Issues Proposed to be discussed in the session on

Select issues with reference to immovable property transactions in Sections 56(2)(x), 43CA and under House Property

By

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Note: Hereunder are the issues which are proposed to be discussed by Jagdish Punjabi at the session of DTRC to be held on May 11, 2025. In view of the constraints of time, it may not be possible to discuss each of the following issues. Therefore, this hand out is being circulated in advance so as to seek the order of preference from the participants. The participants may go through the following and convey their order of preference to the organisers who will in turn convey the same to the panelist.

1 Section 43CA

The Finance Act, 2013 has introduced section 43CA w.e.f. 1.4.2014. The Finance Bill, 2013 and the Explanatory Memorandum thereto state that the provisions of this section will take effect from 1.4.2014 and shall apply in relation to the assessment year 2014-15 and subsequent assessment years. While the provisions of this section require substitution of stamp duty value by full value of consideration in case full value of consideration is lower than the stamp duty value on the date of transfer. As per section 43CA(3) subject to section 43CA(4) the stamp duty value on the date of agreement is what is relevant.

The following questions arise for discussion –

i) Does `transfer' as defined in section 2(47) apply to section 43CA?

ii) Does allotment letter constitute an agreement fixing value of consideration for transfer?

iii) Are provisions of section 43CA applicable in a case where agreement fixing value of consideration for transfer has been entered into prior to 1.4.2013?

iv) Where an agreement fixing value of consideration has been entered into on a date prior to the date of registration of such transfer and the amount of consideration or part thereof has been received by a mode stated in section 43CA(4), will the stamp duty value on the date of such agreement be compared with full value of consideration as against stamp duty value on the date of transfer?

v) In a case where the allotment / agreement fixing value of consideration for transfer is entered into on a date prior to 1.4.2013, and a part of the consideration received on or before the date prior to entering into such agreement has been received in cash, will the benefit of comparing stamp duty value on the date of such agreement and not the stamp duty value on the date of transfer apply to such a transaction?

vi) Does section 43CA apply to a property under construction?

vii) Does section 43CA apply to area allotted to a member of a society / tenant under the terms of Development Agreement read with Permanent Alternate Accommodation?

viii) Is the ratio of the decisions rendered in the context of section 50C applicable in the context of section 43CA?

ix) In the case of an assessee following percentage completion method, in which year will the amount chargeable to tax under / by virtue of provisions of section 43CA be need to be charged?

x) Is the tolerance limit provided in first proviso to section 43CA(1) retrospective?

xi) Does the tolerance limit provided in first proviso to section 43CA(1) apply even with reference to value determined by the DVO, upon a reference made to him by the AO?

2 Section 50C

The Finance Act, 2002 has w.e.f. 1.4.2003 introduced Section 50C in the Income-tax Act, 1961. Section 50C is relevant for computing capital gains arising on transfer of a capital asset being land or building or both. When full value of consideration accruing or arising as a result of transfer of a capital asset being land or building or both is less than its stamp duty value as on the date of transfer, section 50C mandates that for the purpose of computing capital gains as a result of such transfer the stamp duty value be adopted as full value of consideration. Ofcourse, an assessee can claim that the fair market value as on the date of transfer is less than its stamp duty value and the AO may then refer the valuation of the asset under consideration to DVO and the value determined by DVO shall be final. First and Second Provisos, inserted by the Finance Act, 2016 w.e.f. 1.4.2017, deal with a situation where agreement fixing the amount of consideration and the date of registration for the transfer of a capital asset are not the same. Third Proviso to section 50C which has been inserted by the Finance Act, 2018 w.e.f. 1.4.2019 and which third proviso has been amended by the Finance Act, 2020 w.e.f. 1.4.2021 provides for a tolerance limit.

