

Controversies in Taxation of Real Estate Transactions

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Scope

- Letting out of Real Estate
- Issues in Development Agreements
- Sec 43 CA/194 IA
- Sec 50C/56
- Issues in Capital Gains
 - Quantification
 - Exemptions

Exclusions

- Accounting issues and their tax implications
- Sec 45 (2), (3) and (4)
- Sec 80(IB)(10)
- Tenancy Rights
- Issue in regard to Co-operative Societies

Statutory Warning: Interpret law on your own, excessive reliance on judicial pronouncements may be dangerous

Income from House Property

- Taxed as a consequence of ownership
- Owner - defined in 27(2) -for the purpose of Section 22 to 26
- Does not mean only legal ownership

Concept of “Ownership” Practical Application

- In hands of lessee or a tenant of a property
- In hands of member of CHS - taxed u/s 22 –
 - Ref. No. F 4/28/68 WT dated 27th Jan 1969
 - Implications for other matters where Society sells TDR / FSI
- In the hands of builder/developer holding completed premises as stock-in-trade

Issues

- If a company, incorporated with object of developing and exploiting property, hires out premises,
 - would income be business income?
- If building to be let out is of a special nature, e.g. cold storage
 - would it make a difference to the head of chargeability?
- Property is let out & certain additional services are also rendered,
 - would it be possible to allocate the revenue between two heads or would it be taxed under one head?
- If business assets are let out for a temporary period, what would be the head of taxability?

What is a Development Agreement?

- When a developer of the land, acquires the right in respect of the property only for a limited period and for the purpose of construction thereon he is expected to convey the property and interest in the land to the ultimate buyers of the property on or before completion of the project, the instrument devised for this type of activities is a development agreement.

Point of Accrual of Income

- Date of execution of the Development Agreement
- Date of handing over of possession of land to developer
- Date of handing over of possession of land to developer together with a General Power of Attorney authorizing him to transfer his share of property.
- Date on which the first sale deed is executed for undivided share in land for the developer's share.

Issues

- If the property is a bundle rights, is it possible to transfer different parts of that bundle at different points of time?
- If the agreement of development enables the developer to obtain control of the immovable property by grant of an irrevocable authority or license, then even the date of agreement of development will constitute the date of transfer of the capital asset.

Issues

- Is the provision of Sec 53A of Transfer of Property Act applicable to development agreements?
- What is the meaning of term “possession” in the context of Sec 2(47)(v)? Whether granting of ‘license’ to the developer to enter upon the property to carry development activity has the effect of enabling the enjoyment of property as contemplated in Sec 2 (47)(vi)?
- What is the impact of Explanation 2 to Sec 2(47) inserted by Finance Act, 2012 w.e.f. 01/04/2012?

Issues

Owner of bungalow/ building enters into an agreement with builder - bungalow is demolished and other structure erected thereon. Owner or builder or both acquire rights to dispose of some of the flats in the newly constructed premises. 4 Flats are given to Owner for own residence.

Issues-

- Sale of Land or Bungalow ?
- Temporary Alternate Accomodation (TAA)
- Compensation
- Accrued FSI arising from amendment in Development Rules
 - Implications if sold for separate consideration Building & Development rights
 - Is it a right or merely a relaxation in restriction ?

Section 43 CA

- Consideration received or accruing
- as a result of transfer of an asset other than capital asset
- being land or building or both
- is less than assessed or assessable stamp duty value.
- Value so adopted or assessable shall be deemed to be the value of consideration for computing profits and gains

43CA Contd.....

- Provisions of Sec 50C to apply to the extent applicable for purposes and determination of value adopted in assessed or assessable
- If date of agreement fixing consideration is anterior to date of registration, value assessed/assessable to be determined with reference to that date provided consideration/part received by a mode other than cash

Issues

- Date of Application
- Will the definition of 'transfer' u/s 2(47) apply?
- If major/entire consideration has passed impact thereof

