



# Collaborations & Joint Development Agreements

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# Collaborations

- Development of land and
  - division of developed area
  - Sharing of sale proceeds
- Old residential house to be redeveloped by the builder
  - One or more flats to the builder
- Payment of some amount
  - Upfront : part consideration / refundable or non refundable security deposit, etc
  - On completion

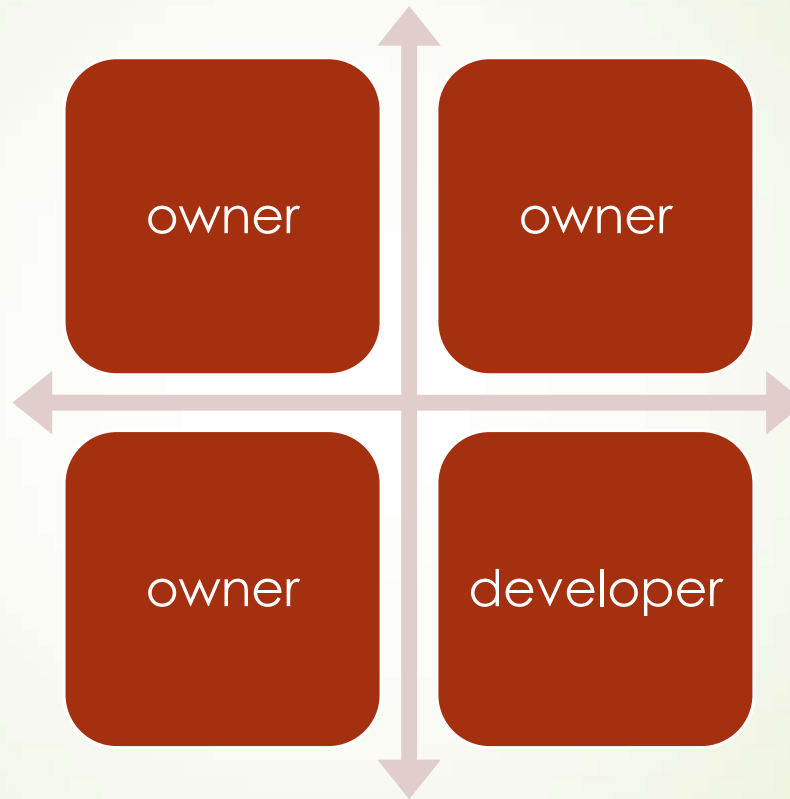
# Business / Capital gains

- Asset held as a fixed asset or as stock in trade?
- Intention at the time of acquisition
- Complete facts and circumstances of the case

# Capital gains

- ▶ Capital asset which is getting transferred?
- ▶ Full value of consideration received on transfer of capital asset?
- ▶ Cost of acquisition?
- ▶ Year of taxability?
- ▶ Taxable entity, whether AOP?

# Sharing



# Collaboration

- As a result of collaboration agreement
- Some part of the asset / right is getting relinquished / transferred in favour of the developer
- Taxability of the capital asset which is getting transferred in favour of the builder

# Large JDA

- Assessee owns 30 acres of land for which duly registered JDA/ GPA, etc are entered into.
- Development will take years
- Part consideration is paid upfront
- Developed area is to be shared or alternatively sale proceeds are to be shared in a certain proportion.

# Residential house redevelopment

- Collaboration agreement entered into for redevelopment of an old residential house
- Builder gets one floor
- In case 4 floors are permissible
- Share in the property getting transferred in favour of the builder:
  - Without basement : 25%
  - With basement : 22.5%



# Model I

- Registered collaboration agreement
- Transfer by the builder
- Implications :
  - Indirect taxes
  - Stamp duty
  - Disputes with the builder

# Model II

- Unregistered agreement
- No transfer
- Sale deed executed by the land owner
- Consideration transferred to builder
- Explanation for 194IA

# Model III

- No proper agreement
- Construction expenses improperly accounted
- Transfer by the land owner
- Subsequent payment to the builder in cash?

# Model IV

- Construction thru land owner's a/c
- Loan against mortgage
- Subsequent sale by the land owner and taxability accordingly
- Consideration to be settled by repayment of loan, etc

# Issues

- Capital asset which is getting transferred
- Year of taxability
- Full value of consideration
- Cost of acquisition

## Section 45(5A)

- Applicable to Indl/ HUF
- Wef AY- 2018-19
- Transfer of a capital asset
- Being land and / or building
- Under a registered agreement
- Owner allows development
- For consideration:
  - Share in the project
  - With or without cash

# Section 45(5A)

- Year of taxability:
  - PY in which the certificate of completion
  - For whole or part of the project is issued
  - By the competent authority
- Full value of consideration:
  - Stamp duty value of owner's share in land & building, increased by,
  - Cash consideration

