



Section 50 C - Special provision for full value of consideration in certain cases.

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Conditions for applicability of Section 50C

- Conditions which need to be cumulatively satisfied for S. 50C to apply –
 - (i) there is an assessee;
 - (ii) the assessee transfers a capital asset;
 - (iii) such capital asset is land or building or both;
 - (iv) there is consideration received or accruing as a result of such transfer;
 - (v) consideration received or accruing as a result of the transfer is lower than its stamp duty value.

- For this purpose “stamp duty value” means value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty on such transfer.

Consequence of S. 50C being applicable and exceptions thereto

- **Consequence:** As stated above, stamp duty value shall, for the purpose of computation of capital gains under Section 48, be deemed to be full value of consideration.
- **Exceptions:**
 - (1) In certain circumstances stamp duty value on the date of agreement fixing the amount of consideration may be taken to be full value of consideration [first and second proviso to section 50C(1)] ;
 - (2) Value determined by DVO may be deemed to be full value of consideration for the purpose of section 48 [section 50C(2)];
 - (3) If the stamp duty value of the asset transferred is less than 105% of the full value of consideration then the consideration received or accruing as a result of transfer shall not be substituted with the stamp duty value.

Object of Section 50C

- Various judicial pronouncements have stated the object of introducing Section 50C as :
- (i) Section 50C was incorporated to prevent large scale under valuation of the real value of the property in the sale deed so as to defraud the Government of revenue it was legitimately entitled to by pumping in black money – **K. R. Palanisamy v. UOI [(2008) 306 ITR 61 (Mad.)]**.
- (ii) 50C has been specifically introduced with a view to prevent evasion of tax and undervaluation of the transaction. It is in that context that section 45, section 48 and section 50C must be read - **Bhatia Nagar Premises Co-operative Society Ltd. v. UOI [(2010) 234 CTR (Bom.) 175]**

Object of Section 50C

- (iii) The object and purpose of Section 50C is to see that the undisclosed income of capital gains received by the assessee is taxed and the law should not encourage and permit the assessee to peg down the market value to avoid tax – **Gouli Mahdevappa v. ITO [(2013) 356 ITR 90 (Karn.)]**

- (iv) Section 50C is a measure provided to bridge the gap as it was found that assessee were not correctly declaring the full value of the consideration or in other words resorting to the practice of undervaluation - **Bhatia Nagar Premises Co-operative Society Ltd. v. UOI [(2010) 234 CTR (Bom.) 175]**

Object of Section 50C

- (v) The basic intention to insert section 50C is for the purpose of determining full value of sale consideration for the purpose of computation of capital gains under section 48 – **Inderlok Hotels (P.) Ltd. v. ITO [(2009) 32 SOT 419 (Mum.)]**

Constitutional validity of Section 50C

Provisions of S. 50C are constitutionally valid

- K. R. Palanisamy v. UOI [(2008) 306 ITR 61 (Mad.)]
- Bhatia Nagar Premises Co-operative Society Ltd. v. UOI [(2010) 234 CTR (Bom.) 175]

Ingredients of Section 50C

- Assessee
- Transfer
- Capital Asset
- Land or building or both
 - Is part of a building covered?
 - Are shares of a co-operative society 'building'?
- Consideration received or accruing as a result of transfer

Ingredients of Section 50C

- Also, the section does not refer to part of a building. Therefore, a question could arise as to whether the section will apply when the capital asset transferred is a part of the building. While it is a well settled legal principle that “**whole includes part**” as also the maxim that “**the greater contains the less**” – **Omne majus continet in se minus**.
- This well settled legal principle that “whole includes part” is also supported by the following observations of the Full bench of Punjab High Court in the case of **Bhagirath v. State of Punjab [AIR 1954 Punj. 167 (O)]** – ICI India Ltd. v. DCIT [(2004) 90 ITD 258 (Kol.)]

“It is clear that the whole includes the part and where an Act provides for rights in an estate it provides for rights in part of an estate.”

Ingredients of Section 50C

- While there can be no dispute against the above well settled legal principle, a question arises as to why do other provisions of the Act such as Sections 27, 194IA, 194LA, 261A(e), 269AB, 269I, 269UA, etc. specifically mention part of a building. However, over a period of more than 15 years that the section has been in force it seems there has been no litigation on this issue.
- In the context of Section 50C it appears that transfer of a part of the building will also be covered by the provisions of Section 50C.

Meaning of Stamp Duty Value

- **Stamp duty value:** Stamp duty value is the value adopted or assessed or assessable by authority of State Government for purpose of levy of stamp duty on such transfer. Therefore, if the value is adopted or assessed or assessable by an authority not of a State Government then the provisions of this section will not apply e.g. in Union Territories. Also, if the immovable property is situate outside India then the authority determining its value for the purpose of levy of stamp duty will not be an authority of the State Government and therefore, the provisions of Section 50C will not apply to transfer of a capital asset being land or building or both situate outside India. It is also relevant to note that 'stamp duty value' need not be the same as fair market value.

Date of applicability of Section 50C

- **Effective from when:** The Finance Act, 2002 has inserted Section 50C with effect from 1.4.2003 i.e. Assessment Year 2003-04 onwards.
- However, in the following decisions, Tribunals have held that the provisions of Section 50C are not applicable because the agreements to transfer the capital asset being land or building or both were entered into by the assessee much before the provisions of Section 50C were enacted and came on the statute book and the delay in transferring the asset was due to bonafide reasons.
 - Hari Mohan Das Tandon (HUF) v. Principal CIT [(2018) 91 taxmann.com 199 (All.-Trib.)];
 - M. Siva Parvathi v. ITO [(2010) 129 TTJ 463 (Vishakhapatnam)]

Date of applicability of Section 50C

- If transfer takes place when Section 50C was not in force, reassessment cannot be made by invoking Section 50C – **CIT v. Shimbhu Mehra & Ors. [(2015) (10) TMI – 1092 – Allahabad High Court]**. The Court was dealing with a case where by virtue of retrospective amendment of Section 2(47) by insertion of Explanation 2, transfer took place in 2001 when Section 50C was not in force. The Court held as under –
 - Explanation 2 to Section 2(47) of the Act was added by Finance Act, 2012 with retrospective effect on 1.4.1962 and, consequently, the said provision would be applicable. The said explanation clearly provides that transfer of an asset includes disposing of or parting with an asset by way of an agreement.

Date of applicability of Section 50C

- In the light of the aforesaid provision, it is apparently clear that the moment an agreement to sell is executed between the parties and part consideration is received, the transfer for the purpose of Section 50C of the Act takes place and computation under Section 48 of the Act will start accordingly, for the purpose of calculating the capital gains under Section 45 of the Act. From the aforesaid, it is apparently clear that the transfer of the property took place in the year 2001 when the provision of Section 50C of the Act was not in existence. Consequently, the Assessing Officer was not justified in making the reassessment and computing the capital gains by invoking the provision of Section 50C of the Act, which was clearly not applicable in the assessee's case. The court decided the issue in favour of assessee.

Section 50C will not apply if there is no transfer

- For the provisions of Section 50C to apply there has to be a transfer. Section 2(47) of the Act defines `transfer`. If the transaction does not amount to a transfer, the question of applicability of Section 50C does not arise.
- Since transfer of assets under a family arrangement does not attract the provisions of section 2(47), the assessee is out of the mischief of S. 45. Since the provisions of S. 45 are not attracted, S. 50C is also not applicable.
 - **Shirish S. Maniar v ITO [59 itatindia 196](Mum)**

Section 50C does not apply to transfer of stock-in-trade

- **S. 50C applies only to capital asset and does not apply to assets held as stock-in-trade**
- CIT v. Thiruvengadam Investments (P) Ltd. [2010] 320 ITR 345 (Mad)
- CIT v. Kan Construction and Colonizers (P.) Ltd. [2012] 20 taxmann.com 381 (All. HC)
- CIT v. Mukesh & Kishor Barot Co-owners_[2013] 33 taxmann.com 87 (Gujarat HC)
- Inderlok Hotels (P.) Ltd. v ITO 32 SOT 419 (Mum)(Trib)
- ACIT v. Excellent Land Developers P. Ltd. [2010] 1 ITR 563 (Del)(Trib)

Does Section 50C alter the date of transfer?

- The Calcutta High Court has in the case of **Bagri Impex Pvt. Ltd. v. ACIT [2013 (2) TMI – 237 – Calcutta High Court]**, while dealing with a case of an assessee who had adopted a device to evade tax, held that the provisions of Section 50C modify the year of transfer. It is respectfully submitted that the ratio of the said decision requires reconsideration. The Court held as under –
- Assessee contended that Tribunal erred in applying Section 50C to the case of the assessee because the valuation of the land for the purpose of stamp duty was yet to be assessed as going by the definition of word 'Transfer' from s.2(47)(v) the sale was completed when the consideration was received in the financial year 2005-06 and the possession had already been given in the year 1996 pursuant to an agreement for sale.

Does Section 50C alter the date of transfer?

- The Court held it is true that 'transfer' has been defined in Section 2(47) but the aforesaid definition was made before Section 50C was introduced to the Income Tax Act. After section 50C was introduced in the year 2003, the value of the land or building or both sold or otherwise transferred has to be the value assessed by the authority of the State Government for the purpose of stamp valuation.

Does Section 50C alter the date of transfer?

- The submission that in the financial year 2005-06 when the consideration was received, the Deed of Conveyance had not even been executed has not found favour for the simple reason that **the intention of the Parliament is that in a case where the land or building or both are sold or otherwise transferred, such transfer shall be deemed to have taken place only after the stamp duty has been assessed by the State Government, because it is on the valuation made for the purpose of stamp duty that the tax is payable under the Income Tax Act.**

Section 50C(2) – Meaning of claim

- **Meaning of “claim”:** Sub-section (2) of Section 50C prescribes two conditions upon satisfaction of which it is provided that the AO may refer the valuation of the capital asset to a Valuation Officer. The two conditions provided in sub-section (2) of section 50C are as under –
 - (a) The assessee claims before any AO that the stamp duty value exceeds the fair market value of the property as on the date of transfer;
 - (b) The stamp duty value has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court.

