

# Taxation and Accounting of Builders & Developers – Recent Developments

(S. 145 & TAS, 43CA, 56(2)(vii)(b) and 194IA)



Saturday, 28<sup>th</sup> June 2014

Direct Taxes Refresher Course WIRC of ICAI

Birla Matushri Sabahgraha

# SYNOPSIS

S. 145  
Method of  
accounting

Tax  
Accounting  
Standards

S. 43CA

S. 56(2)(vii)

194 IA



# Method of Accounting

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 A.O. for change in method
- Possible to invoke new AS- para 21

## ***Realest Builders Pvt. Ltd. 307 ITR 202(SC)***



# Method of Accounting

Relevance  
of PCM in  
Taxation



## Accountancy and ICAI- Current Status

- AS 7 Revised 01.04.2003
- EAC, The CA Vol. 52 pg. 232
- Exposure Draft AS 1- 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 I

Modification in AS 7 and AS 9

Service transactions only on % of completion basis

Postpone only for price escalation and export incentives

For regulation of revenue, outcome need not be measurable

Contract cost be actually incurred for allowance



# Tax Accounting Standards- TAS II

No deduction for future losses unless incurred

Recognition of retention money to be recognised

Reversal of revenue only on compliance of s.  
36(1)(vii)

Preconstruction income taxable

Recognition only on completion of 25% of work



# 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

'Full Value of  
Consideration'



Transfer of an  
asset  
- TOPA- 2(47)-  
145- MOA- ICAI

Value adopted  
for stamp duty  
for transfer

'Land or building  
or both'  
- *Yaseen Moosa  
Godil, 18 ITR  
253*

'Accruing' as a  
result of  
transfer

Union  
Territory



# S. 43CA- Deemed Consideration for an Asset- IV

Development  
Agreement &  
Assignment

Sale of shares

TDR

JV Agreement

Lease/Tenancy

Where premises  
under  
construction

Agreement  
where possession  
deferred



# S. 43CA- Deemed Consideration for an Asset- V

Applicability of  
TP provisions

- *Conora Resources*,  
313 ITR 5 (AAR)

Other issues  
of s. 50C

Date of agreement and  
'registration of transfer'

-*Neville De Noorhana*, 115 TTJ 39 (Kol.)