# Chargeability

- Chargeable to tax in the year in which completion certificate is issued by the competent authority
- Welcome provision
- Taxability in a case where completion certificate is not obtained



# Consideration

- Construction cost of the owners share in the developed property + cash consideration
- In accordance with section 45(5A);
  - Stamp duty value of his share being land & building in the project and
  - Consideration received in cash

## Consideration for capital gains


Description	Total amount	Developer's share	Owner's share
land	80	20	60
Development cost	12	3	9
Cash		(-)2	(+)2
Consideration: Pre 45(5A)	11		
: Post 45(5A)	71		

# Cost of acquisition


- For computing capital gains as per section 45(5A)
- Asset which is getting transferred?
- Keeping in view FVC
- Presumption: Entire asset is getting transferred
- Indexed cost of entire asset to be taken for computing capital gains

# Issues in section 45(5A)

- Only registered agreements
- Individual & HUF
- Year of transfer
- Full value of consideration
- JVs which are already in progress?
- Completion certificate



# Issues



- Residential collaborations ;
  - Whether eligible for 54/54F
  - More than 1 floors for the owner
  - Cost of acquisition; huge benefit
- Other properties?
- What about Companies?
- Unregistered agreements
- Sale of owner's share before completion

# Bottom line

- In case eligible for 54/ 54F
  - Cash consideration becomes taxable subject to:
    - Indexed Cost of acquisition
    - Section 54EC
    - Set off of losses
  - Exemption can be taken for the developed residential areas
  - Benefit of higher cost of acquisition in case of subsequent sale

# As amended by FA, 2014

- One residential house instead of 'a' residential house
- Whether ratio of the Hon. Delhi High Court still a good law

*CIT v. Geeta Duggal 30 taxmann.com 230  
(delhi)*

# Bottom line

- Not eligible for 54/ 54F
  - Unwarranted tax liability
- Assessee owner of commercial land:
  - Indexed cost of acquisition Rs 50 Lacs
  - JV with 50% sharing
  - Stamp duty value of owner's share Rs 100 cr
  - Development cost of owner's share Rs 20 cr
- Taxability:
  - Pre 145(5A) : Rs 19.75 cr
  - Post 145(5A) : Rs 99.50 cr



# Structuring

- Land owned by individual / HUF
- Registered collaboration agreement
- Exemption u/s 54 cannot be availed
- Section 45(5A) gets attracted
- Huge tax implications
- Need for appropriate structuring
- Depending upon facts of each case
- SPV to get the surplus amount



# Section 194IC

- 10% of cash consideration
- On due or payment which ever is earlier
- For payment u/s 45(5A)
- Applicable to all assesses
- No provision for obtaining certificate for lower rate

# Other than 45(5A)

- Land is owned by a company as capital asset
- Collaboration agreement is not registered
- No specific section to address the issues
- Capital asset which is getting transferred?
- How to compute the cost of acquisition
- Full value of consideration?
- Year of taxability

# Capital asset

- Proportionate land rights which are getting transferred in favour of the builder
- Residential house; one floor to the builder
- Share in land:
  - Without basement: 25%
  - With basement : 22.5%

# Cost of acquisition

- Proportion of land rights which are getting transferred:
  - 25%
  - 22.5%
- Cost of acquisition accordingly
- Cost of construction of the old house?

# Consideration

- Cash consideration
- Consideration in kind being development cost of the area given to the owner
- Reimbursement of rent during the construction period

# Consideration in kind

- Full value of consideration:
  - FMV of the asset
  - Cost of the asset
- How the FMV of asset to be computed?
- How the cost to be ascertained?

# Full value of the consideration

- Estimates of the full value of the consideration on various basis:
  - Circle rates
  - PWD rates
  - Market rates

*Potla Nageswara Rao; AP High Court  
Binder Kochar's case; ITAT Chd*



# Collaboration agreements

- Does the transfer take place in the year in which the development / collaboration agreement is entered into
- Possession;
  - Whether in part performance of agreement to sell, or
  - Only for carrying out construction
- Does it take place in the year in which the transaction is completed
- Year in which substantial compliance of contract has taken place
- Point of time when right to transfer devolves on the builder
- Whether any extinguishment of any rights in the property is taking place on entering into the MOU / collaboration agreement

# Year of taxability

## Section 45

- Any profits or gains arising from the transfer of a capital asset effected in the previous year shall.....be chargeable to income tax under the head 'Capital gains' and shall be deemed to be the **income of the previous year in which the transfer took place**

# Transfer

## Section 2 (47)

- Transfer in relation to a capital asset, includes:
- (i) The sale, exchange or relinquishment of the asset; or
  - (ii) The extinguishment of any rights therein; or
  - (iii) .....
  - (iv) .....
  - (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

## Explanation 2

(Inserted by FA, 2012 wref 1/4/62)

For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India

# Year of taxability

- If the contract read as a whole indicates passing of or transferring of complete control over the property in favour of the developer then the date of the contract would be relevant to decide the year of chargeability
- Clause (v) introduced in section 2(47) to plug the loop hole wherein the payment of tax is deferred by resorting to such arrangements.

