

**CERTIFICATE COURSE ON REAL ESTATE
ORGANISED BY VOCA INDIA.**

ISSUES U/S. 50C

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Introduction

- As per S.48 of IT Act, 1961, full value of consideration on transfer of a capital asset is the consideration received or accruing on such transfer. Hence, the actual sale consideration is relevant for computation of gains and not the fair market value as is held by the Supreme Court in **CIT v/s. George Henderson & Co. Ltd. (1967) 66 ITR 622** [transfer of shares at BV]& reiterated in **CIT v/s. Gillanders Arbuthnot & Co. (1973) 87 ITR, 407 (SC)**, except where full value of consideration has been specifically substituted by fair market value or by any other mode.
- K.P. Varghese v/s. ITO (1981) 131 ITR 597(SC) [S.52, Sale to DIL at purchase price- understatement means actual receipt]

Scheme of provision of S.50C.

The Finance Act, 2002, is inserted by S.50C in the Income Tax Act, 1961 with effect from 1-4-2003.

Briefly speaking, sub-section (1) of section 50C deems as the full value of consideration received or accruing on the **transfer** of a **capital asset, being land or building or both** the value adopted or assessed or assessable (inserted w.e.f 1-10-2009) for the purpose of stamp duty by the concerned State Government authority where such value is higher than the consideration shown in the transfer deed. Under sub-sec (2) the assessee may claim that the value adopted for stamp duty purposes exceeds the



fair market value of the property as on the date of transfer and, in such a case, the Assessing officer if he does not agree with the assessee, should refer the valuation of the property concerned to a Valuation Officer. Sub-section (3), thereof provides for the adoption of the stamp duty or the value determined by the Valuation officer whichever is less.

Circle rates are only guidelines (Ramesh Chand Bansal v Dist Collector (1999) 5 SCC 62)

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- By Finance Act 2016, w.e.f AY 2017-2018, First and Second proviso is inserted to S.50C(1). As per First proviso if date of agreement fixing consideration and date of registration for the transfer of capital Asset are not same then stamp valuation as on date of Agreement will be taken. As per Second Proviso, First proviso will apply if entire consideration or part of it is received through banking channels on or before the date of Agreement.
 - **Ramesh Govindbhai Patel v ITO [2020]118 taxmann.com 201 (Ahd)(Trib.)** - ATS – 21/12/1996, Reg – 11/10/2010. Consideration – Rs 2,36,000/-, SV – Rs 51,63,265/-. Addition made u/s 50C deleted as no reference was made to DVO.

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- First & Second proviso apply retrospectively.
 - Amit Bansal v ACIT (2019) 174 ITD 349(Del)(Trib).
 - Dharamshibhai Sonani v ACIT 142 DTR 62(Ahd)(Trib).
 - Insertion of the word “Assessable” is prospective.
 - Smt Alka Jain v ACIT [2020] 116 taxmann.com 413 (Del)(Trib)

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- Third Proviso to S.50C(1) was inserted by Finance Act 2018 w.e.f 1-4-2019 providing a tolerance limit of 5%.
 - 10% or less limit was accepted by Tribunals before amendment.
 - M/S LGW LTD v ITO ITA No 267/Kol/2013
 - ACIT v Suvarna Rekha ITA NO 43/HYD/2009
 - Rahul construction Co v ITO 51 SOT 192

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- The Constitutional validity of S.50C has been upheld by Madras High Court in **K.R. Palanisamy & Ors. v/s. UOI &Ors. (2008) 306 ITR 61(Mad.)** and Bombay High Court in **Bhatia Nagar Premises Co-op. Soc. Ltd. v/s. UOI &Ors. (2011) 334 ITR 145 (Bom.)**. The important principles relating to provisions of S.50C laid down by the Courts while upholding the Constitutional Validity of S.50C are as under:
 - S.50C is only a standard of measure for computation of the tax which is chargeable u/s.4 and 5 of I.T. Act.

