

Section 50C: A Step forward in curbing Black Money

Introduction

In order to seal the prevailing black money in land and building transactions, the legislature vide finance Act 2002, introduced section 50C with effect from 1st April 2003 on transfer of land and building or both held as capital asset. The section provides that where the consideration for transfer of land or building or both is less than the stamp duty value of such land or building or both, Stamp Duty Value (SDV) of the respective asset shall be deemed as full value of consideration for the purposes of computation of capital gains.

It is clear from the reading of the provisions of section 50C that it is inserted to curb the wide spread undervaluation in the real estate transactions in the sale deed which was being done to defraud the government by majorly pumping in black money for real estate transaction. Section 50C has been incorporated to check the evasion of tax by undervaluing the real estate properties. The constitution of India in its Article 246 give exclusive power to the Parliament to make law in respect of the matters enumerated in List I of VII Schedule (Union List). Entry 82 List I of VII Schedule empowers the Parliament to levy tax on income other than agricultural income. The legislative competence of the Parliament in enacting statute or inserting provision for arresting leakage of income has been considered by the Apex Court in several cases. Tax could be evaded by breaking the law or could be avoided in terms of the law. Whenever there is an avoidance of tax in the absence of law, the Legislature steps into amend the income tax law to catch such an income within the net of taxation.

Bare Act

50C Provision for full value of consideration in certain cases

(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :

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 [or through such other electronic modes as may be prescribed], on or before the date of the agreement for transfer:

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

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

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value

so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

Background

Section 50C was introduced in the Income tax Act, 1961 by the Finance Act, 2002 with effect from 1st April 2003 for substituting the valuation done for the Stamp Valuation purposes as full value of the consideration in place of the apparent consideration shown by the transferor of the capital asset, being land or building and, accordingly, calculating the capital gains under Section 48.

Basic Ingredients of Provisions of Section 50C

- i) There should be a transfer of capital asset, being land or building or both;
- ii) There should be a transfer of such capital asset by way of registration with the Stamp Duty Authorities;
- iii) Stamp duty is sought to be imposed by the Stamp Valuation Authorities at certain value of the capital asset which is different than the sale consideration shown in the documents of transfer sought to be registered;
- iv) Where valuation done by the Stamp Valuation Authorities for levying Stamp duty is less than the sale consideration shown by the assessee in the sale deed, Section 50C cannot be invoked;
- v) Where valuation done by the Stamp Valuation Authorities for levying stamp duty is more than the sale consideration shown by the transferor in the sale deed then such higher valuation will be considered as full value of consideration and, accordingly, such full value of consideration being valuation done by the Stamp Valuation Authorities will be substituted for apparent consideration;

- vi) The capital gains under Section 48 shall be computed accordingly on the basis of such higher full value of consideration and not on the basis of apparent consideration shown in the sale deed;
- vii) If the assessee, being transferor, claims before the Assessing Officer that fair market value of the property under transfer is less than the valuation done by the Stamp Valuation Authorities then the Assessing Officer may refer the property to the Valuation Officer for determining its fair market value as on the date of the transfer;
- viii) Such reference would be made in accordance with Section 55A;
- ix) On receipt of valuation report from the Valuation Officer, the Assessing Officer has to compare the fair market value as determined by the Valuation Officer with the valuation done by the Stamp Valuation Authorities under the Stamp Duty Act and with the apparent sale consideration shown by the assessee in the sale deed;
- x) Where valuation done by the Valuation Officer is more than the valuation done by the Stamp Valuation Authorities (SVA) then valuation done by the SVA would be taken as full value of consideration and capital gains will be calculated accordingly;
- xi) If valuation done by the Valuation Officer is less than the valuation done by the SVA then valuation done by the Valuation Officer would be adopted as full value of consideration as against the apparent consideration shown by the assessee or the valuation done by the SVA and capital gains be calculated accordingly;
- xii) If valuation done by the Valuation Officer is less than the valuation done by the SVA as well as sale consideration shown by the assessee in the sale deed then apparent consideration shown in the sale deed would alone

- be accepted as full value of consideration and capital gains be calculated accordingly, i.e. as shown by the assessee;
- xiii) Use of the word 'shall' in Section 50C makes it mandatory for the assessing Officer to adopt the valuation done by the SVA in place of apparent consideration, if necessary conditions under Section 50C are satisfied. The Assessing Officer has no discretion.

Scope of Section 50C

It is well-settled principle of interpretation that the function of the Court is only to explain and not to legislate any provision of statute. The judicial function is confined to find out the true intention of the legislature behind provision brought on statute book. When the words of any statutory provision are clear and unambiguous, in that case to find out intention of the legislature there is no need of further investigation by resorting to process of interpretation. Then, the words used by the legislature should be the base to interpret a particular provision. But on many occasions it is observed that the provisions are drafted in such a way that they may create confusion when the same are being tried to apply and in such situation there is no option but to go with process of interpretation. What is the correct meaning of those words when the law or particular provision was enacted? Normal rule of interpretation is that, if the language is very clear then the provision is to be interpreted in its ordinary, popular and natural meaning. It is also well settled principle that, when the language of the statute is plain and explicit and does not admit of any doubtful interpretation, the Court cannot expand the meaning of the words used by the legislature. The language of section 50C is very clear and straight in respect of its intention that it is brought

on statute book i.e. way of deeming provision for calculation of capital gain on land and building under section 48 of the act. The basic intention to insert section 50C is for the purpose of determining full value of sale consideration for the purpose of computation of capital gains under s. 48 of the Act.

Series of amendments in section 50C

1) Changes brought by Finance Act 2016

The Amendment brought by finance act 2016 provides that where the date of agreement fixing the amount of consideration for the transfer of property and the date of registration are not the same, Stamp Duty Value as on the date of the agreement may be taken for the purposes of computing capital gain provided that amount of consideration or part thereof has been received by way of **an account payee cheque or account payee draft** or by use of ECS services on or before the date of agreement for transfer.

'Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property.'

Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building or both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its first report, pointed out that this provision does not provide any relief where the sel

ler 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. 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."

