Taxation
of
Real Estate Transactions

by

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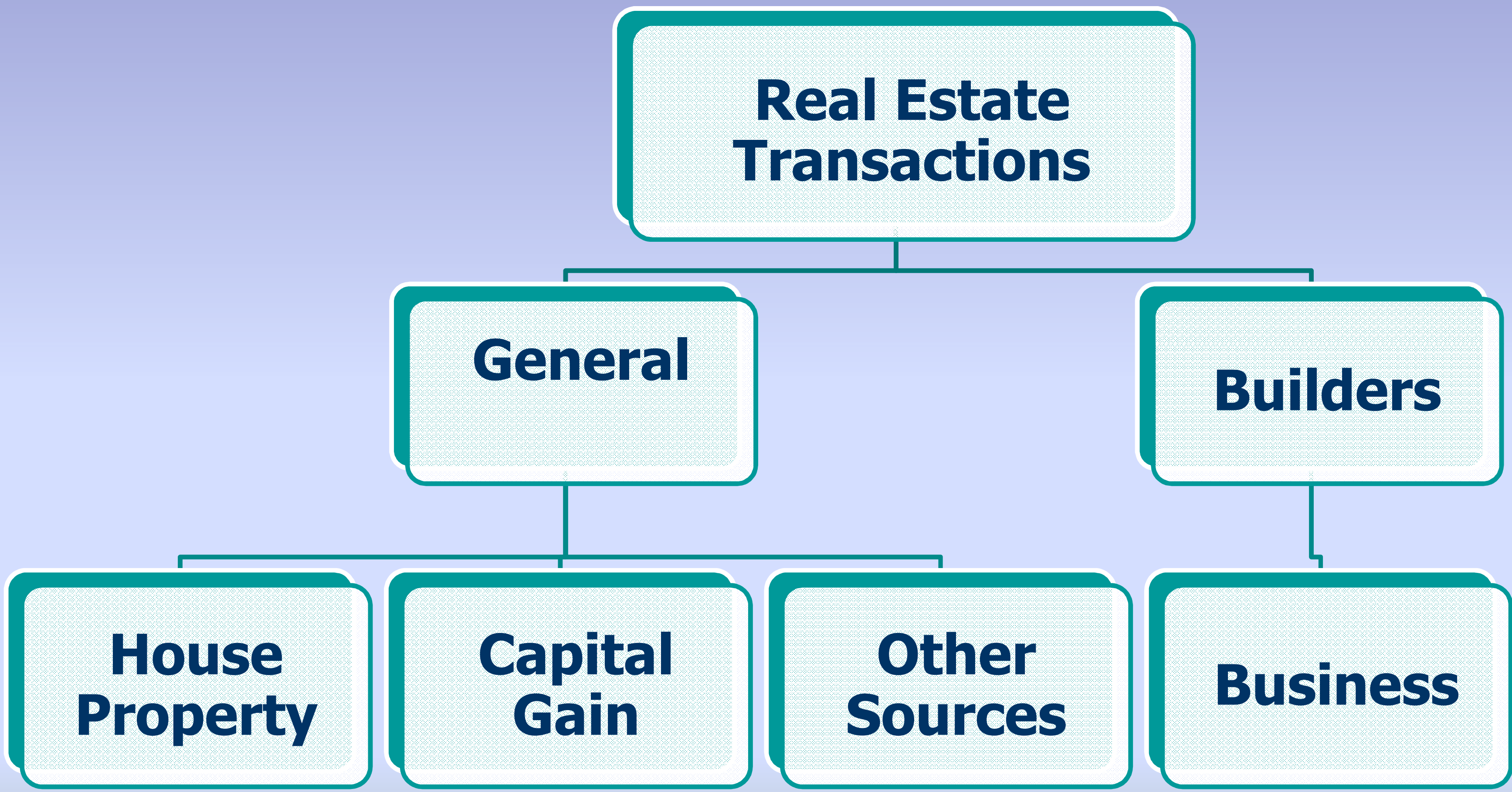
Real Estate Transactions



General
HP/CG / OS

Who is owner?

