

**ERNAKULAM BRANCH OF SIRC OF ICAI**  
**VIRTUAL REFRESHER COURSE ON DIRECT TAXES**

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**26.08.2020**

**REAL ESTATE TRANSACTIONS – IMPACT IN INCOME TAX ACT**

**ISSUE 1**

- Thomas owned a property admeasuring 15,200 Sq. Ft which was purchased on 19.09.80. The cost of acquisition of the property was Rs.20 lakhs
- A joint development agreement was entered into by Thomas with a developer on 10.01.2017 and the approvals for demolition of old building and construction of new flats were obtained by Thomas.
- In June 2017 Thomas executed a Power of Attorney in favour of the developer, whereby possession was given to the developer.
- The developer then demolished the existing building and the new construction was completed in March 2020. The completion certificate was obtained in March 2020.
- The constructed area was 22,400 Sq. Ft.
- Thomas was allotted three flats admeasuring 7200 Sq. Ft. in the aggregate plus a monetary consideration.
- The developer's share in the flats and corresponding undivided share in land were registered in favour of the developer's nominees during the period March 2017 to April 2020.

In these circumstances, the following questions arise:

1. If the joint development agreement is registered, in which year would the transfer be deemed to have taken place and in which year would capital gains arise in the hands of Thomas, especially in the light of Section 45(5A)?
2. If the monetary part of the consideration is not yet received, would the year of taxability change, though the completion certificate was obtained in March 2020?
3. What will be the sale consideration that should be considered in the hands of Thomas? Can the agreement merely state the built up area to be shared between the parties without identifying the specific flats going to the share of each party? If this is done, can it be said that the consideration cannot be determined and

therefore invoke Section 50D and consider the fair market value of the UDS going to the share of the developer to be the sale consideration?

4. By virtue of section 45(5A) [inserted by the Finance Act, 2017 w.e.f. 01.04.2018], would it be possible for Thomas to contend that the entire capital gains should be subjected to tax in the Assessment year 2020-21, assuming all the other conditions in Section 45(5A) are satisfied or the provisions of section 45(5A) would not be applicable since the joint development agreement was entered into prior to the insertion of section 45(5A)?
5. If Section 45(5A) is applied, while calculating indexed cost of acquisition, can Thomas apply the cost inflation index of the year in which the capital gains is required to be offered to tax, or the index of the year in which the transfer has taken place?
6. If Section 45(5A) is applied, and capital gains offered in Assessment year 2020-21, what would be the position of the earlier year returns where Thomas had admitted capital gains?
7. What would be the position if Thomas sells 2 of the flats from out of the 3 flats allotted to him even before obtaining the completion certificate?
8. How would the gain on sale of the 2 flats be treated in the hands of Thomas? Can GST paid by Thomas on the cost of 3 flats allotted to him, be claimed as part of cost of acquisition.
9. Since the property was originally acquired in 1980, for the purpose of computing cost of acquisition, can Thomas substitute the fair market value as on 01.04.1981 for arriving at the indexed cost of acquisition in respect of flats which were sold in the financial year 2016-17. How can the Fair Market Value (FMV) as on 01.04.1981 be computed?
10. Since the flats are also sold during financial years 2017-18 to 2020-21 can Thomas substitute the fair market value as on 01.04.2001 for these flats?
11. Are there TDS obligations u/s 194-IA on the developer on the monetary part of the consideration paid? What about the obligation on the value of the built up portion allotted to Thomas?
12. Can Thomas claim the cost of construction of the demolished building under cost of acquisition while computing capital gains?
13. If Thomas has already offered capital gains in earlier years based on the joint development agreement, but due to subsequent re-negotiation the share of Thomas in the built up area is reduced, what can Thomas do in respect of capital gains already offered to tax?

14. If the developer becomes insolvent before completing the project, and Thomas has to incur additional expenditure in identifying a new developer and to complete the project, can Thomas claim deduction of this additional expenditure while computing capital gains?

## **ISSUE 2**

1. In the facts of Issue 1, can Thomas claim exemption u/s 54F in respect of the flats allotted to him?
2. Since Thomas has handed over both land and building to the developer (the building was later demolished by the developer), is Thomas entitled to claim exemption u/s 54 in respect of the flats allotted to his share?
3. If yes, by what time should the construction be completed so that the claim of Thomas for exemption u/s 54 and 54F is not rejected?
4. For the purpose of claiming exemption, how can the cost of investment in new residential property be computed by Thomas?

