

**PRACTICAL ISSUES IN  
REAL ESTATES  
ACCOUNTING & TAXATION**

**Saturday**

**27<sup>th</sup> December, 2014**

**ICAI TOWER**

**WIRC of ICAI & MCHI**

# SYNOPSIS

- Sections 43CA, 56(vii)(b) and 194IA
- Development Agreements
- Joint Development Agreements – Status & taxation
- Method of Accounting
  - Judicial view on Project Completion Method
  - Relevance of PCM in present times
  - Tax Accounting Standards
  - Road Ahead for PCM
  - Matching concept of Accounting
- Finance cost and Treatment in taxation
- Few real estate related developments

# S. 43CA- DEEMED CONSIDERATION FOR AN ASSET- I

- Introduction w.e.f. A.Y. 2014-15
- Provision similar to s. 50C
  - *Thiruvendagum Investments, 320 ITR 345 (Mad.)*
- All assesseees
- For computation of business income
- Provision for substituting consideration
  - Received or Accruing
- Transfer of an asset
  - Land or building or both (anywhere in India)
- Not a capital asset

## **S. 43CA- DEEMED CONSIDERATION FOR AN ASSET- II**

- Where consideration is less than Stamp Duty Value
- Stamp Duty Value to be deemed FVC
- Provisions of s. 50C(2) and (3) to apply
- Stamp Duty Value as on date of agreement
  - Where value is different on date of registration of transfer
  - Where receipt by mode other than cash

# **S. 43CA- DEEMED CONSIDERATION FOR AN ASSET- III**

- Double Taxation
- Charge or Computation
- Year of Taxation
- Transfer of an asset
  - TOPA- 2(47)- 145- MOA- ICAI
- ‘Land or building or both’
  - Yaseen Moosa Godil, 18 ITR 253
- Union Territory
- ‘Accruing’ as a result of transfer
- Value adopted for stamp duty for transfer
- ‘Full Value of Consideration’

# S. 43CA- DEEMED CONSIDERATION FOR AN ASSET- IV

- Applicability of TP provisions
  - *Conora Resources, 313 ITR 5 (AAR)*
- Other issues of s. 50C
- Agreement?
- Date of agreement and ‘registration of transfer’
  - *Neville De Noorhana, 115 TTJ 39 (Kol.)*
  - *M. Sivaparvathi & ors., 129 TTJ 463*
  - *Bagri Impex (P). Ltd., 259 CTR 553 (Cal.)*
  - *S. Venkat Reddy, 57 SOT 117 (Hyd.)*

# **S. 43CA- DEEMED CONSIDERATION FOR AN ASSET- V**

- Prospective and/or Retroactive
- A Non- Starter?
- Transactions up to 31.03.2013
- Possibilities for transactions up to 31/03.2013
  - Transfer & Income recognised – Post amendment
  - Transfer Post amendment - income recognised before
  - Receipt before amendment
  - Partial income recognised
  - Partial income to be recognised

## **S. 56(2)(vii)(b)- DEEMED INCOME**

- Introduction w.e.f. A.Y. 2014-15 for Individual & HUF
- Receipt of any immovable property
  - Land or building or both
- Introduced and was deleted w.e.f. 01.10.2009
- Difference to be income if exceeds Rs. 50,000/-
- Reference to DVO by A.O. possible
- Cost of Acquisition as per s. 49(4)- where taxes paid
- For inadequate consideration
  - Difference between SDV and consideration received
  - Provisions for adopting SDV on date of agreement



# **S. 194 IA –TDS ON IMMOVABLE PROPERTY- I**

- Introduction w.e.f. 01.06.2013
- Buyer to deduct tax
- On value of consideration
- On transfer of immovable property
  - Land or building or both or part
  - Agricultural land' & s. 194 JA cases excluded- Location
- Rate; 1% or 20% (No PAN)
  - SC & EC, SEC if applicable
  - Of 'amount' 'paid' or 'credited' 'any sum'
  - Only if consideration => Rs. 50L
- Status
  - Buyer- Any assessee
  - Seller- Resident

# **S. 194 IA- TDS ON IMMOVABLE PROPERTY- II**

- Consideration not to be SDV
- Time of payment or credit, whichever is earlier
- Payment by any mode
  - TAN NOT required
- Lower deduction not possible
  - Registration obstacle not provided for
- Business transactions covered
- Purchase from builder
  - TDS even where no Tax Audit for payer

