Taxation of Real Estate Transactions: A Treatise

By **Saurabh N. Soparkar,** *Senior Advocate*

1. Introduction

Income-tax Act, 1961 (hereinafter referred to as 'The Act') is the only legislation of our country which contain reference to several Central Acts and numerous State Legislations. It becomes very essential therefore, to know the provisions of general law with special reference to Transfer of Property Act, Registration Act, Stamp Act, Development Control Regulations, etc. so as to understand the various taxation issues relating to Real Estate Transactions. Some of the very important taxation issues relating to Real Estate Transactions and implication of s. 50C of the income-tax Act are also discussed in this paper.

2. Development Rights

2.1 Capital Assets

The term "capital asset" is defined in s. 2 (14) of the Act to mean "property of any kind", held by the assessee whether or not connected with his business or profession, but specifically excludes 'stock-in-trade' and other kinds of specified assets. Therefore, the definition is very wide and any kind of property except those falling in excluded category is a capital asset.

In *CIT vs. Tata Services Ltd. (1980) 122 ITR 594 (Bom.)* and *CIT vs. Vijay Flexible Containers (1990) 186 ITR 693 (Bom.),* the court has held that the right to obtain conveyance of immovable property is a capital asset. Applying the same principle, the Development rights would be capital assets.

Recently the Mumbai Tribunal in the case of Arif Akhtar Husain vs ITO in ITA No. 541/Mum/2010 by order dt. 22-12-2010 has held that transfer of development rights would attract provisions of s. 50C.

2.2. Development rights – Who are entitled – Societies or the members?

In respect of Tenants co-partnership co-operative societies, which are of the nature of "Flat Owners Societies" in which the flats are acquired by the society from the builder on ownership basis and thereafter Society is formed, and land is conveyed to the society and individual members acquire ownership rights over the building and underneath the development rights. This concept has been recognized under Bombay Stamp Act as on the conveyance in favour of the housing societies, stamp duty paid by the purchasers of flats on ownership agreements is deducted from the stamp duty payable on the market value of the property transferred in favour of the society as per proviso to Article 25 of Schedule 1 of Bombay Stamp Act. Circular No

F.N.4/28 /68-WT dt. 10th January, 1969 and 27th January, 1969 explaining the provision of section 5(1)(iv), the Board clarified that flats vests with individual member of society and wealth tax exemption will therefore be available to individual members. The same principle may be applicable to income tax proceedings and hence members are to be held entitled to the Development Rights.

Westwind Realtors P. Ltd. vs. DCIT (2006) 9 SOT 572 (Mum.) – The common medium of ownership of residential apartments is co-operative societies. But there is no hitch if the same activity is carried out by a company either. The Income Tax Law itself has recognized the locus standi of a company through section 27(iii) to legally hold properties and at the same time allot the *de facto* ownership to its members.

In case of Tenants co-partnership co-operative societies which are of the nature of "Plot purchased type society" i.e. in which land is acquired by the society and the building is constructed by it for allotment to members for occupation, the development rights belong to society and society may be entitled to Development Rights. Therefore, on the basis of the nature of the constitution and facts of the case, the issue of ownership is required to be decided.

3. Redevelopment

3.1 Apex Court in case of *Jayant Achyut Sathe vs. Joseph bain D'Souza & Ors. (2006) 6 SCC 11* has held that all those buildings which were constructed prior to 1940 whether or not they are dilapidated, Regulation 33(7) of the Development Control Regulations, 1991 (DCR) would apply, hence, more than 19,000 buildings in Mumbai would qualify for redevelopment. As most of these buildings are owned by landlords, the redevelopment transactions would raise number of taxation issues in the assessment of landlords, societies, tenants and developers.

Sale of TDR /FSI

3.2 In *Jethalal D. Mehta vs. DCIT (2005) 2 SOT 422 (Mum.),* following the judgment of Apex court in *CIT vs. B.C. Srinivasa Setty (1981) 128 ITR 294 (SC),* it was held that TDR granted by DCR, 1991 qualifying for equivalent F.S.I. having no cost of acquisition, sale thereof gives no rise to capital gains. In *ITO vs. Lotia Court Co-operative Housing Society Ltd. (2008) 12 DTR (Mumbai) (Trib) 396,* it was held that the assignment of the TDRs to the developer and in turn the additional floors to be constructed and also repairs/renovation of the building to be carried out, does not result in to accrual of any income in the hands of the assessee society, who is not the owner of the plot. Even in the case of flat owners who owned the individual flats in the respective names, there is no question of taxability of receipt on account of sale of additional floor space index received by the assessee by virtue of transfer of TDRs under the Development Control Regulation for Greater Mumbai, 1991. Receipt on sale or assignment of rights to receive TDRs is held not liable to tax. In *New Shailaja CHS vs. ITO (ITA NO 512/M/2007.BENCH B dated 2nd Dec., 2008 (Mumbai)* wherein the assessee, a Co-op. Housing Society became entitled, by virtue of the Development Control Regulations, to Transferable Development Rights (TDR) and the same were sold by it for a price to a builder, it was held that though the TDR was a 'capital asset', as there was no 'cost of acquisition' for the same, the consideration could not be taxed as capital gains.

3.3 In *Shakti Insulated Wires Ltd. vs. Jt. CIT (2003) 87 ITD 56 (Mum.)* it was held that development rights are embedded in the ownership of the land are recognized as distinct from the land as per DCR and therefore constitute capital asset and Fair Market Value of development rights as on 1-4-81 should be taken as cost of acquisition for indexation. This decision of the Tribunal has not been considered by the Tribunal in any of the subsequent judgments referred above.

3.4. Bombay High Court in *Chheda Housing Development Corpn., a Partnership firm vs. Bibijan Shaikh Farid & Ors. (2007) (3) MHLJ 402 (Bom.).* Dealing with specific performance of Agreement for use of TDR held that FSI/TDR are benefit arising from the land consequently must be held as immovable property.

The Court observed that an immovable property under the General Clauses Act, 1897 under section 3(26) has been defined as to include benefits arising out of land. Therefore, if there is any benefit which arises out of the land, then it is immovable property.

3.5 Therefore, if TDR/FSI are considered as immovable property being part and parcel of land. However, still the issue for consideration will be whether can it be said that cost of TDR /FSI is nil?