In connection with the provisions of section 50C, following issues are proposed to be discussed –

i) Does section 50C apply to transfer to relatives?
ii) If not, then who are to be regarded as `relatives' for this purpose?
iii) Does section 50C apply to transfer of rights in land or building or both e.g. transfer of leasehold rights by way of assignment of lease, transfer of tenancy, grant of tenancy, development agreement, etc.
iv) Is the tolerance limit provided in third proviso to section 50C retrospective?

3 Section 112 and proviso thereto

The Finance (No. 2) Act, 2024 has w.e.f. 23.7.2024 made significant changes to the provisions dealing with taxation of capital gains. Amongst the amendments made is an amendment to section 112 of the Act whereby the rate of taxation applicable to income arising from the transfer of a long term capital asset has been reduced from 20% to 12.50% and benefit of indexation has been done away with.

Section 112, as amended by the Finance (No. 2) Act, 2024 provides that the long term capital gains arising in respect of transfers on or after 23.7.2024 are to be taxed at 12.50% whereas the rate applicable in respect of transfers before 23.7.2024 is 20%.

Further, second proviso to section 112(1) provides that where the tax payable as per new scheme (i.e. computation of gains without indexation and tax being at the rate of 12.50%) is greater than the tax computed in accordance with the law prevailing immediately prior to its amendment by the Finance (No. 2) Act, 2024 i.e. capital gain to be taxed at 20% but computation to be by considering indexation, then in the case of a resident individual or a resident HUF such excess shall be ignored if the following conditions are satisfied –

i) the gain arises on transfer of a capital asset being land or building or both;
ii) such capital asset was acquired before 23.7.2024;

As is stated above, the second proviso applies to only a resident individual and resident HUF and not to any other person. Therefore, the benefit of ignoring the excess does not apply to non-resident individual, non-resident HUF, company, firm, AOP, BOI, etc. Even qua resident individual / resident HUF the benefit of ignoring the excess is available only in respect of transfer of land or building or both and not in respect of any other capital asset.

In connection with the above provision, it is proposed to discuss as to what will be the rate of tax which will apply –

i) to the amount of long term capital gain arising upon sale of an asset being stock-in-trade which was, prior to 23.7.2024, converted from capital asset into stock-in-trade. The conversion happened pre 23.7.2024 but the sale is happening post 23.7.2024;

Does it make any difference if the converted asset is land or building or both or any other asset?

ii) to the amount of unutilized balance lying in Capital Gains Account Scheme, which amount was deposited in the Capital Gains Account Scheme pre 23.7.2024 and in respect of which the period of 3 years from the date of transfer of original asset expires post 22.7.2024;

iii) to long term capital gain arising on transfer, post 22.7.2024, of a new residential house within a period of 3 years from the date of its acquisition, the cost of which was claimed as a deduction under section 54 in respect of transfer of an original asset pre 23.7.2024;

iv) to amount which is taxable as long term capital gain by virtue of provisions of section 54F(2)?

v) to amount which is taxable as long term capital gain by virtue of provisions of section 54F(3)?;

vi) to amount taxable under section 47A(1), post 22.7.2024, upon satisfaction of conditions mentioned in section 47A(1), which amount was earlier, prior to 23.7.2024, claimed to be not chargeable to tax by virtue of section 47(iv)?

vii) to amount taxable under section 47A(1), post 22.7.2024, upon satisfaction of conditions mentioned in section 47A(1), which amount was earlier, prior to 23.7.2024, claimed to be not chargeable to tax by virtue of section 47(v)?

viii) the amount taxable under section 47A(3), in the hands of successor company post 23.7.2024, upon non-fulfilment of the requirements of proviso to section 47(xiii) and which amount was earlier claimed to be not taxable by virtue of provisions of section 47(xiii)?

ix) the amount taxable under section 47A(3), in the hands of successor company post 23.7.2024, upon non-fulfilment of the requirements of proviso to section 47(xiv) and which amount was earlier claimed to be not taxable by virtue of provisions of section 47(xiv)?

x) the amount taxable under section 47A(4), in the hands of successor company post 23.7.2024, upon non-fulfilment of the requirements of proviso to section 47(xiiib) and which amount was earlier claimed to be not taxable by virtue of provisions of section 47(xiiib)?