- **A using own money purchases property in his <u>own name</u>. He takes <u>rent in name of wife</u>. In whose hand is rent taxable?**
- **A borrowed money to purchase <u>property in name of wife</u>. She gets rent also. Loan is repaid by A.**
  - **HP income taxable in whose hand?**
  - **Deduction for interest paid allowable to whom?**

S.M.A. Siddique vs. CIT (1984) 148 ITR 307 (Mad)

Who is owner?

- **A using borrowed money purchases property in <u>joint name of himself and wife</u>. He takes rent in name of wife and himself. Loans repaid by A. In whose hand is it taxable?**
  - **Rental Income**
  - **Interest payment**
  - **Installment payment**
- **Interest – Is loan prepayment charges allowable u/s 24(b)?**
  - ***Winderemere Properties P. Ltd vs. DCIT (ITAT Mumbai)***

Deductions from CG

Sale made of	*Assessee*	*Investment in*	*Relevant section*	*Amount to be invested*
LTCA being Res. Propty.	Ind or HUF	Res. House	54	CG
LTCA other than Res. Property	Ind or HUF	Res. House	54F	Net Consideration
Any LTCA	Any	LTSA – Bonds	54EC	CG

Section 54 'a' House

- 'a' means one. Benefit restricted to only one h:
  - *KC Kaushik v. ITO (1990) 185 ITR 499 (Bom)*
  - *KG vyas v. ITO 16 ITD 195 (Mum)*
- The General Clauses Act, 1897: S. 13(2): "words in the singular shall include the plural, and vice versa"
- The article "a" is not necessarily a singular term. It is often used in the sense of any, and when so used it may be applied to more than one individual object- *National Union Bank v. Copeland 4NE 794*

Section 54 ‘a’ House

- **Two adjacent flats; Held allowable;** ***D. Anand Basappa v. ITO (2004) 91 ITD 53 (Bang.)***
- **Allowed only for one flat;** ***Gulshanbanoo R. Mukhi v. JCIT (2002) 83 ITD 649 (ITAT- Mum)***
- **Not allowable except in the case of adjacent & contiguous flats;** ***ITO v. Mrs Sushila M. Jhaveri 107 ITD 327 (ITAT- Mum. SB)***
- **If in one building - all together constitute ‘a’ house**
  - ***CIT vs. Gita Duggal [2013-ITRV-HC-DEL-027]***
  - ***CIT Vs. Smt. K.G.Rukminiamma 331 ITR 211 (Kar)***
  - ***CIT vs. Syed Ali Adil AP High Court***

Case Study -1

- **ABC P. Ltd. sold Building whose WDV was Rs. 49 Lacs in AY 2013-14 for Rs. 200 Lacs. Cost in AY 2002-03 was Rs. 89 Lacs.**
  - **Is it STCG or LTCG?**
  - **Is indexation allowable?**
  - **Is any deduction/investment option available?**

- **S. 50 is restricted only to mode of computation of CG. It does not convert LTCA into STCA –**

CIT vs. Ace Builders P. Ltd. (2006) 281 ITR 210 (Bom)

Case Study -2

- **A sold his house property and purchased a residential property in name of his wife.**
  - **Is benefit under section 54 available?**

    CIT vs. V. Natarajan (2006) 287 ITR 271 (Mad)

- **A sold his agricultural land (being used by him for agriculture for more than 2 years) and purchased a agricultural land in name of his son.**
  - **Is any benefit available?**

    Jai Narayan vs. ITO (2009) 221 CTR (P&H) 255

Case Study -3

- L purchased land in 2001
- He constructed residential house thereon in 2005
- He sold the property in 2006
- Whether gain is short term or long term?

CIT v. Lakshmi b Menon (2003) 184 CTR 52 (Ker)

Capital gains to be determined separately

Advance forfeiture – S. 51

- Cost of acquisition : Rs.5 lacs
- Advance forfeited : Rs.25 lacs
- Treatment ?

  Capital Receipt - *Travancore Rubber & Tea Co. Ltd. 243 ITR 158 (SC)*
- Subsequent sale whether cost of acquisition to be NIL or negative figure?

  NIL Smt Sunita N. Shah (2005) 94 ITD 492 (Mum)

CG?