# **S. 194 IA- TDS ON IMMOVABLE PROPERTY- III**

## Procedure Notified

- Notification dated 31<sup>st</sup> May, 2013- No. 1404(E)
- Rules 30 and 31 and 31A
- Time for deduction- Credit or Payment
- Time for deposit- 7 days form the end of the month
- Time for issue of certificate- Form 16B in 15 days
- Need for filing return – Form 26QB with challan
- Need for TAN- Not required

# **S. 194 IA- TDS ON IMMOVABLE PROPERTY - IV**

- Land and/or building
- Cut-off date
- Prospective but retroactive
- Point of taxation- ‘transfer’
  - Booking
  - Payment
  - Allotment
  - Agreement
  - Possession
  - Conveyance

# **S. 194 IA- TDS ON IMMOVABLE PROPERTY- V**

- ‘Transfer’ not defined,- cases of Deemed Transfer
  - S. 2(47)(i) to (vi) and 45(2) to (6) and 46
  - S. 47- No transfer cases
- Mode of transfer
- Part transfers
- Indeterminate consideration
- Time sharing arrangements
- Exchange, Relinquishment
- Third party payment

# **S. 194 IA- TDS ON IMMOVABLE PROPERTY- VI**

- Post dated cheques
- Resale by purchaser,
  - Cir. No. 715 dated 08.08.1995
- When seller not liable to taxation
  - Cir. No. 699 dated 30.09.1995
- Where taxes paid by seller
  - S. 201 Proviso

# S. 194 IA- TDS ON IMMOVABLE PROPERTY - VII

- Payment based on stages of completion
- Payments made by third party- Banks, FI
- Advance before purchase
- Gross purchase price or net
  - Parking space
    - *Japan Air Lines, 180 Taxman 188 (Del.)*
  - Share Capital;
  - VAT, Service tax, Cir. No. 4 of 2008 & 275/73/2007 dated 30.06.2008
  - Reimbursements, Cir. No. 715 dated 08.08.1995
  - Additional consideration, Interest.

# S. 194 IA- TDS ON IMMOVABLE PROPERTY - VIII

- Deposits – Refundable or not
  - Circular No. 718 dated 22.08.1995
- Buyback of premises
- Co- purchasers and/or Co-sellers
  - Circular No. 715 dated. 08.08.1995
  - *Smt. Bisakha Sarkar, 210 ITR 322 (Cal.)*
  - *Senior Manager SBI, 20 taxmann.com 40 (All.)*



# DEVELOPMENT AGREEMENTS

- Typical agreement
  - Permission – License – Power – Consideration - Sharing
- No transfer u/s 2(47) – various cases
- Transfer – Chatrabhuj Dwarkadas, 260 ITR 491 (Bom)
  - Date of substantial compliance and possession not relevant
  - Objectives of s. 2(47)(v) and (vi)
  - Disguised sale - Date of contract relevant

# DEVELOPMENT AGREEMENTS

- Findings in Chaturbhuj Dwarkadas' case
  - Relevant
    - Arrangement conferring privileges of ownership
    - Passing or transferring complete control
  - Not Relevant
    - Substantial performance - a non relevant
    - Payment and permission not relevant factors
    - Limited POA is significant
      - ❖ even an agreement to grant is sufficient
    - Actual possession deferred
    - No irrevocable license
  - Rationale
    - Disguised agreement for sale
    - Objective behind introduction of clause(v) of s. 2(47)
  - Guideline for Income tax Department
  - DA is not a transfer under general law
  - Year of execution of contract is year of transfer

# DEVELOPMENT AGREEMENTS

- **Ingredients of part performance u/s 53A**
  - Agreement for transfer of an immovable property
  - Written instrument for a consideration
  - Possession – Willingness to perform
- **Reconsideration of decision**
- **Privileges of o'ship & Passing of comp. control**
  - Is 'License' a 'possession'
  - Future possession and satisfaction u/s. 2(47)(v)
  - Difference - Agreement for sale & Dev. Agreement
  - Grant of POA – Limited or general
  - Subsequent non performance
- **Finality of subsequent decisions**