*Chaturbhuji Dwarkadas Kapadia v. CIT 260 ITR 491 (Bombay)*

*Vemanna Reddy (HUF) v. ITO (2008) 114 TTJ 246 (ITAT-Bang)*

*Dr T Achyutha Rao v. ACIT (2007) 106 ITD 388 (Hyd.)*

# Jasbir Singh Sarkaria

- Collaboration agreement entered into by the transferor
- GPA executed in favour of the developer
- Developer gets 84% share
- Subsequent agreement to sell 16% shares as well

# Jasbir Singh Sarkaria

- Not necessary that entire sale consideration should be received
- GPA executed with the right to enter upon and exercise the acts of possession
- Possession cannot be restricted to sole and exclusive possession nor actual physical possession

*164 Taxman 108 AAR (N.Delhi)*

# Andhra Pradesh HC

- Taxable in the year of handing over the possession after signing of the agreement
- Chaturbhuji Dwarkadass Kapadia and Jasbir Singh Sarkaria followed

*Potla Nageswara Rao v. DCIT ITA No. 245 of 2014  
(AP)*

*Prameela Krishna v. ITO 42 taxmann.com 185  
Karnataka*



# Consideration

- Mere accrual of the consideration as it is to be received in the subsequent years does not defer the taxability of the capital gains

*Potla Nageswara Rao v. DCIT*  
*ITA No. 245 of 2014 (AP)*

# Date of collaboration

- ACIT v. A Ram Reddy (2012) 23 Taxmann.com 59 (Hyd)
- Krishna Kumar D. Shah (HUF) v. DCIT (2012) 23 Taxmann.com 111 (Hyd)
- G Srinivasan v. DCIT (2012) 28 Taxmann.com 200 (Coch.)
- Ravinder Singh Arora v. CIT (2012) 24 Taxmann.com 346 (Hyd.)

# Chaturbhuji Dwarkadas Kapadia

- Agreement to sell property for Rs 1.86 Cr with the right to develop the property in accordance with law
- Limited power of attorney executed to obtain permissions and to deal with the property.
- Completion of transaction/ substantial compliance/ date of development agreement

# Year of taxability

- Ruling of the Hon. Bombay High Court in the case of Chaturbhuj Dwarkadas Kapadia needs to be distinguished
- Only cash consideration
- Almost entire consideration received at the time of agreement
- Whether section 53A applicable at all to collaboration agreements?

# Transfer

## Section 2 (47)

➤ Transfer in relation to a capital asset, includes:

(i) .....

(ii) .....

(iii) .....

(iv) .....

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of **the nature** referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882); or

## Section 53A

- Any person **contracts to transfer**
- For consideration any immovable property
- By writing signed by him
- From which terms necessary to constitute the transfer can be ascertained with reasonable certainty
- And the transferee in part performance of the contract has taken possession of the property or any part thereof

## Section 53A

- Transferee has performed or willing to perform his part of the contract
- The transferor shall be debarred from enforcing
- Any right in respect of the property
- Other than a right expressly provided by the terms of the contract

# Transfer on possession

- Facts distinguished from Chaturbhuj Dwarkadas case
- Almost entire sale consideration of Rs 1.86 Cr barring a small amount of Rs 9.98 Lacs was already received by the assessee in that case
- No indication of transferring of complete control over the property to the developer
- Issue should be decided on the basis of :
  - Rights which have accrued to the developer
  - Extent to which developer has discharged his obligation
  - Totality of facts of each case

*CIT v. Geeta Devi Pasari Appeal No. 861 of 2007  
(2009) 17 DTR (Bom.)*

*(2007) 14 SOT 63 (Mum.) (URO) ITAT Mumbai Bench F*



# Year of taxability

- Grant of permissive right to rebuild would not amount to transfer as the ownership right has not got annihilated or extinguished.
- Rights conferred upon the parties to the contract will crystallize only if and when the proposed building would come into existence

*CIT v. Atam Prakash & Sons (2008) 12 DTR (Del)*  
1

# JDA

- The project is at a nascent stage and no consideration has been received
- No right is being relinquished or extinguished. Rights only being redefined
- The property to be transferred is the developed area which may or may not come into existence
- Section 53A not attracted as the willingness has to be unconditional