Section 50C – meaning of claim

- The condition (a) above is that the assessee has to 'claim' before any AO that the stamp duty value exceeds the fair market value of the property as on the date of transfer. In this connection a question arises as to what is meant by claim and whether there is any particular form / manner in which the assessee is required to make such a claim. In the Webster Dictionary, the meaning of the word 'claim' is given as 'assert'. Hence, mere assertion by the assessee would suffice. The Madras High Court in the case of **Appadurai Vijayaraghavan v. JCIT [(2014) 369 ITR 486 (Mad.)]** restored the matter to the file of the Assessing Officer to work out capital gains by invoking Section 50C(2) upon observing that though the assessee had raised an objection for invoking section 50C(1), the Assessing Officer had not referred the valuation to the Valuation Officer as per section 50C(2). Without doing so, the Assessing Officer had estimated the capital gains tax, which was confirmed by the Tribunal.

Section 50C – manner of making a claim

- There is no particular form or manner or time frame within which the assessee is required to make this claim. The claim may be by the assessee mentioning it in his submissions in the course of assessment proceedings that the fair market value of the asset transferred by the assessee is less than the stamp duty value determined by the stamp valuation authority. The assessee may even write a letter to the AO soon after filing the return of income wherein he has offered capital gains for taxation with reference to full value of consideration. While there is no bar that the claim cannot be made orally, it is advisable that the claim should be made in writing and at the earliest. The claim may even be made orally and recorded by the AO in the order sheet which is signed by the assessee or his Authorised Representative on his behalf.

Section 50C – manner of making a claim

- There appears to be no bar in the claim being made, for the first time, in the course of revision or reassessment proceedings.
- The Delhi Bench of the Tribunal has in the case of **Sudha Garg v. ITO [2018 (8) TMI 969 – ITAT DELHI]** has held as under –
 - There is no specific manner provided by the Act for making a claim before the Ld. Assessing Officer under Section 50C of the Income-tax Act. Such claim can also be made in the return of income as well as in various communications before the Assessing Officer. As the assessee has submitted the report of the registered government approved valuer, therefore, it cannot be said that the assessee has not claimed before the Ld. Assessing Officer that valuation adopted by the Stamp duty authorities is not correct valuation of the property sold.

Section 50C...

If sale consideration as stated in the transfer document is accepted by the stamp valuation authorities, the provisions of S. 50C do not apply and the AO cannot refer such a case to the DVO. In such case, the AO is duty bound to accept the sale consideration.

- Punjab Poly Jute Corpn. v ACIT 120 ITD 233 (Asr)

Is S. 50C(1) mandatory or does AO have discretion?

- The Tribunal in the case of **Sharad Dinesh Photographer v. ITO [(2011) 43 SOT 452 (Mum.)]** held that since nothing had been brought before the Tribunal to show that the assessee claimed before the Assessing Officer that the value adopted by the Stamp Valuation Authority was more than the FMV of the said property there was no reason to make reference to the Valuation Officer.
- The Hyderabad Bench of the Tribunal has in the case of **ITO v. Smt. Chitti Parvatha Vadhanamma [(2014) 151 ITD 413 (Hyd.)]** held that when Section 50C says that sale consideration shall be guideline value, if stated consideration is less than that, it means that law has already decided course of action. Nothing can persuade situation including genuine and valid difficulties of assessee.

Is S. 50C(1) mandatory or does AO have discretion?

- Section 50C(1) is mandatory if the opportunity under sub-sections (2) and (3) is not availed - **Ambattur Clothing Co. Ltd. v. ACIT [(2009) 221 CTR 196 (Mad. HC)]; Jasvinder Hans v. ACIT [(2018) 170 ITD 241 (Asr. – Trib.)] Mrs. Kirit Bakshi v DCIT [(Delhi)(ITAT)(60 itatindia 313)]**
- When the assessee contended before the AO that the Sub-Registrar refused to release the documents except on payment of high stamp duty on enhanced valuation and that since the buyers wanted the title document to be released at the earliest, they had chosen to pay stamp duty without contesting the same and without consulting the assessee. The assessee had no locus standi in the proceedings and, hence, the assessee should not be made to suffer by enhancing the assessment. The explanation offered by the assessee was held by the Madras High Court in **Ambattur Clothing Co. Ltd. v. ACIT [(2009) 221 CTR 196 (Mad. HC)]** to have been rightly rejected by the AO. The Court held that there was no exception to the stand taken by the AO.

Is S. 50C(1) mandatory or does AO have discretion?

- In case the stamp duty value of the asset transferred is greater than its stated consideration and the assessee claims that the fair market value of the asset transferred is less than the stamp duty value determined by the Stamp Valuation Authority then it is incumbent upon the assessee to make a claim before the AO to this effect. It is only on the assessee's making a claim that the AO will be statutorily bound to make a reference to the Valuation Officer. It was in the background of this legal position that the Mumbai Bench of the Tribunal in the case of **Niamat Mahroof Virji v. ITO [(2017) 162 ITD 378 (Mum.)]** held that the assessee neither challenged value as adopted by the stamp valuation authorities nor sought reference to the DVO. In the aforesaid circumstances, the deeming fiction of Section 50C would come into operation and value as adopted by the stamp valuation authorities would be deemed to be full value of consideration for purposes of section 48.

Is the presumption u/s 50C(1) rebuttable?

- While Section 50C(1) by a fiction deems the stamp duty value of the capital asset transferred being land or building or both to be full value of consideration, for the purposes of section 48, the fiction is rebuttable. The assessee must be given an opportunity to rebut the fiction. The Madras High Court in the case of **Jagnathan Sailaja Chitta v. ITO [2019 (3) TMI 648 – Madras High Court]** has observed as under –
 - “The Fair Assessment Procedure under the scheme of assessment in the Income Tax Act has it at the root the principles of natural justice and the same has not been denied by presumptive provisions, such as Section 50C of the Act and several other provisions in the scheme of the Act.”

When is AO required to apply his mind to the objections

- However, in a case where the stamp duty value of the asset transferred is greater than the consideration and the assessee objects to adoption of stamp duty value and also files a valuation report from the approved valuer to substantiate his contention that the fair market value of the asset is less than the stamp duty value adopted or assessed or assessable then it appears that instead of directly referring the matter to the DVO, the AO is required to apply his mind to the objections.

When is AO required to apply his mind to the objections

- The Allahabad High Court in the case of **CIT v. Shri Chandra Narain Chaudhri [2013 (9) TMI 646 – Allahabad High Court]** has held as under -
 - 14. We are of the view that whenever objection is taken or claim is made before AO, that the value adopted or assessed or assessable by the Stamp Valuation Authority under sub-section (1) of Section 50C exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection of the assessee. He may either accept the valuation of the property on the basis of the report of the approved valuer filed by the assessee, or invite objection from the department and refer the question of valuation of the capital asset to DVO in accordance with Section 55-A of the Act. In all these events, the AO has to record valid reasons, which are justifiable in law. He is not required to adopt an evasive approach of applying deeming provision without deciding the objection or to refer the matter to the DVO under Section 55-A of the Act as a matter of course, without considering the report of approved valuer submitted by the assessee. In all such cases, the reasons recorded by the AO may be questioned by the assessee or the department as the case may be.”

Section 50C...

Provisions of S. 50C are mandatory. AO does not have an option not to apply provisions of S. 50C. The word `shall' used in S. 50C(1) cannot be understood as `may'.

- Shri Jitendra Mohan Saxena (ITA No. 705/Luc/05 decided on 27.7.2007) [Extracts from this decision are reproduced in M/s Fortuna Structures Pvt. Ltd. v ACIT (2008)(60 itatindia 886)(Lucknow)]
- Mohd. Shoib v. DCIT [(2010) 127 TTJ 459 (Luck)(Trib.)]

An order of the AO accepting sale consideration declared by the assessee when the same is less than the stamp duty valuation could entitle the CIT to invoke the provisions of S. 263 of the Act.

- A.K.G. Consultants (P.) Ltd v ITO [17 SOT 592 (Luck)]

Is notice required before invoking 50C

No notice is required under Act to put assessee on notice before invoking provisions of section 50C

Smt. T.V. Nagasena v. ITO [2012] 24 taxmann.com 30 (Bang.)

However, the Calcutta High Court has in the case of **Sunil Kumar Agarwal v. CIT [2014] 47 taxmann.com 158 (Calcutta)** has held that if the stamp duty valuation is higher than the consideration received, the AO must refer the valuation to the DVO even if there is no request by the assessee. The Court in this case, observed as under –

“The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer, the AO, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.”

Section 50C...

AO is bound to make a reference to DVO, if the assessee makes a claim that the fair market value of the property transferred is less than its value as determined by stamp valuation authorities. The word 'may' in S. 50C(2) should be read as 'should'. If S. 50C is read to mean that if the AO is not satisfied with the explanation of the assessee then he 'may' or 'may not' send the matter for valuation to the DVO, then in that case this provision would be rendered redundant.

- S. Muthuraja v. CIT [(2013) 37 taxmann.com 352 (Madras HC)]
- M/s Fortuna Structures Pvt. Ltd. v ACIT [(2008)60 itatindia 886](Lucknow)]
- Meghraj Baid v ITO [23 SOT 25 (Jodh)]
- Kalpataru Industries v ITO [(Mum)(41-B BCAJ 32)(ITA No. 5540/Mum/2007, Mum H Bench, Asst Year 2005-06, Order dated 24.8.2009)]
- Abbas T. Reshamwala v ITO [(41-B BCAJ 33)(Mum)(ITANo. 3093/Mum/2009)(AY 2006-07)(Decided on 30.11.2009)]
- Manjula Singhal v. ITO [(2011) 46 SOT 149 (Jodh)(Trib.)]