## **ISSUE 3**

If, in the example under Issue 1, Thomas does not enter into a Joint development agreement or grant a Power of Attorney, and the development is carried out as a works contract, what would be the tax implications in the hands of Thomas u/s 28, 45 and 194C?

## **ISSUE 4**

If, in the example under Issue 1, Thomas grants a registered Power of Attorney in 2016, but no activity has been taken up by the developer for more than 3 years, how would the taxability in the hands of Thomas be affected?

## **ISSUE 5**

Yusuf holds certain agricultural lands which are now converted to “land for residential use”. He appoints a developer for developing these lands to residential plots. All permissions have been obtained by Yusuf. Marketing for the sale of plots is also done by Yusuf.

In consideration for the development, since Yusuf does not have free funds, he allots some of the developed plots to the developer. In this case will section 45(5A) apply? Would the agreement entered into between Yusuf and the developer be a “specified agreement” u/s.45(5A)?

## ISSUE 6

If, in the above example, Yusuf and the developer enter into a revenue sharing agreement, with Yusuf contributing the land, and the developer incurring the development costs, would the income from the activity be considered to be business income of an AOP, or can the income be returned by Yusuf as income from capital gains, irrespective of how the developer has returned the income?

## ISSUE 7

Would Section 45(5A) be applicable even in cases where the seller obtains the immovable property by one of the modes given in section 49(1), and there is a pre-existing agreement for joint development of this property?

Would it make any difference if the same developer continues the transaction though with some modification in the terms?

## ISSUE 8

'A' Pvt Ltd. owns certain extent of land and intends that a part of this land is developed into a residential complex comprising of independent Villas / Twin Houses / Row Houses / Four in One Clusters in certain residential areas and commercial retail space/s and such other developments and amenities as agreed between 'A' Pvt Ltd and the developer 'B' Pvt Ltd. which is in the business of property development.

'A' Pvt Ltd. and 'B' Pvt Ltd. come together for executing a joint development agreement for development of the property belonging to 'A' Pvt Ltd., whereby 'A' Pvt Ltd. will offer the land and will be entitled to 27.5% of the revenue from the development. 'B' Pvt Ltd. will undertake all activities connected to the development including obtaining approvals, etc. for which it will be entitled to 72.5% share in revenues. These shares are subject to minor changes in the event of any delays as stipulated in the agreement.

- (a) In the hands of 'A' Pvt Ltd., would the gains be chargeable to tax under the head Capital Gains? Can the department invoke Section 45(2) and take a view that the income is in the nature of Business Profits?
- (b) In which year would liability to tax arise, if the income is charged to tax as business profits?
- (c) What would be the extent of charge to tax under various heads of income?
- (d) In the event of invocation of Section 45(2), is it permissible to substitute Guideline value of the property for computation of Capital gains?

What happens in a reverse situation, i.e. where stock in trade is converted to capital asset?

## ISSUE 9

Dakshin Pvt Ltd. holds certain lands as Investment. During the year ended 31<sup>st</sup> March 2019, it transferred the lands as capital contribution to M/s.Dakshin a partnership firm, in which Dakshin Pvt Ltd. is a partner.

- (a) How is the income from capital gains to be computed in the hands of Dakshin Pvt Ltd.?
- (b) If, after, transfer to the firm, the firm revalues the lands in its books of account, would there be any tax implication in the hands of Dakshin Pvt Ltd.?

## ISSUE 10

M/s.Krishna Constructions is a partnership firm in the business of property development. It has three partners. During the year ended 31<sup>st</sup> March 2019, the partnership firm was dissolved on the death of the Managing Partner.

- The two remaining partners want to convert the firm into an LLP and continue the development business. Will there be any tax implications on such conversion u/s.28 / 45 / 50B?
- If, instead of the above, one of the partners wants to take over the development business while the other partner takes over the other assets (including immovable property) of the firm, what would be the tax implications u/s.28 / 45 / 50B?
- In the above scenario if the immovable property has been held as capital asset by the firm, how is the gain to be reckoned? What will be effect of section 50C in such a case?
- If the partner who takes the assets, subsequently wishes to sell the same, what would be the cost of acquisition in his hands?
- How would the final buyers in a project developed by the firm be affected in the first two situations?