*S.Ranjith Reddy v. DCIT (2013) 35 taxmann.com 415 (Hyd.)*

*Fibars Infratech Pvt Ltd v. ITO ITA No.477/Hyd/2013 dt 3/1/14*

# Bottom line

- Redevelopment of a residential house
- Entire construction cost can be claimed as exempt u/s 54
- Taxable quantum:
  - Cash consideration
  - Less indexed cost of acquisition
  - Of area getting transferred to the developer
- Exemption u/s 54EC
- Set off against loss u/h capital gains

# Approach

- Short cut:
  - Transfer on the date of collaboration agreement and possession
  - Valuation of consideration in kind by:
    - Regd valuer
    - Certificate from the builder
- Complexity of yr and valuation

# Big projects

- Tax implications are huge
- Ultimate outcome is also uncertain
- JDA is registered
- Ruling in the case of CS Atwal cannot be invoked
- Deferring the year of taxability is critical
- Terms of collaboration agreement are crucial

# Execution of sale deed

- Execution of sale deed:
  - By the builder
  - Thru tripartite agreement
  - By the land owner
- Transfer of funds to the builder
- TDS u/s 194IA?
- Implication?

# Sale of owner's share

- 3 floors received by the owner as per terms of collaboration agreement
- 1 floor out of the same transferred
- Two separate transactions of transfer
  - Transfer to builder as per collaboration
  - Sale of flat subsequently

# Sale of owner's share

- Whether short term or long term capital gain?
- How the cost of acquisition to be computed?
- Can assessee claim exemption u/s 54 or 54F of the Act



## Land & building

- Land purchased in 1991
- Residential house constructed thereon in 2005 and sold immediately thereafter
- Whether gain is short term or long term

*CIT v. lakshmi b Menon (2003) 184 CTR 52 (Ker)*  
*Capital gains to be determined seperately*

## Cost of acquisition (pre 45(5A))

- Floor out of owner's share
- Proportionate land rights ; cost of acquisition
- Construction cost:
  - Regd Valuer
  - Certified by the builder
- Construction cost not to be included for claiming exemption u/s 54

# Cost of acquisition post 45(5A)

- Stamp duty value of floor
- Period of holding?

# Alternative model

- Indirect tax implications
- Non-Registration of collaboration agreements
- Expenses on construction incurred by land owner / provided as loan by the builder
- Transfer directly to third party

# Unorganised sector

- Collaboration agreement is not registered
- Construction expenses are not incurred by the land owner
- Land owner transfers the builder's share to the third party
- Consideration received is transferred to the builder.

# Consideration

- Immediate
- Deffered
- Not in existence

# Flats in exchange for plots

- Members of a co-operative society agreed to exchange plots with flats to be developed by the builder
- Date of agreement taken to be date of transfer
- Developer may not have exclusive possession or complete control
- Not necessary that entire consideration should have been received
- Value of flats taken at Rs 4,500/= per sft

*Smt Binder Khokar v. ACIT 36 taxmann.com 503 (Chd)*

*CS Atwal v. CIT 59 taxmann.com 359 (P&H)*

# Practical issues

- Huge tax liabilities / outflows
- Uncertainty of outcome
- No provision for;
  - Revision
  - Refund
  - adjustment



# Mode of Computation of Capital Gains

65

## Section 48

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

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

# Receipt of consideration

- Whether important?
- Section 48 ; Full value of the consideration received or accruing
- .....Capital gains can be charged only on receipt of sale consideration and not otherwise.....

*CIT v. Smt Najoo Dara Deboo*  
*IT Appl No. 65 of 2008 dt 16/9/2013*  
*(All)*

# Consideration

- Immediate
- Deffered
- Not in existence

A transfer of property may take place not only *in prasenti* but also in future, but the property must be in existence.

*CIT v. Atam Prakash & Sons 12 DTR (Del) 1*  
*Provat Kumar Mitter v. CIT 41 ITR 624 (SC)*

# Full value of consideration

- ➡ The charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section.

*CIT v. BC Srinivasa Setty 128 ITR 294 (SC)*

# Full value of consideration

- The assessee cannot get away with not paying any tax on the capital gains taking advantage of the DVO's practical barrier to reporting the value.


*Shahdra (Delhi) Saharanpur Light Railway  
Co. Ltd v. CIT 208 ITR 882 (Cal)*

# Conclusion

- Transfer on the date of entering into the collaboration agreement and allowing of possession to the developer
- Possession may for general control and for intended performance of obligation
- Assesse needs to distinguish from Chaturbhuj Dwarka Dass & Jasbir Singh Sarkaria
- Substance of the agreement is important
- Necessary precaution needs to be taken at the stage of drafting of the agreement
- Long drawn litigation.

# JDA

- JDA for land wherein;
  - Sale proceeds to be shared
  - Developed area to be shared
- Common purpose and common action
- Whether can be assessed as an AOP?



