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Deemed value of Consideration under Section 50C

(Insertion of Proviso to Section 50C by Finance Act, 2016)



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Introduction

Section [50C](#) is introduced by Finance Act, 2002 w.e.f. 1st April 2003 to curb the evasion of tax by taxpayers in case of transfer of immovable property being land or building or both. Before introducing the provisions, the Revenue noticed that the tax payers are transferring the immovable property being land or building or both below the value adopted or assessed or assessable by an authority of a State Government. The section basically refers to the "Stamp Valuation Authority" who assess the value of transaction as described in the instrument of transfer to levy stamp duty under respective state law.

Basic Intent of Introducing Section 50C

The notes on clauses to the insertion of section 50C provides that 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 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 shall be deemed to be the [full value of the consideration received or accruing as a result of such transfer] even though assessee has received consideration which is below the value adopted or assessed.***

Section further provided that where the assessee claims that the value adopted or assessed for stamp duty purposes **exceeds the fair market value of the property as on the date of transfer**, and assessee has disputed the value so adopted or assessed in any appeal or revision or reference before any authority or Court, **the Assessing Officer may refer the valuation of the relevant asset to a Valuation Officer in accordance with section [55A](#) of the Income-tax Act. If the fair market value determined by the Valuation Officer is less than the value adopted for stamp duty purposes, the Assessing Officer may take such fair market value to be the full value of consideration.** On the other hand, if the fair market value determined by the Valuation Officer is more than the value adopted or assessed for stamp duty purposes, the Assessing Officer shall not adopt such fair market value and will take the full value of consideration to be the value adopted or assessed for stamp duty purposes.

Thus, the intent is to collect the tax on the transfer of immovable property being land or building or both on the consideration higher of the actual receipt or stamp duty value.

The purpose is to defeat the circulation of black money in the transactions of immovable property. Thereby legal fiction has been imposed in transactions related to immovable properties.

How deeming Provisions are interpreted

Where any deeming provisions are brought in the statute, it gives special power to the Revenue to deal with the transaction in manner specially provided in statute. However, one should understand the truth behind enactment of the deeming provisions before applying deeming provisions contained in the statute. This is so because one should not forget the fact that the **income** had actually not accrued but it had accrued because of the **deeming provisions** contained in the statute.

The deeming provisions create legal presumption to certain facts existed when the transaction was entered into by the parties and such legal presumption is to be accepted by the parties. The provisions also confers discretion sometimes either in favour Revenue or sometimes in favour of Assessee on the basis of the facts and circumstances of the each case. **The deeming fiction ignores the truthfulness of the matter under consideration.**

But nonetheless before applying deeming fiction under taxing statute one has to consider that Hon'ble Supreme Court in the case of ***Organo Chemical Industries v. Union of India* AIR 1979 SC 1803 in para 47 has observed that "each word, phrase or sentence is to be considered in the light of general purpose of the Act itself. A bare mechanical interpretation of the words devoid of concept or purpose will reduce most of legislation to futility. It is a salutary rule, well established, that the intention of the legislature must be found by reading the statute as a whole"**.

The deeming provisions contained in section 50C of the Income Tax Act, 1961 confers discretion to the Revenue to adopt full value of consideration either on the basis of stamp duty value (commonly known as circle rate) or value estimated by Valuation officer appointed under section 55A of the Act. Since it's a factual presumption, the law of land treats it as either rebuttable or irrebuttable. Section itself grants opportunity to either party to rebut the value as per circle rate. **And thus it can safely be said that deeming provision/fiction by virtue of section 50C is not conclusive.** Rather, its discretionary and when any of the provision of act are discretionary in nature, the same are to be interpreted in the manner that the purpose for which it was enacted is achieved.

Thus, provisions of section 50C being rebuttable in nature in no way dilute the rights of the either parties to assess the transaction at its real value and therefore, harmonious construction to deeming provisions and real income theory should be given to specific facts and circumstances of the case by ignoring the deeming fiction.

Introduction of first and second proviso.

Finance Act 2016 inserted first and second proviso to section 50C to make it in same line of the benefit provided to the assessee under section [43CA](#). Both the proviso are read as under:

"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".

Intent of introducing first and second proviso

The amendment to the section 50C is in line with recommendation given by Hon'ble Justice R.V. Easwar, (Former Judge, Delhi High Court and former President, ITAT) in Income Tax Simplification Committee Report. The extract of the said report is reproduced as under:

6.1 RATIONALISATION OF SECTION 50C TO PROVIDE RELIEF WHERE SALE CONSIDERATION FIXED UNDER AGREEMENT TO SELL

Section 50C makes a special provision for determining the full value of consideration in cases of transfer of immovable property. It provides that where the consideration declared to be received or accruing as a result of the transfer of land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (i.e. "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 be deemed to be the full value of the consideration, and capital gains shall be computed on the basis of such consideration under section [48](#) of the Income-tax Act.

