



**Daryaganj CPE Study Circle**



**WEBINAR ON  
INCOME TAX IMPLICATIONS IN CASE OF  
JOINT DEVELOPMENT AGREEMENT**

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Presented by

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# AGENDA FOR TODAY

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- Types of Contracts
- Broad features of JDA
- Taxation of parties involved
- Issues involved in JDA
  - Definition of Transfer
  - Section 53A of the Transfer of Property Act, 1882
  - Year of Taxation
  - Unregistered JDA
  - Practical Example
  - Full Value of Consideration
  - Cost of Acquisition
  - Exemption u/s 54 / 54F
  - Section 45(5A)
  - Amendment to Section 49
  - TDS under section 194IC
  - Applicability of Section 50C
  - Conversion of Capital Asset into stock in Trade

# Three types of Contracts

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## Development Contract

- Simple work contract to developer for development of property
- Ownership with landlord
- No rights with developer for selling the property
- Right to sell with the owner only

## Joint Development Agreement

- Landlord & developer enter into a contract
- Landlord contributes the land & developer develops on that land
- Developed portion distributed b/w the two in pre-decided ratio
- Developer has right to sell his portion of land

## Joint Venture Agreement

- Landlord & developer form a SPV ( company, LLP, partnership firm etc)
- They operate as single entity
- Profit is shared in pre-decided ratio.
- Right to sell with the SPV now.

# Broad Features of Joint Development Agreement

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## 1. Agreement between Property Developer and the Owner

- To construct for the owners certain built up area on his property
- In return for the same, the owner agrees to sell a specified share / percentage of the developed property along with undivided interest in the land to the prospective buyers nominated by the Developers
- Certain cash consideration may also be payable to the owner

## 2. Developer to nominate buyers

- The Developer is authorized to
  - exclusively nominate the prospective buyers.
  - enter into agreements Fixing the sale price/s and consideration

# Broad Features of Joint Development Agreement

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## 3. Execution of GPA

- The Developer is empowered through a General Power of Attorney (GPA) by the Owner to act on Owner's behalf
  - To sell certain specified shares of undivided interests in the land to the prospective buyers
  - Fix price for sale of property
  
- The GPA also empowers the Developer to do all acts, deeds and things in pursuance of the Development Agreement including applying for plan sanction, various licences and clearances required for the development of the Project.
  
- Power to execute sale deed is also given in some cases

# Taxation of Parties Involved

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## Developer

- He is engaged in business
- Income taxable as business income
- Accounting standards and ICDS to apply

## Land Owner

- **Business Asset**
  - Taxable as business income
  - Accounting standards and ICDS to apply
- **Capital Asset**
  - Capital Gain chapter to apply
- **Hybrid**
  - Example : Conversion of capital asset into stock-in-trade

# Issues involved

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- When is there a transfer as per section 2(47) ?
- Section 53A of Transfer of Property Act, 1882
- Point of taxation ?
- Consideration
- Cost of acquisition
- Implication of section 50C / 50D
- Exemption u/s 54 / 54F

# Definition of Transfer

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## **Section 2(47)**

"transfer", in relation to a capital asset, includes,—

- (i) the sale, exchange or relinquishment of the asset ; or
- (ii) the extinguishment of any rights therein ; or
- (iii) ... or
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ;] [or]
- (iva) ...; or
- v. any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or**
- (vi) ...**



# Definition of Transfer

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## Section 2(47)(v)

- Possession of immovable property taken / retained
- Part performance of contract of referred to in section 53A of the Transfer of Property Act, 1882

# Section 53A of the Transfer of Property Act, 1882

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- Where any person contracts to transfer
- for consideration
- any immovable property
- by writing signed by him or on his behalf
- from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,
- and the transferee has, in part performance of the contract,
- taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract

# Section 53A of the Transfer of Property Act, 1882

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- and has done some act in furtherance of the contract,
- and the transferee has performed or is willing to perform his part of the contract,
- then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract.