- **Cost to father – 5 Lac in 1979, FMV 1981- 7 Lac, gifted/willed to son in 2011 value – 1 Cr, sold in 2013 at 1.50 cr.**
  - ***LTCG or STCG?***
  - ***Cost?***
  - ***Indexation***
    - ***Arun Shungloo Trust vs. CIT [2012-ITRV-HC-DEL-035]***
    - ***CIT vs. Manuja J. Shah [2011-ITRV-HC-MUM-263]***

Section 50C

- Value for the purpose of stamp duty, deemed to be the full value of the consideration from transfer of the capital asset for calculating capital gains
- Applicable in the case of seller of a capital asset being land &/or building.
- In case the value is disputed before the AO and the stamp duty valuation has not been disputed; the AO may refer to a Valuation Officer for ascertaining FMV

Reference to DVO

- Can be made for purpose of estimating unexplained investments u/s 69, 69B, 56 (2), etc (section 142A)
- DVO's valuation on reference can be adopted after considering assessee's objection - Though AO has got power under section 142A to refer matter to DVO to estimate cost of construction, but same cannot be adopted without considering assessee's objection – *CIT vs. M. Nagaraja [2012] 211 Taxman 118 (KAR)(MAG.)*

Reference to DVO

- Can be made for purpose of ascertaining FMV for Capital Gain u/s 50C (section 55A)
- Earlier could be referred only when value claimed is less than its FMV.
- W.e.f. 01.07.2012 it can be referred to DVO if the value claimed is at <u>variance</u> with FMV i.e., in case of claim of higher FMV also.
- No reference to DVO, if sale value is higher than stamp duty valuation
- For purpose of section 55A, full value of consideration cannot be construed as fair market value – *ACIT vs. Prakash Ratanlal Sheth [2012] 53 SOT 378 (AHD)*

CG – 50 C ?

- **Is it applicable in case of tenancy rights?**
  - *Kishori sharad Gaitonde v. ITO 2010 TIOL 297 ITAT (Mum.)*
- **Is it applicable in the case of transfer of lease hold rights?**
  - *DCIT vs. Tejinder Singh [2012-ITRV-ITAT-KOL-041]*
  - *Atul G Puranik v. ITO 11 Taxmann.com 92 (ITAT Mum)*
- **Whether difference can be reflected as additional funds in hands of the seller?**
- **Can the seller avail exemption u/s 54/ 54EC / 54F by investing addl. amount?**
  - *Gouli Mahadevappa v. ITO 8 Taxmann.com 15 (Bang.ITAT)*

CG?

- **ABC Builders P. Ltd sold property (held as stock in trade) in June 2013 for Rs. 60 Lacs (Stamp Value 100 Lacs) ??**
  - ***Section 43CA by Finance Act 2013***
- **A sold jewellery worth Rs. 2 crs costing 25 Lacs 10 years ago. Invested 2.25 in constructing residential house.**
  - ***Deduction available under which section?***
  - ***Is deduction available when house is not completed within 3 years?***
  - ***CIT vs. Sri. Sambandam Udaykumar [2012-ITRV-HC-KAR-050]***

Section 56

- If individual or HUF receives any immovable property <u>without consideration</u>, the stamp value of which exceeds Rs. 50000/- s. 56 (2)(vii)(b)
- Inadequate consideration withdrawn w.e.f. 1.10.2009 . Re-introduced by Finance Act, 2013.
- If date of agreement and date of registration is different – must pay some part before agreement date by other mode than cash

Section 56 ??

- A buy commercial property at Mumbai for 30 L (stamp value 30.50 lacs) and residential property at Gurgaon for 20 L (stamp value 20.50 Lacs)??
- B buys agricultural land at Rajasthan for 10 Lacs (stamp value 25 L)??
- C buys shop at Delhi from D (his relative) for 50 Lac (stamp value 75 Lacs)??

TDS on Immovable Property

- Effective from 1st June 2013 – s. 194-IA
- Applicable on purchase of land or building (except agriculture land) if consideration exceeds Rs. 50L
- Tax @ 1% (20% in no PAN) – on payment or credit whichever is earlier
- Payer need not obtain TAN – deposit TDS in challan-cum-statement in Form 26QB. To issue TDS certifcate in downloaded Form 16B

TDS on Imm. Property ?