## ISSUE 11

Kavitha owned 5 properties. She died intestate leaving behind her husband, a son and two daughters. After her death and in order to overcome possible administrative issues that may arise, Kavitha's husband and the daughters gave up their interests in the properties in favour of Kavitha's son. For doing this the son paid the other legal heirs Rs.2 lakhs each (Market value of the properties was Rs.25 crores on the date of the execution of the settlement deed). Will this transaction give rise to capital gains, especially in view of the consideration mentioned in the settlement deed?

## **ISSUE 12**

The assessee had purchased a house property from a friend for a consideration below the market value as the property was mortgaged by the friend in a bank. The assessee had purchased the property for a lower consideration on the condition that the assessee will settle the bank loan. It may be noted that though the property was purchased for a lower consideration the assessee had paid stamp duty on the market value of the property. Later the assessee had sold the property and settled the mortgage loan. Whether the assessee will be eligible for claiming the mortgage loan repaid as deduction from the sale consideration.

## **ISSUE 13**

Fazil holds certain extent of lands in Hyderabad. All the lands are in one stretch except one piece which is on the neighbouring stretch of land. Subsequent to negotiations the owner of the piece of land lying on Fazil's stretch agreed to exchange that piece with Fazil's land on the neighbouring stretch. Fazil wants to know whether this would be a case of transfer of property even if both pieces of land are exactly equal in extent, though both pieces have different guideline values.

## **ISSUE 14**

Praveen sold a commercial building in which he was running his business in the year 2018-19 on 12.06.2018 and moved to a rented premises. He did not had any other building in the said block of asset. Praveen had entered into an agreement of sale on 26.12.2017 for a sale consideration of Rs.1.60 crores. He had received a sum of Rs.1 lakh on 23.12.2017 by way of cash and a sum of Rs.20 lakhs by way of cheque on the date of agreement. However the sale deed was registered only on 12.06.2018 since Praveen had some problems in getting the title deed released from the bank. The purchaser was willing to pay stamp duty on the guideline value on the date of sale agreement which was Rs.1.69 crores and informed Praveen that the balance stamp duty calculated based on the guideline value of Rs.1.72 crores on the date of registration should be borne by Praveen as the stamp duty has increased due to the delay on the part of Praveen. Praveen admitted gain on sale of the said property by reducing the full value of consideration from the written down value of the building and also the difference in stamp duty incurred by him. Praveen had claimed exemption u/s.54EC by investing the sale consideration in tax saving bonds. Is Praveen eligible to claim the exemption?

Since Praveen was holding only one building and this has been transferred during the year, would section 50 be applicable? Can it be represented that a block of assets implies existence of more than one item of fixed asset, and therefore section 50 will not apply in this case?

## **ISSUE 15**

A private limited company has been in the business of real estate for the past 20 years. It had on its balance sheet a number of assets being land and buildings. Two of the buildings were being used for its business and the rest of the properties were held by it

as stock-in-trade. In July 2019 the company sold the entire undertaking to another private limited company and in consideration was issued shares in that company. The question before the company now is whether the transaction would come within the meaning of slump sale transaction u/s 50B.

### **ISSUE 16**

Arvind has sold a plot of land on 09.07.2019 for Rs.5 lakhs. The sale was a distress sale. The value fixed for registration by the Stamp Authorities was Rs.14 lakhs. The buyer of the property has paid the stamp duty on the said Rs.14 lakhs without disputing the same under the relevant law. Is it required that Arvind the seller of the property must request the Assessing Officer to refer the matter to the valuation officer in the course of assessment proceedings failing which the Assessing Officer could take the sum of Rs.14 lakhs as the full value of consideration?

### **ISSUE 17**

Harsh had sold a property and invested the gains in the construction of another property. Deduction u/s.54 has been claimed by making investment in another property. The building has been completed in June, 2019, after 4 years of entering the agreement of sale. Now in September, 2020 Harsh wants to sell the property. Would it be taxable as short term or long term capital gains?

If the flat has not been completed even after 4 years and Harsh wants to sell his rights under the agreement of sale, what would be the position? What would be the status of the gains earlier claimed as exempt u/s 54?