Section 50C...

Clauses (a) and (b) of sub-section (2) of S. 50C are in continuation to each other and, therefore, conditions laid down in both the clauses are required to be satisfied together. The AO has to refer the capital asset for valuation to DVO only when there is a claim made by the assessee. If there is no claim by the assessee the AO need not refer the property for valuation to DVO.

Valuation done by DVO to be adopted if it is less than SDV

The AO has to apply his mind to the contention of the assessee and has to come to the conclusion that the fair market value of the asset is less than its value as determined by stamp valuation authorities. Upon coming to the conclusion that the fair market value is less than the value determined by stamp valuation authorities he has to make a reference to DVO and not otherwise.

- Mohammed Sohaib [29 DTR 306 (Luck)]

In a case where fair market value ascertained by the DVO is less than the value adopted by the stamp duty authorities, the AO has to adopt the value ascertained by the DVO

- ITO v. Gita Roy [(2012) 135 ITD 345 (Kol)(Trib.)]
- CIT v. Rajabhai Lumbabhai Hadiya [(2016) 65 taxmann.com 18 (Gujarat)]

Is report of DVO binding on AO / Is DVO entitled to hearing if assessee objects it

Report of DVO is binding on the AO

- CIT v. Indra Swaroop Bhatnagar [2012] 349 ITR 210 (All)(HC)

Valuation Officer entitled to hearing if his report is objected to by the assessee in an appeal – CIT v. Prabhu Steel Industries [2013 (7) TMI 204 – Bombay High Court]

Valuation officer is constituted as an independent and distinct statutory forum for resolving the controversy regarding determination of the market value of the property with all necessary powers. Its order or report is made binding on the assessing officer and thus he enjoys equivalent status. As per the statutory scheme when the report /order of Valuation Officer under Section 50C(2) is objected to by assessee, the CIT (Appeals) or ITAT are obliged to extend an opportunity of hearing to such Valuation Officer.

Can addition be deleted without waiting for report of DVO

Where AO referred the property to the Valuation Cell on the direction of CIT(A), then CIT(A) is not competent to delete the addition without waiting for such report from the Valuation Cell

- ITO v. Inderjit Kaur (Mrs.) [(2012) 50 SOT 377 (Chd.)(Trib.)]

Once a reference has been made by the AO to the DVO, the AO cannot resort to provisions of S. 50C(1) and take stamp duty value to be the full value of consideration. Upon a reference being made by the AO to the DVO, the DVO cannot refuse to value the asset. He is duty bound to estimate the value of the asset in writing and send the copies thereof to the AO as well as to the assessee.

- Smt. Tulshi Rajkumar v ACIT [2010 – TIOL – 515 – ITAT – Mad]

Section 50C qua Block of Assets

When items constituting block of assets are sold and the block continues to exist -

Provisions of S. 50C are not applicable -

- Panchiram Nahata v JCIT [(127 TTJ 128)(Kol)(UO)]
- ACIT v Roger Pereira Communications (P.) Ltd. [34 SOT 64 (Mum)]
- DCIT v Cable Corporation of India Ltd. [(Mum – E)(ITA No. 5592/Mum/2002)(AY 1995-96)(order dated 29.10.2009)]
- Bhaidas Cursondas & Company v. Addl CIT [(2015) 59 taxmann.com 373 (Mumbai - Trib.)]

When items constituting block of assets are sold and the block ceases to exist -

Provisions of S. 50C are applicable -

- ITO v. United Marine Academy [(130 ITD 13)(Mum)(SB)]

Prior to 1.10.2009 only registered instruments attract S. 50C

In respect of transactions prior to 1.10.2009, provisions of S. 50C do not apply only in cases where the instrument of transfer is not registered and no stamp duty is paid.

- Carlton Hotel (P.) Ltd. v ACIT [122 TTJ 515 (Luck)]
- Navneet Kumar Thakkar v ITO [110 ITD 525 (Jodh)(SMC)]
- Shingar India Pvt. Ltd. v ITO [(41-A BCAJ 26)(Mum)(ITA No. 1785/Mum/2007; A.Y. 2004-05; Decided on 6.5.2009)]

In an event where the value determined by stamp valuation authorities is more than the sale consideration, the onus to prove fair market value is shifted to the assessee. As long as the assessee can reasonably discharge this onus, even under scheme of S. 50C, consideration stated by the assessee cannot be disturbed.

- Punjab Poly Jute Corpn. v ACIT [120 ITD 233 (Asr)]

Miscellaneous valuation issues

While valuing property, DVO cannot blindly base his valuation of property on circle rates.

- Ravikant v ITO [110 TTJ 297 (Del)]

Sub-section (3) of Section 50C would mean that if the value ascertained by the Valuation Officer exceeds the stamp duty value, the value adopted for the stamp duty alone would be adopted. It means that if the value ascertained by the Valuation Officer is lower than the value adopted for the purpose of payment of stamp duty, the same would be adopted as the value of such property.

- ITO v Smt. Manju Rani [24 SOT 24 (Del)]

For purpose of Section 50C, land and building are not to be considered as separate assets and their joint valuation is to be adopted

- J. Anjaneya Sharma v. CIT [(2014) 221 Taxman 148 (AP)]

Can S. 50C be invoked in case of a charitable trust

Provisions of Section 50C cannot be invoked in the case of a society or a charitable trust, which is registered under section 12A of the Act.

- ACIT v. Shri Dwarkadish Temple Trust [ITA No. 256 & 257/Lkw/2011; (Lucknow Trib.)]
- ACIT v. The Upper India Chamber of Commerce [ITA No. 601/Lkw/2011; AY 2008-09; Order dated 15.11.2014]

Section 50C does not apply to transfer of shares

Provisions of S. 50C do not apply to transfer of immovable property held through a company.

- **Bhoruka Engineering Industries Ltd. v. DCIT [(2013) 36 taxmann.com 82 (Karnataka HC)]** – In this case, the AO tried to lift the corporate veil and held that the transfer of land through the medium of transfer of shares will attract provisions of Section 50C. The action of the AO was upheld by the CIT(A) and the Tribunal. On appeal to the HC, it was held that the provisions of Section 50C do not apply to transfer through the medium of transfer of shares. The observations of the HC are as under –
 - 25. As set out above, the transaction is real, valuable consideration is paid, all legal formalities are complied with and what is transferred is the shares and not the immovable property. The finding of the Assessing Authority that it is a transfer of immovable property is contrary to law and contrary to the material on record. They committed a serious error in proceeding on the assumption that the effect of transfer of share is transfer of immovable property and therefore, if the veil of the company is lifted what appears to them is transfer of immovable property. Such a finding is impermissible in law. Unfortunately, three authorities committed the very same mistake which is ex-facie, illegal, contrary to settled legal position and therefore, requires to be set-aside.

Section 50C does not apply to transfer of shares

Provisions of S. 50C do not apply to transfer of immovable property held through a company.

- **Irfan Abdul Kader Fazlani v. ACIT [itatonline.org (Mum.)(Trib.)]**
- The assessee held shares in a company called Kamala Mansion Pvt. Ltd. The company owned flats in a building known as Om Vikas Apartments, Walkeshwar Road, Mumbai. The shares were sold by the assessee for Rs. 37.51 lakhs and capital gains were offered on that basis. The AO & CIT(A) held that by the sale of shares in the company, the assessee had effectively transferred the immovable property belonging to the assessee and that it was an indirect way of transferring the immovable properties being the flats in the building. He accordingly '*pierced the corporate veil*', invoked s. 50C and computed the capital gains by adopting the stamp duty value of the flats. On appeal by the assessee to the Tribunal, HELD allowing the appeal:

Section 50C does not apply to transfer of shares

Provisions of S. 50C do not apply to transfer of immovable property held through a company.

- *S. 50C applies only to the transfer of a "capital asset, being land or building or both", "assessed" by any authority of a State Government for stamp duty purposes. The expression "transfer" has to be a direct transfer as defined u/s 2(47) which does not include the tax planning adopted by the assessee. S. 50C is a deeming provisions and has to be interpreted strictly in accordance with the spirit of the provision. On facts, the subject matter of transfer is shares in a company and not land or building or both. The assessee did not have full ownership on the flats which are owned by the company. The transfer of shares was never a part of the assessment of the Stamp duty Authorities of the State Government. Also, the company was deriving income which was taxable under the head 'income from property' for more than a decade. Consequently, the action of the AO & CIT(A) to invoke s. 50C to the tax planning adopted by the assessee is not proper and does not have the sanction of the provisions of the Act.*

Scope of land or building or both

Provisions of S. 50C do not apply to “rights in land & building”. Consequently, the provisions do not apply to transfer of booking rights by the assessee.

- ITO v. Yasin Moosa Godil [2012] 18 ITR 253 (Ahd.)(Trib.)
- Smt. Devindraben I. Barot v. ITO [(2016] 70 taxmann.com 235 (Ahmedabad - Trib.) - Section 50C would have no application where assessee has transferred only rights in impugned land which cannot be equated to land or building or both
- ITO v. Tara Chand Jain [2015] 63 taxmann.com 286 (Jaipur - Trib.) – 50C does not apply to a case where the ownership of the land is with the State Government. The land is acquired and the assessee is merely a Kashtkar, this clearly shows that the assessee is only having the limited rights in the land sold. The limited rights of Kashtkar on the land cannot be equated with the ownership of land or with building or with both. The Act clearly recognizes the distinction between the land or building or any right in the land or building under section 50C. Thus, the Act has given the separate treatment to land, building and rights in the land. [Para 6.10]

Scope of land or building or both

However, in the following cases it was held that the provisions of S. 50C are applicable to Development Agreements.

- Chiranjeev Lal Khanna v. ITO [(2012) 66 DTR 260 (Mum.)(Trib.)]
- Mrs Arlette Rodrigues v. ITO [ITA No. 343/Mum/2010]
- Smt. Myrtle D'Souza v. ITO [ITA No. 3168/Mum/2011]
- Arif Akhtar Hussain v. ITO [(2011) 59 DTR 307 (Mum.)(Trib.)]