4. Transfer – S. 2 (47)

4.1 If the agreement of development enables the passing of domain and control of the immovable property by grant of an irrevocable authority or licence, then even the date of agreement of development will constitute the date of transfer of the capital asset. – *Chaturbhuj Dwarkadas Kapaidia vs CIT (2003) 260 ITR 491 (Bom.)*

4.2 Conversion of capital asset into stock-in-trade

As per section 45(2) if a capital asset is converted into stock-in-trade, the capital gain is taxable in the year such stock is sold, and the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of consideration received or accruing as a result of the transfer. Thus capital gain gets computed by taxability is postponed to the year of sale of such converted capital asset i.e., stock-in -trade.

4.3 Conversion of stock-in-trade into Capital Asset – A converse situation

In *CIT vs. Bright Star Investments (P) Ltd. (2008) 24 SOT 288 (Bom.)* it was held that IT Act does not contain a provision similar to section 45(2) with respect to conversion of stock-in-trade to capital asset. It was further held that holding period is to considered from the date of acquisition. *Kalyani Exports & Investment (P) Ltd. & Ors. vs. Dy. CIT (2001) 78 ITD 95 (Pune) (TM) (139 & 140)*

However, in *Splendor Constructions (P) Ltd. vs. ITO (2009) 27 SOT 39 (Delhi)/ 122 TTJ 34* it was held that the period to be considered from the date of conversion to investment. This decision has not considered the above decision of the Mumbai Tribunal in Bright Star

Piecemeal transfer – Part transfer of possession

4.4 In *Ajai Kumar Sah Jagati vs. ITO (1995) 55 ITD 348 (Del.)* and *M/s G. G. Dandekar Machines Works Ltd. vs. JCIT, ITA No. 181/Mum/2001, Bench – F, dated 28th February, 2007,* possession of only a part of property was transferred against proportionate consideration received during the relevant assessment year. It was held that capital gains arising only on the said proportion amount of consideration could be charged in the relevant year and not on the entire consideration stipulated in the sale agreement.

4.5 Valuation as on 1-4-1981

Reference to the DVO can be made under s. 55A only when the A.O. is of the opinion that the value of the capital asset claimed by the assessee is less than its fair market value and not when he was of the opinion that the fair market value of the property on 1st April, 1981, as shown by the assessee was more than its actual fair market value.

CIT vs. Daulat Mohta HUF ITA No. 1031 of 2008 dt. 22-9-2008 (Bombay High Court)
Daulat Mohata vs. ITO ITA No. 322/m/2007 Bench 'D' Dt. 23-7-2008.
ITO vs. Smt. Lalitaben B. Kapadia (2008) 115 TTJ 938 (Mum.)
Patel India (P) Ltd. vs. Dy. CIT (1999) 63 TTJ 19 (Mum.)

5. Consideration

5.1 Generally the consideration received is two-fold i.e., partly in cash and partly in kind i.e., by way of allotment of property in the redeveloped property. Hence, it becomes important to ascertain the full value of consideration. Such transactions are thus a combination of sale and exchange. The Supreme Court in *CIT vs. George Henderson and Co. Ltd. (1967) 66 ITR 622 (SC)* held that in case of an exchange, the money's worth of the property received in exchange constitutes the consideration for the property parted in exchange.

6. Block of assets – S. 2(11)

6.1 Where land and building transferred were used for business an important issue arises as to whether the new constructed area received can be added to the block of assets. The new constructed area will not be a building used for the purpose of the business. If it is not an asset which will be used as a "building" for purpose of the business it may not become a part of the block of assets. If the property is let out and income is chargeable under the head "Income from house property" can it be said that the building is used for the purpose of business and can be considered as part of block of asset is the issue for discussion.

6.2 The concept of block of assets in the scheme of the Act is vis-à-vis allowing depreciation in the computation of business income. If, an asset is not put to use for the purposes of the

business, depreciation may not be allowed. The new constructed area may be held as an "investment", and therefore its cost may not be eligible for depreciation.

6.3 For the purposes of redevelopment the old building has to be demolished. Such building may be a part of block of assets. Issue arises as to whether indexed cost of structure can be deducted to arrive at the long term capital gains on sale of land. Indexation u/s. 48 is allowed only in respect of cost of acquisition or cost of improvement of the capital asset transferred. Therefore, it can be contended that what is transferred is only the land and not the building, which will be demolished to enable the development of land, hence the cost of structure can not be taken into consideration and only index cost of land will be considered.

6.4 The argument in favour of the proposition that the building is also transferred is that it cannot be said that the landlord remains the owner of the building after it is inferred that it has transferred the land to the developers under the development agreement. He is considered the owner, then he has the right to sell the building to anybody else as it is its 'owned' property therefore for seller he is entitled for apportionment towards the building.

6.5 The argument to the contrary is that he transferred only the land and merely permitted the developer to demolish the building to enable the developer to develop the vacant land and hence he cannot apportion the cost to the building.

6.6 Capital Gains – Depreciation has been claimed and allowed – Ss. 50, 54E

Fiction created in sub-ss. (1) and (2) of s. 50 is restricted only to the mode of computation of capital gains contained in ss. 48 and 49 and does not apply to other provisions and therefore an assessee is entitled to exemption under s. 54E in respect of capital gain arising on the transfer of a long-term capital asset on which depreciation has been allowed.

CIT vs. ACE Builders (P) Ltd. (2006) 281 ITR 210 (Bom.) / ACE Builders (P) Ltd. vs. ACIT (2001) 76 ITD 389 (Mum).
CIT vs. Assam Petroleum Industries (P) Ltd. (2003) 262 ITR 587 (Gau.)
CIT vs. Legal Hairs of late Dr. (Mrs. S. R. Pandit) ITA No. 144/2007 dt. 30-8-2005 (Bombay High Court)

7. Expenditure – Ss. 37 & 48

7.1 Compensation paid to tenants/lessee can be reduced from full value of consideration.

In *CIT vs. A. Venkataraman and Others (1982) 137 ITR 846 (Mad.) and Naozar Chenoy vs. CIT (1998) 234 ITR 95 (AP)* it was held that the compensation paid to tenants to enable handing of vacant possession of property transferred were allowable as deduction.

Similarly, compensation paid to hutment dwellers on assessee's land to enable sale of vacant land was allowed as deduction in computation of capital gains in *CIT vs. Miss Piroja C. Patel (2002) 122 Taxman 752 (Bom.)*

8. Conversion of tenancies into ownership

8.1 Whenever redevelopment of the tenanted properties take place tenants prefer to convert their tenancies into ownership basis by paying 100 months rent. In *Dr. D. A. Irani vs. First ITO (1984)7 ITD 160 (Bom.) (SB).* Assessee was initially in occupation of flat as a tenant. Later he acquired it by purchase from the original owners with all the rights and interest therein including occupancy right. There was a union of the interests of the lessor and the lessee and tenancy was extinguished. It was held that Flat sold within 4-5 months thereafter was short-term capital gain.