Section 194-IA

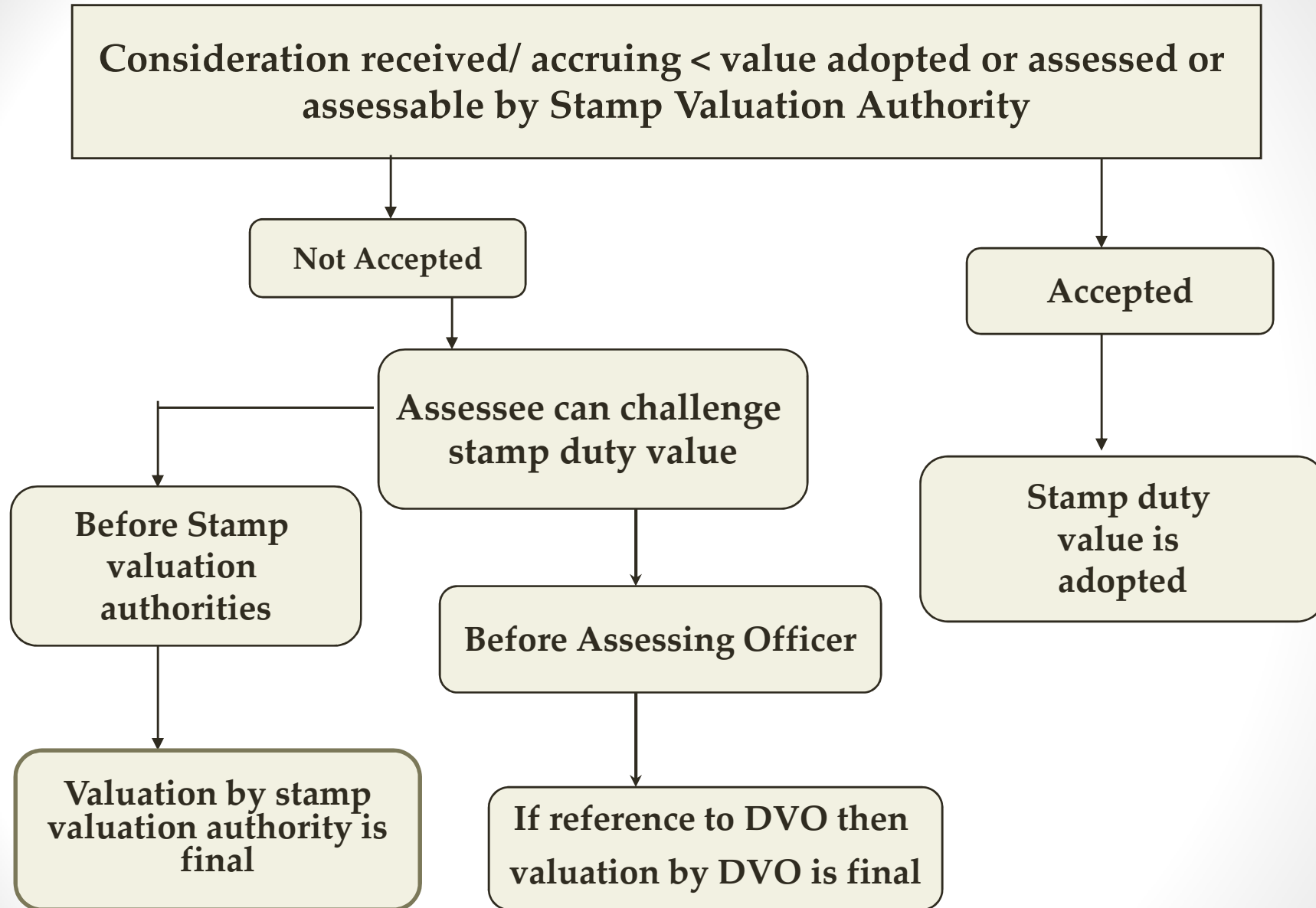
- A transferee responsible for paying to a resident transferor
- consideration for transfer of immovable property
- Shall at the time of credit payment
- deduct an amount equal to 1% of such sum
- no deduction where consideration is less than 50 lakhs

Issues

- If agreement is executed prior to 01/06/2013 will provision apply?
- If it applies, will it apply to payments/credits prior to 01/06/2013?
- Will the provisions apply if the consideration as stated in the agreement is less than 50 lakhs but deemed consideration u/s 43CA/50C is more than 50 lakhs ?
- If the agreement is cancelled, what will be the position of tax deducted?

Section 50C

- Purpose of introduction
- Scope and ambit
- Nature of provision
 - Substantive
 - Machinery
 - Deeming fiction



Reference to Valuation Officer

S. 55A

- Where the Assessing Officer does not agree with the value as submitted by the valuation provided by the assessee, or he is seeking to adopt an increased valuation; he cannot unilaterally substitute a different value,
- Reference to DVO is mandatory
- Rules reg. Value to be adopted
- Rules of Equity to be observed

Applicability of Section 50C

- Does not apply to transfer of stock in trade
 - *Inderlok Hotels Pvt Ltd vs ITO (2009) 32 SOT 419 (Mum)*
- May not apply to transfer of leasehold rights
 - *Atul G. Puranik vs. ITO (2011) 132 ITD 499 / 11 ITR 120 (Trib.) (Mum.)*

Issues

- Does Land & Building include
 - Transfer of Tenancy Rights
 - TDR / FSI ?
 - Grant of Development Rights (*Arif Akhtar Husain vs. ITO (2011) 59 DTR 307 (Mum.)(Trib.)*)

Sec 50C : Issues

- Transaction giving rise to the transfer
 - Agreement of Sale & later Conveyance
- Applies only to capital asset & not to stock in trade
 - What if assessee converts asset into stock in trade and thereafter sells it
- Is 50 C a substantive provision or machinery provision ?
 - burden of proof
 - Sale to PSU / Local Body ?
- Investment required U/s. 54 / 54 E / 54 EC
 - W.r.t. consideration in the deed of sale or per SVA valuation?
- Cost when the purchaser in turn sells
 - Double taxation or substitution of Cost ?
- What if effected via transfer of Co. shares ?

Section 56(2)(vii)(b) w.e.f. 01-04-2014

Where an individual or a Hindu Undivided Family receives in any previous year, from any person or persons on or after the 1st day of October 2009-

- Any immovable property-

How transferred	Chargeable to tax as income from other sources
Without consideration, and the stamp duty value exceeds fifty thousand rupees	The stamp duty value of such property
For a consideration which is less than the stamp duty value by Rs.50000	The stamp duty value of such property as exceeds such consideration

Section 49(4)-Cost of acquisition

- Where the capital gain arises from the transfer of a property, the value of which has been subject to income tax under clause (vii) or clause (viia) of sub-section (2) of Section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) or (viia)

Exemptions

Sec 54 Issues

- 'a' residential house; single or plural?
- Position when property consisting of multiple residential units transferred
- What is the meaning of "purchase"
- Will it require letter of allotment/agreement/registered document?
- Meaning of 'constructed'
- How far date of completion sacrosanct

Sec 54F : Issues

- Can it be claimed simultaneously with Sec 54?
- Two restrictions in proviso (ii) and (iii)
- Not to be lost sight of

Thank You