Provisions of S. 50C are not applicable to transfer of land development rights.

- Shakti Insulated Wires Pvt. Ltd. v ITO (Mum)(URO) [(ITA No. 3710/Mum/07. Assessment Year 2003-04; Mumbai E-1 Bench, Order dated 27.4.2009)]
- Voltas Ltd. v. ITO [(2016) 74 taxmann.com 99 (Mum.-Trib.)]

Scope of land or building or both

Provisions of S. 50C are not applicable to transfer of tenancy rights / leasehold rights.

- Kishori Sharad Gaitonde [(Mum SMC)(URO)]
- DCIT v. Tejinder Singh [(2012) 50 SOT 391 (Kol.)(Trib.)]
- Atul G. Puranik v. ITO [(2011) 58 DTR 208 (Mum.)(Trib.)]
- Fleurette Marine Nouvelle Hatam V. ITO (International Taxation) [(2015) 61 taxmann.com 362 (Mumbai - Trib.)]
- Kancast (P.) Ltd. v. ITO [(2015) 55 taxmann.com 171 (Pune - Trib.)]
- ITO v. Pradeep Steel Re-Rolling Mills (P.) Ltd. [(2013) 39 taxmann.com 123 (Mumbai - Trib.)]
- **CIT v. Greenfield Hotels & Estates (P.) Ltd. [(2017) 77 taxmann.com 308 (Bom.)]** - This decision was allowed as the Tribunal had decided the matter following decision in Atul G. Puranik [2011 (5) TMI 576 – ITAT, Mumbai] and the Revenue could not in the High Court point out any distinguishing features either in factos or in law in the present appeal from that arising in the case of Atul Puranik

Decision of Bombay High Court in CIT v. Heatex Products Pvt. Ltd. [2016 (7) TMI 1393 – Bombay High Court]

- CIT v. Heatex Products Pvt. Ltd. [2016 (7) TMI 1393 – Bombay High Court]
 - In this case the revenue contended that Section 50C would apply also to transfer of leasehold interest in land and is not limited to only to transfer of land and building or both. The Court held that the impugned order of the Tribunal allowed the respondent assessee's appeal by following its own decision in Atul G. Puranik V. ITO [2011 (5) TMI 576 - ITAT, Mumbai] as held that Section 50C of the Act would apply only to a capital asset being land or building or both and it cannot apply to transfer of lease rights in a land. No substantial question of law.

Decision of SC in UOI v. Satish P. Shah [2000 (12) TMI 5 – Supreme Court]

- Supreme Court in the case of UOI v. Satish P. Shah [2000 (12) TMI 5 – Supreme Court] has laid down salutary principle that where the Revenue has accepted the decision of the Court / Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged.

Decision in Pr. CIT v. Kancast Pvt. Ltd. [2018 (5) TMI 713 - Bombay High Court]

- Bombay High Court has in the case of Pr. CIT v. Kancast Pvt. Ltd. [2018 (5) TMI 713 - Bombay High Court] admitted the following substantial question of law –
- (i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the provisions of Section 50C of the Act does not come into operation where leasehold rights in land are transferred?

**Decision in Pr. CIT v. Kancast Pvt. Ltd. [2018 (5) TMI 713 -
Bombay High Court]**

- As no appeal had been filed by the Revenue for the order of the Tribunal in the case of Atul Puranik (2011 (5) TMI 576 - ITAT, Mumbai) which had held that section 50C of the Act will not apply to transfer of leasehold rights in land and buildings. However, at the time when both aforesaid decisions in Greenfield Hotels and Estates [2016 (12) TMI 353 – Bombay High Court] and Heatex Products Pvt. Ltd. [2016 (7) TMI 1393 - Bombay High Court] were not entertained by this Court, the decision of this Court in Pradeep Steel Re-Rolling Mills Pvt. Ltd. [2011 (7) TMI 1101 - ITAT MUMBAI] admitting the Appeal on this very question was not brought to our notice.

**Decision in Pr. CIT v. Kancast Pvt. Ltd. [2018 (5) TMI 713 -
Bombay High Court]**

- As no appeal had been filed by the Revenue for the order of the Tribunal in the case of Atul Puranik [2011 (5) TMI 576 – ITAT - Mumbai] which had held that section 50C of the Act will not apply to transfer of leasehold rights in land and buildings. However, at the time when both aforesaid decisions in Greenfield Hotels and Estates [2016 (12) TMI 353 – Bombay High Court] and Heatex Products Pvt. Ltd. [2016 (7) TMI 1393 – Bombay High Court] were not entertained by this Court, the decision of this Court in Pradeep Steel Re-Rolling Mills Pvt. Ltd. [2011 (7) TMI 1101 - ITAT Mumbai] admitting the Appeal on this very question was not brought to our notice.

Decision in Keki Bomi Dadiseth v. CIT [2017 (3) TMI 1055 – Bombay High Court]

- The Bombay High Court has in the case of Keki Bomi Dadiseth v. CIT [2017 (3) TMI 1055 – Bombay High Court] was dealing with objection of the assessee to the action of the AO in reopening the assessment. The assessee contended that in view of the decision of the Bombay High Court in Greenfield Hotels & Estates (P) Ltd., the AO could not have reason to believe that the income chargeable to tax has escaped assessment, the Court held as under –

Decision in Keki Bomi Dadiseth v. CIT [2017 (3) TMI 1055 – Bombay High Court]

- So far as the submission on behalf of the petitioner that the Assessing Officer *could* not have any reason to believe that income chargeable to tax has escaped assessment in view of the decision of this Court in Greenfield Hotels & Estates (P) Ltd. (2016 (12) TMI 353 - BOMBAY HIGH COURT) is concerned, it is observed that the aforesaid decision of this Court did not independently rule appropriate interpretation of Section 50C of the Act. The Court refused to entertain the Revenue's appeal for the reason that the impugned Order of the Tribunal had followed its earlier decision in case of Atul G Puranik vs ITO [2011 (5) TMI 576 - ITAT, Mumbai]. The Revenue had accepted the same and in appeal from the Order of the Tribunal in Atul G. Purnaik (supra) was preferred. In the aforesaid background the Court refused to interfere with the Order of the Tribunal as there were no distinguishing features either on facts or in law as reiterated in Green Field Hotels & Estates (P) Ltd. (supra) from that existing in Atul G. Puranik (supra).
- In the present facts, the petitioner had not brought any decision of the Tribunal on the issue of law while filing its objections which the Assessing Officer could have dealt with bearing in mind facts involved. -Decided against assessee

Decision in Keki Bomi Dadiseth v. CIT [2017 (3) TMI 1055 – Bombay High Court]

- Further, Rajasthan High Court has in the case of SH. RAM JI LAL MEENA S/O SH. BACHU RAM MEENA VERSUS INCOME TAX OFFICER, WARD NO. 6, JAIPUR 2018 (5) TMI 1792 - RAJASTHAN HIGH COURT
- The appellant has referred judgment of Bombay High Court in M/S. GREENFIELD HOTELS & ESTATES PVT. LTD. [2016 (12) TMI 353 - BOMBAY HIGH COURT] where it was held that Section 50C of the Act of 1961 would not be applicable on transfer of lease hold rights of the land. Bare perusal of Section 50C of the Act of 1961 does not show that transfer of capital asset for consideration should be other than of lease hold property or khatedari land.
- The court cannot re-write the provision. If analogy taken by the Bombay High Court in the case (supra) is applied in general then Section 50C would not be applicable in majority of the cases as not it is allowed as lease hold property. Section 50C is applicable on transfer of capital assets for consideration. The Bombay High Court has not referred as how the land was in the balance-sheet. It is as a capital asset or not thus we are unable to apply the judgment of Bombay High Court in the case of M/s. Greenfield Hotels & Estates Pvt. Ltd. (supra). - No substantial question of law.

Restricted use / tolerance band

Provisions of S. 50C will not apply if value of property adversely affected due to its usage for industrial purposes only.

- Janakiram v. ACIT [(2015) 63 taxmann.com 139 (Hyderabad - Trib.)]

For a period prior to insertion of third proviso, as no tolerance band is prescribed in section 50C, stamp duty value will be taken as full value of consideration, even if difference in stamp duty value and stated sale consideration is marginal.

- Heilgers Development & Construction Co. (P.) Ltd. v. DCIT [(2013) 32 taxmann.com 147 (Kolkata - Trib.)]

Can 155(15) be invoked for situations other than S. 50C(2)(b)

Section 155(15) is invoked only in case of situations covered by section 50C(2)(b) which refers to only values adopted or assessed by stamp valuation authorities; DVO's value is outside scope of section 155(15)

- Addl CIT v. Rajkumar L. Daryanani [(2014) 48 taxmann.com 54 (Mumbai - Trib.)]

Section 50C cannot be invoked qua purchaser

Provisions of S. 50C cannot be invoked to make an addition in the assessment of the purchaser of property. Fiction created u/s 50C is applicable only for computing capital gains in the hands of seller and does not apply to buyer for invoking S. 69B.

- CIT v Chandni Bhuchar [191 Taxman 142 (P & H)(HC)]
- CIT v Khoobsurat Resorts (P.) Ltd. [(2013) 256 CTR 371 (Del)(HC)]
- CIT v. Sarjan Realities Ltd [(2013) 40 taxmann.com 398 (Gujarat)]
- ITO v Optec Disc Mfg [11 DTR 264 (Chd)(ITAT)]
- ITO v Smt. Kusum Gilani [(Delhi)(ITAT)(ITA No. 1576/Del/2008, AY 2004-05, order dated 11.12.2009)]
- DCIT v. Vallabhbai Purshottambhai Surani [(2012) 54 SOT 566 (Ahd.)(Trib.)]
- ITO v. Fitwell Logic System P. Ltd. [(2010) 1 ITR 286 (Del) (Trib.)]