- A purchase commercial property situated at Mumbai from B being NR for Rs. 55 Lacs in May 2013. Is 194-IA applicable?
- X purchases property from B situated at Delhi for Rs. 45 L in June 2013, though stamp duty value is Rs. 52 Lacs.??
- A pays Rs. 30 Lacs as advance money for property value of Rs. 75 Lacs, which is forfeited – s.51 applicable??
- R pays Rs. 55 L for commercial property out of which Rs. 10 L is for furniture??

Builders / Developers

Revenue Recognition

- Revenue in real estate sales should be recognised when all the following conditions are satisfied:
- All critical approvals necessary for commencement of the project have been obtained. These include, wherever applicable:
  - Environmental and other clearances.
  - Approval of plans, designs, etc.
  - Title to land or other rights to development/ construction.
  - Change in land use.
- When the stage of completion of the project reaches a reasonable level of development. A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25 % of the construction and development costs

Revenue Recognition

- Atleast 25% of the saleable project area is secured by contracts /agreements with buyers.
- Atleast 10 % of the total revenue as per the agreements of sale or any other legally enforceable documents are realised at the reporting date in respect of each of the contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms as defined in the contracts.
- Example – If there are 10 Agreements of sale and 10 % of gross amount is realised in case of 8 agreements, revenue can be recognised with respect to these 8 agreements

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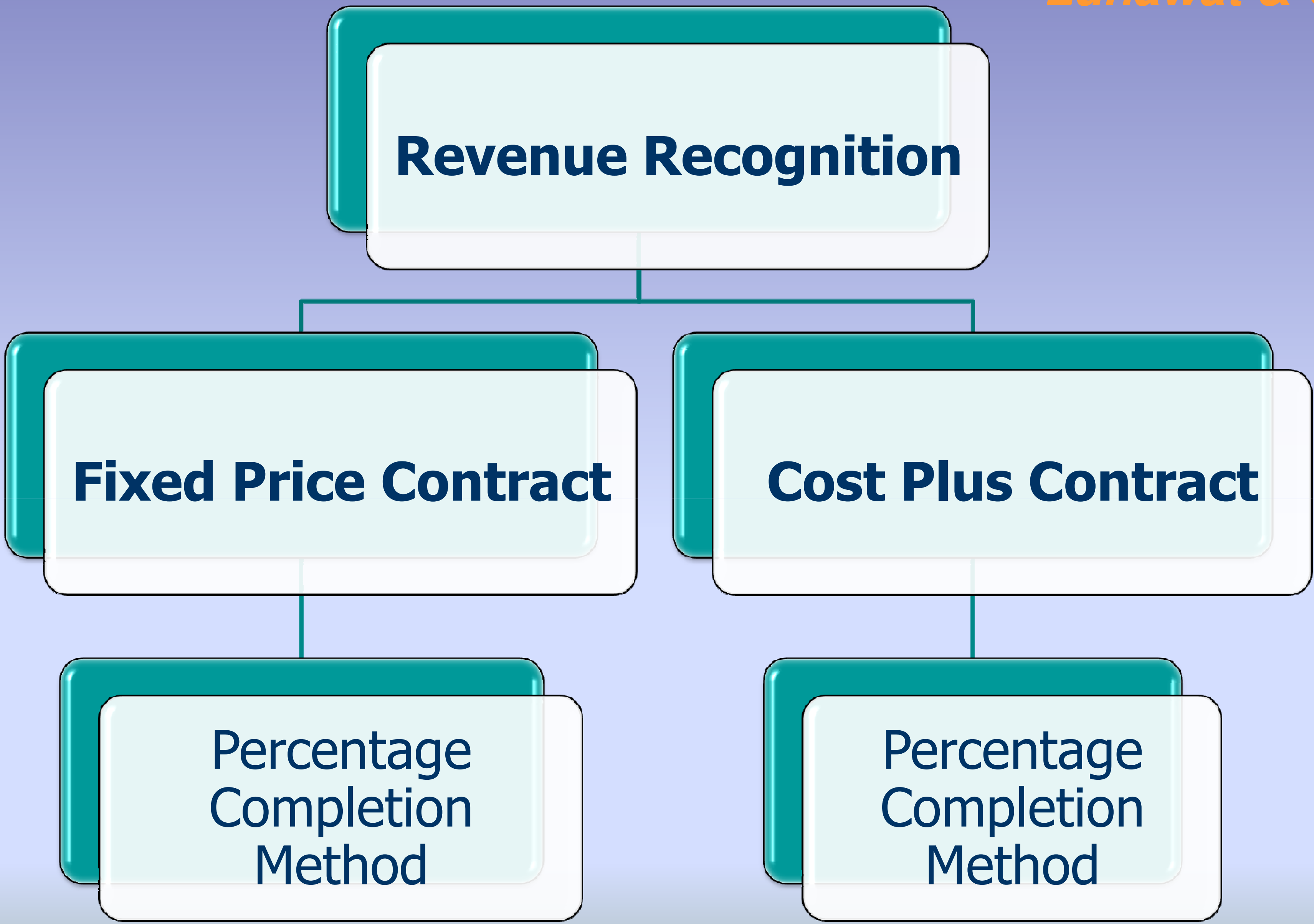
Revenue Recognition
Fixed Price Contract
Cost Plus Contract
Percentage Completion Method
Percentage Completion Method