Amendment is retrospective in nature

By the above amendment the Government has recognized the genuine and intended hardship in the cases in which the date of agreement to sell is prior to the date of sale, and introduced welcome amendments to the statute to take the remedial measures. There cannot be any dispute that this amendment in the scheme of Section 50C has been made to remove an incongruity(incompatibility), resulting in undue hardship to the assessee, as is evident from the observation in Easwar

Committee report to the effect that "The (then prevailing) 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" recognizing the incongruity that the date agreement of sell has been ignored in the statute even though it was crucial as it was at this point of time that the sale consideration is finalized. The incongruity in the statute was glaring and undue hardship not in dispute. Once it is not in dispute that a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced. In support of this proposition, the Hon'ble Delhi High Court's judgment in the case of CIT v. Ansal Landmark Township Pvt Ltd. [(2015) 377 ITR 635 (Del)], wherein approving the reasoning adopted in an order authored by me during my tenure at Agra bench [i.e. Rajeev Kumar Agarwal v. ACIT (2014) 149 ITD 363 (Agra)] which centered on the principle that when legislature is reasonable and compassionate enough to undo the undue hardship caused by the statute "such an amendment in law, in view of the well settled legal position to the effect that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically".

Amendments under Finance Act 2018

Section 50C was further amended to provide that the provisions of the said section shall apply only where the SDV of the property exceeds **105%** of the actual sale consideration. Example: - Transaction price is Rs 200 but the SDV is Rs 210 then there would be no implications under the said section since SDV doesn't exceed 105% of transaction price.

Finance Act 2020

Section 50C has further been amended to provide that the threshold for the application of this section shall be taken as **110%** of sale consideration instead of 105% of sale consideration as stated in Finance Act 2018 above.

Constitutional Validity of Section 50C

The constitutional validity of section 50C has been challenged before the hon'ble Madras High Court in the case of K. R. Palanisamy v. UOI [2008] 306 ITR 61 (Madras), where the High Court uphold the validity of section 50C and held as under:

“Every safeguard has been provided under the provisions of the Stamp Act to the petitioner to establish before the authorities as to the real value for which the capital asset has been transferred. As per the provision of section 47A of the Stamp Act, if the registering authority has reason to believe that the market value of the property, which is the subject-matter of transfer, has not been truly set forth in the instrument, he would after registering such instrument, refer the same to the Collector for determination of the market value of such property. On receipt of the reference, the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under the Stamp Act determine the market value of the property.

Sub-sections (2) and (3) of section 50C provide further safeguard to the assessee, in the sense that if the assessee claims before the Assessing Officer that the value adopted by the stamp duty authorities exceeds the fair market value and the value so adopted or assessed for the purpose of stamp duty has not been disputed in any

appeal or revision before any authority, the Assessing Officer could refer the valuation of the capital asset to the Departmental Valuation Officer. On such reference, if the value determined by the Valuation Officer is more than the value adopted or assessed by the stamp duty authority, the Assessing Officer shall adopt the market value as determined by the stamp duty authority. Thus, a complete full proof safeguard has been given to the assessee to establish before the authorities concerned the real value. Thus, what is stated in section 50C as a real value cannot be regarded as a notional or artificial value and such real value is determinable only after hearing the assessee as per the statutory provisions. There is no indication either in the provisions of section 50C of the Income-tax Act or section 47A of the Stamp Act or Rules made there under about the adoption of the guideline value. Hence, the contention that section 50C is arbitrary and violation of article 14 cannot be accepted.

Thus, it can be seen that the constitutional validity of section 50C of the Act was upheld after noting the various safeguards available to an aggrieved person regarding valuation of a property under the Indian Stamp Act as well as the Income-tax Act.

In the case of **Bhatia Nagar Premises Cooperative Society Ltd. v. Union of India** [2011] 334 ITR 145, the Bombay High Court held that classification for preventing evasion of tax and undervaluation of transaction by substituting apparent sale consideration are neither unreasonable nor discriminatory. The insertion of Section 50C is within the legislative competence and is not violation of Article 14 of the Constitution of India.

Reference to the valuation officer report

CIT V DR. Indra Swaroop Bhatnagar, [2012] 349 ITR 210, Allahabad High Court

In this case the assessee entered into an agreement for sale for a consideration of Rs.51,75,000 while the Stamp Authorities levied the stamp duty on a value of Rs.1,38,00,000/- as per the circle rate . Thus, relying on the same the Assessing Officer invoked the provisions of section 50C i.e. sale consideration Rs.1,38,00,000/-. It is held that section 50C 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 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. Further 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, 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. The D.V.O. valued the property in question at Rs.58,50,000/-, but the A.O. has rejected the D.V.O. report and adopted the valuation made by the Stamp Valuation Authorities as full value of the consideration received and accordingly calculated the capital gain. It is crystal clear with a series of Judgments that , when the A.O. has obtained the D.V.O. Report then the same is binding. Thus the case is decided against the revenue.

Legal Fiction under Section 50C is rebuttable:

The fundamental purpose of introducing section 50C was to counter suppression of sale consideration on sale of immovable properties, and this section was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. However, section 50C creates a legal fiction which is rebuttable. The Fair Assessment Procedure under the scheme of assessment in the Income Tax Act requires that the principles of natural justice should be followed while making any additions and the same cannot be denied by presumptive provisions, such as Section 50C of the Act and several other provisions in the scheme of the Act.

Section 50C creates "presumption" that any difference between guideline value and sale consideration is deemed consideration. However, any presumptions about attempts to evade tax are rebuttable and an opportunity must be given to the assessee to show cause that such presumption drawn is incorrect. In case of any immovable property, there could be several bona fide considerations which may induce the seller to sell the property less than the market value. Hence, in the absence of any opportunity to the assessee, the provision would have been in violation of principles of natural justice.

M/S Jagannathan Sailaja Chitta V ITO, 2019, Madras High Court:

In this case the presumptive value under section 50C gave rise to the additions to the extent of Rs 2,61,05,992/- to the declared sale value, as disclosed by the assessee, and the same was adopted by the Appellate Authorities for assessment purposes, without meeting the objections of the assessee at all. The presumption under section 50C (1) even though rebuttable in law, was never allowed to be rebutted by the Assessee at all.

The Hon'ble High court held that the consideration of objections of the Assessee by the Assessing/Appellate Authorities is a must to be undertaken exercise. But, the same was not done in this case. The Departmental authorities failed to meet the objections of the Assessee, which were raised before CIT (A) for the first time at the appeal stage, and the same were never overruled by a speaking order and the **Guidance Valuation as per Section 50C (1) was taken as a Gospel Truth against the disclosed and declared value of the sale by the Assessee. This is not permitted in law.**

The 'Guidance Value' fixed for stamp duty purposes is fixed by the authority concerned, taking into account the location, current market price of property in particular area etc., but it cannot be taken as a standard measure and the differences of personal factors, such as, sale in distress for meeting financial emergency, sale to related parties and a host of such other factors cannot be ignored as, in Income Tax Act, the concept of levy of tax on "real income" exists.