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- A complete full proof safeguard has been given to the assessee to establish before the authorities concerned the real value under sub-section (2) of Section 50C. Hence, S.50C deals with real value which is to be determined only after hearing the assessee as per the statutory provisions.

 - The provisions of S.50C cannot be read down as assessee has been given an opportunity to rebut the presumption as to the fair market value of the capital asset arrived at by the authorities under the Stamp Act. Hence, the ratio of decisions of Supreme Court in K.P. Varghese v/s. ITO (1981) 131 ITR 597 is not applicable to S.50C.


Applicability of S/50C to rights in land / Buildings.


To determine applicability of S.50C to rights in land and building, would require interpretation of the words “transfer by an assessee of capital asset, being land or building or both” as contained in sub-section (1) of Section 50C. The term capital asset is defined in S. 2(14) to mean property of any kind held by an assessee. The term property is a term of widest import and it signifies every possible interest which a person can clearly hold and enjoy other than the exceptions carved out in the section itself.




i. Development Agreement

As per Article 5 (g-a) of the Maharashtra Stamp Act, 1958, stamp duty on any agreement relating to giving authority or power to a promoter or a developer, by whatever name called i.e., a development agreement shall be same as stamp duty payable on conveyance.

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- Even under RERA, owner of the property as well as the developer are classified as promoters and are required to convey land and building within specified time from formation of a co-operative society.



The development agreements generally satisfy the conditions of S. 53A of Transfer of Property Act, 1882, (TOPA) and accordingly as per the provisions of S. 2(47)(v) of the Income Tax Act, the transaction of transfer is completed. Hence, when a development agreement satisfies the conditions of transfer u/s.2(47)(v) r.w.s. 53A of TOPA, it effectively results in transfer of land and building. Thus S.50C would be applicable to such development agreements.



Chiranjeevlal Khanna vs. ITO (2011) 132 ITD 474 (Mum.)(Trib.) it was argued by the assessee who was the owner of land and building and had entered into development agreement that S. 50C is not applicable to transfer of rights in land and building. The Hon'ble Tribunal on perusal of the Development agreement came to the conclusion that what was really transferred by virtue of the development agreement was not merely rights in land and building but the land and building itself and hence, S. 50C was applicable.



Arif Akhtar Hussain vs. ITO, (2011) 140 TTJ 413 (Mum.)


It was held that continuance of name of assessee (Owner) in the Municipal records and Property Registration card as owner after entering into the development agreement would not make any difference.

Voltas Ltd v ITO (2016) 74 taxmann.com 99(Mum)(Trib) – S.50C not applicable to transfer of development rights as there was no transfer of land.

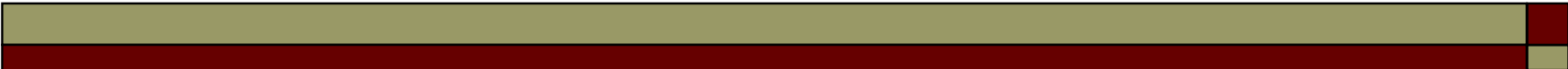
Loading of TDR /DRC/FSI by entering in development agreement

As per Development Control Laws, applicable to Greater Mumbai, development potential of land is separated from the land and is made available to the owner of the land in the form of TDR. Development Control Laws provides the circumstances when such Development rights are made available to owners [such as surrender of land to Govt. for road widening etc.] as well as provides for utilisation of such TDR on plot vacant or developed or by construction of additional floors subject to FSI available.


Hence in Mumbai by virtue of the DCR, 1991, several Societies of receiving plot got the right to construct additional floors by loading TDR.




Maheshwar Prakash – 2 Co-op Housing Soc vs. ITO (2009) 313 ITR (AT) 103 held that where society enter into agreement with Developer whereby developer has to purchase TDR at his own cost and load the same on the property of the society for constructing additional floors, what was transferred is the right to construct which right came into existence due to coming into force of DCR 1991 and such right had no envisigable cost and hence such transfer of right was outside the ambit of S.45.