8.2 A tenancy for tenancy is a transfer by way of 'exchange' and the moneys worth of the new tenancy received in exchange constitutes the consideration for the old tenancy parted in the exchange. In *CIT vs. D.P. Sandu Bros. Chembur (P) Ltd (2005) 273 ITR 1 (SC*) the apex court held that tenancy right is a capital asset as the cost of acquisition being nil no capital gain tax could be charged. After the amendment to section 55(2) w.e.f. 1-4-1995 if the tenant has not paid any cost for acquiring the tenancy the cost will be nil. In case the tenant gets alternative accommodation on ownership basis he may be liable to capital gains tax on the value of the ownership rights which he gets. In case if he is not owning any other house property he may be entitled the benefit of section 54F of the Income-tax Act subject to other conditions.

9. Housing Projects – S. 80-IB(10)

9.1 The expression "housing projects" has not been defined in section 80-IB.

The Concise Oxford Dictionary, Sixth Edition, gives its meaning in noun form as a "plan, scheme, planned undertaking."

As per Chamber's Twentieth Century Dictionary (Revised edition) project means "a scheme of something to be done; a proposal for an undertaking; an undertaking."

A reading of the above, it emerges that a project must be a planned affair or a scheme of something undertaken to be done.

Since the housing project is required to be approved by a local authority, it would be fair to construe that the scheme or plan of the housing project must be in keeping with schemes laid down by the approving local authority. If there is convenience shops within the project same can be considered as Housing Project.

The view taken by us also finds support from CBDT circular F. No. 205/3/2000/ITA II dt. 4-5-2001. This circular is the reply given by the CBDT to a query posed by the Maharashtra Chamber of Housing Industry in a representation made by it to CBDT. Here the CBDT has clarified that "any project which has been approved by a local authority as housing project should be considered as adequate for purpose of Section 80-IB(10)".

9.2 One of the issues for consideration is whether assessee must be the owner of the land on which the housing project is constructed is now settled by the Special Bench in *Radhe*

Developers & Ors. vs. ITO & Ors. (2008) 23 SOT 420 (Ahd). In this case land was not registered in assessee's name. Contention of the Revenue was that in order to claim deduction under S. 80-IB(10) the assessee must be the owner of the land on which the housing project is constructed. It was held that there is no such condition in the provisions of S. 80-IB(10). Deduction under S. 80-IB is allowable to an undertaking developing and building housing project, whether it is developed by it as a contractor or as an owner. It was also held that the term 'contractor' is not contradictory to the term 'developer'.

In this case another important issue before the bench was whether the profit earned by assessee included sale of Extra-FSI which was unutilised was eligible for deduction. It was held that there is no condition as to FSI under the scheme of S. 80-IB(10). It is not mandatory requirement to fully utilize permissible FSI. In the facts of the case it was held Development agreement with the land-owners makes reference to land area only. Also, sale deeds executed in favour of buyers of the residential houses are for sale of plot of land. In both the documents assessee has not acquired or relinquished rights with reference to FSI. There is no question of selling unused FSI to the individual buyer or calculating profitability on FSI as the same is not contemplated under S. 80-IB(10). Calculation given in the approved plan is for the maximum permissible FSI. By giving such calculation it is not mandatory to make construction to the fullest extent of maximum permissible FSI. Therefore, deduction could not be denied to the assessee on the ground that the profits earned by the assessee are not for developing and building housing project done but for sale of extra FSI which has not been utilized for developing and building the housing project.

9.3 However, an issue may arise in a case where an undertaking developing and building housing project is engaged as a sub-developer and all the sanctions are obtained by the developer whether the sub-developer would be eligible for the deduction or main developer or both. In *Saroj Sales Organisation vs. ITO (2008) 115 TTJ 485.* The tribunal held that the sub developer is eligible for deduction.

9.4 Another issue which arises is whether the benefit of extension of the date of completion of project up to 31st March, 2003 were applicable to the Asst. Year 2001-02 and subsequent years only. In *Dy. CIT vs. Ansal Properties & Industries Ltd. (2008) 22 SOT 45 (Del.)* it was held that the Contention of Revenue that the amendments made in S. 80-IB(10) by the Finance Act, 2000 extending the date of completion of project up to 31st March, 2003 were applicable to the Asst. Year 2001-02 and subsequent years and the assessee in the instant case for the Asst. Year 2000-01 was not eligible to avail the benefit of the said amendments is not acceptable.

9.5 Many a times developers under a single sanctioned plan construct separate wings for houses for higher strata of the society (which do not fulfil necessary conditions) along with low cost houses. Whether the assessee would lose deduction on eligible units due to ineligible units This issue came to be decided in *Saroj Sales Organisation vs. ITO (2008) 115 TTJ 485 (Mum.) / (2008) 3 DTR 494 (Mum.)* wherein it was held that assessee having completed the construction of various wings of the building under the approved plan in two different blocks under different certificates of commencement, was eligible for deduction under S. 80-IB(10) in respect of one block in respect of which claim for deduction was made and which satisfied the requirement of S. 80-IB(10); claim could not be denied by clubbing the two blocks especially

when the second block had been kept separate by the assessee and for which deduction under S. 80-IB(10) was not claimed.

10. Slum Development

In the city of Mumbai there are innumerable slum rehabilitation projects which are carried out by various undertakings engaged in development of housing projects.

These projects are approved by the Government of Maharashtra as Slum Rehabilitation Project (SRA Project)

These SRA projects has to be in strict compliance of various rules and Act, which is again guided by the Circulars and Notifications, therefore, the developer has no say in its implementation and execution.

S. 80-IB(10) provides for a deduction of the profits of an undertaking developing and building housing project. One of the conditions laid down is the project size should be more than one acre. However, by Finance (No. 2) 2004, the legislature has removed the restriction of the project size by a proviso due to difficulties faced to developer in getting an area of one acre for development of a single society within the entire slum project.

As a result in most of the cases a developer undertakes several projects which are within the slum project but are not adjacent and they are more than one acre only cumulatively. Hence, eligibly of deductions in such situation is an important issue.

When the competent authority for the slum rehabilitation holds that it is one project, can the Assessing Officer take the view that it is not one project, condition of one acre has to be satisfied for each permission and not combined together.

One derives the support from the subsequent Amendment by the Finance (No. 2) Act, 2004. The proviso was inserted in clause (b) whereby the restriction of size of plot was relaxed with view to rationalize the provision. It is submitted that the proviso was inserted to make the provision workable and avoid the difficulty. Interpretation should be made to bring effective result and avoid unjust result or discrimination. The proviso was inserted to cure the defect.