Therefore, Capital Gains Tax can also be levied on 'real' capital gains and not on the presumptive capital gains. The need to determine a Fair Market Value upon a fact finding exercise is a sine qua non. But, such fact finding exercise by the Departmental authorities, be that Assessing Authority or even the Appellate Authority, was not really undertaken in the present case and that is where, failure and miscarriage of justice has occurred.

It would be an insult to the honest tax payer to adopt an assumed higher market value to impose Capital Gains Tax without allowing him or her an opportunity to rebut even the legal presumption under Section 50C (1) even though law itself provides for a further fact finding exercise to be undertaken by reference to DVO under Section 50C (2) and thereupon meeting the objections of the Assessee and

allowing him full opportunity to prove that the value declared in the sale deeds is the true and fair Market Value of the Capital Asset and the actual consideration received by him and, therefore, Capital Gains Tax can be imposed only on that basis.

A bare reading of Scheme of Section 50C would show that Assessee can object to presumptive value as per Section 50C (1) and, therefore, it is only after hearing the objections of the Assessee, the Fair Market Value of the Capital Asset as per 'Guidance Value' can be determined by the authorities. The Assessee cannot be denied an opportunity to raise his objections even against the presumptive Fair Market Value under Section 50C (1) or Report of DVO under Section 50C (2) and the Assessing Authority or the Appellate Authorities, whose powers are co-extensive with those of the Assessing Authority, cannot refuse to meet those objections point by point.

The Fair Assessment Procedure under the scheme of assessment in the Income Tax Act has at its root the principles of natural justice and the same has not been denied by presumptive provisions, such as Section 50C of the Act and several other provisions in the scheme of the Act.

Thus, in view of the above facts the hon'ble court opined that CIT (A), where, for the first time, the Report of DVO came up, could either deal with the objections of Assessee himself or remit the matter back to the Assessing Authority for dealing with the said objections in an appropriate and detailed manner. But, such an exercise does not seem to have been undertaken by him in the present case. Therefore, the Appeal of the Assessee is allowed for the said purpose.

CIT v Khoobsurat Resorts (P.) Ltd. (2012), ITA 776/2011, Delhi High court. It was held in para 15 as under :

'The express provision of Section 50C enabling the revenue to treat the value declared by an assessee for payment of stamp duty, ipso fact, cannot be a legitimate ground for concluding that there was undervaluation, in the acquisition of immovable property. If parliamentary intention was to enable such a finding, a provision akin to Section 50C would have been included in the statute book, to assess income on the basis of a similar fiction in the case of the assessee who acquires such an asset. No doubt, the declaration of a higher cost for acquisition for stamp duty might be the starting point for an inquiry in that regard; that inquiry might extend to analyzing sale or transfer contemporaneously at the time of transaction. However, the finding cannot start and conclude with the fact that such stamp duty value or basis is higher than the consideration mentioned in the deed. The compulsion for such higher value, is the mandate of the Stamp Act, and provisions which levy stamp duty at pre-determined or notified dates. In the present case, the revenue did not rely on any objection fact or circumstances; therefore the Tribunal is right in granting relief to the assessee.

The Hon'ble Allahabad High Court in the case of CIT Vs Chandra Narain Chaudhary in ITAT No.287/2011 vide Judgment dated 29.08.2013 held that Section 50C of the Act is a rule of evidence in assessing the valuation of property for calculating the capital gain. The deeming provision under Section 50C(1) of the Act is rebuttable. It is well known that an immovable property may have various attributes, charges, encumbrances, limitations and conditions. The Stamp Valuation Authority does not take into consideration all the attributes of the property for determining the fair market value of the same. The stamp duty collector is required to value the property in accordance with the circle rates fixed

by the Collector. *The object of the valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value on which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as its occupation by tenant, any charge or legal encumbrances.*

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

In this case, it is held that “the Department valuation Officer has placed too much of emphasis on the assessment or valuation by the stamp valuation authority. This is neither desirable nor permissible. The reason is that the valuation by the stamp valuation authority is based on the circle rates. The circle rates which are adopted are uniform rate of land for an entire locality, which generally disregards peculiar features of a particular property. As even in a particular area, on account of location factors and possibilities of commercial use, there can be wide variations in the prices of land. However, circle rates disregard all these factors and adopt a uniform rate for all properties in that particular area. *If the circle rate fixed by the stamp valuation authorities was to be adopted in all situations, there was no need of reference to the DVO under section 50C(2).* The sweeping generalizations inherent in the circle rates cannot hold good in all situations. It is, therefore, not uncommon that while fixing the circle rates, authorities do error by adopting higher rates of the land in a particular area as the circle rate. Thus, in this case, the DVO's blind reliance on circle rates is unjustified. The DVO has simply adopted the average circle rate of residential and commercial area, on the ground that interior area of the locality, where the assessee's property is situated, is mixed developed area i.e. shops and offices on the ground floor and residence on the upper floors. When DVO's valuation required to compare the same with the valuation by the stamp valuation authority will render exercise under section 50C(2) a meaningless

ritual and an empty formality”, it is futile to base the valuation report on the circle report itself.

Section 50C is a legal Fiction which cannot be further extended:

The perusal of section 50C shows that it creates a legal fiction, by which the value adopted by the Stamp Valuation Authority for payment of stamp duty is deemed to be the full value of the consideration received but it has been created for the limited purpose of section 48. Section 48 deals with mode of computation of income chargeable under the head “Capital gain”. It is therefore clear that the legal fiction created by section 50C is limited to the purposes of section 48 alone and does not extend to any other purpose. In other words, its applicability is restricted to the computation of capital gain under section 48 and therefore the legal fiction created by section 50C cannot be extended to any purpose beyond the purposes of section 48. The legal fictions created by law must be carried to its logical conclusion and not to an illogical length or beyond the purpose for which it is created.

Various Issues settled in Judicial Pronouncements by various courts

1. **Section 50C cannot be applied to stock in trade** – Where a property is treated as stock in trade or business asset it would not be a capital asset and, therefore, provisions of Section 50C cannot be invoked. The same has been held in various judicial pronouncements such as **CIT v Thiruvengadam Investments (P)Ltd.** (2010) 320 ITR 345 (Mad.), **Inderlok Hotels (P)Ltd. v. ITO** (2009) 32 SOT 419 (Mum), **Asst.CIT v. Excellent Land Develoeprs (P)Ltd.** (2010) 1 ITR (Trib) 563 (Delhi).

- 2. Exemption under section 54F and section 50C:** The deeming fiction as provided under section 50C of the Act for computation of the full value of consideration is to be applied only to section 48 of the Act and therefore meaning of full value of consideration as referred to in explanation to section 54F of the Act is not governed by the meaning of the words full value of consideration as mentioned in section 50C of the Act. The same has been held in various judicial pronouncements.