# Section 53A of the Transfer of Property Act, 1882

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## Essentials

- Contracts to transfer any immoveable property
- For consideration
- Contract is in writing signed by him / or his agent
- Terms necessary to constitute the transfer can be ascertained with reasonable certainty,
- Transferee has, in part performance of the contract, taken possession / continues in possession and
- Transferee has done some act in furtherance of the contract,
- Transferee has performed or is willing to perform his part of the contract,

# Year of Taxation

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## Department's Contention

- Signing of JDA constitutes a transfer prescribed u/s 2(47)(v) r/w section 53A of TOPA
- Land owner has parted with possession and developer has got the possession
- Certain portion of property shall be transferred to developer

# Year of Taxation

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## Chaturbhuji Dwarkadas Kapadia v.CIT [2003] 129 Taxman 497 (Bombay)

- If on a bare reading of a contract in its entirety, an Assessing Officer comes to the conclusion that in the guise of agreement for sale, a Development Agreement is contemplated, under which the developer applies for permissions from various authorities, either under power of attorney or otherwise and in the name of the assessee, then the Assessing Officer is entitled to take the date of the contract as the date of transfer in view of section 2(47)(v).
- If the contract, **read as a whole, indicates passing of or transferring of complete control over the property in favour of the developer**, then the date of the contract would be relevant to decide the year of chargeability.

# Year of Taxation

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## Jasbir Singh Sarkaria [2007] 164 Taxman 108 (AAR - New Delhi)

- Possession contemplated by sub-clause (v) need not necessarily be the sole and exclusive possession. So long as the transferee is, by virtue of the possession given, enabled to exercise general control over the property and to make use of it for the intended purpose, the mere fact that the owner has also the right to enter the property to oversee the development work or to ensure performance of the terms of agreement does not introduce any incompatibility
- It is fairly clear that the GPA is not a mere licence to enter the land for doing some work
- The GPA unequivocally grants to the developer a bundle of possessory rights. The acts of management, control and supervision of property are explicitly mentioned.

# Year of Taxation

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## Other decisions in favour of Revenue

- CIT Vs Dr T K Dayalu (Karnataka High Court) (ITA No 3209 of 2005)
- Mahesh Nemichandra Ganeshwade vs. ITO (2012) 17 ITR 116 (Pune 'A' Trib)
- Krishnakumar D Shah (HUF) Vs DCIT(2012) 23 taxmann.com 111
- Azad Zubarchand Bhandari Vs Asst CIT(2013) 58 SOT 347 (Mum 'A" Trib)
- Taher Alimohammed Poonawala v. Addl. CIT [2009] 124 TTJ (Pune) 387- ITAT Pune Bench
- Ms Rubab M Kazerani Vs Jt CIT(2005) 2(II) ITCL 456(Mum-Trib)(TM)
- ITO Vs Vikash Behal (2010) 34(II) ITCL 73 (Kol "C" Trib)
- G Sreenivasan V Dy CIT (2013) 140 ITD 235 (Coch-Trib)
- R Kalanidhi Vs ITO (2009) 314 ITR (AT) 266 (Chennai-ITAT)
- DCIT Vs Jai Trikanand Rao (2014)149 ITD 112 (Mum J Trib)
- Ram Prasad Vs Dy CIT (2015) TaxPub(DT) 5142 (Hyd 'A' Trib)
- B V Narayana Reddy v. Asst CIT (2015) TaxPub (DT) 4553 (Hyd 'B' - Trib)
- ITO Vs Ayisha



# Year of Taxation

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## Other decisions in favour of Revenue

- Fathima (2016) 160 ITD 377 ( ITAT Chennai Bench D): (2016) 182 TTJ( ITAT Chennai Bench D ) 437
- Adinarayana Reddy Kummata vs ACIT Circle-11(1), Hyderabad [2018] 91 taxmann.com 360 [Hyderabad-Trib.].
- CIT v. Jeelani Basha (2002) 256 ITR 282/122 Taxman 509 (Mad)
- Tamilnadu Brick Industries V ITO ITA no 744/Chny/ 2017 rendered on 11-5-2018
- Kasturi D v CIT 323 ITR 40 (Mad)
- Udai Hospitals Pvt Ltd vs ITO. Ward 17(3), Hyd, (ITAT “B” Bench) ITA No. 1755/Hyd/2017 rendered on 28/09/2018.
- K Vijaya Lakshmi Vs ACIT ITA no. 1561/Hyd/2016 and 372/Hyd/2017 rendered on 28/02/2018.
- K. Vijaya Lakshmi Vs ACIT (2019) 165 TR (A) 253 (Hyd-Trib): (2018) 195 TTJ (Hyd 'B' - Trib) 114
- Vijaya Productions (P) Ltd vs Addl. CIT (2012) 134 ITD 19 (Chennai-Trib)(TM)
- Dy. CIT vs. Jamnaben J Gokani 2015 TaxPub(DT) 1224 (Mum 'E' - Trib)