4 Section 54 / 54F

Section 54 grants deduction from long term capital gain arising on transfer of a residential house if the long term capital gain so arising is invested in purchase / construction of one residential house in India within the time period mentioned therein and subject to satisfaction of conditions mentioned therein.

Similarly, subject to satisfaction of conditions precedent, section 54F grants deduction from long term capital gains arising on transfer of a long term capital asset not being a residential house provided the long term capital gain so arising is invested in purchase / construction of one residential house in India within the time period mentioned therein and subject to satisfaction of conditions mentioned therein.

In connection with the provisions of sections 54 / 54F, the following issues are proposed to be discussed –

i) For the purpose of section 54 / 54F, when can it be said that the new house has been “purchased” by the assessee?

ii) Under what circumstances can adjoining units constitute one residential house?

iii) Is the claim of deduction under section 54 / 54F fatal when the assessee has, in the return of income, not shown / disclosed either the capital gains nor has he claimed deduction under section 54 / 54F?

iv) Does changing the claim of deduction, in the course of assessment proceedings, from section 54 to 54F amount to making a fresh claim in the course of assessment proceedings and therefore the same cannot be entertained in view of the decision of the Apex Court in the case of Goetze (India) Ltd?

5 Section 56(2)(x)

The Finance Act, 2017 has w.e.f. 1.4.2017 introduced Section 56(2)(x). Section 56(2)(x) is expansion in scope of erstwhile section 56(2)(vii) which was introduced by the Finance (No. 2) Act, 2009 w.e.f. 1.10.2009 and applied only to individuals and HUFs. Section 56(2)(x) charges to tax any sum of money / immovable property / property received without consideration or for inadequate consideration. The expression `property' for this purpose is defined in clause (d) to Explanation to section 56(2)(vii).

Receipts from relatives are exempt from applicability of section 56(2)(x) and for this purpose the expression `relative' is defined in Explanation to clause (vii).

The expression `property' as defined in clause (d) to Explanation to section 56(2)(vii) as follows –

"property" means the following capital asset of the assessee, namely –

(i) immovable property being land or building or both;
(ii) …
(iii) …
(iv) …
(v) …
(vi) …
(vii) …
(viii) …
(ix) …"

Section 56(2)(x)(b) charges to tax receipt of "any immovable property". Section 56(2)(x)(b) has two items (A) and (B). Item (A) deals with receipt of immovable property without consideration and item (B) deals with receipt of immovable property for a consideration.

In connection with section 56(2)(x)(b) the following issues are proposed to be discussed -

i) Whether land or building held as stock-in-trade are covered within the scope of the expression “immovable property” in section 56(2)(x)(b)?

ii) Whether receipt of rights in land or building such as receipt of leasehold rights, tenancy, development agreement are all covered by section 56(2)(x)(b)?

iii) Whether receipt of agricultural land without consideration or for inadequate consideration is covered by section 56(2)(x)(b)?

iv) While computing holding period in respect of an immovable property, received from a non-relative by way of a gift, is holding period of previous owner also required to be included to decide whether it qualifies as a long term capital asset or otherwise?

v) Also, does the ratio of the decision of the Bombay High Court in the case of CIT v. Manjula Shah [(2011) 16 taxmann.com 42 (Bom. HC)] i.e. indexation is available even with reference to the period for which the previous owner held the asset apply?

vi) Where an immovable property received as a gift from non-relative has stamp duty value on the date of receipt which is lower than the cost for which the previous owner had acquired the property, will the provisions of section 49(1) apply and cost to the previous owner be regarded as the cost of the recipient or will the provisions of section 49(4) apply and the amount considered for taxation under section 56(2)(x) be regarded as cost of acquisition?