# Section 2(42A)

- Short term Capital Asset
- Held for not more than 36 months immediately preceding the date of transfer
- 1<sup>st</sup> proviso ; 12 months
  - Securities listed on a recognised stock exchange (other than Units)
  - Units of UTI
  - Units of an equity oriented fund
  - Zero coupon bonds
- 3<sup>rd</sup> proviso ; 24 months (AY 2018-19)
  - Shares of a company (other than listed)
  - Immovable property being land and / or buliding



# Indexation

- Properties acquired prior to 1/4/1981
  - FMV on that date can be adopted
  - Indexation from the said date
- Changed to 1/4/2001
- Cost inflation index notified

# Transfer of unquoted shares

Valuation as per Rule 11UA

Prior to amendment : book value

Deeming fiction to tax

Diff between FMV & transaction price

In the hands of buyer u/s 56(2)(vii)/ (x)



# Two changes

## Section 50CA ;

- Deeming fiction
- Tax ; diff in the hands of seller

Rule 11UA has been amended



# Section 50CA

Taxation on presumptive basis ; AY 2018-19

Shares of a company other than quoted shares

Held as a capital asset

Transferred for consideration < FMV

FMV deemed to be FVC for section 48

FMV ; Rule 11UAA

Quoted share?




# Quoted share

## Explanation to section 50CA

For the purpose of this section 'quoted share' means the share quoted on any recognised stock exchange **with regularity from time to time**, where the quotation of such share is based on **current transaction** made in the **ordinary course of business**

# Transfer of shares

- Transferee of shares: FMV u/s 56(2)(x)
- Transferor : FMV u/s 50CA
- No exceptions provided



# Rule 11UAA

- Rule 11UAA notified on 12/7/17
- Rule 11UA amended by the aforesaid notification
- Amended rule applicable wef 1/4/17
- Method of valuation changed;
  - Jewellery & artistic work
  - Shares & securities
  - Immovable properties

Particulars	Amount	FMV / Stamp duty value
Land	Rs 10 Lacs	Rs 500 Lacs
Paid up Capital	Rs 10 Lacs	1 Lac equity shares of Rs 10 each
Value for transfer	Rs 10 per share	Rs 500 per share

Shares of a property company





# Issues

- Bottom line:
  - Shares valuation at the time of transfer
  - Stamp duty value of property
  - Both buyer as well as seller of shares
- Cross holdings / subsidiary also to valued accordingly
- Property remains with the company
- Subsequent sale of property by the company
- Tax effect
- Effect of DDT

# Exemptions

- Section 54
- Section 54F
- Section 54EC
- Section 54B

# Collaboration agreement

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

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

# Whether 54 / 54F/ 54B

- Capital asset which is getting transferred as a result of collaboration?
- Whether residential house or land?
- Whether agricultural land outside the purview of section 2(14)

# *Thank you*

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# Transformation of an asset

- Assessee books a flat / becomes member of a CGHS in 2007
- Possession of the flat is given to the assessee in 2011
- Flat sold in 2012
- Capital gain; whether long term or short term

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

*CIT vs Jindas Parchand Gandhi (2005) 279 ITR 552 (Guj)  
Vinod Kumar Jain v. CIT ITA No. 140 of 2000 (Pb. & HAR)*

- Flat booked with the builder

*ACIT v. Sharad Thadani 104 TTJ 567 (ITAT Lko)*

## Section 54F

- Assessee should not own more than one residential house other than the new asset
- Booking of flats with a builder ?

*Ram Prakash Miyan Bazaz v. DCIT  
45 taxmann.com 550 (Jaipur ITAT)*

# Investment in the new house

- To avail exemption u/s 54F the assessee books a flat with a builder
- Whether entitled to exemption ?
- Yes

*Ram Prakash Miyan Bazaz v. DCIT 45 taxmann.com 550 (Jaipur ITAT)*

- Payments made prior to 1 yr before exemption allowed on the basis of sale deed

*Gopilal Ladha v. ACIT 42 taxmann.com 390 (Bang-Tri)*



## Section 54

➡ Whether ratio can be extended to section 54 as well ?

➡ *Circular No. 471 dt 19-10-1986*

➡ *Circular No. 672 dt 16-12-1993*

# Link capital gain & investment

- Capital asset sold resulting in long term capital gains and sale proceeds utilized for business.
- New residential house property purchased after getting the same financed from bank
- Other stipulations for exemption complied
- Whether assessee entitled to deduction u/s 54F
- **Exemption u/s 54F not admissible**  
*Milan Sharad Ruparel v. ACIT 121 TTJ 770 (Mum)*
- Assessee entitled to exemption  
*Muneer Khan v. ITO 7 Taxmann.com 30 (Hyd- ITAT)*  
*Ajit Vaswani v. (2001) CIT 117 Taxman 123 (Delhi) (Mag.)*  
***Smt Pushpa Devi Tibrewala [2013] 33 taxmann.com 305 (Hyderabad - Trib.)***  
***Kapil kumar v. CIT 38 taxmann.com 384 (Delhi ITAT)***



# Indexation

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

# Capital asset acquired u/s 49

- Explanation (iii) to Section 48:

Indexed cost of acquisition means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1-4-81 which ever is later.