Judicial Pronouncements

The coordinate bench of ITAT Jaipur in the case of **Gyan Chand Batra V ITO (2010) 6 ITR 147** held that:

In Explanation to section 54F(1), it is mentioned that net consideration means the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of full value of consideration in Explanation to section 54F(1) will not be governed by meaning of words 'full value of consideration' as mentioned in section 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under section 48. Section 54F(1) says that capital gain is to be dealt with in accordance with the provisions of sub clause (a) and (b) of section 54F(1). In the instant case, the cost of new asset is not less than the net consideration thus, the whole of the capital gains will not be charged even if the capital gain has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in section 54F(4) that net consideration which is not appropriated towards the purchase of new asset the same is to

be taxed in case such net consideration not appropriated or not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus, the deduction under section 54F is clearly applicable. Deeming provisions as mentioned in section 50C will not be applicable to section 54F so far as the meaning of 'full value' of consideration is concerned as deeming provision mentioned in section 50C is for specific asset and for the purpose of section 48. Hence, the assessee is entitled for deduction under section 54F.

Gouli Mahadevappa v. ITO (2011) 128 ITD 503 (2010) (Banglore)

When valuation done by the SVA is adopted as full value of consideration under Section 50C then, such value adopted will result in larger capital gain for the assessee as compared to what is disclosed by him. However, for the purpose of getting benefit under Section 54F, the assessee cannot be expected to invest more than actual amount of capital gains accrued to him on the basis of sale consideration as per instrument of transfer. The legal fiction created by Section 50C in determining the capital gains cannot be extended to Section 54F or other provisions allowing exemption from capital gains as deeming Section can be applied only for the definite and limited purposes for which it is created. Therefore, capital gains and net consideration mentioned in exemption provisions such as Section 54F can be worked out on the basis of apparent sale consideration without imposing fiction created under Section 50C.

Sunil Miglani V DCIT, Ghaziabad, 2020, ITAT Delhi In this case, the AO admitted the claim of the assessee for exemption under section 54F(1)(b) in respect of investment on long term capital gain but instead of taking actual sale consideration received, has adopted the figure of sale consideration by invoking Section 50C.

It is held that this is not in accordance with the provision of Section 50C which has created a deeming fiction. Section 54F is an exemption provision and it has given its applicability in itself, therefore, Section 50C will not come under picture. Long Term Capital Gain exemption is admissible under section 54F(1)(b), wherein total taxable gain comes to Rs 2,68,830/- only as the investment made by the assessee adopting the figure of the actual sale consideration received in consequence with Section 54F of the Income Tax Act.

CIT(A) while enhancing the addition has ignored the very effect of the provisions of Section 54F. Besides this, the CIT(A) while enhancement has not given any reasons as to why the enhancement is necessary and why the assessee is not justified in adopting the figure of the actual sale consideration received. Thus, the Assessing Officer as well as CIT(A) failed to justify the stand by making addition of Rs 30,17,456/- in respect of long term capital gain without granting exemption under section 54F of the Income Tax Act.

Smt. Kalva Uma Devi V ITO Visakhapatnam, 2018

In this case, the assessee has invested the entire net consideration in acquiring the new house. As per section 54F, the conditions required to be satisfied for allowing the deduction section 54F is firstly, the asset

transferred must be long term capital asset not being a residential house. The assessee should acquire the new house within one year before the transfer or within 2 years from the date of transfer or the assessee required to construct one residential house before one year or within 3 years from the date of transfer. The quantum of allowable deduction is, if the cost of the new asset is not less than the net consideration in respect of the original house, the whole of such capital gains should not be charged section 54F.

Thus, the net consideration is the full value of consideration received or accrued as a result of transfer but not the deemed consideration as defined in section 50C of the Act. Section 54F(1)(a) clearly makes the assessee entitled for the net consideration, if the whole of such amount is paid for acquiring the new house. In the instant case, there is no dispute that the assessee has paid the whole of net consideration for acquiring the new house. Thus, it is held that section 50C has no application in case the entire net sale consideration has been applied for acquiring the new house.

3, Section 50C would apply to a seller only and not the purchaser

CIT V Sarjan Realities Ltd, (2013). The relevant extract of the decision vide para 6 and 7 reads as under :

6. As is well known, section 50C of the Act makes special provision for full value of consideration in certain cases Subsection (1) thereof 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 or assessable by any authority of a State Government for the purpose of stamp duty in respect of such transfer, such

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

7. Clearly thus, section 50C of the Act by a deeming fiction substitutes the consideration received on sale of a capital asset by stamp duty valuation. Such deeming fiction, however, is applicable only in case of a seller for the purpose of section 48 of the Act.

Gayatri Enterprise v ITO, 2019, Gujarat High Court

It is settled law that section 50C will apply to the seller of the property and not to the purchaser of the property. Section 50C of the Act does not seem to have been invoked by the authority below for the purpose of adding the income under Section 69B of the Act.

In this case, there is nothing on record to indicate as to what was the price of the land at the relevant time. Apart from the fact that the price of the land was different than the one, recited in the sale deed but it is not established on record by the department that as a matter of fact, the consideration as alleged by the department did pass to the seller from the purchaser, it cannot be said that the department had any right to make any additions.

Section 69B of the Act does not permit an inference to be drawn from the circumstances surrounding the transaction that the purchaser of the property must have paid more than what was actually recorded in his books of account for the simple reason that such an inference could be very subjective and could involve the dangerous consequence of a notional or fictional income being brought to the tax contrary to the strict provisions of Article 265 of the Constitution of India which must be “taxes on income other than agricultural income”.

There could not have been any presumption for the purpose of making addition under immovable property.

Applicability of Section 50C on Lease hold right

Section 50C applies only to capital asset being land or building or both. It does not apply to leasehold rights in the land or building. The scope of a deeming provision cannot be extended beyond the object for which it is enacted.

CIT V M/S. Greenfield Hotels & Estates Pvt. Ltd. , [2016] 389 ITR 68 , Bombay High Court It is held that Section 50C is not applicable while computing capital gains on transfer of leasehold rights in land and buildings.

Since the Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul Puranik, thus, it could be inferred that it has been accepted. As held in Apex Court in UOI vs. Satish P. Shah (2000 - Supreme Court) has laid down the salutary principle that where the Revenue has accepted the decision of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged.