Penalty qua addition under S. 50C

Penalty under section 271(1)(c) of the Act is not leviable in the event an addition is made to the total income merely by invoking provisions of S. 50C

- CIT v. Fortune Hotels and Estates (P.) Ltd. [(2014) 52 taxmann.com 330 (Bom HC)]
- CIT v. Madan Theatres Ltd. [(2014) 44 taxmann.com 382 (Calcutta HC)]
- Prakash Chand Nahar v. ITO [(2007) 110 TTJ 886 (Jodh.)(Trib.)]
- Renu Hingorani v. ACIT [ITA No. 2210/Mum/2010; AY 2006-07; Mumbai `D' Bench; Order dated 22.12.2010]
- Chimanlal Manilal Patel v. ACIT [ITA No. 508/Ahd/2010; AY 2006-07, Ahmedabad `D' Bench; Order dated 22.6.2012]

Amendments to Section 50C made by the Finance Act, 2016 and by Finance Act, 2018

General background of Section 50C

- Generally, in a transaction of transfer of land or building or both ('asset") there is a considerable time gap between the date when the vendor agrees to sell the asset and the date of actual transfer by way of a registered instrument to the buyer. The price is fixed between the parties at the time of entering into an agreement to sell. Thereafter, the buyer investigates the title of the vendor, payment is made and the document of transfer, generally, a conveyance is executed and registered in favour of the buyer.
- Based on the language of section 50C, prior to its amendment by the FA, 2016, it was possible to take a view that the stamp duty value as on the date of transfer has to be compared with the consideration stated in the instrument of transfer and if the stamp duty value as on the date of transfer is more than the consideration stated in the instrument of transfer, the stamp duty value is to be regarded as full value of consideration for computing capital gains arising on transfer of such asset.

General background of Section 50C

- Even when section 50C did not have a provision similar to the one contained in the proviso to section 56(2)(vii)(b)(ii) or the one contained in sub-sections (3) and (4) of section 43CA of the Act, the Tribunal has in the following cases held that in a case where the date of agreement for transfer is different from the date of transfer, the stamp duty value as on the date of agreement and not the stamp duty value as on the date of transfer is to be considered as full value of consideration.

Cases holding SDV on date of agreement to be full value of consideration

- Kodani Satya Srinivas Vijayawada v. ACIT (ITAT – Visakhapatnam)
[ITA No. 556 & 557/Vizag/2008; AY : 2006-07; Date of order: 2.7.2010]
- Lahiri Promoters v. ACIT (ITAT – Visakhapatnam)
[ITA No. 12/Vizag/2009; AY : 2006-07; Date of order: 22.6.2010]
- ITO v. Modipon Ltd. (ITAT – Delhi)
[ITA No. 2049/Del/2009; AY : 2005-06; Date of order: 9.1.2015]
- Mohd. Imraan Baug v. ITO (ITAT – Hyderabad)
[ITA No. 1942/Hyd/2014; AY : 2006-07; Date of order: 27.11.2015]
- Moole Rami Reddy v. ITO (ITAT – Visakhapatnam)
[ITA No. 311/Vizag/2010; AY : 2006-07; Date of order: 10.12.2010]
- Parekh Marketing Ltd. v. ACIT (ITAT – Mumbai)
[ITA No. 4307/Mum/2013; AY : 2008-09; Date of order: 26.5.2015]

Insertion of 2 provisos to Section 50C by FA, 2016

- The Finance Act, 2016 has amended the provisions of section 50C of the Act by inserting the following two provisos with effect from 1.4.2017–

“Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.”

Insertion of third proviso to section 50C by FA, 2018

- The Finance Act, 2018 has further amended the provisions of section 50C of the Act by inserting the following third proviso with effect from 1.4.2019 i.e. effective Assessment Year 2019-20 –

“Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.”

- Third proviso to section 50C(1) provides that stamp duty value of the capital asset transferred will be deemed to be full value of consideration only if stamp duty value exceeds 105 per cent of the consideration received or accruing as a result of transfer.

Explanatory Memorandum to the FB, 2016

- The Explanatory Memorandum to the Finance Bill, 2016 states as under –
- **“Rationalization of Section 50C in case sale consideration is fixed under agreement executed prior to the date of registration of immovable property**

- Under the existing provisions contained in Section 50C, in case of transfer of a capital asset being land or building or both, the value adopted or assessed by the stamp valuation authority for the purpose of payment of stamp duty shall be taken as the full value of consideration for the purposes of computation of capital gains. The Income Tax Simplification Committee (Easwar Committee) has in its report, pointed out that this provision does not provide any relief where the seller has entered into an agreement to sell the property much before the actual date of transfer of the immovable property and the sale consideration is fixed in such agreement, whereas similar provision exists in section 43CA of the Act i.e. when an immovable property is sold as a stock-in-trade.

It is proposed to amend the provisions of section 50C so as to provide that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration.

Explanatory Memorandum to the FB, 2016 ...

- It is further proposed to provide that this provision shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, on or before the date of the agreement for the transfer of such immovable property.
- These amendments are proposed to be made effective from the 1st day of April, 2017 and shall accordingly apply to assessment year 2017-18 and subsequent years.”

First proviso to s. 50C v. 43CA(3)

First Proviso to s. 50C	Sub-section (3) of section 43CA
<p>Provided that where the date of the agreement fixing the <u>amount</u> of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.</p>	<p>Where the date of agreement fixing the <u>value</u> of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.</p>

Second proviso to S. 50C v. 43CA(4)

Second Proviso to s. 50C	Sub-section (4) of section 43CA upto its amendment by FA, 2018 w.e.f. 1.4.2019
<p>Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received <u>by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account</u>, on or before the date of the agreement for transfer.</p>	<p>The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by <u>any mode other than cash</u> on or before the date of agreement for transfer of the asset</p> <p>Note: FA, 2018 has w.e.f. 1.4.2019 substituted the above underlined words for "by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account"</p>

Issues arising out of the amendments made by FA, 2016

- Will the amended provisions apply only to agreements entered into after the amended provisions became effective or to transfers chargeable to capital gains after the amendment becomes effective irrespective of the date of agreement.
- In view of the fact that the amendment to section 50C is prospective with effect from the assessment year 2017-18, does it mean that the ratio of various decisions of the Tribunal mentioned in earlier slide need to be disregarded and that the legal position, prior to 1.4.2017, was that the stamp duty value on the date of transfer is to be compared with the amount of consideration stated in the document of transfer.
- Can it be argued that the provisos inserted by the Finance Act, 2016 to section 50C are clarificatory and therefore retrospective.

Issues arising out of the amendments made by FA, 2016 ...

- Can it be contended that the amendment merely tries to plug the loophole in the existing provision.
- Will the provisions of proviso apply to an agreement which fixes not the amount of consideration but the value of consideration eg. Development agreement for sharing area between the parties?
- The provisions may still not apply to a case of a transfer where the entire consideration is non-monetary because the second proviso as a precondition requires that the amount of consideration or a part thereof should be received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account. Therefore, transfers by way of a journal entry will not grant benefit under section 50C whereas the same will be covered by provisions of section 43CA.

Is the proviso inserted by FA, 2016 retrospective?

- Ahmedabad Tribunal in the case of **Dharamshibhai Somani v. ACIT [(2016) 161 ITD 627 (Ahd. – Trib.)(SMC)] (ITA No. 1237/Ahd/2013; AY 2008-09; order dated 30.9.2016)(Ahd Trib SMC)** was dealing with the case of an assessee who had entered into an agreement to sell certain agricultural land on 29th June, 2005 for a consideration of Rs. 45 lakh. The final sale deed was executed on 24th April, 2007. The delay in registration was due to time taken for procedure of converting agricultural land into non-agricultural land for the purchaser who was a private limited company.
- The AO computed capital gains on transfer of land by adopting stamp value prevalent on the date of registration in April 2007 which was much higher than the consideration agreed to under the agreement to sell dated 29th June, 2005.
- The assessee contended that in the facts of his case, the stamp duty value of 2007 is not relevant to determine the capital gains tax liability.
- Aggrieved, the assessee filed an appeal to CIT(A) who upheld the action of the AO.

Dharamshibhai Somani v. ACIT(Ahd Trib SMC) – holds the proviso to be retrospective

- The Ahmedabad Bench of the Tribunal, in the case of **Dharamshibhai Somani v. ACIT [(2016) 161 ITD 627 (Ahd. – Trib.)(SMC)]**(ITA No. 1237/Ahd/2013; AY 2008-09; order dated 30.9.2016)(Ahd Trib SMC) held that –
 - 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;
 - The proviso to section 50C should also be treated as curative in nature and with retrospective effect from 1st April, 2003, i.e. the date effective from which Section 50C was introduced.
- The Tribunal has observed that the amendment is one step short of what ought to have been done in as much as the amendment, in tune with the judge made law, ought to have been effective from the date on which the related legal provisions were introduced.
- The Tribunal also observed that the amendment is optional to the assessee.

Dharamshibhai Somani v. ACIT(Ahd Trib SMC) – observes that the proviso inserted by FA, 2016 is optional to the assessee

- The Tribunal has made the following observations which are to the effect that the amendment is optional to the assessee –
 - “The amendment in Section 50C was brought in to provide relief to the assessee in a situation in which the stamp duty valuation of a property has risen between the date of execution of agreement to sell and execution of sale deed, as is the norm rather than exception, but the real estate market is now traversing through a difficult phase and there can be situations in which there is a fall in the stamp duty valuation rates with the passage of time. Such a situation has actually arisen in many places in the country, such as in Gurgaon, New Delhi and even in Dehradun (Uttarakhand) and some other places. It is therefore possible that, at first sight, first proviso to Section 50C may seem to work to the disadvantage of the assessee in certain situation in the event of the word ‘may’ being construed as mandatory in application, but then one cannot be oblivious to the fact that this proviso states that

Dharamshibhai Somani v. ACIT (Ahd Trib SMC) – observes that the proviso inserted by FA, 2016 is optional to the assessee...