In *Allied Motors (P) Ltd. vs. CIT (1997) 224 ITR 677 (SC)* it was held that a proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section to give the section a reasonable interpretation requires to be treated as retrospective in operation.

However even if the proviso is read as retrospective, assessee may be denied deduction as the SRA projects require approval of the CBDT and CBDT has not approved a single Slum Rehabilitation Project till date.

11. Completion of project

11.1 As per the requirement of section 80-(IB)(10), the project is required to be completed by 31-3-2008. For the purpose, whether occupation certificate obtained from the appropriate authority to the effect that the development is as per the approval and is ready for occupation is sufficient or will the department insist on any other certificate like completion certificate from appropriate authorities?

11.2 In my opinion the occupation certificate given by the MC would sufficient proof that the housing project is completed. Even in *Dy. CIT vs. Ansal Properties & Industries Ltd. (2008) 22 SOT 45 (Del.)* it was considered sufficient. But, occupation certificates are sometimes given building wise. If all the buildings constructed by the developer have occupation certificates before 31-3-2008, may be sufficient compliance.

11.3 If, by any reason the occupation certificate was not granted or dispute, despite the fact that the project is completed, some other proof like the architect certificate may also help. It is preferable that the certificate should elaborately describe the completed project item wise. For example, the architect's certificate must describe the buildings that have been completed, the utilities like water, electricity that are functional, the areas kept readily available to surrender to the BMC for reservation, setback, roads, etc.

11.4 When, construction is duly completed before 31-3-2008, but the sale of some flats take place in the subsequent year, whether deduction u/s. 80-IB[10] would be available in the subsequent years from the incomes from such sales?

11.5 In my opinion generally, in incentive provisions granting tax holidays, there is always a specification as to the number of years the tax holiday can be enjoyed. But, in S. 80-IB[10], there is no specification as to the number of years the tax holiday is available. As on date, it appears that once an approved project is completed before the cut off date fixed as per section 80-IB[10] and other eligibility conditions are also fulfilled, there is no terminal year for claiming the tax holiday.

11.6 The assessee will be entitled to deduction u/s. 80-IB[10] in respect of the income from the sale, provided that the Legislature has not made any amendment curtailing the availability of the deduction up to A.Y. 2009-10 or deleted the provisions of section 80-IB[10] w.e.f. 1-4-2010.

It is settled principle in law that as regards income tax provisions, the law that is to applied is the law that is in force on the first day of the assessment year.

A useful reference can be made to the decision of the Supreme Court in the case of *Reliance Jute & Industries Ltd. vs. CIT (1979) 120 ITR 921 (SC).*

12. Terrace

12.1 Whether terrace areas allotted to some flat owners for exclusive use should be clubbed with the built-up areas of the flat to ascertain whether the maximum built-up of the flat is less

than 1000 sq. ft built-up area in order to satisfy the eligibility condition in clause [c] of section 80-IB[10]?

12.2 In my opinion a terrace is known as a paved outdoor area adjoining a residence. It adjoins the residence externally and is not part of the structure that composes the residential unit. A residential unit is enclosed in walls which stretch from the floor level to the roof; it has windows and is topped by a roof. A residential unit has provisions for amenities and security of the residents.

A terrace, on the other hand, hardly has the features of the residential unit. It is open to the sky and the height of its wall boundaries are no where similar to that of the residential unit. Windows are virtually non existent.

Both terrace and residential units can exist independently and can be used in mutually exclusive manner by the residents. A terrace may provide more beneficial enjoyment to the residential unit, but so does a garage or an open garden. A terrace independently is not competent to be used for habitable purposes.

13. Several housing projects

Some assesses have a division which carry out several housing projects. In such projects difficulty arise as to preparing separate balance sheets for each project as the resources are common. Rule 18BBB requires separate report [10CCB] for each “Undertaking or Enterprise” of the assessee should be accompanied by profit & loss account and balance sheet of the undertaking or enterprise as if the undertaking or the enterprise was a distinct entity. Reading Rule 18BBB and section 80-IB together means “undertaking” and “housing projects” mean two different things. Can it be interpreted that the requirement of Rule 18BBB is met if Balance Sheet of a Division [being treated as “Undertaking or Enterprise covering various “Housing Projects” is common.

14. Business Income vs. Capital Gains

14.1 Whether a purchase and sale transaction of a land is an adventure in the nature of trade or not depends on the facts and circumstances of each case. It is not possible to evolve any single legal test or formula which can be applied in determining whether a transaction is an adventure in the nature of trade or not.

14.2 Land received as gift

CIT vs. Shashi Kumar Agrawal (1992) 195 ITR 767 (All)

Assessee sold the same after plotting it out in order to secure a better price and because he was staying in a different place in connection with his official duties and not able to use it for agricultural operations. Surplus received from sale was not assessable as income from an adventure in nature of trade.

14.3 Ancestral land converted into non-agricultural land

CIT vs. Premji Gopalbhai (1978) 113 ITR 785 (Guj.)

Land divided into several plots and sold as and when purchaser was available. Assessee is not dealer in land.
Ram Saroop Saini, HUF vs. Asst. CIT (2007) 15 SOT 470 (Del.)

It was held that fact that the assessee got the land converted into non-agricultural land before selling it is neither determinative nor conclusive to ascertain the nature of the transaction. It is the totality of the circumstances which have to be borne in mind to determine the character of the transaction.

14.4 *CIT vs. R. V. Gupta (2002) 258 ITR 261 (Delhi)*

Assessee constructed six flats on land allotted to him and to his brother by DDA long ago and sold four flats retaining the remaining two flats for their own use. It was held that the assessee was in service; no change in the character of the said plot had been effected from the years 1971 to 1989; there was no material on record from where it could be said that the assessee ever had the intention to exploit the plot as a commercial venture. Merely because six flats had been constructed, out of which four were sold to friends, it would not show that it was an adventure in the nature of trade.

15. Property vs. Business Income

15.1 With several malls and business centres emerging taxability of rental income arising therefrom is an important issue. Supreme Court in *Shambhu Investment (P) Ltd. vs. CIT (2003) 263 ITR 143 (SC)* has held that income derived from letting assessable as income from property and not business income. In this case assessee was letting out furnished premises on monthly rent basis to various parties along with furniture, fixtures, light, air-conditioners, etc., for being used as "table space". Under the agreement assessee is also providing services like watch and ward staff, electricity, water and other common amenities to the occupiers. These services are not separately charged. Entire cost of property already recovered by way of interest-free advance by the assessee. Only intention was to let out the portion of premises to respective occupants. It was held that income derived from letting rightly held assessable as income from property and not business income.