Accounting Policies

Revenue from real estate development of constructed properties is recognised on the "percentage of completion method". Total sale consideration as per the legally enforceable agreements to sell entered into is recognised as revenue based on the percentage of actual project costs incurred to total estimated project cost, subject to such actual cost incurred being 30 percent or more of the total estimated project cost. Project cost includes cost of land, estimated cost of construction and development of such properties. The estimates of the saleable area and costs are reviewed periodically and effect of any change in such estimates is recognised in the period such change is determined. Where aggregate of the payment received from customers provide insufficient evidence of their commitment to make the complete payment, revenue is recognised only to the extent of payment received

Accounting Policies

- Revenue from projects is recognised on the 'Percentage of Completion Method' of accounting.
- Revenue is recognized, in relation to the sold areas only, on the basis of percentage of actual cost incurred thereon including land as against the total estimated cost of the project under execution subject to such actual costs being 30% or more of the total estimated cost.
- The estimates of saleable area and costs are revised periodically by the management. The effect of such changes to estimates is recognized in the period such changes are determined.

Accounting - Example

App. Total Saleable area	300000 Sq. Yd.
Area sold upto 31.3.2013	170000 Sq. Yd.
Estimated Total Revenue receivable 31.3.2013	Rs. 95 Cr.
Estimated Cost of Project	Rs. 160Cr.
Actual Cost incurred upto 31.3.2013	Rs. 70 Cr
% of Cost incurred to Estimated PC	70/160=44%
Revenue to be recognised	44% of 95 = **42 Cr**
Cost to be charged to revenue	170/300*70= **40 Cr**

Builders / Collaboration Agreement

Charging S. CG – S. 45

- Transfer of a capital asset effected in the previous year
- Resultant profits or gains from such transfer
- Those profits or gains would constitute the income of the assessee/transferor
- Such income shall be deemed to be the income of the same previous year in which the transfer had taken place

Case Study -4

- ABC P. Ltd. purchased land in Jan. 1971
- Gave the land to B for building in March 1971. B to sell the properties and receive payments.
- A to get guaranteed sum of Rs. 8 Lacs as under:
  - 85000 before execution of agreement
  - 100000 before 1.4.71
  - 150000 before 1.5.71
  - 350000 before 1.5.72
  - 50000 before 31.3.73
  - 40000 before 30.9.73
  - 25000 before 31.12.73
- Actual transfer of lease to be done only when entire construction complete.
- When does the income arise? AY 71-72; 72-73; or 73-74?
- It will accrue as mentioned in agreement as it had no right to receive the entire amount on the date of execution of agreement.

CIT vs. Ace Builders P. Ltd. (1993) 202 ITR 324 (Bom)

Case Study -5

- R owner of Land since 1958, could not retain the land due to Urban Land (Ceiling & Regulation) Act, 1976.
- She sold the plot to B to construct flats.
- POA given to builders for booking of flats
- Sale deed executed by both.
- R got fixed amount of Rs. 20 Lacs as per agreement.
- Is it PGBP or CG?

CG – intended to trf only land

CIT vs. Smt. Radha Bai (2005) 272 ITR 264 (Del)

Development Agreement

- Development agreement does not transfer the interest in the property to the developer in general law and therefore s. 2(47)(v) has been enacted.