Similar view is taken in *Jethalal D. Mehta vs. Deputy CIT* (2005) 2 SOT 422 (Mum.), *ITO vs. Lotia Court Co-operative Hsg. Soc.* (2008) 118 TTJ 199 (Mum.), *New Shailaja Co-operative Hsg. Soc. Ltd. vs. ITO* (2009) 121 TTJ 62 (Mum.) and *Om Shanti Co-operative Hsg. Soc. Ltd. vs. ITO* ITA No. 2550/M/2008, Dtd. 28th August, 2009 (ITAT- Mumbai) *Land Breeze Co-operative Housing Society Ltd. vs. ITO* (2013) 55 SOT 103 (Mum.) (Trib.) [confirmed by Bombay high court in ITA NO 334 of 2013 dtd 11.3.2015] and *CIT v. Sambhaji Nagar Co-op. Hsg. Society* (2015) 370 ITR 325 (Bom.)(HC).



Hence, where development agreements are entered for loading TDR and making additional construction, consideration received is not exigible to capital gains u/s. 45 and consequently S.50C shall not be applicable.




It is pertinent to note that in all the above cases the Hon'ble ITAT had given a finding of fact that land and building was not transferred by the societies. Hence, Tribunal in Chiranjeev Lal Khanna (Supra) after considering all these decisions held that, on fact, these decisions were distinguishable and S.50C was applicable to transfer of development rights.

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- The Hon'ble ITAT in Shri Manohar H Kakwani v ITO ITA No 7582/Mum/2014, AY 2009-2019, dtd 9-10-2015 (Mum)(Trib) considered Chiranjeevlal Khanna (supra) but did not follow the same in view of Bombay High Court decision in Sambhaji Nagar(Supra). Decision is approved by the Bombay high Court. Income Tax Appeal No. 822 of 2016 (A.Y.2009-10) heard on 07/01/2019,

Sale of TDR/FSI/DRC

ITO vs. Prem Rattan Gupta ITA No.5803/M/2009 A.Y. 2006-07 dtd. 28/3/2012(Mum)(Trib) held that value of consideration received on transfer of TDR / additional FSI granted on account of land acquisition cannot be subject matter of S.50C as there is no transfer of land and Building.

The said decision was rendered after considering the decision of Bombay High Court in the case of **Chedda Housing Development u/s. Banijan Sheikh Farid 2007 (3) MLJ 402** in which their lord ships have held that TDR is an immovable property.



Assignment of such TDR will not attract S. 50C as even though they may be regarded as immovable property but they cannot be regarded as land and building. Similarly transfer of incentive FSI would also not attract S. 50C as there is no transfer of land and building.

IV. Leasehold / Tenancy Rights

Atul G. Puranik vs. ITO (2011) 132 ITD 499 (Mum.) has held that S. 50C is not applicable to assignment of lease hold rights in Plot owned by CIDCO. In this case the assessee had transferred lease right for sixty years in the plot.(Long Lease). Taxable as CG but 50C not applicable. [No Appeal filed before Bom HC].

CIT v Greenfield Hotels & Estate(P) Ltd (2016) 389 ITR 68(Bom)(HC)

DCIT vs. Tejinder Singh ITA No. 1459/Kol./2011 dtd. 29/2/2012(Kol)(Trib) Assessee had transferred lease hold rights held for 99 years in a house property. It was held that “Lease hold right in land & building” cannot be equated with the “land and building” and accordingly S.50C was not applicable.

Kishori Sharad Giatonde vs. ITO ITA No. 1561/M/09 dtd. 27/11/2009(Mum)(Trib) the assessee a tenant in flat had sold tenancy rights. The Tribunal held that S.50C was not applicable to sale of such tenancy rights.