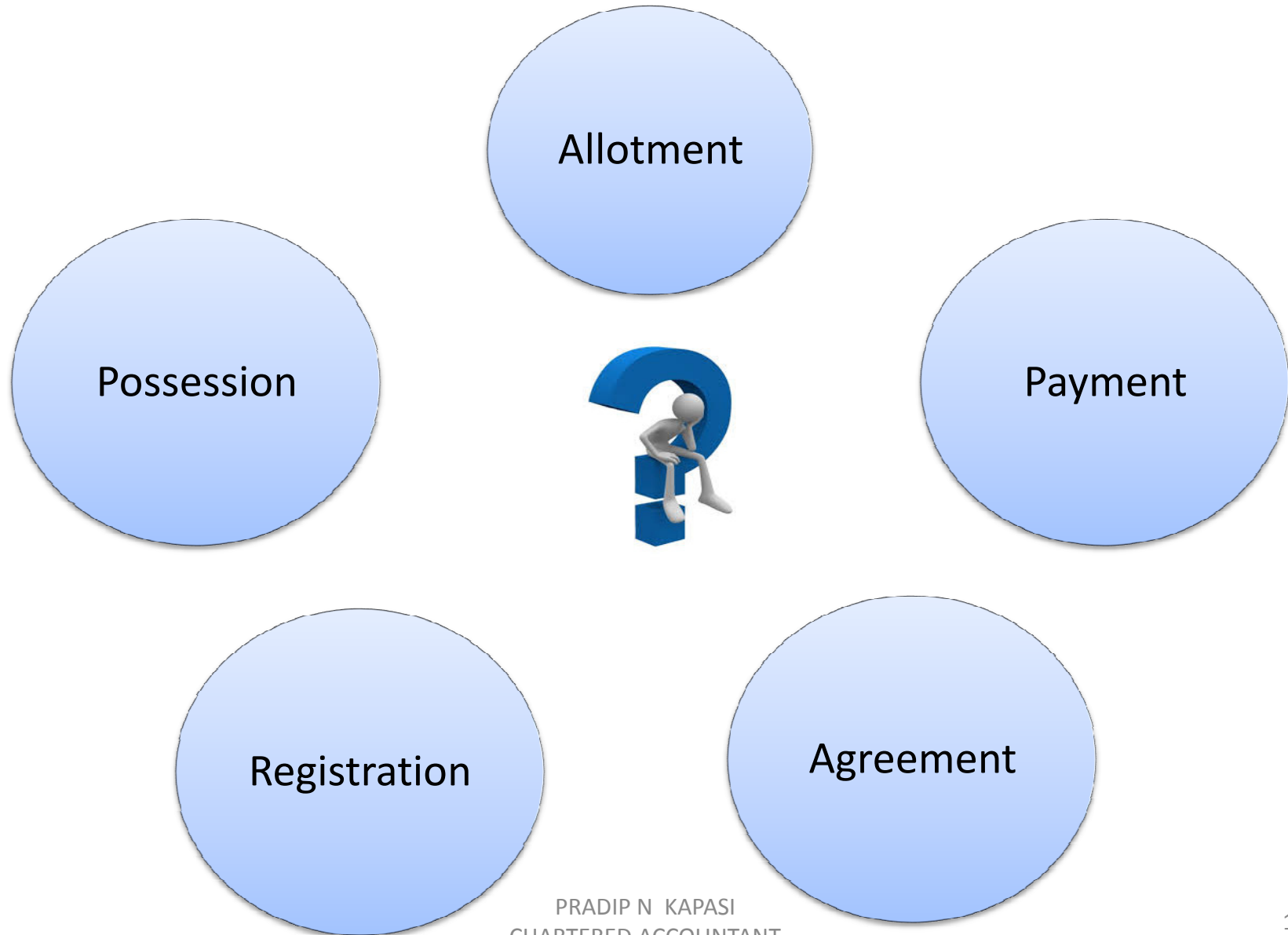
-*M. Sivaparvathi & ors.*, 129 TTJ 463

-*Bagri Impex (P). Ltd.*, 259 CTR 553 (Cal.)

-*S. Venkat Reddy*, 57 SOT 117 (Hyd.)



# S. 43CA- Deemed Consideration for an Asset- VI



# S. 43CA- Deemed Consideration for an Asset- VII

Prospective and/or  
Retroactive - Cut-off date

Transactions up  
to 31.03.2013



A Non - Starter?

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. 43CA- Deemed Consideration for an Asset- VIII

Relevance of  
method of  
accounting

Where no stamp  
duty payable

PAA and SDV



Claim for bad  
debts

Allotment to  
land owner

Unstamped  
agreement

# S. 56(2)(vii)(b)- Deemed Income- I

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. 56(2)(vii)(b)- Deemed Income- II

Double Taxation

Union Territory

Stamp Duty by seller

Land & Building

Indexation of COA

Implication of s. 49(4) in case of 'relatives'

Post dated cheques not realised

Purchase from a 'relative'





# S. 194 IA –TDS on Immovable Property- I

Introduction w.e.f. 01.06.2013

Buyer to deduct tax

On value of consideration - Basis

On transfer of immovable property - Intention

- 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- Agreement

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

Transfer, whether sine qua non

Land and/or building

- Development rights
- Lease & Tenancy
- Flat sale agreement
- Joint venture agreements
- Shares in society and company



Agreement - a must or not

Relevance of Stamp Duty Value

Cut-off date

- Payment made by 30.06.2013
- Agreement by 30.06.2013 but payment later



# S. 194 IA- TDS on Immovable Property - V

Subsequent  
increase in price

Applicability  
where one co-  
owner is NR

Service tax and  
VAT



Reimbursement  
of expenditure

Point of taxation- 'transfer'  
- Booking- Payment- Allotment  
- Agreement- Possession- Conveyance

Amenity works

# S. 194 IA- TDS on immovable Property- VI

'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

Third party  
payment

Mode of  
transfer

Exchange,  
Relinquishment

Part transfers

Time sharing  
arrangements

Indeterminate  
consideration



# S. 194 IA- TDS on immovable Property- VII

Where taxes  
paid by seller  
- S. 201  
Proviso

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

Payment in  
kind



# S. 194 IA- TDS on Immovable Property - VIII

Adjoining flats and limits

Payments made by third party- Banks, FI

Payment based on stages of completion

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 - IX

Deposits- Refundable  
or not

- Circular No. 718 dated.  
22.08.1995

Deemed Transfer cases



Buyback of premises

Payment on  
cancellation

TDS and  
Redevelopment

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.)***





Thank you