- Date from which indexation to be done ?
- From the date of inheritance; **Kishore Kanungo 102 ITD 437 (ITAT-Mum)**
- From the date of acquisition by the previous owner  
**CIT v. Manjula J. Shah (2011) 16 taxmann.com 42 (Bom.)**  
**Arun Shugloo Trust v. CIT (2012) 18 taxmann.com 261 (Delhi)**



# Indexation

- Capital asset acquired during the FY 1993-94
- Payment for the aforesaid asset made in instalments from 1993-94 to 1996-97
- Indexation ?
- Indexation on the value of the asset from the date of acquisition of the asset and not from the date of actual payments made by the assessee

*Charanbir Singh Jolly v. ITO (2006) 5 SOT 89 (Mum.)*

*Lata G. Rohra v. DCIT 21 SOT 541 (Mum)*

# Investment of diff section 50C

- Whether exemption can be availed against the taxability of addl consideration as per section 50C
- Can the seller avail exemption u/s 54/ 54EC by investing additional amount? *Gouli Mahadevappa V.*

*ITO [2013] taxmann.com 47 (Karnataka)*

*Raj Babbar v. ITO 29 taxmann.com 11 (Mum ITAT)*



# Incomplete house

- Capital gains invested in construction of residential house within the stipulated time
- More funds required to complete the construction in a particular manner
- Assessee entitled to exemption as the utilization of the capital gains is complete

*CIT v. Dr R Balaji 41 taxmann 411 (Kar)*

*CIT v. Sardarmal Kothari 302 ITR 286*

*Ajay Goyal v. ITO (ITA No 493 of 2004 dt 9-5-2005)*

# Capital Gains Tax Scheme

## Section 54(2)/ 54F(4)

- Amount to be utilised before the date of furnishing of return u/s 139
- Unutilized amount of capital gains to be deposited in an account under Capital Gains Scheme
- Before the date of furnishing ITR u/s 139(1)
- Proof of such deposit to be furnished alongwith the ITR.
- Withdrawal for purchase/construction of new house.
- Unutilized amount chargeable to tax as the income of the previous year in which the period of three years expires.



# Capital Gain Tax Scheme

- Money not deposited before the due date of filing ITR u/s 139(1)

*Exemption u/s 54F not available*

*Taranbir Singh Sahni v DCIT(2006)5 SOT 417 (Delhi)*

- Sale proceeds deposited in normal savings account instead of under the scheme

*Exemption not to be allowed*

*Thakor Lal Harkishandas Intwala v. ITO*

*43 SOT 347 (Ahd.)*

# Capital Gains Scheme

- Funds given as advance instead of depositing in the Capital Gains Scheme
- Later received back
- Property purchased during the stipulated time
- Whether benefit u/s 54 or 54F will be available to the assessee

*“Deminimus non curat lex”*

*Rupali R Desai v. ACIT (2005) 273 ITR 109 (ITAT- MUM)*

*Mukesh G. Desai (HUF) v. ITO 120 TTJ 792(mum)*

# Capital Gains Scheme

- Capital asset sold on 15/3/2009
- No deposits under capital gain deposit scheme before 31/07/2009
- New residential house purchased on 13/01/2011
- ITR filed on 28/2/2011
- Whether capital gains exempt u/s 54/ 54F ?
- Exemption available in case utilised before filing of ITR even u/s 139(4)

*CIT v. Rajesh Kumar Jalan 286 ITR 274 (Gauhati)*

*CIT v. Jagriti Agg 15 Taxmann.com 146 (P&H)*

*Nipun Mehrortra 110 ITD 520 (ITAT- Bangalore)*



# Sale of the new residential house

- Assessee sold residential house at Andheri
- Immediately thereafter purchased flat in Juhu
- Sold the Juhu house within 6 months & purchased flat in Ville Parle
- Flat in Ville Parle purchased within 2 yrs from sale of Andheri house
- Whether assessee entitled to benefit u/s 54 of the Act

*KC Kaushik v. ITO (1990) 185 ITR 499 (Bom)*



# Adjustment of gain

- More than one house sold and purchased
- Sale of two residential houses resulting in capital gain
  - House A Rs 20 Lacs
  - House B Rs 30 Lacs
- Flats Y & Z purchased @ Rs 25 Lacs each
- Exemption only on one to one basis and each set of sale and purchase