ITO vs. M/s. Pradeep Steel Re-rolling Mills Pvt. Ltd. in ITA No. 341/M/2010 dtd. 15/7/2011 held that provision of S. 27(iib) which says that a person shall be deemed owner of the building if such person acquire any rights with respect to a building by virtue of a transaction referred to in S. 269UA(f) i.e. lease of more than 12 years etc, shall not extend to computation of capital gains and accordingly S.50C is not applicable to transfer of such lease hold rights.[**Appeal admitted by Bom HC**]



Shavo Norgren (P) Ltd. vs. DCIT (2013) 58 SOT 23

(Mum.) it was held on facts, that prima facie S.50C was applicable to the lease hold rights. Assessee had taken a plot of land on lease from MIDC for 95 years from 1/11/1967 which lease hold rights were assigned by assessee on 9/4/2007 and constructed building thereon.

Kancast Pvt. Ltd. vs. ITO (2015) SOT 110 (Pune) (Trib.)

held in favour of assessee after considering Shavo Norgren (supra). [Appeal admitted by Bombay HC]

**Fleurette Marine v ITO (2015) 70 SOT 203
(Mum)(Trib)**

Transfer of tenancy rights- 50C not applicable.

**ITO v Tara Chand Jain (2015) 155 ITD 956
(Jaipur)(Trib)**

Kashtkar right in land.

**Ritz Suppliers (P.) Ltd.v ITO [2020] 113
taxmann.com 349 (Kolkata - Trib.)**

Leasehold rights of 99 years in Unit in Mall was transferred.

Contrary view

Ram Ji Lal Meena v. ITO (2018) 168 DTR 245 / 303 CTR 821 / 102 CCH 316 (Raj.)(HC)

Assessee sold lease hold land under a registered sale deed. The property was leasehold land and ownership vested with the state government. AO made addition ~~under the head capital gains and invoked S. 50C. CIT(A) and Tribunal confirmed~~ the addition. High Court held that if analogy is taken from referring to the decision of CIT v. Greenfield Hotels & Estates Pvt Ltd (2016) 389 ITR 68 (Bom) (HC) section 50C would not be applicable in majority cases. The High Court cannot re-write the provision. Accordingly the view of the Tribunal is affirmed.

- 50C v 54D (capital asset, being land or building or any right in land or building), 50C v 269UA(d).

V. Booking Right

In **ITO vs. Yasin Moosa Godil (2012) 72 DTR 167 (Ahd.) (Trib.)** assessee had transferred booking rights in the flat by a tri-partite agreement between assessee, developer and new buyer. The Tribunal held that S.50C was not applicable to booking rights in land or building.

Shree Laxmi Estate(P)Ltd v ITO (2019) 178 ITD 98(Mum) – Sale of under-construction flats- 43CA not applicable.

Applicability of S.50C in case of transfer of capital asset by a person to a firm etc under S.45(3).

- S.45(3) – amount recorded in the books of account of the firm shall be deemed to be the full value of consideration.
- Clash of two deeming provisions – S.45(3) v 50C.
- Both the provisions are without any non obstante clause and also both provisions are deeming fiction created for the purpose of taxation of transfers of capital asset in special cases, hence there is question of importing another deeming fiction to determine the deemed full value of consideration.
- Relevance of charging provision. Hence situation is of importing 50C into 45(3)
- Hon'ble Supreme Court in the case of CIT vs Moon Mills Ltd, (1966) 59 ITR 574.

Carlton Hotel P. Ltd. vs. ACIT (2009) 122 TTJ 515. (Applicable)


Amartara v DCIT (Mum) (Trib) (UR)

(ITA NO 6050/M/2016 / ITA No 1614 / Mum/2016 dt 29 -12 -2017 (AY. 2012 -13) { Not Applicable}


M/s Network Construction v ACIT ITA No 279/M/2017(Mum)(Trib)[dtd 11.08.2020]

Decision in Carlton Hotel Pvt Ltd v ACIT (2009) 122 ITTJ 515 (Luck)

(Trib) is distinguished , High Court set aside the order of the Tribunal , CIT v. Carlton Hotel Pvt Ltd (2017) 399 ITR 611 (All) (HC), SLP of the assessee is dismissed , Carlton Hotel Pvt Ltd v ACIT (SC).