ATUL G. PURANIK V ITO, [2011] 11 ITR 120, [2011] 132 ITD 499

Section 50C applies only to a capital asset, being land or building or both, it cannot be made applicable to lease rights in a land. As the assessee transferred lease right for sixty years in the Plot and not land itself, the provisions of section 50C cannot be invoked. It is a settled legal proposition that a deeming provision cannot be extended beyond the purpose for which it is enacted. Capital gain on the transaction of assignment of lease rights in the Plot is to be computed in the year in question by adopting the full value of consideration on 25-08-2005 at Rs 2.50 crores and the cost of acquisition shall be worked out afresh as per law by the AO

by taking the market value of lease rights for sixty years in the Plot as on 16-08-2004.

Noida Cyber Park Pvt. Ltd. V ITO, 2020, ITAT DELHI, ITA NO. 165/DEL/2020

As per AO, consideration received by the assessee as a result of the transfer of the six properties in question was lower than the value adopted by the ‘Stamp Valuation Authority’ for the purposes of payment of stamp duty and Section 50C is to be not invoked. It is held that the expression ‘land or building’ in its coverage is quite distinct from the expression ‘any right in land or building’. The legislature, in its wisdom, has used the expression ‘land or building or both’ in Section 50C(1) and not the expression ‘any right in land or building’. Therefore the present transaction of six properties for a lease of 90 years, does not warrant invoking of section 50C(1) of the Act as the property in question is not of the nature covered by section 50C(1) of the Act. Therefore, the Assessing officer is being directed to delete the addition.

4. Land and Building held as stock in trade

The Legislature wisdom had introduced a separate provision to adopt the stamp value in respect of assets other than capital assets by introducing section 43CA of the Act in line with the provision of section 50C of the Act. But we find that the provisions of section 43CA has been introduced in the Statute by Finance Act, 2013 w.e.f 01.04.2014 meaning thereby, the same is applicable only for the assessment year 2014-15 and not earlier.

In the case of **Neelkamal Realtors & Erectors India**, the Hon’ble High Court brought out distinction between the capital gains and income arising on business

assets, which was reflected as ‘work-in-progress’ (WIP) and in this regard the Court observed as under:

“It is self-evident from reading of section 50C of the Act that it would not have any application while determining ‘profits and gains of business or profession’ as its application is only limited to computation of income chargeable under the head ‘capital gains’ i.e. section 48 of the Act i.e., mode of computation of capital gains. In fact, section 50C of the Act as is placed as part of the Chapter IV-E under the head ‘capital gains’, so that it can only govern the valuation of the property to determine capital gains and cannot govern valuation of transfer of assets (other than a capital asset) i.e., stock-in-trade. This view is further strengthened by the fact that section 43CA has been introduced into the Act w.e.f 1st April, 2014 which governs taking of full value of consideration for transfer of assets other than capital assets on the basis of stamp duty valuation. This section 43CA of the Act finds a place as a part of Chapter IV-D – Profits and gains of business or profession. Therefore, with effect from 1st April, 2014 the stamp duty valuation of assets sold could be taken as full value of consideration. Thus, it is clear that section 50C of the Act has no application to value stock in trade.

CIT V M/S Kan Construction and Colonizers (P) Ltd, 2012, Allahabad High Court

In this case the assessing officer treated the sale of plots as sale of capital assets and determined the deemed capital gain from sale as per the provisions of section 50C. But the assessee contented that the income from the said transaction is liable to be treated as income from profits and gains of business as the property in question is stock in trade. The Tribunal also treated it as stock in trade. However, aggrieved by the same the Revenue filed an appeal to High court. The Hon’ble

Allahabad High Court held that the observations of the Tribunal that in the balance sheet also the land has been disclosed as stock in trade and Stock in trade has been excluded from the definition of capital asset is acceptable and also it is for the Revenue to establish that the profit earned in a transaction is within the taxing provision and is on that account liable to be taxed as income. The profit motive in entering a transaction is not decisive, for an accretion to capital does not become taxable income merely because an asset was acquired in the expectation that it may be sold at a profit. Also, there is nothing to show that the assessee desired to controvert the property into some other use. Hence, the appeal of the revenue is dismissed stating provisions of section 50C are not applicable with respect of sale of land as land was not capital asset but stock in trade.

5. Conversion of Capital Asset to stock in trade

Sometimes it is noted that when a capital asset gets converted into stock in trade, it ceases to be a capital asset and hence the provision of Section 50 C will not be applicable. It is to be further noted that Section 50 C starts with the wording - "Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset". Therefore, as there is no consideration received or accruing when the capital asset is converted into stock in trade the provisions of Section 50 C will not be applicable to such transfer. Further, if the Capital Asset namely Land is converted into Stock in trade and the assessee commences development of a project on that land the receipts of which are offered for Tax in the year of completion the interest paid on borrowed capital for the project will be allowed as an expenditure as a period cost.

6. Section 50C does not apply to rights

Section 50C is a deeming provision and it extends to only to land or building or both. The settled legal proposition is that deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of the section. Therefore, it is essential that for application of Section 50C, that the transfer must be of a capital asset, being land or building or both. If the capital asset under transfer cannot be described as “land or building or both” then section 50C will cease to apply.

Smt. Sowmya Sathyan V ITO, Mysuru, ITAT Bangalore: The term 'capital asset' mentioned in the section specifically refers and confines its meaning to 'land or building or both'. Thus, scope of section 50C is restricted by the legislature itself to these two types of capital assets only.

In this case, the capital asset which was transferred by the assessee was 'Development Rights in the land' and not the 'Land' itself. It is further held that we should apply the 'Rule of strict Interpretation' as well as 'Rule of Literal Construction' while understanding the meaning and scope of deeming provisions under the given facts and circumstances, Thus, the impugned capital asset transferred by the assessee upon which long term capital gain has been computed is on account of transfer of Development Rights in the land of the assessee. The land itself has not been transferred by the assessee. Thus, provisions of section 50C have been wrongly applied upon the impugned transaction.

Voltas Ltd. V ITO , Mumbai, 2016

The provisions of section 50C are deeming provisions. It is settled law and well accepted rule of interpretation that deeming provisions are to be construed strictly. Thus, while interpreting deeming provisions neither any words can be added nor

deleted from language used expressly. We should apply the 'Rule of Strict Interpretation' as well as 'Rule of Literal Construction' while understanding the meaning and scope of deeming provisions. In our opinion, under the given facts and circumstances, Ld. Counsel has rightly contended that since the impugned capital asset transferred by the assessee upon which long term capital gain has been computed by the AO is on account of transfer of Development Rights in the land of the assessee.

The land itself has not been transferred by the assessee. Thus, in our opinion provisions of section 50C have been wrongly applied upon the impugned transaction. Thus, we reverse the action of lower authorities in applying the provisions of section 50C and in substituting any value other than the amount of actual sales consideration received by the assessee.