# Year of Taxation

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## CIT vs Balbir Singh Maini [2017] 86 taxmann.com 94 (SC)

- A reading of the JDA in the present case would show that the **owner continues to be the owner throughout the agreement, and has at no stage purported to transfer rights akin to ownership to the developer.**
- At the highest, **possession alone is given** under the agreement, and that too for a **specific purpose -the purpose being to develop the property**, as envisaged by all the parties. We are, therefore, of the view that this clause will also not rope in the present transaction.
- The matter can also be viewed from a slightly different angle. Shri Vohra is right when he has referred to Sections 45 and 48 of the Income Tax Act and has then argued that **some real income must "arise"** on the assumption that there is transfer of a capital asset. This income **must have been received or have "accrued"** under Section 48 as a result of the transfer of the capital asset.

# Year of Taxation

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## CIT vs Balbir Singh Maini [2017] 86 taxmann.com 94 (SC)

- In the facts of the present case, it is clear that the income from **capital gain on a transaction which never materialized is, at best, a hypothetical income**. It is admitted that, for want of permissions, the entire transaction of development envisaged in the JDA fell through. In point of fact, income did not result at all for the aforesaid reason. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be brought to tax under Section 45 read with Section 48 of the Income Tax Act.
- In the present case, **the assessee did not acquire any right to receive income, inasmuch as such alleged right was dependent upon the necessary permissions being obtained**. This being the case, in the circumstances, there was no debt owed to the assesseees by the developers and therefore, the assesseees have not acquired any right to receive income under the JDA. This being so, no profits or gains "arose" from the transfer of a capital asset so as to attract Sections 45 and 48 of the Income Tax Act.

# Year of Taxation

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## CIT vs Atam Prakash & Sons (Delhi HC) [2008] 175 Taxman 499 (Delhi)

- Mere grant of a permissive right to build on said plot of land would not amount to a transfer of a capital asset.
- There was no extinguishment of the rights of the assessee as a perpetual lessee of the land.
- What the assessee intended to do by virtue of the collaboration agreement was to embark on a joint venture to build a multi-storeyed commercial building. The responsibility and the expense, to give effect to the same, were laid at the doorstep of SSPL.
- The rights conferred upon the parties to the contract would crystallize only if and when the proposed multi-storeyed building would come into existence.

# Year of Taxation

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## S. Ranjith Reddy v. DCIT [2013] 35 taxmann.com 415 (Hyderabad - Trib.)

- Transfer of an immovable property always contemplates **transfer of an existing property**, i.e., a *property in praesenti*.
- **Consideration** – Assessee is providing its land for development and is getting rights in the developed property. **The extinguishment of its right over the land is compensated by its right in the built-up area.** Even if it is considered as a proposed exchange, **nothing has been culminated in the impugned previous year. All those things are to happen in the future.**
- In the present case the property was only in the nature of mutual rights. **The project and development are yet to happen. Strictly, speaking, the projects and plans may happen or may not happen.**

# Year of Taxation

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## S. Ranjith Reddy v. DCIT [2013] 35 taxmann.com 415 (Hyderabad - Trib.)

- The execution of the **JDA does not bring into existence any tangible asset that could be transferred** between the parties. It only speaks about the intentions of the parties and heir future action plans.
- Once the project is completed and all the stipulations are satisfied...Only at that point of time, the question arises whether there was any transfer u/s 2(47).