15.2 However, in *PFH Mall & Retail Management Ltd. vs. ITO (2008) 110 ITD 337 (Kol.)* after considering Shambhu Investment (P) Ltd. it was held that income derived by assessee from shopping malls/business centres was assessable as business income and not as income from house property. It held that "The fact that the Apex Court held that the income earned by Shambhu Investment (P) Ltd. is assessable as property income has no relevance in the facts and circumstances of the present case. Because in that case the facts showed that the main intention was to earn rental income. That was why the entire cost of the property was recovered from the tenants by way of interest-free advance. In the instant case, on the other hand, the assessee had taken bank loans to finance his projects like any other businessman. As discussed hereinabove,

every action of the present assessee appears to be with the sole object of commercial exploitation of the premises."

Mumbai Tribunal in case of *M/s Omsagar Engineering Pvt. Ltd. vs. ACIT, ITA No. 2989/Mum/03, Bench–K, dated 30-11-2006,* held that income from service centre is to be treated as business income.

CIT vs. Pateshwari Electrical & Associated Industries (P) Ltd. (2006) 282 ITR 61 (All.) (After considering Shambhu Investments) Letting out of all the rooms of a property, used as a guest-house, by the assessee to a bank to be used as a training centre was a part on running of the lodge business and, therefore, income from such leasing was assessable as business income and necessary expenditure incurred thereon was allowable as business expenditure.

CIT vs. Sarabhai (P) Ltd. (2003) 263 ITR 197 (Guj.)

When property has been let out not only as property but with services which is a complex letting, the income cannot be said to be derived from mere ownership of house property but may be assessable as income from business. If the owner of a property carries on upon the property some activities which result in profits and gains arising, not from the ownership of the property but from the owner's use thereof, letting various services to the tenants, those profits and gains may be chargeable u/s. 28 as income from business, apart from the assessment u/s. 22 in respect of income from house property.

16. Sec. 50C – Special provision for full value of consideration in certain cases

For the purpose of computing capital gains, the full value of consideration arising on transfer is relevant. The Supreme Court, in *CIT vs. George Henderson & Co., Ltd., 66 ITR 622* has discussed the expression "full value" to mean the whole price without any deduction whatsoever and it cannot refer to the adequacy or inadequacy of the price bargained for. According to the Supreme Court, it need not have any reference to the market value of the capital asset which is the subject matter of the transfer. Sec. 50C introduced by the Finance Act, 2002, with effect from 1-4-2003 makes a departure from this well established principle by linking consideration with the guideline value fixed for stamp duty purposes.

Where the consideration received or accruing on transfer of 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 consideration. This provision applies to transfer of land or building or both but does not apply to other capital assets.

If an assessee claims that the stamp duty value exceeds the fair market value of the property as on the date on the transfer, the Assessing Office may refer the valuation of the capital asset to valuation officer. Such reference shall be made only if the stamp duty value has not been disputed in any appeal or revision before any authority or Court or the High Court. If any such reference is made, the provisions are Sec. 16A of the Wealth-tax Act shall apply with necessary modification.

Subsequent to the making of assessment in a case by adopting the stamp duty value as the full value of consideration, if such value is revised in any appeal or revision, etc., the Assessing Officer shall amend the order of assessment to recompute the capital gain on the basis of the revised value¬ – Sec. 155(15).

When a reference is made to the Valuation Officer in the matter of valuation of a property the Assessing Officer is statutorily bound to adopt the valuation estimated by the Valuation Officer. The correctness of the valuation report may be challenged in appeal by the assessee but so far as the Assessing Officer is concerned, he is bound by it. *CWT vs. Dr.H. Rahman (1991) 189 ITR 307 (All.) & 217 ITR 107 (All.).*

17. Objective behind sec.50C

There have been several measures in the past adopted through the Income-tax legislation to check proliferation of black money in real estate transactions and to enforce disclosure of consideration reflecting the fair market value of the immovable property which is subject-matter of transfer. While there is a general belief that real estate transactions provide scope for evasion of tax, it is not only income-tax that has been the cause of it but also the stamp duty payable to the State Government. In some of the States, stamp duty rates have also been reduced to encourage declaration of correct consideration.

In 1922 Act, there was a proviso to section 12B(2) and a corresponding provision was inserted in the 1961 Act u/s. 52 to achieve this objective. However, in *KP Varghese vs. ITO, 131 ITR 597 (SC)* it was made clear that sec. 52(2) cannot apply to genuine transactions. Besides, unless there is evidence to establish under statement of consideration, the applicability of such a provision enabling adoption of notional value was ruled out. In view of this, sec. 52(2) was withdrawn in 1988. Thereafter, Chapter XXA was inserted providing powers to acquire properties if there is understatement of consideration. This chapter was in the statue book from 1972 to 1986 and less than 14 properties were acquired exercising the power vested therein. In 1986, Chapter XXC was introduced providing the right of pre-emptive purchase in favour of the Government. Supreme Court, in *C.B. Goutham vs. Union of India, 199 ITR 530* held that the presumption of understatement does not arise if the difference is not more than 15% between the apparent consideration and the market value. This chapter was in force for about 16 years from 1-10-1986 up to 1-7-2002. Thereafter sec.50C has been inserted.

On applicability of sec. 50C, the following practical issues, among many other issues, arise:

i. Is it possible for the seller to account for the difference between the guideline value and the actual consideration as a source?
ii. Is it possible for the buyer to record his purchase consideration on the basis of such guideline value?

The answer to the above issues shall be definite "no". Neither the seller nor the purchaser can reflect the guideline value in books as received or paid. If seller does it, he will be losing his ground to fight the issue apart from giving suspicion as to whether he has received on-money

from the buyer. If buyer does it, the provisions of sec. 69 relating to unexplained investment may be invoked by the Assessing Officer to assess him on the difference.

18. Applicability to special transactions

The applicability of the provisions of sec. 50C which imposes guideline value to transactions to which the provisions of sec. 45(2)/(3)/(4)/(5) apply is an issue to be considered. The principle that a specific provision will prevail over the general provision is well settled and is enunciated in "generalia specialibus non derogant" principle. The Supreme Court has upheld this doctrine in *CIT vs. Shahzada Nand and Sons, 60 ITR 392.* This principle will not apply if two provisions apply to different categories or fields – *Kirloskar Pneumatic Co. Ltd., vs. CIT 210 ITR 485 (Bom)* inasmuch as the above sub-sections of sec. 45 specifically prescribe the consideration to be adopted, sec. 50C cannot apply to transactions covered by them.