- “the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement **may** be taken for the purposes of computing full value of consideration for such transfer (emphasis supplied)” making it clearly optional to the assessee and that in any event, what has been brought by the lawmakers as a measure of relief to the taxpayers cannot be construed as resulting in a higher tax burden on the tax payers. Of course, assuming my understanding of this statutory provision is in harmony with the legislative intention, insertion of the words “**at the option of the assessee**” between ‘**stamp valuation authority on the date of agreement may**’ and “**be taken for the purposes of computing full value of consideration for such transfer**”, in the first proviso to Section 50C(1) could have made the legal provision even more unambiguous.

Division Bench decisions on the lines of Dharamshibhai Somani [(2016) 161 ITD 627 (Ahd. – Trib.)(SMC)]

- Amit Bansal v. ACIT [(2018) 100 taxmann.com 334 (Delhi – Trib.)]
- Devendra J. Mehta v. ACIT [(2017) 77 taxmann.com 282 (Rajkot – Trib.)]
- Goldgerg Finance Pvt. Ltd. v. ACIT [(2017) 78 taxmann.com 123 (Mumbai – Trib.)]
- Hari Mohan Das Tandon v. Pr. CIT [(2018) 91 taxmann.com 199 (Allahabad – Trib.)]
- Rahul G. Patel v. DCIT [(2018) 97 taxmann.com 598 (Ahmedabad-Trib.)]
- Smt. Chalasani Naga Ratna Kumari v. ITO [(2017) 79 taxmann.com 104 (Visakhapatnam – Trib.)]

Tolerance Limit introduced in section 50C

- Prior to its amendment by the Finance Act, 2018, section 50C provided that where a person transfers a capital asset being land or building or both and if the consideration received or accruing as a result of transfer was less than the stamp duty value of the capital asset transferred then for the purpose of computing capital gains, stamp duty value was to be regarded as full value of consideration.
- Finance Act, 2018 has inserted a third proviso to section 50C(1) which provides that stamp duty value of the capital asset transferred will be deemed to be full value of consideration only if stamp duty value exceeds 105 per cent of the consideration received or accruing as a result of transfer.
- Third Proviso has been inserted with effect from assessment year 2019-2020.

Position prior to introduction of tolerance Limit in section 50C

- Prior to the amendment there was a controversy as to whether the provisions of section 50C applied or not if the difference between stamp duty value of the asset transferred and the consideration for which the transfer is effected did not exceed a particular percentage.
 - Honest Group of Hotels Pvt. Ltd. v. CIT [(2012) 12 Taxman 464 (J&K)][10%]
 - John Fowler India Pvt. Ltd. v. DCIT [TS-6184-ITAT-2017 (Mum.-Trib.)][10%]
 - Rahul Constructions Co. v. ITO [(2012) 21 taxmann.com 435 (Pune-Trib.)][10%]
 - Smt. Sita Bai Khetan v. ITO [(2017) 88 taxmann.com 377 (JP – Trib.)] [10%]
 - Suresh C. Mehta v. ITO [(2013) 35 taxmann.com 230 (Mum.-Trib.)][15%]
 - Krishna Enterprises v. Addl.CIT [ITA No. 5402 of 2014, dated 23.11.2016](Mum.-Trib.)] [10%].
- Consequent to the amendment, the ratio of the aforesaid decisions will no longer apply and a variation of upto 5% of the sale consideration will be available.

Position prior to introduction of tolerance Limit in section 50C

- As far as period upto AY 2018-2019 is concerned, either the ratio of the aforesaid judgments, favorable to the taxpayer, will apply or atleast a variation of 5% ought to be permitted based on subsequent amendment.
- Option for approaching Valuation Officer, under section 50C(2), for valuing property in question continues to be available even subsequent to the amendment.

Particulars	Situation 1	Situation 2
Consideration as per agreement of transfer	10,000	10,000
Stamp duty value	12,000	10,400
Stamp duty value as a percentage of declared consideration	120%	104%
Whether stamp duty value exceeds 105% of consideration as per agreement of transfer	Yes	No
Consideration for computing capital gains	12,000	10,000

Section 50C read with Sections 54, 54EC & 54F

Applicability of provisions of S. 54F vis-à-vis S. 50C

- S. 50C applies when an assessee transfers a capital asset being land or building or both and the full value of consideration for transfer of such capital asset is less than the value thereof assessed or assessable by an authority of a State Government for the purpose of levy of stamp duty ("stamp duty value"). The section has been introduced because the common belief is that the real consideration for transfer is more than the consideration stated in the document of transfer. In the event of the stamp duty value being greater than the full value of consideration s. 50C deems the stamp duty value to be the full value of consideration for the purpose of s. 48.
- Section 54F provides roll over benefit to the assessee if, within the time limit prescribed by the said sections and subject to the satisfaction of conditions mentioned therein, he purchases or constructs a residential house. The entire capital gains arising on transfer of original asset is exempt if the cost of acquisition of the new house purchased or constructed is greater than or equal to the net consideration.

Applicability of provisions of S. 54F vis-à-vis S. 50C ...

- In a case where the stamp duty value of the asset transferred is greater than the consideration of the asset transferred, can the entire capital gains be claimed to be exempt under s. 54F? If yes, whether the assessee is required to invest the consideration accruing or received as a result of the transfer or is he required to invest an amount equivalent to the stamp duty value of the asset transferred? In other words, the question which arises is whether the capital gains referred to in s. 54F(1) is the capital gain computed after giving effect to the provisions of s. 50C or is it the capital gains computed before giving effect to the provisions of s. 50C. The argument could be that the difference between stamp duty value and the consideration accruing or received as a result of transfer is unaccounted income which is sought to be brought to tax and there cannot be any exemption in respect of unaccounted income.

Applicability of provisions of S. 54F vis-à-vis S. 50C ...

- The issues stated in the above paragraph can be better explained by way of an illustration. An assessee transfers land whose indexed cost of acquisition is Rs. 50 for a consideration of Rs. 110. The stamp duty value of the land transferred is Rs. 160. Expenditure incurred on transfer is Rs. 10. Therefore, long term capital gains accruing to the assessee is Rs. 100 (Rs. 160 - Rs 10 - Rs 50). If the provisions of s. 50C are not applicable, the capital gains would be Rs. 50 (Rs 110 - Rs 10 - Rs 50). Now, the questions being raised are can the assessee claim entire capital gain of Rs. 100 to be exempt under s. 54F or will the exemption under s. 54F be restricted to Rs. 50? If the entire capital gain of Rs. 100 can be claimed to be exempt under s. 54F, what is the amount which the assessee should utilize to purchase or construct the new residential house - should it be Rs. 100 or Rs. 150?

Applicability of provisions of S. 54 and 54F vis-à-vis S. 50C...

- The exemption under s. 54F is with reference to net consideration. The term 'net consideration' has been defined in Explanation to s. 54F as under –
"Explanation : For the purposes of this section,—
"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."
- In a case where the capital asset transferred is land or building or both and the stamp duty value of the asset so transferred is greater than the consideration received or accruing as a result of the transfer, S. 50C deems the stamp duty value of the asset transferred to be full value of consideration. This deeming fiction is for the purpose of s. 48.
- Even the entire capital gains can be exempt provided the conditions specified in the respective sections are satisfied. The question which arises for consideration is whether the fiction created by s. 50C travels even to ss. 54, 54EC and 54F or whether the fiction is only for purpose of s. 48.

50C does not apply to 54F – Gyan Chand Batra (Jp. Trib.)

- In Gyan Chand Batra vs. ITO [133 TTJ 482 (Jp)] the Jaipur Bench of the Tribunal held that deeming fiction as provided in s. 50C in respect of the words 'full value of consideration' is to be applied only to s. 48 and, therefore meaning of full value of consideration as referred to in Explanation to s. 54F(1) is not governed by the meaning of the words 'full value of consideration' as mentioned in s. 50C.
- The Tribunal was dealing with a case where the assessee had transferred land which was a long term capital asset. The stamp duty value of land transferred was more than the agreed consideration. The assessee had purchased new residential house and the cost of acquisition of the new residential house was more than the stamp duty value. The amount utilized for purchase of house before due date of filing return of income was greater than consideration received on transfer but lower than the stamp duty value of the flat transferred. The assessee made claim for exemption under s. 54F for the first time before CIT(A). It was contended that the amount utilized for purchase of new residential house exceeded the net consideration. If stamp duty value was regarded as net consideration then too a substantial part of capital gain computed was exempt under s. 54F. It was in this factual background that the Tribunal made the following observations -

Ratio of Gyan Chand Batra (Jp. Trib.)

"Sec. 50C provides a deeming provision for considering the full value of consideration as the value adopted for stamp duty. In modern statutes, the expression 'deem' is used a great deal and for many purposes. It is at times used to introduce artificial conceptions which are intended to go beyond legal principles or to give an artificial construction of a word or phrase. Thus the artificial meaning of full value of the consideration has been given in s. 50C of the IT Act for the purpose of s. 48 of the IT Act. One is entitled to ascertain the purpose for creating a statutory fiction. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end, it would be proper and even necessary to assume all those facts on which alone fiction can operate. The legislature in its wisdom has referred to s. 48 of IT Act in s. 50C for adopting the same value as fair market value. Hence, the deeming fiction as provided in s. 50C in respect of the words 'full value of consideration' is to be applied only for s. 48 of the IT Act. The words 'full value of consideration' as mentioned in other provisions of the Act are not governed by the meaning of full value of consideration as contained in s. 50C of the IT Act.

Ratio of Gyan Chand Batra (Jp. Trib.) ...