## Regarding Section 53A

- Distinguishing from Bom HC in Chaturbhuji Dwarkadas Kapadia : By **no** stretch of logic, this legal precedent can support the proposition **that all development agreements**, in all situations, **satisfy the conditions of Section 53A** which is a *sine qua non* for invoking section 2(47)(v).

# Year of Taxation

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## S. Ranjith Reddy v. DCIT [2013] 35 taxmann.com 415 (Hyderabad - Trib.)

### Regarding Section 53A

- It is clear that **willingness to perform** for the purposes of section 53A is something **more than a statement of intent**; it is the unqualified and unconditional willingness on the part of the vendee to perform its obligations.
- No sale was effected on the date of agreement. No consideration has passed between the parties on signing the agreement. There was no construction.
- Thus, not possible to hold that the developer performed its obligation.
- Thus, conditions laid down under section 53A of TP Act were not satisfied during the period.

# Year of Taxation

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## Points to argue

- JDA gave only license to developer for limited purpose of construction and did not transfer the property.
- Owner continues to be the owner throughout the agreement, and has at no stage purported to transfer rights akin to ownership to the developer
- No accrual – Balibir Singh Maini (Supreme Court)
- The rights conferred would crystallize when property comes into existence.
- Willingness point (no construction took place in year of signing etc.)
- Only a small portion only of sale consideration was received as earnest/deposit money



# Year of Taxation

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## Other decisions in favour of Assessee

- CIT V G Saroja (2008), 301 ITR 124(Mad)
- Dilip Anand Vazirani vs ITO [2015] 57 taxmann.com 142 (Mumbai - Trib.)
- Asstt. CIT v. Mrs. Geetadevi Pasari (2007) 14 SOT 63 (Mum.)(URO) -
- Dr. Arvind S. Phadke v. Addl. CIT [2014] 46 taxmann.com 335 (Pune) —
- Binjusaria Properties (P.) Ltd. v. Asstt. CIT [2014] 45 taxmann.com 115 (Hyd.) —
- Smt. P. Prathima Reddy v. ITO [2012] 25 taxmann.com 264/54 SOT 409 (Hyd.)
- Fibars Infratech (P.) Ltd. v. ITO /46 taxmann.com 313 (Hyd.);
- Suresh Kumar D. Shah v. Dy. CIT [2011] 16 taxmann.com 324
- Ravinder Singh Arora v. Asstt. CIT [2012] 24 taxmann.com 346
- JT. CIT v. Gokhale & Gadre Enterprises [IT Appeal Nos. 2335 & 2336 (Mum.), dated 23-8-2005]
- Pr. CIT vs Fardeen Khan [2018] 96 taxmann.com 398 (Bombay)
- Smt Sowcar Janaki v ITO (2013 27 ITR (Trib) 226
- General Glass Co Private Limited v. Dy. CIT (2007) 108 TTJ 0854/ 2007 14 SOT 0032 (Mum.)

# Unregistered JDA

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## Implication in case JDA is unregistered

- In 2001, **the Registration and Other Related Laws (Amendment) Act, 2001** was passed through which amendments were made in Section 53A of TOPA and Sections 17 and 49 of the Indian Registration Act.
- **Section 17(1A) Indian Registration Act:** *The documents containing **contracts to transfer** for consideration, **any immovable property** for the purpose of **Section 53A of the Transfer of Property Act, 1882 (4 of 1882)** shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are **not registered** on or after such commencement, then they shall **have no effect** for the purposes of the said Section 53A."*

# Unregistered JDA

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## CIT vs Balbir Singh Maini [2017] 86 taxmann.com 94 (SC)

- The effect of the aforesaid amendment is that, on and after the commencement of the Amendment Act of 2001, **if an agreement, like the JDA in the present case, is not registered, then it shall have no effect in law for the purposes of Section 53A.**
- In short, there is **no agreement in the eyes of law** which can be enforced under **Section 53A** of the Transfer of Property Act.
- This being the case, we are of the view that the High Court was right in stating that **in order to qualify as a "transfer"** of a capital asset under **Section 2(47)(v)** of the Act, **there must be a "contract"** which can be **enforced** in law under **Section 53A** of the Transfer of Property Act
- It being clear that the said **JDA was never registered**, since the JDA has **no efficacy in the eye of law**, obviously **no "transfer"** can be said to have taken place under the aforesaid document.