Whether Sec. 50C will apply to transactions where possession is given in part performance of a contract of the nature referred to in Sec. 53A of the Transfer of Property Act? Even if there is no registration of such a transaction in the year of transfer, can the provisions of sec. 50C be invoked? It is a debatable issue to be contested as substantial portion of sec. 50C shall not apply to this type of transaction. The Jodhpur bench of the ITAT has taken a view that sec.50C shall not apply to a document unregistered – *Navneet Kumar Thakkar vs. ITO, (2008) 298 ITR (AT) 42 (Jodhpur).* The provisions of sec.50C do not apply to transactions covered under sections 50, 50A & 50B as it is clearly mentioned that the provisions of sec.50C apply only when the computation is u/s.48.

19. Impact of sec. 50C on exemptions

a. In the following case, it will be interesting to analyse as to how much should be invested in the notified bonds for availing 100% exemption u/s. 54EC:

   a) Sale consideration Rs. 40 lakhs
   b) Guideline value Rs. 70 lakhs; and
   c) Indexed cost of acquisition Rs. 20 lakhs

   Capital gain on the basis of real consideration works out to ` 20 lakhs. If sec.50C is applied then the capital gain works out to ` 50 lakhs. This implies that assessee has to borrow ` 10 lakhs to invest in addition to sale consideration in order to get complete exemption from capital gain. Can this be the legislative intent?

b. Similar issue can arise where an assessee transfers residential building and proposes to invest the capital gain in another residential house so as to claim exemption u/s. 54. Should the assessee invest the capital gain computed on the basis of real consideration or on the basis of deemed consideration is a practical issue to be addressed. Literal application and interpretation indicates that capital gain computed on the basis of stamp duty value (wherever applicable) to be invested and therefore will result in litigation.

c. The above-mentioned difficulty does not arise if the assessee transfers land and reinvests in a residential house to avail exemption u/s. 54F. Sec. 54F requires investment of "net consideration". Net consideration is defined as 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". In view of this, what is relevant for the purpose of sec. 54F is the reinvestment of the net amount actually realized and not any notional amount as may be adopted by virtue of sec. 50C. This view is upheld by the Jaipur Tribunal in the case of *Gyanchand Batra vs. ITO 133 TTJ 482 /45 DTR 41*

20. Full value of sale consideration – S. 50C

20 .1 Section 50C is inserted to prevent large scale undervaluation of the real value of the property in the sale deed so as to defraud Revenue. Constitutional validity of S. 50C has been upheld by the Madras High Court in *K. R. Palanisamy & Ors. vs UOI & Ors. (2008) 219 CTR 323 (Mad.).*

20.2 Reference to DVO – Not discretionary

In *Meghraj Baid vs. ITO (2008) 114 TTJ 841 (Jd) / (2008) 4 DTR 509 (Jd)* it was held that in case the AO does not agree with the explanation of the assessee with regard to lower consideration disclosed by him then he should refer the matter to DVO for getting its market rate established as on date of the sale to arrive at the correct sale consideration. If this provision is read in the sense that if the AO is not satisfied with the explanation of the assessee then he 'may' or 'may not' send the matter for valuation to the DVO then in that case this provision would be rendered redundant.

In *ITO vs. Smt. Manju Rani Jain (2008) 24 SOT 24 (Del.)* Assessing Officer having taken market value adopted for stamp duty purposes as full value of consideration for purposes of computing capital gains in place of stated consideration, CIT(A) was justified in directing the Assessing Officer to first refer the properties to valuation cell and then do so in view of provisions of S. 50C(2).

20.3 Effect of DVO valuation

Ravi Kant vs. ITO (2007) 110 TTJ 297 (Del.)

Where apparent consideration of land and/or building as shown in the document of transfer is less than the stamp duty valuation fixed by State Government, it is the latter which shall prevail for computation of capital gains. In case the assessee claims that the value fixed for stamp duty purposes is higher than fair market value, the Assessing Officer shall refer the matter to DVO under S. 50C(2) for determination of fair market value which if less than the stamp duty valuation shall be considered as fair market value; but if higher than the stamp duty valuation, the stamp duty valuation shall be treated by virtue of S. 50C(3), to be the fair market value. Assessing Officer cannot disregard the valuation fixed by DVO.

In *Jitendra Mohan Saxena vs. ITO (2008) 117 TTJ 974 (Luck.)* it was held that as the valuation arrived at by the DVO was higher than that adopted by stamp valuation authority. Assessing Officer was justified in adopting stamp valuation as full value of consideration.

In this case it was further held that Report of approved valuer is alien to the provisions of S. 50C. In case of variation between approved valuer's report and that of DVO, there is no provision in the Act to make a reference to a third valuer.

20.4 No registration – 50C not applicable (Before amendment)

In *Navneet Kumar Thakkar vs. ITO (2007) 112 TTJ 76 (Jd) / (2008) 110 ITD 525 (Jd.)* it was held that S. 50C embodies the legal fiction by which the value assessed by the stamp duty authorities is considered as the full value of consideration for the property transferred. It does not go beyond the cases in which the subject transferred property has not become the subject-matter of registration and the question of valuation for stamp duty purposes has not arisen.
It was further held that the value adopted or assessed by the stamp valuation authorities has to be of the very same property, which is the subject-matter of transfer. The language of this section provides in unambiguous terms that the value adopted or assessed by the stamp valuation authority has to be substituted with the sale consideration of "such property". It is wholly irrelevant to consider the assessed value of another property for stamp duty purposes as full value of consideration.

Amendment in s. 50C by the Finance (No. 2) Act, 2009 w.e.f. 1-10-2009

To cover the transactions whereby the registration of document is avoided or postponed and nullify the effect of the decisions holding that unless the property is subjected to registration, s. 50C is now amended which provides that in such cases value "assessable" shall be considered for the purpose of s. 50C. The expression "assessable" is defined in Explanation 2 to mean the price which the stamp valuation authority would have adopted or assessed if it were referred to such authority for the purpose of payment of stamp duty.

20.5 Section 50C does not apply to buyer for invoking S. 69B

ITO vs. Optec Disc Manufacturing (2008) 11 DTR 264 (Chd.)(Trib.) it was held that adoption of different value for stamp duty purposes cannot by itself distract from the consideration stated in the sale deed. Fiction created under S. 50C is applicable only for computing capital gains in the hands of seller and does not apply to buyer for invoking S. 69B.

Similar decisions have been rendered by the Ahmedabad Tribunal holding that in the case of purchaser of the property, s. 50C cannot be invoked.