  Chaturbhuj Dwarkadas Kapadia vs. CIT (2003) 260 ITR 491 (Bom.)

Section 2(47)(v)

- Transfer includes any transaction involving
  - the allowing of the possession of any immovable property
  - to be taken or retained
  - in part performance of a contract
  - of the nature referred to in section 53A of the Transfer of Property Act, 1882.

Part Performance

- Section 53A of Transfer of Property Act
  - There should be a contract for consideration
  - Contract should be in writing
  - It should be signed by the transferor
  - Should pertain to immovable property
  - Transferee should have taken the possession of the property
  - Transferee should be ready and willing to perform his part of the contract

Case Study -6

- A entered into builders agreement to erect multistory building at 21 Barakhamba Road.
- 50% constructed area to be kept by A and 50% by AP & Co. Space agreed.
- Rs. 10 Lacs to be paid as security to A.
- PGBP or CG?
- Agreement was on principle to principle basis – no partnership

CIT vs. Ashok Kapur HUF (2007) 213 CTR (Del) 241

Case Study -7

- J entered into collaboration agreement with XYZ Builders on 8.6.2005.
- Builders to obtain letter of intent and other permissions
- Developer to have 84% and owner to have 16%.
- Owner to be given built up area as consideration free of cost
- Ownership shall vest exclusively with owners till it gets constructed area as per agreement.
- Payment of EM of Rs. 1 Crore at time of agreement

Case Study – 7 (Contd.)

- SPOA to be executed in favour of developer to get necessary approvals
- If LOI not received by 8.3.06, agreement stands terminated.
- On fulfilling conditions of LOI owners to execute GPOA to book and sell units out of developers share and collect money for the same. However sale deeds to be executed after owners receive their share.
- After CLU and earmarking their areas, both can sell or lease out their areas.
- GPA executed on 08.05.2006
- On completion of built up area (AY 2007-08), owner to give POA to developer to transfer Rights, title, etc. to buyers
- WHEN DOES CG ARISE?

Case Study – 7 (Contd.)

- On 15.9.2005 supplementary agreement entered that Owners sells its 16% to Builders at 42 Cr. in installments starting from 8.6.06 and last to be paid by 8.6.07.
- Now, When does CG arise?
  - AY 2007-08 when CLU obtained?
  - AY 2008-09 when final payment received?
  - Proportionately in 06-07, 07-08 & 08-09?
- 2(47)(v) comes into full play and year of major performance i.e. AY 2007-08 is the taxable year and not year of receipt of full payment

Jasbir Singh Sarkaria, In Re (2007) 294 ITR 196 (AAR)

Case Study – 8

- **S agrees with builder for construction.**
- **No written agreement.**
- **Date of construction and date of ultimate sale is different.**
- **WHEN DOES CG ARISE?**
  - **Date of construction?**
  - **Date of ultimate sale?**
- **2(47)(v) comes into operation only if condition of S. 53A of Trf. Of Property Act is satisfied & written agreement is there. – CG in year of sale.**

CIT vs. G. Saroja 301 CTR 124 (Mad)

Other Case laws

- **Assessee following completed contract method – Legal & advertisement exp, can't be apportioned towards completed & uncompleted phases, hence allowed in full in year of incurrence.**
- **Assessee following completed contract method – charging service charges for A.C. for 5 years, thereafter, transfer the same at no cost. Facts on records showed that sale consideration of premises was inclusive of AC facilities. Entire consideration was taxable in year of receipt – spreading over 5 years not permissible.**

CIT vs. Mangal Tirth Estates Ltd. (2008) 214 CTR (Mad) 253

Other Case laws

- **Assessee sold ancestral land after plotting – not an adventure in nature of trade**

  CIT vs. MLM. Mahalingam Chettiar (1977) 107 ITR 236 (Mad)

- **In cases of development agreement, the year of chargeability of Capital Gain is the year in which the contract is executed, where by reading of the contract indicates complete passing of the property in favour of the developer, substantial performance of contract is not relevant.**

  Chaturbhuj Dwarkadas kapadia Vs. CIT (2003) 260 ITR 491 (Bom)

- **Assessee business being construction, any addition towards cost of construction on basis of DVO's Valuation Report was invalid.**

  CIT vs. Star Builders (2007) 294 ITR 338 (Guj)

Thank You

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