# Practical Example

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## Facts

Mr. A, owner of a 200Sq yards residential house, entered into a JDA with XYZ Ltd. XYZ Ltd. with following terms:

- 3 Floors to be retained by Mr. A
- 1 Floor to be transferred to XYZ Ltd. or his nominee
- XYZ Ltd. will give Rs. 50L to Mr. A

Total construction cost incurred by Builder = Rs. 1.20 crores

Sale Price of Floor = Rs. 2 crores

Circle Rate of Floor = Rs. 1.60 crores

Cost of Acquisition = Rs. 80 L (Rs. 60L cost of land and Rs. 20L construction cost)

Indexation Multiplier = 2x

# Full Value of Consideration

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## Full Value of Consideration =

Proportionate Construction Cost of land owner's share in the property

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Cash Consideration

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Reimbursement of rent in construction period

## ITO v/s M.S Nagaraj (ITAT Bangalore) 52 taxmann.com 511

- According to the assessee, the full value of the consideration should be a fair market value of the land to be transferred to the developer. Section 48 nowhere talks of fair market value. It talks of full consideration.
- Full consideration in this case is the cost of construction incurred by the builder on the assessee's share of constructed area, because the assessee would receive constructed area in lieu of the land share. Whatever is the expenditure incurred for constructing that area is a consideration in kind to the assessee.

# Full Value of Consideration

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## CIT v. Vasavi Pratap Chand (Delhi HC) 398 ITR 316 (Delhi) 1

- Delhi HC did not find any error in the order of ITAT Delhi which held that *“consideration for the transfer of 44 per cent. land was the cost of construction of 56 per cent. built-up area which was to be incurred by the builder.”*

### In previous example

Total construction cost incurred by Builder = Rs. 1.20 crores

Proportionate Construction Cost of land owner's share in the property = Rs. 90L

Thus, FVC = Rs. 90L + Rs. 50L = **Rs. 1.40 crores**

### In case Consideration i.e. Cost of Construction can not be ascertained

- Apply section 50D
- The fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration

# Cost of Acquisition

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## In our example

Total COA = Rs. 80L

Proportionate COA of asset transferred = Rs. 20L

Therefore, **indexed COA = Rs. 40L**

# Cost of Acquisition of Developed Flats

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## Cost of Acquisition of Developed Flats=

Cost of Land

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Cost of construction on owner's flats incurred by the builder

## CIT v. Vasavi Pratap Chand (Delhi HC) 398 ITR 316 (Delhi) 1

➤ ITAT Held that :

- *Therefore, we are of the considered opinion that consideration for the transfer of 44 per cent. land was the cost of construction of 56 per cent. built-up area which was to be incurred by the builder. This very sum would also amount to investment by assessee in the construction of flats and, therefore, the cost of construction of the flats by the builder would also amount to the cost of acquisition of the flats by the assessee.”*



# Cost of Acquisition of Developed Flats

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## CIT v. Vasavi Pratap Chand (Delhi HC) 398 ITR 316 (Delhi) 1

➤ ITAT Held that

- As far as **cost of flat** is concerned, we have already observed that **it would be equal to the cost of construction of 56 per cent. of the built-up area.**
- The sale consideration of 44 per cent. land was in kind and, therefore, **it also amounted to investment in the construction of built-up area. Hence, the same will be taken as cost of acquisition of flats after** examining the record of the builder.

➤ Delhi HC agreed with this finding of ITAT Delhi

# Cost of Acquisition of Developed Flats

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## In our example

Total COA = Rs. 80L

Of this COA of Land = Rs. 60L

Proportionate COA of Land in Developed Flats obtained by owner = Rs. 45L

**Proportionate Cost of Improvement = Rs. 90L**

Total Cost = COA of land + COI of construction  
= Rs. 45L + Rs. 90L  
= **Rs. 1.35 crores**

# Calculation of Capital Gain

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## In our example

Particulars	Amount (Rs.)
Full Value of Consideration	Rs. 1.40 crores
Less : Indexed Cost	Rs. 40 lakhs
<b>Capital Gain</b>	<b>Rs. 1 crore</b>
Exemption u/s 54 (Cost of Improvement of 3 flats)	Rs. 90L
<b>Balance Capital Gain</b>	<b>Rs. 10L</b>