However, s. 56(2)(vii) earlier to its substitution sought to charge the difference in the consideration and the FMV (assessable stamp value) of the value of immovable property in the hands of the purchaser as income. But again, by amending s. 56 (2)(b), the provision to charge the difference is further amended and now it is only where the immovable property is received

without any consideration the same will be applicable in the hands of receiver of the immovable property.

20.6 Business income

Provisions of section 50C cannot be applied where the income from transfer is business income.

M/s. Inderlok Hotels Pvt. Ltd. vs. ITO, ITA No. 4376/M/2008, Bench "I", dt. 5-2-2009 (reported in 122 TTJ 145)

20.7 Development Right

Section 50C applies to land and building or both. In section 269A(e) the definition of immovable property is very wide. It covers rights of the nature referred to in clause (b) of sub-section (1) of section 269AB. It may be possible to take a view that section 50C cannot be applied to development rights. However Mumbai Tribunal in ITA No. 541/Mum/2010 in the case of Arif Akhtar Husain has held that s. 50C applies in the case of transfer of development rights

21. Joint Venture business

21.1 We have been witnessing a new and different trend in relation to the Real Estate Development. Earlier, a builder would go for outright purchase of a piece of land from the landlord and develop the same at his own cost and risk. The scenario in this regard is undergoing a change. Now the landlord also desires to have a share in the profit of the project being undertaken by the builder and developer. On his part, the builder and developer desire(s) to share his risk in the development of the project. This change in the trend in relation to Real Estate Development is giving rise to a new concept of joint venture between the landlord and the builder/developer for the purpose of development of immovable properties. It is often the case, that the builder/developer is either a limited company or a partnership firm, whereas the landowner is either an individual, a Hindu undivided family or a partnership firm. The joint venture business is assessed as an Association of Persons for the purposes of taxation under the Income-tax Act, 1961.

21.2 Whether share of a member in the income of a joint venture business, taxed in the status of an Association of Persons, will again be liable to tax in his hands.

At the outset it may be stated here that an incentive deduction like deduction under section 80-IA(4)(iii) or section 80-IB(10), etc. of the Act, will also be available to an Association of Persons, if all the other relevant conditions are fulfilled. As per the second proviso, where no income-tax is chargeable on the total income of an Association of Persons/Body of Individuals, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income. In this context, the meaning of the expression "where no income-tax is chargeable on the total income of the Association of Persons/Body of Individuals", is relevant. The aforesaid expression means, incomes which do not form part of the total income. In this connection, it

may be stated that a deduction or relief under section 80-IA, section 80-IB, section 80-I and section 80J, cannot be said to be income, profits and gains, not includible in the total income. In support of this proposition, reliance may be placed on the judgment in the case of *ITO vs. Stumpp, Schuele & Somappa (P) Ltd. (1977) 106 ITR 399 (Kar.).* This judgement of the Karnataka High Court was affirmed by the Apex Court in the case of *ITO vs. Stumpp, Schuele & Somappa (P) Ltd. (1991) 94 CTR 160 (SC) / (1991) 187 ITR 108 (SC).* Thus, the deductions available under sections 80-IA and 80-IB do not pose any problem in this respect. Otherwise also, if the total income of an Association of Persons is entitled to deduction under section 80-IA or section 80-IB, then the question of any tax liability on the share of a member in the income of the Association of Persons, will not arise, as the income of the Association of Persons or Body of Individuals would be nil and consequently share of the member includible in the total income would also be nil.

21.3 Whether share of a member (company) in the income of an Association of Persons, is required to be disclosed in the profit and loss account of such company.

One view could be not required to be shown in the profit and loss account. Share of a company in the income of an Association of Persons does not form part of the result of the working of the company and further the same will also not constitute a transaction of the business of the company. Therefore, the share of a company in the income of an Association of Persons will not be includible in 'book profit' of the company and accordingly, Minimum Alternate Tax may not be applicable in respect of the same.

22. Accounting of construction contracts

22.1 For those who carry on construction business, the assessable profits derived is computed under the head "Profits and gains of business or profession". Accounting Standard 7 (issued in December 1983), originally recognised two methods of computation namely the completed contract method and percentage of completion method. Besides, the Standard was applicable not only for construction contracts but also to enterprises undertaking construction activities on their own account as a venture of commercial nature where the enterprise has entered into agreement for sale.

22.2 Accounting Standard 7 was revised in 2002 to recognise only percentage of completion method for accounting of income. Thus, completed contract method has been de-recognised. Besides, it applies only to construction executed in pursuance of contracts and not to projects executed *suo motu.* The implication is that in respect of own projects of the building AS-7 does not apply and AS-9 which deals with revenue recognition applies to those ventures. ICAI has issued a Guidance note on "Recognition of Revenue by Real Estate Developers" which explains the principles of AS9 in the context of real estate projects.

22.3 It stands to reason that the income for purposes of taxation cannot be different from what is computed in accordance with the common principles of commercial accounting. Any variation can be on account of the statutory allowances availed and statutory disallowances made. Similarly, expected losses cannot be recognized for tax purposes although the same may be recognized and provided for accounting purposes.

22.4 The formulation of accounting policies on valuation of work-in-progress, revenue recognition etc., play a predominant role in the determination of profits. Where a corporate entity carries on the business of construction and development activity, the implication u/s. 115JB should also be borne in mind. Under section 115JB, book profit needs to be computed in accordance with Schedule VI of the Companies Act; Accounting Standards and also subject to the adjustments contemplated therein. Book profit so computed has to be certified by a Chartered Accountant. If the total income computed in accordance with normal provisions is less than 10% of the book profit, then such book profit shall be deemed to be the total income and 10% thereof together with surcharge, if any, and educational cess shall be payable.

22.5 In some cases, Courts have had occasion to examine the requirement of determining profit in construction business on a year to year basis. The Supreme Court in *P.M. Mohammed Meerkhan vs. CIT (1969) 73 ITR 735* has taken the following view:

> "*It is not a correct proposition to say that the profits of the assessee cannot be ascertained even on the assumption that the transaction of the adventure of trade was not completed. Under the Income-tax Act for the purpose of assessment each year is a self-contained unit and in the case of a trading adventure the profits have to be computed in the manner provided by the statute. It is true that the Income-tax Act makes no express provision with regard to the value of stock. It charges for payment of tax the income, profits and gains which have to be computed in the manner provided by the Income-tax Act. In the case of a trading adventure, the profits have to be calculated and adjusted in the light of the provisions of the Income-tax Act permitting allowances prescribed thereby. For the purpose it was the duty of the Income-tax Officer to find out what profit the business had made according to the true accounting practice*".