### **ISSUE 18**

Radha had sold a land admeasuring 2400 sq. ft, a residential house admeasuring 1100 sq. ft on a land of 1500 sq ft and some shares which she held for more than 5 years. She had earned a long term capital gain of Rs.35,21,600/-, Rs.28,92,130/- and Rs.5,49,000/- respectively from out of the above sale. She has purchased a new residential house property for a sum of Rs.1 crore and claimed exemption u/s.54F and u/s.54 against the long term capital gains that she had earned. Is she eligible to claim exemption u/s.54F and 54 in respect of investment in the same residential house. Will Radha be eligible to claim exemption u/s.54F / 54, if she had made the investment in the additional construction of an already existing house.

### **ISSUE 19**

The assessee, an individual, is the owner of a house property which was held by him for more than 10 years. He sold the same during the previous year relevant to the assessment year 2018-19.

Prior to six months from the date of sale of the said house property the assessee had invested in another flat. The assessee therefore claimed exemption u/s.54 on the

reinvestment made in another flat. The Assessing Officer has proposed to disallow the claim of exemption u/s.54 for the reason that investment in a flat amounts to construction and therefore the exemption would not be available u/s.54 as the said section allows a deduction only where a residential house is constructed within three years from the date of transfer of the long term capital asset. Is the Assessing Officer correct in his view?

If in the above case instead of investing in a flat, if the assessee had commenced construction of an independent house one year prior to the date of sale of the house property, on a land which was bought by him 5 years back, will he be eligible to claim exemption u/s.54 in respect of the cost of the land as well as the cost of construction.

If the assessee had not received the sale consideration in time and had invested in the new property from out of borrowed funds, will the assessee be eligible for claiming exemption u/s.54?

## **ISSUE 20**

Where a person sold, during his lifetime, a house property where he had resided, thereby earning capital gains, and his legal representative fulfills the condition as to purchase or construction of a new residential house within the stipulated period, will the benefit of section 54 be attracted to the capital gains earned by the deceased

## **ISSUE 21**

The assessee has sold a property and claimed exemption by investing in a residential property. However the assessee has registered the property in the name of his spouse. Will the assessee be eligible for claiming exemption? What will be the position if the investment is made in the name of son / daughter?

## **ISSUE 22**

In a case where the provisions of section 50C are attracted and where the guideline value is taken as the full value of consideration, what will be the amount to be invested for the purpose of claim of exemption u/s.54 / 54EC / 54F? If the assessee has invested the entire capital gains taking it on the basis of the Guideline value, can exemption u/s 54 be claimed?

## **ISSUE 23**

An assessee has sold a capital asset and invested in construction of a residential house. The assessee has not invested the sale consideration / capital gain in a capital gains account scheme before the due date for filing the return of income. However the assessee has utilized the said amounts for construction of the residential house and the construction was completed before the due date for filing the return of income u/s.139(4). Can the assessee claim exemption u/s.54 or 54F by filing the return of income u/s.139(4)?

What will be the position if the assessee has filed the return of income u/s.139(1) claiming exemption against long term capital gains, but has made the investment in residential house before the due date for filing the return of income u/s.139(4)

Will it make a difference if the assessee has invested the sale consideration in his savings bank account but has utilized the entire amount within a period of three years from the date of sale, for construction of the new house property

#### **ISSUE 24**

The assessee is the owner of a land which is situated beyond 8 Kms from the municipal limits in an area covered under the Town Panchayat. The population as per the last census is more than 10000. The land is classified as an agricultural land in revenue records. The assessee proposes to sell this land. In order to be eligible for exclusion from the meaning of capital asset, is it necessary that the land should have been used for the purpose of agriculture prior to the sale? Is it also necessary that agricultural income must have been offered to tax or would the exclusion apply even if the produce which are fruits like mango and guava which are used for own consumption?

#### **ISSUE 25**

- (a) MPN Builders are constructing an ultra-deluxe residential complex and each unit costs a sum of Rs.90 lakhs. They have sold 3 units in the building. At the time of sale of the 4<sup>th</sup> unit, the buyer insists on deducting tax u/s 194-IA. MPN Builders wants to know whether the buyer is right and if yes, what would be the consequence in the case of the first 3 buyers who had not deducted the tax. If the 4<sup>th</sup> buyer is right, when will he deduct the tax and how can MPN Builders claim credit for the tax deducted?
- (b) In another project there are three co-owners to a flat that was sold by MPN Builders and each were holding equal share in the flat. The cost of the flat was Rs.1.20 crores. Whether the buyers will have to deduct tax at source u/s.194-IA?