6 Development Agreement

Generally, a builder developer enters into a Development Agreement with a co-operative society and/or the land owner in respect of land belonging to such co-operative society / land owner. The existing building situated on such land has various tenements which are occupied by members of the society / tenants. The developer apart from entering into a Development Agreement with the Society / Land Owner also enters into a Permanent Alternate Accommodation Agreement with the individual member / tenant.

Under the terms of the Development Agreement read with Permanent Alternate Accommodation Agreement, the Developer interalia agrees to give to the Member / Tenant an allowance/s known as Hardship Compensation / Rent for Alternate Accommodation / Inconvenience Allowance / Shifting Allowance. The Developer also grants the individual Member / Tenant a right to buy additional area (over and above the area which he is entitled to received to receive free of cost) at a rate which is at a discount to the rate at which he is selling the areas to non-member / outsider.

In connection with such allowances and the right, the following issues are proposed to be discussed -

i) Is Hardship Compensation / Rent for Alternate Accommodation / Inconvenience Allowance / Shifting Allowance taxable in the hands of the member / tenant?

ii) If yes, under which head of income? Also, whether rent paid for alternate accommodation is allowable as a deduction while computing the amount chargeable to tax?

iii) From the builder's / developer's perspective, is tax required to be deducted at source on the payment made to members / tenant in respect of Hardship Compensation / Rent for Alternate Accommodation Agreement?

iv) If yes, under which section – 194IA or 194IC?

v) Does section 194IC apply to a Joint Development Agreement with a land owner who is neither an individual nor a Hindu undivided family?

vi) Does section 43CA apply to area agreed to be sold by the Developer to the Member / Tenant at a concessional price fixed by Development Agreement read with Permanent Alternate Accommodation Agreement?

vii) Does section 56(2)(x) apply to area received by the Member / Tenant from the Developer at a concessional price fixed by Development Agreement read with Permanent Alternate Accommodation Agreement?

7 Income from House Property

Section 22 of the Act charges to tax annual value of a property consisting of buildings or lands appurtenant thereto of which assessee is an owner other than such portions of the property which is occupied by him for the purposes of his business or profession. Manner of computation of annual value is given in section 23. Section 23 provides that annual value of two self occupied properties is deemed to be Nil. In case an assessee owns properties which do not qualify as self occupied properties with Nil annual value then their fair rent is regarded as its annual value. Section 23(1)(c) deals with annual value of a property which is vacant for whole or part of the previous year. In respect of such properties, actual rent received is to be regarded as its annual value.

In respect of a property which has been vacant throughout the previous year, the following issues arise for discussion –

i) Can annual value of a property which is vacant throughout the previous year be taken to be Nil?

ii) If yes, are any conditions required to be met / evidences required to be kept / established for getting such claim allowed?

8 Bareshell Flat

Of late every buyer desires to design the house purchased by him tastefully to his requirements. Consequently, the builders / developers have started entering into agreements whereby they sell to buyers what is commonly known as “bareshell flat”. Such bareshell flats have walls which are not plasterered, flooring is not provided, except for main door no other room has a door, toilets / bathrooms are not done, kitchen does not have a platform / other paraphernalia, electricity and plumbing connections are only at one point within the house.

In connection with such bareshell flats the following issues are proposed to be discussed –

i) Does purchase of a bareshell flat qualify for deduction under section 54/ 54F?

ii) Is it mandatory to do the finishing works in a bareshell flat so that it qualifies for deduction under section 54 / 54F?

iii) If yes, does the cost of such finishing works qualify for deduction under sections 54 / 54F?

iv) Also, is it necessary that the finishing work be completed within the time frame mentioned in section/s 54 / 54F?

v) Is annual value of bareshell flat chargeable to tax in case it is not let out or can it be contended that since the bareshell flat is not habitable there is no question of its having any annual value?

vi) Prior to 23.7.2024, what is the period for which a bareshell flat is required t to be held so as to qualify as a long term capital asset?

Note : This being a session akin to Brains Trust / Panel Discussion, there will not be any separate power point presentation being distributed and therefore, the participants may, during the course of the session, make a note of citations which they feel are important / relevant.