

ISSUES UNDER CAPITAL GAINS- SECTIONS 50, 50C, 50D, 54, 54F, 54EC.

1) **Section 50 (Depreciable Assets).**

- i) **Applicable only when depreciation has been allowed on the asset-**
It has no application where depreciation has neither been claimed nor been allowed- . **CIT V/s. Santosh Structural & Alloys 206 Taxman 616 (P & H.); Divine Construction Co. V/s. ACIT 138 TTJ (Mum.) 72.** It is irrelevant whether depreciation has been allowed rightly or wrongly- **Narotamdas Bhau 15 SOT 629 (Mum.).**

- ii) **Even if depreciation is claimed in any** one year but not claimed in subsequent years, still the asset would continue forming part of the block and capital gain would be assessable u/s. 50 of the Act- **Sakthi Metal Depot 232 CTR (Ker.) 279.** Same view of the Special Bench in case of **Chhabria Trust 87 ITD 181 (Mum.) (SB).**

- iii) **Applicability of Sec.50 where both land and buildings are sold** **{A.Y.- 1989-90}**- Land & the structure standing on it are both separate properties- **M/s I K INTERNATIONAL PVT LTD 206 Taxman 622 (Del.) .Hindustan Hotels 335 ITR 60 (Bom.).**

- iv) Once land forms part of the asset, section 50 can have no application since it is not possible to bifurcate the consideration into land and the building.-**Raka Food Products 277 ITR 261 (Mad)**. Same view in **Coimbatore Lodge 328 ITR 69 (Mad)**. **Union Motor Co. (2006) 283 ITR 445 (Mad)**. Contrary view but on facts in '**Raj Woollen Indust.** (2011) 7 ITR (Trib.) 339 (Del.)
- v) As an axiomatic consequence, where assessee sold land & building and claimed exemption by investing u/s. 54EC, it was held that such exemption is allowable since land was a long term asset.- **Orient Steel & Industries Ltd. ITA/112/Kol/2011. A.Y. 06-07**, decided on 5th Aug'11.
- vi) Applicability of Sec.50 and exemptions u/s. 54/54F -The assessee is entitled to exemption under section 54E, even if the asset is a short-term capital by virtue of section 50. **CIT V/s. ACE Builders 281 ITR 210 (Bom)** {A.Y. 1992-93}. .The same principle applies where set off is sought u/s. 74- **Komac Investments & Finance Ltd. {2011} 62 DTR (Mum.) (Trib.) 196; Manali Investments 45 SOT 128 (Mum.) (URO)**..

2) Section 50D. (Finance Act, 2012.)

Fair market value deemed to be full value of consideration in certain cases.Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for

the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

3) **Section 50C.**

- a) Vires of Section 50C upheld- ***Bhatia Nagar Coop. Society 334 ITR 145 (Bom.)***
- b) **Special Provision to compute Full Value of Consideration-** Where the value as per Stamp valuation authorities exceeds the disclosed consideration, only the onus shifts to the assessee. The circle rates adopted under the stamp Act are merely guidelines & not final for the person subjected to pay the stamp duty- **Ramesh Chand Bansal V/s. District Collector (1999) 5 SCC 62 ; Jawajee Naganathan V/s. Revenue Divisional Officer (1994) 4 SCC 595.**
- c) A.O. is obliged to bring on record positive evidence supporting the price assessed by the State Govt. for the purpose of stamp duty.- **CIT V/s. Chandni Bhuchar (2010 229 CTR 190 (P & H).Ravi Kant 110 TTJ (Del) 297.**
- d) Provisions of section 50C shall not apply to business assets. **M/s KAN CONSTRUCTION AND COLONIZERS PVT LTD 208 Taxman 478 (All.) Thiruvengadam Investments Pvt. Ltd. 229 CTR 284 (Mad)View in Inderlok Hotels 122 TTJ (Mum) 145 : 32 SOT 419 affirmed.**

