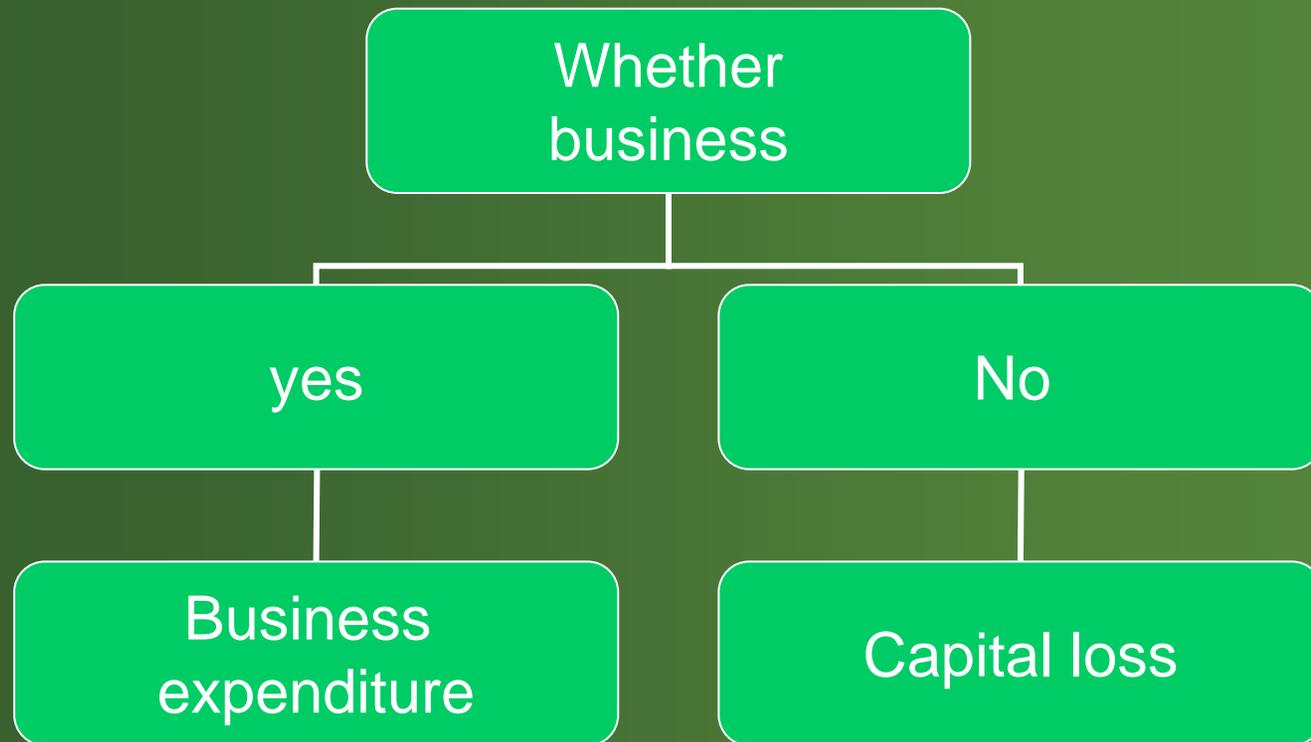
# Issue

- Whether advance money received & retained is to be deducted from cost of acquisition or indexed cost of acquisition
- Section 48 amended wef 1-4-1993 consequential amendment to section 51 not done
- Advance received more than cost of acquisition

# Treatment of advance

- Cost of acquisition : Rs.5 lacs
- Advance forfeited : Rs.25 lacs
- Treatment ?
- Excess over cost of acquisition is a capital receipt
- *Travancore Rubber & Tea Co. Ltd. 243 ITR 158 (SC)*
- Subsequent sale whether cost of acquisition to be NIL or negative figure?
- *Held: NIL Smt Sunita N. Shah (2005) 94 ITD 492 (Mum)*

# Treatment in the hands of payer



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*Thank you*