

## **Insertion of proviso to section 50C by Finance Act, 2016 with effect from 1-4-2017, has retrospective effect**

**Summary – The Ahmedabad ITAT in a recent case of Dharamshibhai Sonani, (the Assessee) held that Insertion of proviso to section 50C by Finance Act, 2016 with effect from 1-4-2017, has retrospective effect**

### **Facts**

- During relevant year, assessee sold certain land at Village 'B' on 24-4-2007 at consideration of Rs. 45,00,000. According to the stamp duty valuation authority, said land was valued at Rs. 76,21,800/-. It was in this backdrop that the Assessing Officer sought to add Rs. 15,60,900/- to the value of sale consideration, for the purpose of computing capital gains, received by the assessee.
- The assessee explained that though a registered 'agreement to sell' was executed on 29-6-2005, the sale deed of land could finally be executed only on 24-4-2007 since the land was agricultural and was required to be converted into non-agricultural land before execution of sale deed.
- The stamp duty valuation as on 24-4-2007 was therefore, according to the assessee, not relevant for ascertaining whether the sale consideration was suppressed which was relevant for the purpose of section 50C.
- The explanation was, however, rejected. What, according to the Assessing Officer, was relevant was the date on which sale deed was executed. The Assessing Officer thus proceeded to adopt sale consideration under section 50C at stamp duty valuation rate.
- The Commissioner (Appeals) confirmed order of Assessing Officer.
- On second appeal:

### **Held**

- The fundamental purpose of introducing section 50C was to counter suppression of sale consideration on sale of immovable properties, and this section was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. This section provides for a presumption, a rebuttable presumption that the value, for the purpose of computing stamp duty, adopted by the stamp duty valuation authority represents fair indication of the market price of the property sold.
- The trouble, however, is that while the sale consideration is fixed at the point of time when agreement to sell is entered into, there is sometimes considerable gap in parties agreeing to a transaction (*i.e.* agreement to sell) and the actual execution of the transaction (*i.e.* sale deed), and yet, it is the value as on the date of execution of sale deed which is recognized by section 50C for the purpose of computing the capital gain because that is what is relevant for the purpose of computing stamp duty for registration of sale deed. The very comparison between the value as per sale deed

and the value as per stamp duty valuation, accordingly, ceases to be devoid of a rational basis because these two values represent the values at two different points of time.

- In a situation in which there is significant difference between the point of time when agreement to sell is executed and when the sale deed is executed, therefore, should ideally be between the sale consideration as per registered sale deed, which is fixed by way of the agreement to sell, *vis-à-vis* the stamp duty valuation as at the point of time when agreement to sell, whereby sale consideration was infact fixed, because, if at all any suppression of sale consideration should be assumed, it should be on the basis of stamp duty valuation as at the point of time when the sale consideration was fixed.
- So far as section 50C is concerned, the Finance Act, 2016, with effect from 1-4-2017, inserted the provisos to section 50C.
- There cannot be any dispute that this amendment in the scheme of section 50C has been made to remove an incongruity, resulting in undue hardship to the assessee.
- Once it is not in dispute that a statutory amendment is being made to remove an undue hardship to the assessee or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced.
- The present amendment, being an amendment to remove an apparent incongruity which resulted in undue hardships to the taxpayers, should be treated as retrospective in effect. Quite clearly therefore, even when the statute does not specifically state so, such amendments, can only be treated as retrospective and effective from the date related statutory provisions was introduced. Viewed thus, the proviso to section 50C should also be treated as curative in nature and with retrospective effect from 1-4-2003, *i.e.* the date effective from which section 50C was introduced.
- So far as the amendment to section 50C being retrospective in effect is concerned, there is no doubt about the legal position. That the provisos to section 50C being effective from 1-4-2003. This is precisely what the assessee has prayed for. The plea of the assessee is indeed well taken and deserves acceptance. What follows is this. The matter will now go back to the Assessing Officer. In case he finds that a registered agreement to sell, as claimed by the assessee, was actually executed on 29-6-2005 and the partial sale consideration was received through banking channels, the Assessing Officer, so far as computation of capital gains is concerned, will adopt stamp duty valuation, as on 29-6-2005, of the property sold as it existed at that point of time. In case the assessee is not content with this value being adopted under section 50C, he will be at liberty to seek the matter being referred to the DVO for valuation, again as on 29-6-2005, of the said property. As a corollary thereto, the subsequent developments in respect of the property sold (*e.g.* the conversion of use of land) are to be ignored. It is on this basis that the capital gains will be recomputed. With these directions, the matter stands restored to the file of the Assessing Officer for adjudication *de novo*.