

- 1. Under development agreement, when assessee handed over physical possession of property to builder allowing it to enjoy 60 per cent of land in lieu of 40 per cent of constructed area, it was to be concluded that transfer took place.** The transaction between the assessee and the builder is by way of arrangement or agreement which has the effect of transferring the landed property for enjoyment of the builder. In other words, the assessee transferred 60 per cent of the land area to the builder for its enjoyment. Therefore, there was a transfer on 8-12-2006 within the meaning of section 2(47)(i) and 2(47)(vi). Therefore, the relevant transaction took place in the financial year 2006-07 which falls in the assessment year 2007-08. Hence capital gain, if any, is assessable only in the assessment year 2007-08 and certainly not in the year 2009-10. The Commissioner (Appeals) proceeded to observe that the capital gain arises only on the date of completion of the construction of flats and its handing over to the assessee. This observation is totally contrary to the provisions of section 2(47). In fact, the assessee entered into an agreement and handing over the physical possession of the property to builder allowing it to enjoy 60 per cent of the land in lieu of 40 per cent of the constructed area. Thus, the transfer took place on 8-12-2006 and the assessee is liable for payment of capital gain tax in the assessment year 2007-08. Therefore, no capital gain tax arises in the year in which the construction was completed and the constructed area was handed over to the assessee. **Income-tax Officer v. Mrs. P.A. Sarala [2015] 154 ITD 168 (Chennai - Trib.).**
- 2. Where the predominant activities of assessee was not to earn income but to provide facilities for disseminating or exchanging knowledge as per object of society, merely because incidental income was earned by assessee society by providing hostel and catering activities, it could not be said that assessee was doing trade or business as contemplated under proviso to section 2(15).** It was found from records that predominant activities of the centre was not to earn income but to provide facilities for disseminating or exchanging knowledge as per the object of the society. There is no gainsaying that without creating a proper platform the primary object of dissemination and exchanging of knowledge could not be achieved. Therefore, whether in aforesaid circumstances merely because incidental income was earned by assessee society for achieving its dominant object from providing hostel and catering activities, it cannot be said that the assessee was doing trade or business as contemplated under proviso to section 2(15). The centre had to necessarily charge for the hostel, catering and use of such facilities from members/participants since it had to recover cost and at the same time have enough funds to carry out the charitable activities. The Court is reminded at this juncture of an old saying - "Everything comes at a price". It is incomprehensible that an institution which is carrying out charitable objects will provide the essential facilities free of charge. It is not the allegation of DIT(E) that the main object of assessee, in any manner, did not fulfil the criteria of charitable activity. On the contrary she herself has observed that the first category does fulfil the charitable purpose/criteria and it is only the second category *i.e.* giving of hostel, catering etc. that the assessee's activities are caught

within the mischief of second proviso to section 2(15). It is also not the case of DIT(E) that there was no free access to the general public for programmes such as dance, music, seminars etc. In its reply the assessee had also pointed out that there were number of occasions when the centre did not charge institutions for holding their programmes such as lectures, discussions or seminars etc. Admittedly there is no funding from government or any other outside bodies to sustain activities of promotion of cultural and intellectual activities and, therefore, the assessee had to be totally self supporting and self financing and for this purpose, in order to achieve its main objective, it had to charge and earn receipts from members so that the activities could be carried out. Admittedly, the assessee is disseminating knowledge to general public on subjects ranging from art, dance, urban development means etc. through conferences, lectures etc. It was further pointed out before Assessing Officer that even while charging the members, there was no commercial motive in fixing the rates. The rates were nowhere near the commercial rates and were generally fixed to recover the cost and cost of activities to run the centre. These activities could not be treated in the nature of trade or commerce. **India International Centre v. Assistant Director of Income-tax [2015] 154 ITD 220 (Delhi - Trib.)**