22.6 Therefore, where the execution of contract spreads over different years percentage of completion method requires to be adopted so that the income is computed on annual basis and offered to tax accordingly – 26 ITR 617 (Pat), 103 ITR 15 (Del). Inasmuch as the Accounting Standard 7 does not recognise 'completed contract method', it will be highly controversial to employ that method for tax purposes. Even when percentage of completion method is adopted, it can be argued that if there are no receipts in respect of a particular project, the determination of profit does not arise. The entire outlay requires to be carried forward at cost and the work-in-progress being valued at cost will be equivalent to the outlay. But where there are receipts, proportionate profits on a sound and reasonable basis can be consistently determined and offered. Alternatively, to the extent of cost incurred for construction project, a pre determined percentage can be added towards profit and the closing work-in-progress can be reflected at the marked up value. Progressively as such method of offering profit is done, on conclusion of the project, the balance amount of profit is offered for taxation.

22.7 In a case where the developer periodically hands over the constructed flats, on each occasion of handing over of the flats, there is a completed sale of stock. The proportionate profit arising therefrom will have to be accounted though the construction of the entire project may not be completed. When the entire project is over, the profit accounted may turn out to be low or high in comparison with the ultimate actual profit made. Suitable adjustment is

necessary in order to reflect the actual profit chargeable to tax or loss assessable with reference to such project.

22.8 In exceptional cases, construction contracts may provide for retention of certain amounts on bills raised and payable by the customer. In such cases, the retention money cannot be treated as income till such time the obligations attached to the retention are fulfilled by the builder and he gets a right to receive such money. This analogy is drawn from decisions rendered in the context of taxability of retention money in the execution of contract works – 105 ITR 627 (Ker.), 161 ITR 418 (Pat.), 179 ITR 8 (Cal.) and 206 ITR 48 (AT).

22.9 The method of recognizing revenue in the accounts will be relevant to determine the turnover for the purpose of tax audit requirement u/s. 44AB of the Income-tax Act. ICAI has issued Accounting Standard Interpretation 29 (ASI 29) clarifying on the determination of 'Turnover' in the case of Contractors. The Interpretation clarifies that the amount of contract revenue recognised as revenue in the profit and loss account as per AS-7 should be considered as 'turnover'.

22.10 An issue may arise whether work-in-progress can be considered as part of turnover for the purpose of tax audit. While dealing with this issue, in *Asst. CIT vs. P.K. Jhala & Associates (1999) 69 ITD 141 (Pune)*, it is observed that work-in-progress cannot be treated as turnover. It only represents current assets and it includes the cost of material, labour and other direct overheads incurred by the assessee. It is cost of incomplete and unfinished work and hence it is quite similar to stock-in-trade, the ownership of which remains vested with the assessee. "Turnover" and "Sales" precisely and essentially require the transfer of title of the goods to the purchaser. The assessee could be said to have effected sales only in respect of those flats/shops, construction of which is complete and the possession of which is given to the purchaser.

22.11 In the case of a developer, though the business activities involve execution of civil construction works, it may be difficult to apply the provisions of sec. 44AD of the Act if civil construction alone is not separately carried out. Besides, in most cases, the turnover will cross the ceiling limit of Rs.40 lakhs . Where any concern of the developer carries on the civil construction activity and if the turnover thereof does not exceed ` 40 lakhs, then the provisions of sec. 44AD can be invoked and 8% or more of the turnover can be offered as income without any need for maintaining regular books of account. No other deduction can be claimed therefrom except in the case of a firm which can claim interest and salary to partner subject to limits and conditions as per sec. 40(6).

23. Project completion possible

CIT vs. Bilahari Investments (P) Ltd. (2008) 299 ITR 1 (SC)

Recognition/identification of income under the 1961 Act, is attainable by several methods of accounting. Project completion method is one such method.

CIT vs. Advance Construction Co. (P) Ltd. (2005) 275 ITR 30 (Guj.)

Assessee-contractor having offered profits for tax on the basis of percentage completion method which is a standard accounting practice and has been constantly followed by the assessee in subsequent years, the same could not be rejected and impugned amount which has been deducted in working out the profit is not chargeable to tax in the year under consideration, same having been offered for taxation in later years.

23.1 Disclosure in the course of search – Whether income be taxed on completion of project

Dhanvarsha Builders & Developers (P) Ltd. vs. DCIT (2006) 102 ITD 375 (Pune) – Assessee following project completion method. Undisclosed income in the form of 'on money' should be taxed in the respective assessment years as per method of accounting followed by the assessee.

23.2 Finance cost indirect cost and revenue

CIT vs. Lokhandwala Construction Inds. Ltd. (2003) 260 ITR 579 (Bom.)

Construction project undertaken by the assessee-builder constituted its stock-in-trade and the assessee was entitled to deduction under s. 36(1)(iii) in respect of interest on loan obtained for execution of said project.

Wall Street Construction Ltd. & Anr. vs. JCIT (2006) 101 ITD 156 (Mum.) (SB) – Assessee following project completion method of accounting, the interest identifiable with that project should be allowed only in the year when the project is completed and the income from that project is offered for taxation.

ITO vs. Panchavati Developers (2008) 115 TTJ 139 (Mum.) – Assessee following project completion method, and advertisement expenses of the two projects being allocable to individual project, such advertisement expenses have to be capitalized as work-in-progress to be allowed deduction in the year of completion of project.

JCIT vs. K. Raheja (P) Ltd. (2006) 102 ITD 414 (Mum.) – Even though assessee was following competed contract method for returning its income, its claim of finance cost as a period cost in nature of interest was allowable in the year in which it was incurred or accrued, in accordance with AS-7 issued by the ICAI.

DCIT vs. Thakker Developers (2008) 6 DTR 238 (Pune) – Assessee following 'modified project comp *CIT vs. Advance Construction Co. (P) Ltd. (2005) 275 ITR 30 (Guj.)*

'Completion method' which was accepted in the past, AO could not be allowed to partially detract from the same by making disallowance of part of interest and loan processing fee in respect of a particular project and allowing the balance of the interest thereby creating an anomalous position and deviating from the rule of consistency.

24. Conclusion

It is very unfortunate that the CBDT has not issued any notification specifying the slum project. Dharavi of Mumbai which is considered as biggest slum of Asia has also not notified by the Board. This needs to be properly urgently looked into. Because of recession many housing projects may not be completed within specified time of four years from the end of financial year in which the housing project has been approved. These are the practical difficulties which need to be addressed and resolved so that the purpose of incentive is not lost.

Editorial: Refer Bombay High Court Judgment in CIT vs. Brahma Associates (2011) 51 DTR 298 (Bom.) Source: www.itatonline.org
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