- e) **Meghraj Baid (2008) 23 SOT 25 (URO) (Jodh.)**- By virtue of section 50C(2), if the A.O. does not agree with the assessee, he has no choice but to refer the matter to the DVO. **Manju Rani Jain 24 SOT 24 (Del)**-
- f) Where DVO has valued the property at less than the Stamp Valuation authorities, then the value adopted by the DVO has to be adopted. Also see **Ajmal Fragrances 34 SOT 57 (Mum.)** and **Bharti Sanghani 128 ITD 345 (Mum.)**
- g) Where a reference is made to DVO, the A.O. will not be justified if assessment is completed without waiting for the DVO's report. Time-limit for assessment shall stand extended by virtue of section 153 (3)(ii).- **N. Meenakshi V/s. ACIT 226 CTR (Mad.) 625.**
- h) No penalty is leviable where addition is made by virtue of section 50C- **Renu Hingorani v/s. ACIT ITA/2210/Mum/2010** decided on 22nd Dec'10.
- i) Section 50C has no application to transfer of tenancy/lease rights- **DCIT V/s. Tejinder Singh {2012} 16 ITR (Trib.) 45 .**

- j) Provisions of section 50C cannot be *ipso facto* applied to section 69B-
Dinesh Jain HUF 211 Taxman 23 (Del.)

4) **Section 50D. (Finance Act, 2012.)**

Fair market value deemed to be full value of consideration in certain cases.

Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

5) **Section 54/54F.**

- i) **Long term Capital Asset.** Domain & control over the property is the relevant factor- ***Hilla Wadia 216 ITR 376 (Bom)***- {A.Y. 1973-74}. **Right in an immoveable property-** The word 'property' is of widest amplitude and this is re-emphasised by the use of the words "of any kind". ***Tata Services 122 ITR 594 (Bom)***. Holding period in an immoveable property which is incidental to share holding- ***Anilaben Upendra Shah 262 ITR 657 (Guj)***- {A.Y. 1983-84} followed in ***Jinhas Gandhi 279 ITR 552 (Guj.)***; ***Nila Shah 51 SOT 461 (Mum.)*** . ***Praveen Gupta 137 TTJ (Del.) 307.***

- ii) No transfer of legal title is necessary for claiming the benefit u/s. 54/54F- **T.A. Aravinda Reddy 120 ITR 465 (SC)**.

- iii) **Vinod Chhopia ITA/3178/Mum./2010**. Dt. 21.11.12- Effect of change of tenants in the hands of the landlord.

- iv) Land purchased for construction of house qualifies for exemption u/s. 54- **Pushpa Tibrewala ITA/1763/Hyd./2011** Circular no.667 of 1993.

- v) Two kinds of Capital gain falling u/ss. 54 & 54F- investment in one flat is permissible- **Venkata Ramana Reddy ITA/552/Hyd./2012** dated 18.1.2013.

- vi) Property/House consisting of both residential property as well as commercial property- **Suresh Chand Kukreja TS-916-ITAT-2012 (Ind.)**.

- vii) 'Commercial property excluded from purview of Section 54F notwithstanding applicability of section 22- **Ifthiquar Ashiq TS-266-ITAT-2013-Chny**.

- viii) Fiction of section 50C cannot be extended to secs. 54/54F- **Gouli Mahadevappa 128 ITD 503 (Bang.). Raj Babbar (Mum Trib.).**
- ix) Flat acquired in a development agreement qualifies for exemption u/s. 54.- **Jatinder Kumar Madan 51 SOT 583 (Mum.); Veena Gope Shroff ITA/7159/Mum/2010..**
- x) Holding of property in joint name, does not disentitle an assessee from claiming exemption u/s. 54/54F- **DR SMT P K VASANTHI RANGARAJAN 252 CTR (Mad.) 336: 75 DTR (Mad.) 56: 209 Taxman 628 .Jennifer Bhide 349 ITR 80 (Kar.);Ravinder Arora 342 ITR 38 (Del.).**
- xi) Full value of consideration would be only land attributable to the built-up area transferred- **Vijay Kumar Jain ITA/6120/Mum./2009.Vasavi Pratap Chand 89 ITD 73;** Bifurcation of assets into land & structure-**Jaimal Shah 137 ITD 376 (Mum.)** {Hindustan Hotels 335 ITR 60 followed.}
- xii) The exemption u/s. 54-whether restricted to one single house.- **CIT V/s. Anand Basappa (2009) 309 ITR 329 :223 CTR (Kar) 186.** View reiterated in **Rukhminamma 331 ITR**