It is also noted by us that for the assessment year under consideration there is no other provisions on the statute which permit the AO to substitute any other value with the full amount of consideration actually received by the assessee, while computing income under the head of capital gains. Thus, the case is decided in favour of assessee.

V.S. Chandrashekar V ACIT, 2021, Karnataka

The Hon'ble Karnataka High court held that from the perusal of the provisions section 2(47) and section 50C, it is axiomatic that explanation 1 to Section 2(47) uses the term 'immovable property ' whereas, Section 50C uses the expression 'land' instead of immovable property. It is also pertinent to mention that wherever the legislature intended to expand the meaning of the land to include rights or interests in land, it has said so specifically viz., Section 35(1)(a), Section 54G(1),

Section 54GA(1) and Section 269UA(d) and Explanation to Section 155(5A). Thus, Section 50C applies only in case of a transferor of land which in the instant case is M/s Namaste Exports and not the assessee who was only a consenting party and not a transferor / co-owner of the property. In this case it is clear that, the assessee had certain rights under the agreement, however, from the clear, plain and unambiguous language employed in Section 50C, it is evident that the same does not apply to a case of rights in land. It is equally well settled rule of statutory interpretation with regard to taxing statute that an assessee cannot be taxed without clear words for that purpose and every Act of the Parliament has to be read as per its natural construction of words. Thus, the provisions of Section 50C are not applicable to the case of the assessee.

Income Tax Officer V. Shri Yasin Moosa Godil (ITAT Ahmedabad)

From the reading of Section 50C, it is evident that Section 50C is a deeming provision and it extends to only to land or building or both. Section 50C can come into play only in a situation where the consideration received or accruing as a result of the transfer by an appellant of a capital asset, being land or building or both is less than the value adopted or assessed or assessable by any authority of State Government, therefore, for the purpose of payment of stamp duty in respect of such transfer. It is settled legal proposition that deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of the section. Clearly therefore, it is essential that for application of Section 50C that the transfer must be of a capital asset, being land or building or both. If the capital asset under transfer cannot be described as “land or building or both” then section 50C will cease to apply. From the facts of the case narrated above, it is seen that the assessee has transferred booking rights and

received back the booking advance. Booking advance cannot be equated with the capital asset and therefore section 50C cannot be invoked.

7. Section 50C does not apply on transfer of Tenancy Rights

ACIT, V Munsons Textiles, Mumbai, 2012, ITAT: In this case, the assessee had shown value of Rs 55 lakh in respect of transfer of tenancy rights of factory godown. Capital gain has to be computed on the basis of sale consideration accruing to the assessee. Even if the document was not registered, the capital gain has to be computed on the basis of the sale consideration shown and received by the assessee unless there was material to show that the sale consideration was understated. Market value cannot be substituted for sale consideration while computing capital gain. Only for the limited purpose of computation of capital gain in respect of sale of land and building, stamp duty value has to be substituted for sale consideration in view of specific provisions of section 50C. Therefore, provisions of section 50C cannot be applied in case of transfer of tenancy rights in respect of land or building or both.

In this case, the document was not registered and no stamp duty had been paid. Therefore, the stamp duty value cannot be adopted for the purpose of computation of capital gain and the value shown in the agreement has to be adopted.

8. Stamp duty value as on the date of agreement to sell to be considered

Smt. Chalasani Naga Ratna Kumari v. ITO, Ward- 3(2), Visakhapatnam [2017] (Visakhapatnam - Trib.) [AY 2009-10] December 23, 2016

In the said case, the assessee made transfer of property through a registered sale deed during the relevant assessment year. The Assessee did not offer capital gains on the above transaction for the relevant year as she claimed it as an agricultural

land, situated beyond 8 kms from the limits of Vishakapatnam Municipal Corporation (VMC). On scrutiny for the relevant year, the revenue authorities found that no capital gain income was offered to tax on sale of the impugned land by the assessee. The Assessing Officer held that impugned lands were not agricultural lands and merely a vacant land, not used for agricultural operations but came within the definition of capital assets as defined under section 2(14) and hence liable for capital gains. Further the Assessing Officer held that in adopting the value of the property under section 50C, the date of sale deed would be relevant for the purpose of computation of capital gains. He, therefore, adopted value as on the date of sale deed. It was held that though there is no agricultural operation carried out by the assessee, the lands held by the assessee are classified as agricultural lands in the revenue records and also suitable for agricultural operations. Therefore, impugned lands cannot be held as non-agricultural lands, just because the assessee has not carried out any agricultural operations. It was also held that for the purpose of deemed consideration the stamp duty value as on the date of agreement to sale should be considered and that the stamp duty value as on the date of sale deed has no relevance. Hence the Assessing Officer erred in adopting value of property as on the date of sale deed to compute deemed consideration as per section 50C. *Dharamshibhai Sonani v. ACIT, Circle-9, Surat* [2016] 75 (Ahmedabad - Trib.) [Assessment Year 2008-09] September 30, 2016 During relevant year, assessee sold certain land at Village 'B' on 24-4-2007 at consideration of Rs 45,00,000/-. According to the stamp duty valuation authority, said land was valued at Rs 76,21,800/-. It was in this backdrop that the Assessing Officer sought to add Rs 15,60,900/- to the value of sale consideration, for the purpose of computing capital gains, received by the assessee. The assessee explained that though a registered 'agreement to sell' was executed on 29-6-2005, the sale deed of land could finally be executed only on 24-4-2007 since the land

was agricultural and was required to be converted into non-agricultural land before execution of sale deed. Hence, according to the assessee the stamp duty valuation as on the date of sale was not relevant for computing capital gains. The Assessing officer rejected the explanation of the assessee and thus proceeded to adopt sale consideration under section 50C at stamp duty valuation rate. The fundamental purpose of introducing section 50C was to counter suppression of sale consideration on sale of immovable properties, and this section was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. As per the amended provisions of section 50C in situation in which there is significant difference between the point of time when agreement to sell is executed and when the sale deed is executed, the full value of consideration should ideally be the sales consideration as per registered sale deed, which is fixed by way of the agreement to sell, and the stamp duty valuation at the point of time when agreement to sell should be considered, , because, if at all any suppression of sale consideration should be assumed, it should be on the basis of stamp duty valuation as at the point of time when the sale consideration was fixed. This inserted provision is applicable with effect from 1-4-2017, being retrospective in nature and hence in the said case the plea of the assessee was taken. The matter was directed to be given back to the Assessing Officer to investigate whether the agreement to sell was executed on the date claimed by the assessee and in case he finds that the agreement to sell was actually on that date the A.O. will adopt the stamp duty value as on that date. In case the assessee is not content with this value being adopted under section 50C, he will be at liberty to seek the matter being referred to the DVO for valuation.