Though S. 50C is a Special Provision dealing with land and building, it is not a “notwithstanding” provision to override other provisions of the I.T. Act. Further, even S. 45(3) is a special provision dealing with a particular situation and cannot be taken as a general provision. Legal fiction u/s. 45(3) as well as under S. 50C is created for determining sale consideration and hence they run in same spheres.




Hence, there is conflict in application of these two legal fictions in a given case simultaneously as it results in supposition on other supposition of law which is not warranted or supported by the language of the relevant provisions and to do so is impermissible in law.

Applicability of S.50C to Computation of capital gains u/s.50 on transfer of Depreciable Assets


ITO vs. United Marine Academy (2011) 130 ITD 113 (Mum)(SB) wherein it is held that provisions of S. 50C **are applicable** to transfer of depreciable capital asset covered by S. 50. According to the tribunal, legal fiction created u/s. 50C is for “full value of consideration” and legal fiction created u/s. 50 is for “cost of acquisition”. Hence, both the legal fictions operate in different fields and do no conflict with each other.



An important issue arises as to the stage at which S. 50C is to be invoked i.e. at the time of ascertaining the “excess” of net sale consideration over the depreciable value of the block u/s. 50 or after such “excess” is ascertained.



As per S. 43(6)(c), written down value in case of block of assets shall be the opening WDV of the block as adjusted by actual cost of asset 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 expressions “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.




Section 50 deems the excess of net sale consideration over opening WDV and the cost of new asset added to the block as short term capital gains. On a co-joint reading of S. 43(6)(c) and S. 50, it can be concluded that at the time of ascertaining the excess, only the actual value of consideration received or accruing as a result of sale should be considered without regard to the deeming provision of S.50C. Thus, once there is such excess, then and only then S. 48 gets triggered and consequently S. 50C would become applicable.



The issue as stated aforesaid has not been determined by the Special Bench.

Bhaidas Cursondas & Co V/s ACIT [2015] 154 ITD 521 (Mumbai - Trib.)

Deeming provisions of section 50C, where stamp duty value was adopted as sale consideration, were applicable for limited purpose of computing capital gains and it had no application in determination of written down value of relevant block of assets



Where all 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 S. 48, 49 and 50C would be applicable.

**Smita Conductors (2015) 152 ITD 417
(Mum)(Trib.)**

Applicability of S.50C to Slump Sale u/s.50B.

Dy.CIT v/s. Summit Securities Ltd. (2012) 135 ITD 99 (Mum)(SB)

S.50C is not applicable for computing capital gains u/s. 50B.

“Explanation 2 to section 2(42C) defining 'slump sale' has made it clear that the determination of the value of asset or liability for the purposes of payment of stamp duty etc. shall not be regarded as assignment of values to the individual assets or liabilities. It is, therefore, manifest that even if the assets of the undertaking, which is subject-matter of transfer, include land or building or both, the stamp value shall be ignored insofar as the computation of full value of consideration of the undertaking as a whole is concerned.”⁴⁰


Applicability of S.50C to stock in trade

The Madras High Court in **CIT vs. Thiruvengadam Investments P. Ltd. (2010) 320 ITR 345** has held that provisions of S. 50C is applicable only to ascertain the true value of capital asset and is not applicable to business assets i.e. stock in trade.

Inderlok Hotel (P) Ltd vs. ITO (2009) 122 TTJ (145)

CIT vs. Kan Construction and Colonizers (P) Ltd (2012) 208 Taxman 478 (All.)(HC)

CIT vs. Mukesh & Kishor Barot Co-owner (2013) 215 Taxman 151 (Guj.)(HC).