*Rajesh Keshav Pillai v. ITO (2010) 7 Taxmann.com 11 (Mum.)*



# Cost of plot

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



# Issues in section 54/ 54F

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

# New house in wife's name

- Capital gains from sale of residential house property in the name of husband
- New residential house purchased in the name of wife
- Exemption u/s 54 allowable
  - CIT v. Ravinder Kumar Arora (2011) 42(1) ITCL 0498*
  - CIT v. V.Natrajan (2006) 287 ITR 271 (Mad)*
- New house in the name of adopted son
- Exemption u/s 54F not to be allowed
  - Prakash v. ITO 173 Taxman 311 (Mum)*
- Whether Individual or HUF
  - Vipin Malik (HUF) (2009) 183 Taxmann 296 (Del)*





# Purchase of residential house outside India

- Whether assessee entitled to exemption u/s 54/ 54F
- Held: No, Income Tax Act, 1961 applies only to India  
*Leena J Shah v. ACIT (2006) 6 SOT 721 (Ahd)*
- Held: Yes, section 54 does not impose any bar on acquisition outside India  
*Prema P Shah v. ITO 100 ITD 60 (ITAT) (Mum.)*



# Section 54EC

- Investment within six months
- How the period of six months to be calculated
- Date of transfer; 15.9.2011
- Whether investment possible after 15.3.2012 but before 31.3.2012
- Held; Yes

*Yahya E Dhariwal v. DCIT (2012) 17 Taxmann.com 159 (Mum.)*



# Family arrangements

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



# Family settlement



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

Kale v. DDC AIR 1976 SC 807



# Family Arrangements

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

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



# Agricultural Land

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



# Agricultural land

- Rural agricultural land not a capital asset u/s 2(14)
- Compulsory acquisition not liable to tax u/s 10(37)
- Exemption of capital gains from sale of land in case other agricultural land purchased within 2 yrs u/s 54B



# Agricultural Land

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



# Agricultural land

Within municipality :

- Having population of less than 10,000
- Having population of 10,000 or more
- Not a capital asset u/s 2(14)
- Capital asset liable to tax


# Outside the municipality

## Population


- Less than 10k
- >10k but <1 lac
- >1 lac but <10 lacs
- >10 lacs

## Aerial Distance

- Nil
- 2 KM
- 6 KM
- 8 KM



# Issues



## ➤ How the distance to be measured?

*Distance to be taken by approach road and not as a straight line;*

*Radhasoami Satsang v. CIT 193 ITR 321 (SC)*

*CIT v. Satinder Pal Singh 188 Taxmann 54 (Pb & Hry)*

## ➤ Whether nearest municipality or as per revenue records?

*DCIT v. Capital Local Area Bank Ltd 29 SOT 394 (Asr)*

*Srinivas Pandit HUF v. ITO 39 SOT 350 (Hyd.)*

# Compulsory acquisition


## Section 10(37)

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

# Exemption of capital gains on land used for Agricultural purposes

## **Section 54B**


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



# Issues

## Section 54B

- Exemption to individual and HUF
- The asset may be short term or long term
- Land purchased may be in urban area
- Consequences in case purchased outside the notified limits and sold within a period of 3 years



# Issues


## Section 54B

- Vendee may have purchased the land for any other purpose  
*CIT v. Savita Rani (2004) 270 ITR40 (P&H)*
- Compulsory acquisition of agricultural land; Period of 2 yrs from the date of receipt of compensation or enhanced compensation as the case may be

*CIT v. Janardhan Dass (2008) 170 Taxman 113 (All)*



# Agricultural Land

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



# Valuation for Stamp Duty

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

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

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

## Section 50C

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

# Consequences of higher valuation by DVO

## Section 50C

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

# Section 50C

- Section 50C is constitutionally valid.

*K.R. Palanisamy v. UOI decided on 5/8/2008 (Mad)*  
*Bhatia Nagar Co-op Society WP 1305 of 2009 (mum.)*

- Provision yet to be tested in the light of decision in the case of K.P. Verghese V. ITO.(1981) 131 ITR 597 (SC).

# Issues in section 50C

- Not applicable in case of tenancy rights

*Kishori sharad Gaitonde v. ITO 2010 TIOL 297 ITAT (Mum.)*

- Not applicable in the case of transfer of lease hold rights

*Atul G Puranik v. ITO 11 Taxmann.com 92 (ITAT Mum)*

- Transfer of booking of flat with the builder outside the purview of section 50C

*ITO v. Yasin Moosa Godil 20 Taxmann.com 424 (Ahd.)*

# Section 50C

- Reference to the DVO: “may” appearing in subsection 2 to be read as “shall” in case the expln of the assessee not accepted by the AO

*Meghraj Baid v. ITO 114 TTJ 841 (Jd)*

- Law on the date of agreement to prevail in case of delay in execution of sale deed due to a genuine cause

*M. Siva Parvathi v. ITO 129 TTJ 463 (vizac)*

- No penalty u/s 271(1)(c) in case of addition only on the basis of stamp duty value u/s 50C

*CIT v. Madan Theatres Ltd GA No. 684 of 2013 ITAT No. 62 of 2013*

# Issues in section 50C

- Whether difference can be reflected as additional funds in the hands of the seller?
- Can the seller avail exemption u/s 54/ 54F/ 54EC by investing additional amount?