10. Provisions of Section 50C are not applicable if asset is transferred in lieu of Capital Contribution

M/S. Network Construction Company V ACIT, ITAT Mumbai, ITA No. 2279/Mum/2017

It is held that the provisions of section 45(3) provides that when a person transfer his capital asset to a firm or a body of individual or to AOP by way of capital contribution for becoming a partner/ member therein, then for the purposes of section 48 of the Act, the amount recorded in the books of account of the assessee firm or AOP, the value of the capital asset shall be deemed to be full value of consideration received or accruing as a result of the transfer of capital asset. As per the deeming fiction an amount recorded in the books of account thereby the full value of consideration for the purpose of section 48.

The Provisions of section 45(3) of the Act is a charging provision having two limbs joined by conjunction “AND”. The first limb is a charging provision which levies capital gain tax on gains arising from contribution of capital asset in the AOP by a member and second limb is an essential deeming fiction for determining the value of consideration without which the charging provision would fail. The provisions of section 50C of the Act also deeming fiction deems only the value of consideration for the purpose of calculating capital gains in the transfer of capital asset from one person to another. In view of the above, we are of the view that the provisions of section 50C of the Act are not applicable in the instant case and provision of section 45(3) of the Act will be applied.

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

Sections 69, 69A and 69B of the Income-tax Act create legal fiction by which unexplained investments, etc., are deemed to be the income of the assessee. They place the burden on the assessee to satisfactorily explain the nature and source of investments. Deemed income may be income for the purposes of assessment but that does not ipso-facto mean that the deemed consideration is actually and physically available for investments. Though section 50C creates legal fiction to the effect that the value adopted/assessed by the Stamp Valuation Authority for payment of stamp duty would be deemed to be the consideration received yet the said legal fiction cannot be extended to create another legal fiction to the effect that the consideration deemed to be so received would also be deemed to generate cash/funds for making the investments or meeting the expenses, or otherwise displace the legal fiction created by sections 69, 69A and 69B.

PCIT vs Dharmaja Infrastructure [(2019) 107 (Gujarat)] :

“In this case the assessment year under consideration is 2011-12. The assessee had purchased two properties for a consideration of Rs. 1,55,00,000/- and Rs. 1,35,00,000/- respectively. However, the value adopted by the stamp duty authority as per the market rate was Rs. 2,55,45,000/- and Rs. 2,22,57,500/- respectively. Also, as per the submissions of Assessing Officer, the assessee could not give any explanation with regard to the difference of amount of Rs 1,88,02,500/- and, therefore the Assessing officer considered such amount to be income from undisclosed sources not reflected in the books of account and treated the same as unexplained investment under section 69B of the Act. The assessee carried the matter in appeal before the Commissioner (Appeals), who allowed the appeal by holding that the Assessing Officer had relied upon the jantri rate without bringing any material on record to prove that the assessee, in fact, had made investment over and above that recorded in the books of account. While doing so, the

Commissioner (Appeals) placed reliance upon the decision of the Tribunal in DCIT v. Virjibhai Kalyanbhai Kukadia, 138 ITD 255, wherein it has been held that the provisions of section 50C of the Act cannot be applied for making addition under section 69B of the Income Tax Act. The revenue carried the matter in appeal before the Tribunal who upheld the order passed by the Commissioner (Appeals).

PCIT V M/S Bhomiyaji Land and Finance CO., 2020, Madhya Pradesh High Court, In this case, the Tribunal had concluded that the Assessing Officer had made the additions on the basis of the statement of the partner. However, the said statement has been retracted on the very next day of completion of survey proceedings by way of duly signed affidavit, signed by all the partners. Further, except for the retracted statement of the partner, there was no other material with the Assessing Officer to make such an addition. The addition was made on the basis that the sale consideration which was shown in the two sale deeds dated 28.09.2006 and 09.10.2006 was Rs. 31,01,000/- and Rs. 31,10,000/- whereas the Stamp Valuation Authority had determined the market price of this land at Rs. 42,69,500/- and Rs. 42,44,000/- respectively, resulting in the difference of Rs. 23,02,500/-. Applying the provisions of Section 50C of the Act, the addition was made.

However, the provisions of Section 50C of the Act were not available to the Revenue as the assessee was the purchaser of the land. CIT(A) has rightly adopted this view holding that provisions of section 50C were not applicable on the assessee being the purchaser of the property and also during the survey proceedings no documentary evidence was found which may prove that the assessee had made payment over and above the registered value of the property.

Subash Chand v. ACIT [2012] 49 SOT 732 (Chandigarh ITAT) does not displace legal fiction created by section 69, 69 A & 69B. The consideration, which is deemed by section 50C to have been received by the transferor, is for the limited purpose of computation of capital gain under section 48 and for no other purpose. It cannot and does not mean that the said amount of consideration has been actually received by the assessee or actually paid by the transferee to him so as to be available in his hands for investments or for meeting the expenses. "Deemed consideration" under section 50C for computation of capital gain under section 48 is quite different from actual consideration or actual availability of money for the purpose of making investments or for meeting the expense. Deemed consideration within the meaning of section 50C cannot and does not mean that the amount of deemed consideration has actually been paid by the transferee or actually received by the assessee. Also see *Rajdeep Builders vs Asstt. CIT [2012] 21 taxmann.com 254 (Chd.-ITAT)*

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

Opportunity to assessee in reference to the report of Valuation Officer

A proper opportunity is required to be provided to the assessee to raise objections before the assessing officer, prior to the adoption of stamp duty value and valuation as per DVO report. Non-provisioning of opportunity is violation of the principle of natural justice.

Manvendra Singh v CIT [2014] (Allahabad): As per the statutory scheme when the report of valuation officer is objected by the assessee, the CIT (Appeals) or

ITAT are obliged to extend an opportunity of hearing to the assessee as per law pertaining to the D.V.O.'s report .

CIT v Prabhu Steel Industries Ltd. [2013] (Bombay) : While computing capital gains under section 45, Full Value Consideration has to be taken as per circle rates prescribed by the State Government for the purpose of stamp duty valuation unless the AO has material in his possession to prove that the assessee had received higher amount than the circle rates. Adoption of the DVO's report without providing opportunity of being heard is also against the principles of natural justice.

Merely applicability of section 50C will not prove escapement of Income.