In Explanation to s. 54F(1), it is mentioned that net consideration means the full value of consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. The meaning of full value of consideration in Explanation to s. 54F(1) will not be governed by meaning of words 'full value of consideration' as mentioned in s. 50C. The value adopted for stamp duty is to be considered as full value of consideration for the purpose of computing the capital gains under s. 48. Sec. 54F(1) says that capital gains is to be dealt with in accordance with the provisions of sub-cl. (a) and (b) of s. 54F(1). In the instant case, the cost of new asset is not less than the net consideration thus the whole of the capital gains will not be charged even if the capital gains has been computed by adopting the value adopted by stamp registration authority. It is clearly mentioned in s. 54F(4) also that net consideration which is not appropriated towards the purchase of new asset the same is to be taxed in case such net consideration not appropriated is not deposited in the capital gain account. It is not necessary that the new asset should be got registered before filing of the return. The requirement of law is that net consideration is required to be appropriated towards the purchase of the new asset. Thus deduction under s. 54F is clearly applicable. Deeming

Jagdish T Punjabi mentioned in s. 50C will not be applicable to s. 54F. June 7, 2019 the meaning of full

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)]

- It is respectfully submitted that the ratio of the above decision needs reconsideration because for the proposition that the full value of consideration means consideration as per document of transfer, the Tribunal has relied upon the decision of the Delhi High Court in the case of CIT v. Smt Nilofer Singh [309 ITR 233 (Del)]. In the case before the Delhi High Court, the provisions of s. 50C were not applicable at all.
- It needs to be noted that the Bangalore Bench of the Tribunal has in the case of **Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)]** has held that the assessee will be entitled to exemption under s. 54F only with reference to capital gains computed without giving effect to provisions of s. 50C. Therefore, the Tribunal has held that in a case where s. 50C applied and the stamp duty value was taken to be full value of consideration, the entire capital gains can never be claimed to be exempt under s. 54F. The assessee, after being given maximum permissible exemption under s. 54F, will be liable to pay tax on capital gains which will be equivalent to the difference between stamp duty value of the property transferred and the full value of consideration received or accruing as a result of the transfer. According, to the Tribunal this was the only way to harmonise the various provisions of the Act and give effect to the intent of the legislature.' The Tribunal held as follows-

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)] ...

"The first limb of s. 45(1) pinpoints at the profits or gains arising from the transfer of a capital asset effected during the previous year. The second limb of the section provides for the amount to be excluded from the profits or gains referred in the first limb of the section. It is obvious that one has to compute the "profits or gains" as per the provisions of the Act and thereafter compute the exemption as provided under the relevant exemption sections and exclude the same from the "profits and gains" so computed. Needless to mention that, the computation of the capital gain has to be in accordance with s. 48 and computation of exemptions in accordance with the relevant exemption sections. Sec. 45(1) is a charging section therefore while interpreting the section strict construction principle is applicable. The provisions of the charging sections must be interpreted as per the language used therein and when the words of the statute are in themselves precise and unambiguous, no more exercise is necessary than to expound those words in their natural and ordinary sense. Therefore, it is apparent that the submissions of the Authorized Representative that "the provisions of s. 48 are not something that are to be determined before the exemption provisions, as the exemption provisions by virtue of the link with s. 45(1) operate simultaneously with the operation of s. 45(1)" does not hold any water. The processes of arriving at the capital gains and the exemptions are distinct and separate.

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)] ...

- One does not override the other. By virtue of s. 45(1), a charge is created for levy of tax on the profits or gains arising out of the transfer of capital asset effected during the previous year coupled with certain exemptions. The exemption ss. 54, 54B, 54D, 54EA, 54EB, 54F, 54G and 54H, are self-contained sections which also include the method of computation of the exemption. The manner in which the profits or gains arising out of the transfer of the capital asset are to be computed as mentioned in s. 48 which goes without saying that the charge is on the profits or gains so computed. While computing the profits or gains as per s. 48, the deeming provision embedded in s. 50C has to be given effect to. The charge is created on the enhanced profits or gains arrived at from the fiction of s. 50C.
- Sec. 54F is an exemption provision and a complete code in itself. Since it is a complete code in itself, the computation of eligible exemption has to be worked out within its framework as far as possible. Being an exemption provision, beneficial interpretation has to be given. However, in any interpretation, the maxim "ut res magis valeat quam pareat" should be kept in mind. The construction which would reduce the legislation to a futility should be avoided; and alternative that will introduce uncertainty, fiction or confusion into the working of the system should be rejected. An interpretation which leads to unworkable results and absurdity should be avoided.

Ratio of Gouli Mahadevappa v. ITO [128 ITD 503 (Bang)]

- As far as arriving at the exemption allowable under s. 54F, one has to strictly follow the provisions of the section and compute the exemption accordingly without imposing any section creating a legal fiction into the section. The main ingredients of the statute to be dealt with to compute the exemption allowable under these sections are : (1) the "capital gain" arising from the transfer of any long-term capital asset, (2) net consideration in respect of the original asset, (3) extent of the net consideration invested in the new asset. The "capital gains" and the "net consideration" have to be worked out within the framework of s. 54F, without imposing any fiction created by any other section. Thus, the capital gains arising from the transfer of any long-term capital asset for the purpose of s. 54F have to be worked out applying s. 48 without imposing s. 50C into it. As regards to net consideration, the section itself has made it clear in the Explanation the method in which it has to be arrived at. Needless to mention that the words "such capital gain" and "capital gains" mentioned in s. 54F(1)(a) and (b) refer to "the capital gains" arising from the transfer of any long-term capital asset worked out as mentioned in s. 54F(1) r/w s. 48 and not worked out as mentioned in s. 45(1) r/w ss. 48 and 50C. When this interpretation is adopted, every provision of the chapter will fall in line without producing any absurd result and thereby giving a fruitful purpose for the enactments.

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)]

- Alternatively, as canvassed by the Authorized Representative, if the term "capital gain" in s. 54F is arrived at by imposing s. 50C, then the intention for introducing s. 50C would be defeated, because whatever may be the capital gain arrived at by imposing s. 50C would be exempt, if the net consideration, however meager it may be, is invested in the new asset."
- The Tribunal has, therefore, held that for the purpose of s. 54F, capital gain has to be computed in accordance with provisions of s. 48 without applying s. 50C.
- Aggrieved by the decision of the Tribunal, the assessee preferred an appeal to the Karnataka High Court. The Karnataka High Court has in the case of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)]. The substantial questions of law referred to the High Court were as under –
"(b) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in holding that the "Capital gains" and "the Net Consideration" have to be worked out within the frame work of section 54F of the Act, without imposing any fiction created by any other section and that the capital gains arising from the transfer of any long term capital asset for the purpose of section 54F has to be worked out applying section 48 without imposing section 50C into it?"

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] ...

(c) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contentions that provisions of Section 54F(1)(a) of the Income Tax Act will become unworkable, if the construction placed thereon, would require the consideration as per section 50C of the Act to be taken to work out the amount of exemption of the capital gains in other words whether it is correct to hold that the operation of legal fiction under section 50C of the Act has to be restricted only for the purpose of section 48 of the Act as wrongly interpreted by the Income Tax Tribunal and not to be applied for the entire Chapter VI E relating to taxation of capital gains, especially to Section 45 of the Income Tax Act?

(d) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in rejecting the contention that the term capital gain in section 54F has to be arrived by imposing section 50C of the Act in order to comply with the provisions of charging section 45 of the Income Tax Act?

(e) Whether on the facts and the circumstances of the case, the Income Tax

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Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] ...

(f) Whether on the facts and the circumstances of the case the Income Tax Tribunal is correct in law in holding that the denial of benefit of exemptions under section 54F(1)(a) on condition of compliance, by referring to Section 50C of the Act by the Lower authorities as being correct?

(g) Whether on the facts and the circumstances of the case, the Income Tax Tribunal is correct in law in holding that the legal fiction created by virtue of section 50C in determining the Capital gain cannot be extended to Section 54F of the Act and that Section 54F of the Act has to be applied only for the definite and limited purpose for which it is created?"

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] ...

- The Court considered that the assessee had sold an asset whose stamp duty value was Rs. 36,00,000 for Rs. 20,00,000. The assessee had purchased new residential house for Rs. 24,00,000. The extra amount of Rs. 4,00,000 was stated by the assessee to have been invested out of agricultural and other income which could not be demonstrated. The agreement for purchase of new house was for Rs. 20,00,000 but its valuation was Rs. 24,00,000. The Court held as follows –

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] ...

"7. The assessee before the Assessing Authority had stated that he has invested Rs.20,00,000 out of the sale consideration and further investment of Rs.4,00,000/- of agricultural income towards construction of the house at Gangavathi. The total amount shown to be invested for construction of house at Gangavathi is Rs.24,00,000/-. The Assessing Authority has disallowed the benefit of exemption of Rs. 4,00,000, That part of the order of the Assessing Authority and the Appellate Authority does not appear to be sound and proper. The ultimate object and purpose of Section 50C of the IT Act is to see that the undisclosed income of capital gains received by the assessee should be taxed and the law should not encourage and permit the assessee to peg down the market value at their whims and fancy to avoid tax. In other words, the ultimate object is to curb the growth of black money. When the capital gain is assessed on notional basis, whatever amount invested in new residential house within the prescribed period, under Section 54F of IT Act the entire amount invested, should get the benefit of deduction irrespective of the fact that the funds from other sources are utilized for new residential house. In that context, whatever total amount actually invested by the assessee for construction of house at Gangavathi should be deducted irrespective of the fact that part of the funds invested are from other sources and not from the capital gain that view or the matter, the amount assessable Towards net capital gain should be Rs.1033404."

Ratio of Gouli Mahadevappa v CIT [356 ITR 90 (Kar)] ...

- From the above mentioned decision of the High Court it appears (though it is not stated in clear terms) that the Court has held that the claim for exemption under s. 54F need not be restricted to capital gains worked out under s. 48 without applying provisions of s. 50C. This appears from the fact that the Court has granted exemption under s. 54F of Rs. 24,00,000 which exceeds long term capital gains computed under s. 48 without applying provisions of s. 50C.
- The Hyderabad Bench of ITAT in the case of **ITO v. Kondal Reddy Mandal Reddy (ITA No. 848/Hyd/2016; AY 2010-11; Order dated 13.5.2016)** has followed the decision of the Karnataka High Court and held that the exemption can be granted even with reference to capital gains computed by adopting stamp duty value as full value of consideration.