Some people include proportionate land value also while calculating investment for the purpose of Section 54/ 54F exemption

# Exemption u/s 54 / 54F

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## Whether available for all the 3 floors or 1 single floor

### CIT vs Gita Duggal (Delhi HC) [2013] 30 taxmann.com 230 (Delhi)

- Section 54/54F uses the expression "a residential house". The expression used is not "a residential unit".
- So long as the assessee acquires a building, which may consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been satisfied.
- A person may construct a house according to his plans and requirements.
- We do not think that the fact that the residential house consists of several independent units can be permitted to act as an impediment to the allowance of the deduction under Section 54/54F.
- Whether application post amendment made by Finance Act 2014 ?

# Section 45(5A)

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## Inserted w.e.f. AY 2018-19

- **Notwithstanding** anything contained in sub-section (1),
- where the capital gain arises to an assessee, being an **individual or a Hindu undivided family**,
- from the transfer of a **capital asset**, being **land or building or both**,
- under a **specified agreement**,
- the **capital gains** shall be **chargeable to income-tax** as income of the **previous year** in which the **certificate of completion** for the whole or part of the project is **issued** by the competent authority;
- and for the purposes of section 48,

# Section 45(5A)

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- and for the purposes of **section 48**,
- the **stamp duty value**, on the date of issue of the said certificate, of **his share**, being land or building or both in the project,
- as **increased** by the **consideration** received in **cash**, if any,
- shall be **deemed** to be the **full value of the consideration** received or accruing as a result of the transfer of the capital asset :

## Not Applicable if

- Where the assessee **transfers his share** in the project **on or before the date of issue of the completion certificate**

# Section 45(5A)

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"specified agreement" : Means

- A **registered agreement**
- in which a **person owning** land or building or both,
- **agrees to allow** another person
- to **develop a real estate project** on such land or building or both,
- **in consideration** of a **share**, being land or building or both in such project,
- whether **with or without payment** of part of the **consideration in cash**;

# Section 45(5A) : Issues

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- Individual / HUF Only
- Changes date of charge of capital gain and not date of transfer.
- Certificate of completion never issued ?
- Sec. 45(5A) deems Full Value of Consideration. Can section 50C still apply
- Agreement unregistered ?
- Land owner and developer agree to share revenue and not a part of property ?
- Retrospective - *Adinarayana Reddy Kummata vs ACIT Circle-11(1), Hyderabad [2018] 91 taxmann.com 360 [Hyderabad-Trib.]*
- Cost of Acquisition asset transferred not defined ?



# Section 45(5A) : Full Value of Consideration

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## Full Value of Consideration =

Stamp duty value of land owner's share

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Cash Consideration

## In our example

XYZ Ltd. will give Rs. 50L to Mr. A

Total construction cost incurred by Builder = Rs. 1.20 crores

Sale Price of Floor = Rs. 2 crores

Circle Rate of Floor = Rs. 1.60 crores

Cost of Acquisition = Rs. 80 L (Rs. 60L cost of land and Rs. 20L construction cost)

Indexation Multiplier = 2x

**FVC as per section 45(5A) = (Rs. 1.60 crores \* 3) + Rs. 50L = Rs. 5.30 crores**

**FVC [ pre 45(5A)] = Rs. 1.40 crores**

# Amendment to Section 49

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Sub-Section 7 inserted

- Where the capital gain arises from the transfer of a capital asset,
- being share in the project, in the form of land or building or both,
- referred to in sub-section (5A) of section 45,
- **the cost of acquisition of such asset**, shall be the amount which is **deemed as full value of consideration in that sub-section.**

## In our example

**After 45(5A) COA of 3 floors = Rs. 5.30 crores**

Before 45(5A) = Rs. 1.35 crores

# Cost of Acquisition 45(5A)

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## Pre section 45(5A)

Proportionate COA of asset transferred = Rs. 20L

## Post 45(5A)

- Sec. 45(5A) is based on assumption that developer is transferring entire house and getting 3 floors in return