ITO v Shri Haresh Chand Agarwal, HUF, ITA No.282/Agra/2013

In this case, it is admitted fact that there is no material available with the AO to form his opinion that income has escaped assessment. All material evidences were available at the stage of original assessment proceedings and the AO merely following the provisions of section 50C reopened the assessment order. The assessee has disclosed all the facts which were already known to the Revenue. The value under Section 50C is not final certainty to prove that it is a case of escapement of income. The report of the prescribed valuer may provide estimated figure on the basis of facts of each case. Therefore, on mere applicability of section 50C would not be a proof that there is escapement of income in the facts and circumstances of the case. The AO at the initial assessment had considered all the documents and material produced and has accepted the value of property as was provided by the assessee. Therefore, on mere change of opinion, the AO was not justified in reopening the assessment. The learned CIT(A) on proper appreciation of facts and law correctly quashed the reassessment proceedings.

Combine reading of Section 45(3), 50C and 55A

From a combine reading of sections 45(3), 50C and section 55A, it is clear that they all operate in different spheres and they can be invoked when conditions laid down in those sections are satisfied. Invoking of power contained in one of these sections does not come into conflict with each other. As mentioned above, provisions of section 50C can be invoked when there is a registration of transfer under Registration Act and stamp duty is paid for the purposes of registering the sale. If the transfer by way of sale is not registered under Registration Act and no stamp duty is paid then section 50C cannot be invoked. Sec. 55A, on the other hand, empowers the AO to refer the property under transfer to a DVO if he has material on record on the basis of which he forms an opinion that value declared by the assessee as per estimate of the registered valuer is less than its fair market value or fair market value is more by certain percentage to what is declared by the assessee as sale consideration, or there are other relevant factors which necessitated the AO to refer the capital asset under transfer to the DVO. Section 55A can be invoked for the purpose of this chapter. On the other hand, where a transfer covered under section 45(3) is sought to be registered by the firm and stamp duty is paid by the parties then provisions of section 50C could still be invoked even that case may be covered under section 45(3). In that case, provisions of section 45(3) would not be applicable but it is only section 50C which can alone be invoked as there is a registration of sale deed under Registration Act. Thus, where a sale transaction is registered by paying stamp duty then it is only section 50C which can operate. In that situation, section 50C would override section 45(3). Section 45(3) is a common provision where as the section 50C is a specific provision which overrides the provisions of section 45(3) if the sale deed is registered by the payment of stamp duty. But in the cases where such registration did not takes place by payment of stamp duty than that case would

only be covered under section 45(3) and therefore, value recorded by the firm in its books would only be the full value of consideration for the purposes of computing capital gains.

Deviation between 10% to 15% in stamp duty value and sale consideration is acceptable

Parliament has introduced third proviso in section 50C(1) of the Act, as per which the difference in stamp duty valuation and actual consideration should be ignored, if it is less than 5%/10%. Even though the said provision has come into effect from 1.4.2019/1.4.2021, but in earlier judgments also of various courts the same was held as curative in nature and thus the proviso mentioned above should apply since the date of insertion of section 50C of the Act.

Shri B.S. Sanjay [HUF] V ITO (ITAT Bangalore), 2018

In this case, the sale consideration as per sale deed was Rs. 59.40 Lakh and the value adopted by DVO under section 50C (2) is Rs. 64.10Lakh and therefore, the difference between these two values is of Rs. 4,70,400/- that means difference is less than 8% of the sale consideration shown by the assessee.

Thus, following the Tribunal Judgement in the case of M/s. John Fowler (India) Pvt. Ltd. Vs. DCIT, 2017, ITAT Mumbai and also other two Tribunal orders rendered in the case of Smt. Sita Bai Khetan Vs. ITO 2016 ITAT Jaipur and Rahul Constructions 2012, ITAT Pune, hold that in the facts of the present case, no addition is justified and therefore, delete the same.

Penalty cannot be levied solely on deeming provisions

ITO V Ajay Sharma, 2017, ITAT Delhi

Assessing officer did not bring any positive evidence on record to show that assessee has concealed particulars of income or furnished any inaccurate particulars. The valuation of the Stamp Valuation Authority is not a conclusive evidence of receipt of the money by assessee over and above what is recorded in the sale deed.

The assessing officer in this case, has not brought any concrete evidence of concealment of income in the order. A.O. at the stage of assessment, simply applied the deeming provisions of Section 50C without bringing any evidence on record for concealment of income or furnishing inaccurate particulars by the assessee. In the absence of any positive evidence with respect to concealment of income, there is no justification for the A.O. to levy penalty in the matter.

Ravindra Anant Bhuskute V ITO, 2020, ITAT Pune,

As per the provisions of section 271(1)(c) the procedure of imposition of penalty u/s 271(1)(c) shall arise and only arise if there is any concealment of income or furnishing of inaccurate particulars of income. It is held that the assessee was under the bonafide belief that since he has not received any consideration during the relevant year, the sale is not complete and no profits accrued to him. In the present facts, when the charge is of the concealment of income, the facts does not suggest even on a remote basis that assessee has concealed his income rather the assessee has acted under bonafide belief and even the Revenue could not place on record any evidence of receipt of income regarding 1/4th share of the property by the assessee in the relevant year. Neither there is mens rea nor actus reus (guilty act) on the part of the assessee.

Conclusion

Thus, from the above discussion we can conclude that the provisions of section 50C can be applied only for the computation of capital gains in real estate transaction in respect to seller only and not for the purchaser. Various courts have held several times that The Fictions in law are created only for some definite purpose and there application must be limited to that purpose only and should not be extended beyond that legitimate field. Also, the fundamental purpose behind introduction of section 50C was to counter the widely prevalent suppression of sale consideration on sale of immovable properties. The section 50C was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. But in actual scenario there can be variation between stamp duty value and the sale consideration because of many factors such as Location of property, nearby public amenities, Forced sale, Size of land and building, nearby public highway/Rail facilities, Shape of the plot or location etc. Also the provisions of Section50C does not provide any pre-remedial provisions, where the genuine taxpayers in case of genuine transactions can reach to assessing officers and pre informed him regarding the under valuation of the property because of various other factors. There should also be a mechanism under section 50C where the assessee can get the valuation done for getting the fair valuation of the property in the case where the market value is less than the specified stamp value. In a country like India where the property is generally purchased as an investment which is to be utilized in case of need or emergencies, to make the innocent tax payers go through the rigorous and inescapable provisions of section 50C and further assessment and litigations is ruthless and inhuman .The assessment and litigation cost will eat way all his proceeds from the property which he might have sold to meet his emergencies such as marriage, repayment of

loan etc. Thus, it is expected from the legislature while introducing the deeming provisions like Section 50C, a pre-remedial measure should be provided for honest taxpayers so that they can be saved from the vicious circle of litigation and assessment and deeming provisions should only come in to picture where understatement of property is done to defraud revenue. Instead of literal interpretation, purposive interpretation should be applied and accordingly, the provisions should not be applied to bonafide and honest transactions.