211 (Kar.). Gita Duggal (Del. HC) (Independent units) dt. 21.2.13. (Now followed in '**Chiranjeev Khanna**' ITA/3226/Mum/2010 dt. 26.2.13)

- xiii) But no dispute that the assessee is entitled for as many houses as number of houses transferred- **Rajesh Pillai 44 SOT 617 (Mum.); Ranjit Vithaldas 137 ITD 267 (Mum.); Raman Suri 81 DTR 33 (Bom.); Syed Adil 352 ITR 418 (AP)**- Adjacent flats)
- xiv) Assessee selling property which was in name of HUF and purchased property in personal name. Held not entitled to section 54F exemption. **Vipin Malik HUF 330 ITR 309 (Del)**. Assessee purchasing property in the name of son- Held assessee not entitled to exemption u/s. 54F- **Prakash V/s. ITO (2009) 312 ITR 40 (Bom)**. Contrary view in **Kamal Wahal 351 ITR 4 (Del)**.
- xv) Acquisition of property in joint names- **Vasanthi Rangarajan 252 CTR (Mad.) 336; Gurnam Singh 327 ITR 278 (P & H)** {In the context of sec. 54B}; **Ravinder Kumar Aurora 342 ITR 38 (Del)**. Also see **Jennifer Bhide 349 ITR 80 (Kar)**. Same principle applies for bonds u/s. 54EC- **Vijay Shirodkar 48 SOT 8 (Mum)**

- xvi) Acquisition of property in name of wife permissible where wife's income was assessed in the hands of husband (assessee)- **V. Natarajan 287 ITR 274 (Mad.)**
- xvii) Capital Gains Scheme Account.- The time limit for parking the capital gains in the account .- **Jagriti Agarwal 339 ITR 610 (P & H); Rajesh Kumar Jalan 286 ITR 274 (Gau.);Fatima Bai 32 DTR (Kar.) 243; P.R. Kulkarni 135 TTJ (Bang.)630{A.Y. 06-07}; Kishore Galaiya 137 ITD 229 (Mum.);RKP Elayarajan 52 SOT 159 (URO) (Chennai); Jagtar Singh Chawla TS-112-HC-2013 (P & H)**
- xviii) No requirement that construction should be complete, in order to claim benefit of section 54/54F- **SHRI SAMBANDAM UDAYKUMAR 345 ITR 389 (Kar.) .Sadarmal Kothari 302 ITR 286 (Mad.)**
- xix) Where assessee has invested some amount of capital gain in purchase of a new house and balance amount has been parked in Capital Gains Scheme Account, the assessee is entitled for exemption on both viz. amount invested in new house and amount invested in the Account- **Vikas Singh (ITA/855/Del/2011) Decided on 18.11.2011** and **Deepak Bheda 52 SOT 327 (Mum.)**.

xx) **Exemption by constructing additional floor in existing house-** *Narsimhan 181 ITR 101 (Mad); Vidya Prakash Talwar 132 ITR 661 (Del); B.B.Sarkar 132 ITR 150 (Cal).*

6) **Section 54EC.**

- I) Date of Investment must be the date of payment & not the date of issue of certificate or bond.- ***Hindustan Unilever 325 ITR 102 (Bom.)***.

- II) Limit of Rs.50 Lacs-whether applies per financial year. ***Raj Kumar Jain 20 ITR (Trib.) 212 (Jp.)***. (*In favour Revenue*). ***Aspi Ginwale 52 SOT 16 (Ahd.)***; ***Vivek Jairazbhoy (Bang.)*** (*In favour of assessee*).
In the hands of minor- ***Rajeev Goyal 52 SOT 335 (Kol.)***. ***Shankar Sharma ITA/951/2011 {A.Y.07-08} dt.1.6.2012***.(Limit of Rs.50 Lacs would apply independently in the hands of minors.).

- III) Time limit of 6 months can start running from receipt of consideration- ***Mahesh Nemichandra Ganeshwade {2012} 17 ITR (Trib.) 116 (Pune)***. Same view in ***Chanchal Kumar Sircar {2012} 16 ITR (Trib.) 91 (Kol.)***.