***Gouli Mahadevappa V. ITO [2013]  
33 taxmann.com 47 (Karnataka)***

***Raj Babbar v. ITO [2013] 29 taxmann.com  
11 (Mum.)***

# Section 43CA

- Applicable to asset other than a capital asset
- Consideration received or accruing for transfer of land and/or building is less than the stamp duty value of the property
- Value for the purpose of stamp duty deemed to be consideration for computing income
- Provision applicable wef AY 2014-15



# Section 43CA

- Difference between date of agreement to sell and actual registration of transfer
- Advance against the agreement to sell has been received by mode other than cash
- on or before the date of such agreement
- Deeming fiction to apply on the rate as on the date of the agreement
- Provisions of section 50C(2) & (3) to apply

## Section 56(2)(vii)

- Deeming fiction of adopting stamp duty value proposed to be extended to the buyer of an immovable property
- Provision enacted by Finance (No. 2) Act, 2009 proposed to be reintroduced in the statute
- Clause (vii) applicable only to individuals and HUF
- Provisions parallel to 43CA regarding agreement to sell

# Exceptions

- Clause not to apply in case received from:
  - from a relative
  - On the occasion of the marriage of the individual  
*Rajinder Mohan Lal v. DCIT (2012) 18 taxmann.com 91 (Chd.)*
  - Under a will or by way of inheritance
  - In contemplation of death of the donor
  - Local authority
  - Institution referred to in section 10(23C)
  - Institution registered u/s 12AA

# Relative

(e) "relative" means,—

(i) *in case of an individual—*

(A) *spouse of the individual;*

(B) *brother or sister of the individual;*

(C) *brother or sister of the spouse of the individual;*

(D) *brother or sister of either of the parents of the individual;*

(E) *any lineal ascendant or descendant of the individual;*

(F) *any lineal ascendant or descendant of the spouse of the individual;*

(G) *spouse of the person referred to in items (B) to (F); and*

(ii) *in case of a Hindu undivided family, any member thereof;]*

- Whether gift received from cousin is taxable?
- Whether gift received from nephew is taxable?
- Gift received by a member from HUF?

# Cost of acquisition

- Section 49(4) introduced by Finance (No.2) Act, 2009 wef 01-10-2009
- Cost of acquisition for the purpose of capital gain to be as per deeming fiction u/s 56(2)(vii) or (viia)

# Conclusion wrt immovable property

- Deeming fiction applicable in the hands of a seller:
  - As a capital asset / stock in trade
  - All persons including companies
- Applicable in the case of a recipient / transferee:
  - Only in case of individual / HUF
  - As a capital asset / stock in trade
  - exception in case received from a relative

## Section 195

- Any person responsible for paying to a non-resident
- Any sum chargeable under the provisions of this Act
- Deduct income tax thereon at the rates in force
- Application to the AO to determine income in case the whole sum would not be income
- Recipient may apply for certificate for no deduction of tax

# Section 194IA

- Provision inserted wef 1/6/2013
- Applicable when transferor is a resident
- TDS @ 1% to be deducted by the transferee from consideration for any immovable property
- Not applicable in case consideration for the transfer of immovable property is less than Rs 50 lacs
- Not applicable in the case of acquisition of agricultural land



# TDS on payment for immovable property

- Agricultural land which is a capital asset not excluded
- Part of a building also included in the definition of immovable property
- Deduction to be made at the time of payment or credit whichever is earlier

## Issues in section 194IA

- Compliance issues
- Provision applicable in case of acquisition of immovable property for personal use or as a capital asset
- Applicable in case payment being made to a builder / CGHS
- No exception even if the payment is being made to a local authority
- No provision for refund of TDS
- Whether land agricultural?

# Issues in section 194IA

- Applicability:  
'...consideration for transfer of an immovable property is less than Rs 50 lacs'
- Advance already paid, instalments being paid now
- Property for Rs 90 lacs:
  - One buyer two sellers
  - Two buyers one seller
  - Husband & wife as two buyers / sellers
  - Unrelated two buyers / sellers
- Conservative approach to deduct tax
- No provision to obtain certificate from AO for deduction of tax at lower rate u/s 197
- Applicability of section 206AA

# *Thank you*

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# Issues in section 54/ 54F

- Booking of flat
- Date of acquisition for flat under construction
- Time available whether 2/ 3 years
- Construction not completed in 3 years