## In our example

**COA (without indexation) = Rs. 80L**

Indexed Cost = Rs. 1.60 crores

**Note:** Alternate view is that only share for which FVC is being calculated should form part of COA

# Calculation of Capital Gain

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## In our example

Particulars	Pre 45(5A)	Post 45(5A)
Full Value of Consideration	Rs. 1.40 crores	Rs. 5.30 crores
Less : Indexed Cost	Rs. 40 lakhs	Rs. 1.60 crores
<b>Capital Gain</b>	<b>Rs. 1 crore</b>	<b>Rs. 3.70 crores</b>
Exemption u/s 54	Rs. 90L	Rs. 5.30 crores
<b>Balance Capital Gain</b>	<b>Rs. 10L</b>	<b>Nil</b>

# Section 45(5A) : Period of Holding and Indexation

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## Period of Holding

- Section 2(42A) "short-term capital asset" : *means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its **transfer.***
- Section 45(5A) only defers charge of capital gain and not date of Transfer

## Indexation

- Explanation (iii) to section 48 "indexed cost of acquisition" *means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the **year in which the asset is transferred** bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 2001 , whichever is later;"*

## Section 45(5A) : Investment period for section 54

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- *Sec. 54 : ... the assessee has within a period of one year before or two years after the **date on which the transfer took place** purchased, or has within a period of three years after that date constructed, one residential house in India...*
- Literal interpretation results in absurd result. Purposive construction ?
- **Circular : No. 791, dated 2-6-2000** : Sections 54EA, 54EB and 54EC also provide deduction from long-term capital gain if the sale proceeds/long-term capital gain is invested in specified assets within a period of 6 months from the date of transfer. It is not possible for an assessee to make the required investment under the aforesaid sections at the point of conversion of capital asset into stock-in-trade because the right to collect sales consideration in such cases arises only at the point of sale or transfer otherwise of stock-in-trade. The board has considered the matter afresh in consultation with the Ministry of Law and has decided that the period of 6 months for making investments in specified assets for the purpose of sections 54EA, 54EB and 54EC should be taken from the date such stock-in-trade is sold or otherwise transferred, in terms of section 45(2) of the Act.
- Favorable Ruling by ITAT Ranchi in **Rajesh Kumar Adukia vs. DCIT, ITA 14/Ran/2018**

# TDS Under section 194IC

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## Section 194-IC

- Notwithstanding anything contained in section 194-IA, any person **responsible for paying** to a resident any sum by way of **consideration, not being consideration in kind**, under the agreement referred to in **sub-section (5A) of section 45**, shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, **deduct** an amount equal to **ten per cent** of such sum as income-tax thereon.
- Section 194IA vs 194IC simultaneous levy ?

# Applicability of Section 50C

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## Favourable

- Syed Jamaluddin Ali Khan by L.R. Adeebunnisa Begum (Alias) v. ITO (Hyderabad ITAT) Income Tax Appeal No. 816/Hyd/2017 : *The cost of the constructed area received by the assessee should be taken as the consideration received by the assessee in lieu of the development agreement and not the SRO value. The SRO value u/s 50C of the Act would come into play when the assessees sell their share of the flats and if the sale consideration received by them is less than the SRO value. Therefore, the AO is directed to take the cost of construction of the flats by the builder as the sale consideration received by the assessee for transfer of land to the development for computing the long term capital gain.*

## Unfavorable

- ACIT Vs. M/s Manubhai A. Sheth larger HUF (I.T.A.NO.5775/Mum/2008): *In the case before us, assessee has definitely transferred the title of the land and, therefore, section 50C was applicable. It cannot be said that since land was given for development rights, therefore, provisions of sec. 50C are not applicable. In the case before us assessee has himself admitted to the transfer of land, therefore, sec. 50C could be applicable*



# Conversion of Capital Asset into stock in Trade

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- Definition of “transfer” under section 2(47) does not apply to a transfer of stock-in-trade as it is purely in relation to a transfer of a “capital asset”
- Accordingly, section 53A of TOPA r/w section 2(47) will not apply in case property held as stock in trade.

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Questions ???



# THANK YOU



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