Controversies

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Whether provisions of Section .50C of the Act are applicable on transfer of tenancy rights/lease hold rights?

Issue:

When assessee assigns lease hold rights/tenancy rights for a consideration whether provisions of section 50C is applicable?

Proposition:

A perusal of Section 50C suggests that it is only for the limited purpose of computing capital gain in respect of sale of land and building, only when such sale takes place stamp duty value has to be substituted for the sale consideration, if the sale consideration is less than the stamp duty value. It is proposed that in case of the surrender of tenancy right/assignment of lease hold rights, provisions of sec. 50C would not apply.

View in against of proposition:

Let me refer to provision of Section 50C, 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 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 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.

The distinction between a capital asset being "land or building or both" and any right in "land or building or both" is well recognized under the I.T. Act. Section 54D deals with certain cases in which capital gain on compulsory acquisition of land and building is charged. Sub-section (1) of sec. 54D opens with: "Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking.." it is palpable from section 54D that "land or building" is distinct from "any right in land or building". Similar position prevails under the W.T. Act, 1957 also. Section 5(1) at the material time provided for exemption in respect of certain assets. Clause (xxxii) of section 5(1) provided that "the value, as determined in the prescribed manner, of the interest of the assessee in the assets (not being any land or building or any rights in land or building or any asset referred to in any other clauses of this sub-section) forming part of an industrial undertaking" shall be exempt from tax. Here also it is worth noting that a distinction has been drawn between land or building on one hand and or any rights in land or building on the other.

It is very well settled that lease hold rights and tenancy rights are capital assets and liable to capital gains. When capital gain is to be computed section 50C applied and if the stamp valuation is more than the sale consideration than capital gain liability arises. Section 50C of the Act is a special provision for computing capital gains in certain cases and would include not only land as such but also lease hold rights in land. The assessee cannot claim exemption on the bases of the ground that section 50C specifically does not cover rights in land or building. Section 50C is applicable for the purpose of computing capital gain and capital gain as per this section has to be computed on the basis of stamp duty value. Thus, stamp duty value has to be substituted for the sale consideration if the sale consideration is less than the stamp duty value. Thus, since the lease hold rights as well as tenancy rights are also capital assets capital gains have to be worked out.

View in favour of the proposition:

A question arises whether the words "land or building or both" shall also cover any right in land or building or bith. Section 54D of the Act refers to "capital asset, being land or building or any right in land or building.." section 269UA(d) defines immovable property. Explanation to sub-clause (i) of clause (d) of section 269UA provides that "For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein". Thus, from the wordings used in section 54D and 269UA(d), it is clear that:

(i) Wherever Parliament intended to cover "any right in land or building within the ambit of any provision, it has done so by using clear and express words.

(ii) The need to specifically cover rights in land or building in section 54D and 269UA(d) arose because the expression land and building will not cover any rights therein.

In Atul G. Puranik V. ITO (2011) 132 ITD 499 (Mum.), the Tribunal held that lease rights for 60 years in a plot of land is not capital asset being land or building or both and section 50C is not attracted in a transaction for assignment of lease rights in a plot of land to a builder.

In Dy. CIT V. Tejinder Singh (2012) 19 taxmann.com 4(Kol.), the Tribunal held that:

Section 50C does not apply to transfer or surrender of tenancy rights as it will not apply to transfers of capital assets other than land or building or both.

Section 50C can only be applied in respect of "transfer by an assessee of a capital asset, being land or building or both". These provisions will not come into play in a case where only tenancy rights are transferred or surrendered.

A lease hold right in capital asset being land or building or both cannot be equated with the capital asset per se.

The Tribunal observed as under:

"revenue's contentions that the provisions of section 50C also apply to the transfer of leasehold rights is devoid of legally sustainable merits and is not supported by the plain words of the statue. It is sine qua non for application of section 50C that the transfer must be of a "capital asset, being land or building or both", but when a leasehold right in such a capital asset cannot be equated with the capital asset per se. We are, therefore, unable to see any merits in revenue's contention that even when a leasehold right in land or building or both is transferred, the provisions of section 50C can be invoked.

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The Tribunal held that undisputedly tenancy right is a capital asset but whether transfer of such capital asset has to be looked upon in the light of the provisions of Sec. 50C of the Act. A perusal of sec. 50C suggests that it is only for the limited purpose of computing capital gain in respect of sale of land and building, only when such sale take place stamp duty value has to be substituted for the sale consideration, if the sale consideration is less than stamp duty value. The Tribunal further held that in case of the surrender of tenancy right, provisions of sec. 50C would not apply. Dismissing Revenue's appeal, the Tribunal held that provisions of sec. 50C are not applicable on the transfer of tenancy right inasmuch as there was no reason for referring the matter to the DVO and adopting DVO's valuation for the computation of long term capital gains.

Summation:

It is submitted that the rights in land cannot be equated with the land or building. Therefore, it is concluded that section 50C is applicable to transfer of capital asset only in respect of land or building or both and is not applicable to right in land.

Let me now refer to the decision of ITAT bench Mumbai in the case of Shri Farid Gulmohamed C/o. M/s. B.C. Dastur and Co. Vs. ITO (International Tax) 3(1). ITA No. 5136/Mum/2014, Asst. 2010-11, decided on 16 March, 2016. The Hon. Tribunal held as under:

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"We do not find any justification in the orders of the authorities below in invoking the provisions of section 50C of the Act and adopting the value of property as determined by the stamp valuation authority, for the purpose of computing the capital gain on transfer of the assessee's leasehold rights".

In the end, let me refer to the latest decision of their lordships of Bombay High Court in ITA No. 735 of 2014 decided on 24th Oct, 2016. Their lordships held as under:

"Mr. Kotangale, learned counsel for the revenue, states that the Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul Puranik (Supra.). Thus, it could be inferred that it has been accepted. Our court in DIT Vs. Credit Agricole Indosuez 377 ITR 102 (dealing with Tibunal Order) and the Apex Court in UIO Vs. Satish P. Shah 249 ITR 2211 (dealing with High Court Order) has laid down 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. Further, it is not the Revenue's case before us that there are any distinguishing features either in facts or in law in the present appeal from that arising in the case of Atul Puranik (Supra.).

It is also interesting to note that this decision also is applicable not only to assignment of leasehold rights in land but also transfer of tenancy rights or leasehold rights in land as well as building about which the question was raised in some of the decisions of the ITAT.

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