The scope of section 50C was extended w.e.f. A.Y. 2010-11 to the transaction which were executed through agreement to sell or power of attorney by inserting the word "assessable" alongwith words "the value so adopted or assessed". Hence, section 50C is now also applicable in case of such transfers. The present provisions of section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement. A later similar provision inserted by way of section [43CA](#) does take care of such a situation.

6.2 It is therefore proposed to insert the following provisions in section 50C:

(4) Where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the value referred to in subsection (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.

(5) The provisions of sub-section (4) 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 a date of agreement for transfer of the asset.

Memorandum Explaining the Finance Bill 2016

Even the memorandum explaining the Finance Bill also says that the amendment is brought in to rationalise the existing provisions. The text is reproduced as below:

"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 on 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

first 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. 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. 30

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

(emphasis added)

Effect of introducing proviso to section 50C

Thus, amendment to section 50C seeks to provide benefits to the assessee where the date of agreement and date of registration of agreement is different, **the date of agreement fixing the value of consideration and not date of registration shall be regarded as the date of transaction for the purpose of applying section 50C**. However, such benefit has one rider 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.

Whether the insertion of proviso shall be constructed prospective or retrospective.

The amendment seeks to provide benefit to the assessee from assessment commencing from w.e.f. 1st April 2017. However, the amendment made is to rationalise the provisions in conformity with the similar provisions contained in section 43CA. The difference between section 43CA and section 50C is that the former apply to asset other than Capital asset and later apply to capital asset being land or building or both. The intent of both the section is to curb black money in real estate transactions.

Now, question arises that when section 43CA was brought into the statute, it gave the benefit alike of proviso inserted now in section 50C now. Thus, can it be interpreted that the benefit of proviso be read retrospectively? The amendment seeks to overcome the shortcoming of section 50C which were missed at the time of enactment and therefore, Mischief Rule of interpretation applies to the amendment made by Finance Act, 2016. The amendment seeks to remedy and to cure the disease in statute for the benefit of the common society.

One of the theories of interpretation guides that where amendment is brought into the statute cure and remedy the shortcomings can be interpreted retrospectively.

Recently, **Vishakhapatnam Bench of Income Tax Appellate Tribunal in the case Smt. Chalasani Naga Ratna Kumari v. ITO ward 3(2) bearing ITA no 639/Vizag/2013** dated: 09.12.2016 has held that proviso to section 50C of the Act has been inserted by the Finance Act, 2016 w.e.f. 1.4.2007 to resolve the genuine and intended hardship, in the case in which the date of agreement to sale is prior to the date of sale and market value of the property as on the date of agreement to sale and date of sale deed is different. The said proviso to section 50C of the Act has been examined by the coordinate bench of ITAT, Ahmedabad bench in the case

of Dharma SibaiSonani Vs. DCIT in ITA No.1237/Ahd/2013 dated 30.09.2016 and held that the proviso to section 50C of the Act inserted by the Finance Act, 2016 w.e.f. 1.4.2007 is curative in nature and intended to remove an undue hardship to the assessee and accordingly given retrospective effect from 1st April, 2003 i.e. the date effective from which section 50C of the Act was introduced.

Authors comment

Vishakhapatnam Bench of Income Tax Appellate Tribunal **earlier i.e. before amendment made by Finance Act, 2016** in the case of ***M/s Lahiri Promoters v. ACIT bearing ITA no 12/Vizag/2009 dated: 22.06.2010*** has already held that provisions of section 50C are to be applied on the date on which agreement is entered and not on the date when transaction is completed. **The said decision was recently followed by hon'ble Delhi ITAT in the case of *ITO v. Modipon Ltd.* reported in [\[2015\] 57 Taxmann.com 360 \(Delhi-Trib.\)](#).**

Conclusion

Thus the amendment seeks to be in line with the beneficial interpretation given by the Tribunals in the situations for which proviso has been inserted by the legislature. Therefore, the date of the transaction for the purpose of adopting section 50C value is to be taken the date of first agreement fixing the value of consideration between the parties and not on the date when the transaction is concluded or registered. Further, amendment made in section 502C by Finance Act, 2009 to include value assessable also gives strength to the fact that the date on which the transaction for first assessable shall be the date for the purpose of adoption of value under section 50C.

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