# POSSIBLE ALTERNATIVES

- **Conversion and contract**, 213 CTR 241(Del)
- **Piecemeal transfer**
- **Partial retention**
- **Pending approvals**, 13 SOT 82(Mum.)
- **Willingness to perform**, 14 SOT 32(Mum.), 65 DTR 250(Hyd.)
- **Possession deferred, Pending approvals**
  - 14 SOT 63(Mum) , Aug.08 I T Review 32 (Bom.)
  - 12 DTR 1(Delhi), 114 TTJ 246(Bang), 60 DTR 403(Karn.)
- **Written agreement**
  - 301 ITR 124(Mad.), 135 ITD 441(Delhi)
- **On taking steps for development**, 52 SOT 521(Hyd.)
- **On grant of POA** , 131 ITD 71(Agra)(TM)

# JOINT VENTURES TAXATION

## ■ Status- AOP or not

- Van Ord , 248 ITR 399(AAR)
- Geo Consult GmbH, 304 ITR 283(AAR)
- Linde AG, 349 ITR 172(AAR)
- Alstom, 349 ITR 292(AAR)
- Linde AG, 365 ITR1(Del.)

## ■ Arm's Length

- Landowner and Builder
  - Mahesh Nemichand Ganeshwade, 73 DTR 1(Pune)
  - Vijaya Productions (P) Ltd., 134 ITD 19(Chennai)
- Developer and Builder & Stock-in-trade

# YEAR OF TAXATION FOR DEVELOPER

- **Bilahari Investment, 299 ITR 1 (SC)**
  - Case of a chit fund
  - CCM (Project Completion) acceptable in tax laws
  - Possible for integrated scheme > 12 months
  - Objective assessment of income of contract
  - Revenue neutral
  - New AS not invoked
  - Method accepted in past
  - Onus on AO for change in method
  - Possible to invoke new AS – para 21
- **Realest Builders Pvt. Ltd. 307 ITR 202(SC)**

# RELEVANCE OF PCM IN TAXATION

- **Accountancy and ICAI - Current status**
  - AS 7 Revised 1.04.2003
  - EAC, The CA Vol.52 pg.232
  - Exposure Draft AS I – The CA Vol. 54 April, 2005,
  - Guidance Note 23, 55 The CA, 1764 June 06
  - Revised Guidance Note, 60 The CA, pg. 1436, March,12
  - IFRS on Real estate & Investment properties
  - Material aspects of Guidance Note
  - IFRS Effect
- **New S. 145**
- **Tax Accounting Standards , 349 ITR 87(st.)**

# TAX ACCOUNTING STANDARDS-TAS

- Modification in AS 7 and AS 9
- Service transaction only on % of Completion basis
- Postpone only for price escalation and export incentives
- For recognition of rev. outcome need not be measurable
- Contract cost be actually incurred for allowance
- No deduction for future losses unless incurred
- Recognition of retention money to be recognised
- Reversal of rev. only on compliance of s. 36(1)(vii)
- Preconstruction income taxable
- Recognition only on completion of 25% of work



# ROAD AHEAD IN TAXATION

- **Prudent and Better view**
  - Method for taxation
  - Time for recognition
  - Stage for recognition
  - TAS
- **Post 1.04.2003 and revised AS 7**
  - Avadhesh Builders, 37 SOT 122 (Mum)
  - Prestige Estates Projects Ltd., 129 TTJ 680 (Bang)

# MATCHING CONCEPT OF ACCOUNTANCY

## ■ Matching concept

- Expenditure to match income recognised
- Judicial acceptance
  - Calcutta Co. Ltd. 37 ITR 1(SC)
  - Rajgir Builders, 70 ITD 226 (Mum)
  - Taparia Tools, 260 ITR 102 (Bom.)

# FINANCE COST & TREATMENT

- Section 36(1)(iii)
- Analysis
  - Lokhandwala Construction, 260 ITR 579(Bom)
  - Wallstreet Constructions, 101 ITD 156 (Mum)(SB)
  - Panchvati Developers, 115 TTJ 139(Mum)
  - Mangal Tirth Estate Developers(Mad), ITAT India
  - Thakkar Developers, 115 TTJ 841(Pune)
- Effect of Revised AS-7 & New s.145
- AS 16 and Borrowing costs
- Guidance Note, 2012
- Industry practices

THANK YOU

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GOOD LUCK