The two views

- The Jaipur Bench of the Tribunal has in the case of Prakash Kumavat v. ITO [49 SOT 160 (Jaipur)] has followed the decision of Jaipur Bench in the case of Gyan Chand Batra (supra). The Tribunal has stated that the ratio of the Bangalore Bench in Gouli Mahadevappa (supra) is same as that in the case of Gyan Chand Batra. It is respectfully submitted that this is not correct. Also, this decision was rendered before the decision of Karnataka High Court in the case of Gouli Mahadevappa (supra).
- The two views which could be possible are - one that the assessee is not entitled to claim exemption under s. 54F with reference to difference between stamp duty value and the consideration accruing or arising as a result of the transfer. Second view could be that the assessee is entitled to claim exemption under s. 54F with reference to capital gains computed after applying provisions of s. 50C provided of course he has invested in purchase or construction of the house amount equivalent to the stamp duty value of the asset transferred. The second view is

The two views ...

- If one interprets 'net consideration' for the purpose of s. 54F to be consideration received or accruing as a result of transfer and not stamp duty value then an assessee may be able to avoid the rigors of s. 50C by investing a meagre amount of net consideration in purchase of new residential house. Say for example, in a case where the stamp duty value of the asset transferred is Rs. 1010 but the consideration received or accruing as a result of transfer is Rs. 110 and the indexed cost of acquisition is Rs. 10 - the long term capital gain accruing to the assessee will be Rs. 1000 (Rs. 1010 - Rs 10) and the assessee can by investing Rs. 110 claim the entire capital gain to be exempt if one interprets net consideration to mean only consideration received or accruing as a result of transfer without giving effect to provisions of s. 50C. Also, this would create a disparity between assessee claiming exemption under ss. 54 and 54EC as against an assessee who is claiming exemption under s. 54F because ss. 54 and 54EC require an assessee to invest capital gains in purchase / construction of a new

Applicability of provisions of S. 50C to exemption under S. 54

- Section 54 provides roll over benefit if the long term capital gain arising on transfer of a capital asset being a residential house is invested in purchase or construction of a new residential house within the time period mentioned in the section and subject to satisfaction of conditions mentioned in the section.
- In the event of capital asset transferred being land or building or both, section 50C provides that the stamp duty value of the same (i.e. land or building or both transferred) should, for the purposes of section 48, be considered to be full value of consideration instead of consideration accruing or arising as a result of transfer.
- In other words, if stamp duty value is greater than the consideration as per document of transfer then capital gain is to be computed with reference to stamp duty value.

Applicability of provisions of S. 50C to exemption under S. 54 ...

- In order to avail roll over benefit under Sections 54 / 54EC, assessee is required to invest the capital gain in purchase or construction of new residential house or in bonds (section 54EC) within the time prescribed in Sections 54 / 54EC.
- The question which arises for consideration is whether the amount of capital gain which is required to be invested is to be computed with reference to full value of consideration as per document of transfer or by considering provisions of Section 50C.
- Section 50C by a fiction regards stamp duty value to be full value of consideration. The assessee has not received this amount, therefore, the question arises as to how will the assessee invest what has not been received. Is the law expecting assessee to do the impossible !!

Ratio of Jagdish C. Dhabalia v. ITO [(2019) 104 taxmann.com 208 (Bombay)]

- This issue has very recently been considered and adjudicated upon by the Bombay High Court in the case of **Jagdish C. Dhabalia v. ITO [(2019) 104 taxmann.com 208 (Bombay)]**
- The Hon'ble Bombay High Court has held that the amount to be invested will be the amount of capital gains with reference to Section 50C even though the amount of capital gains may be greater than the consideration accruing or arising as a result of transfer.
- The facts of the case before the Court were –
- The assessee held 25% undivided share in a plot of land which was transferred under a sale deed dated 29.9.2007 under which the assessee received a sum of Rs. 25 lakh by way of sale consideration.

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- The assessee invested the entire Rs. 25 lakh in bonds qualifying for exemption under S. 54EC.
- In the return of income, the assessee claimed long term capital gain of Rs. 21,19,344 and claimed full exemption of such capital gain under s. 54EC.
- For the purpose of levying stamp duty, stamp duty authorities valued the plot of land transferred at Rs. 3,04,70,810. The assessee's share therein was Rs. 76,17,702.
- The AO in the assessment order dated 29.12.2010 determined long term capital gain to be Rs. 49,47,344.
- Before CIT(A) assessee contended that since entire consideration of Rs. 25 lakh was invested in bonds the assessee must get full exemption from capital gain irrespective of deemed sale consideration under Section 50C of the Act.
- CIT(A) allowed the appeal filed by the assessee.
- Aggrieved, revenue preferred an appeal to the Tribunal which appeal was allowed.

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- The Tribunal held that for purpose of exemption under Section 54EC the deeming fiction contained in 50C of the Act cannot be ignored. The assessee could claim exemption only in relation to investment made in the specified bond and not qua the entire capital gain.
- Aggrieved, the assessee preferred an appeal to the High Court where the following substantial question of law came up for consideration of the Court –
 - Whether, in the facts and circumstances of the case, and in law, the Tribunal was right, while reversing the order of CIT in confirming the action of the assessing officer in taxing capital gain, to the extent of the enhanced and notional sale consideration under section 50C of the Act, in spite of the fact that the Appellant had invested the entire sale consideration accruing on transfer of the immovable property in the prescribed bonds in terms of Section 54EC of the Act?

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- The arguments on behalf of the revenue were –
 - The interpretation advanced by the assessee would render the provisions of section 50C redundant;
 - The exemption provision should be strictly construed; and
 - Assessee can claim exemption only in relation to investment made in specified bond and not beyond.
- The Court referred to provisions of Sections 45(1), 50C and 54EC held as under -
- In plain terms, the stamp valuation assessment by the stamp duty officer of the State Government would be deemed to be the sale consideration of capital asset, replacing the declared sale consideration, if it happens to be less than stamp duty valuation. For the purpose of charging capital gain in view of section 45, to be computed as provided in section 48, this deemed consideration would be applied.

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- We do not find any conflict or any incongruent consequences of applying the provisions of section 50C for the purpose of computation of capital gain tax after claiming exemption under section 54EC of the At. The deeming fiction under section 50C of the Act, must be given its full effect and the court should not boggle the mind while giving full effect to such fiction. We are not opposing the proposition canvassed by the Counsel for the Assessee that deeming fiction must be applied in relation to the situation for which it is created. However, while giving effect to the deeming fiction contained under section 50C of the Act for the purpose of computation of capital gain under section 48, for which section 50C is specifically enacted, the automatic fallout thereof would be that the computation of the assessee's capital gain and consequently the computation of exemption under Section 54EC, shall have to be worked out on the basis of substituted deemed sale consideration of transfer of capital asset in terms of section 50C of the Act.

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- Any other interpretation, particularly one canvassed by the learned counsel for the assessee, would render the provisions of section 50C redundant. In a situation like the one on hand, even if for the purpose of section 48, in terms of section 50C of the Act, the sale consideration deemed to have been received by the assessee may be much higher than one declared in the sale deed, the assessee would claim no further capital gain tax liability by simply claiming to have made investment in specified asset the full declared sale consideration.
- Under such circumstances we do not find that the Tribunal has committed error in interpreting the relevant statutory provision. Income-tax appeals are therefore dismissed.



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B.Com., B.G.L., FCA.

Are provisions of s. 50C applicable to transfer of depreciable assets forming part of block of assets?

- S. 50C applies to transfer of land or building or both. Land is not a depreciable asset. However, if the assessee transfers building which was forming part of a block of assets a question would arise as to whether the provisions of s. 50C are applicable to the transfer of such building. There could be two situations - one could be that even after the building is transferred the block continues to exist and the other could be a situation in which as a result of the transfer of the building the block ceases to exist and the provisions of s. 50 also come into play. In the first situation where the block would continue to exist, s. 43(6)(c) defines 'written down value' as opening WDV of the block as adjusted by actual cost of assets purchased during the previous year and reduced by moneys payable in respect of any asset falling within that block which is sold during the previous year. As per Explanation 4 to s. 43(6)(c), the expression "moneys payable" and "sold" shall have the same meanings as given in Explanation below sub-section (4) of section 41. As per the said Explanation, "moneys payable" in respect of any building, etc when it is sold is the price for which it is sold i.e. the actual sale consideration. Therefore, it appears to be quite an arguable proposition to contend that as long as the block continues to exist even after sale of building the provisions of s. 50C will not get attracted.

Are provisions of s. 50C applicable to transfer of depreciable assets forming part of block of assets?...

- As regards the second situation where the block ceases to exist as a result of sale of building the position is governed by the decision of Mumbai Special Bench of Tribunal in the case of ITO v. United Marine Academy [130 ITD 113 (Mum)] wherein it is held that provisions of s. 50C are applicable to transfer of depreciable capital assets covered by s. 50. According to the Tribunal, legal fiction created under s. 50C is for "full value of consideration" and the legal fiction created under s. 50 is for "cost of acquisition". Hence, both the fictions operate in different fields and do not conflict with each other. It would be relevant to note that before the Special Bench the assessee had argued for the first time that the block had not ceased to exist and there was positive WDV as per s. 43(6)(c). However the Special Bench of ITAT did not adjudicate this point as assessee had himself accepted before the lower authorities that the block had ceased to exist. Hence, the issue as stated above (i.e. the first situation) has not been determined by the Special Bench.
- Where all the assets are transferred and the block ceases to exist, then as per s. 50(2) there is no requirement of existence of any "excess" and consequently provisions of ss. 48, 49 and 50C would be applicable.