By Finance Act, 2013, with effect from 1/4/2014, section 43CA has been inserted in Chapter IV dealing with computation of Business Income. **PCIT v Swanand Properties(P) Ltd (2019) 267 Taxman 429(Bom)(HC) – 43CA is prospective.**


S. 92BA inserted by Finance Act 2012 w.e.f. 1/4/2013 gives powers to A.O. to enhance business profits in cases of “specified domestic transactions”. The Delhi High Court in **CIT vs. Discovery Estates P. Ltd. (2013) 356 ITR 159** has held that provisions of S. 92BA are prospective. Hence, even S. 92BA cannot be invoked to enhance the Business profit on sale of land and building.

Applicability of S.50C to S. 69, S. 69A,69B etc.
unexplained investments in the hands of buyer

Delhi High Court in CIT vs. Khoob Surat Resorts (P.) Ltd (2013) 256 CTR 371 has held that stamp valuation adopted u/s. 50C cannot ifso facto be a legitimate ground for concluding that there was an under valuation in the acquisition of immovable property and consequently no addition can be made in the hands of the buyer u/s. 69B.

In **ITO vs. Mrs. Inderjit Kaur (2012) 50 SOT 377 (Chd.) (Trib.)** it was held that legal fiction u/s.50C does not extend to S. 69. Similar view is held by the Punjab and Haryana High Court in **CIT vs. Chandni Buchar (2010) 323 ITR 510.** In **PCIT v Dharmaja Infrastructure [2019] 265 Taxman 125 (Guj)** held that Provisions of section 50C could not be applied for making addition under section 69B

Hence, S. 50C is not applicable to assessment of income in the hands of the buyer u/s.69, S.69B etc.



However, with effect from 1-4-2014, where buyer being an individual or a HUF u/s 56(2)(vii), and with effect from 1-4-2017 where buyer being any person u/s 56(2)(x), receives any immovable property for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration shall be taxed in the hands of the buyer.

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- **The Bombay High Court in Walchand & Co. P. Ltd. vs. CIT (1993) 204 ITR 146 (Bom.)** after considering the Supreme Court decision in **Laxmipat Singhania vs. CIT (1969) 72 ITR 291** held that, where the legislative intent is clear, even if it amounts to double taxation, there is no absolute bar or prohibition against it.

Applicability of S.50C to documents not registered


Carton Hotel (P) Ltd vs. ACIT (2009) 122 TTJ (Luck)
515, Navneet Kumar Thakkar vs. ITO (2007) 112 TTJ
(JD) 76 and Ranmal Bhansali vs. ACIT (2012) 143 TTJ
(Del) (UO) 65.

With effect from 1-10-2009, Finance (No.2) Act, 2009 inserted the words “or assessable” in S. 50C whereby transfers of properties without or before registration can also be subjected to provisions of S. 50C. Hence after introduction of the words “or assessable” such transfers where the value is assessable by the valuation authority are also brought into the ambit of section 50C.


The Madras High Court in **CIT vs. R. SuganthaRavindran (2013) 352 ITR 488** has after considering **Circular No.5 of 2010, dated 3/6/2010 (2010) 324 ITR (St.) 293(Expl Notes)(New class of transaction “ without”/”before registration”)** held that the amendment made by Finance (No.2) Act, 2009 is prospective in nature and cannot be applied retrospectively. Hence, the amendments have been made applicable with effect from October 2009 and will apply only in relation to transactions undertaken in or after such date.

Applicability of S.50C to sale of Shares of a Company where such Company is the owner of land and building.

In Irfan **Abdul Kader Fazlani v/s. ACIT (2013) 56 SOT 12 (Mum.)** it was held that 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 was held to be not proper and did not have the sanction of the provisions of the Act.

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- By Finance Act, 2017 w.e.f 1-4-2018 Section 50CA & Rule 11UAA are introduced. As per Section 50CA transfer of unquoted shares will be at Fair Market Value.

Reference to valuation officer – S. 50C(2)

Section 50C(1) – deems / presumes stamp valuation as sale consideration. However, this presumption is a rebuttable one at the option of the assessee.

Under S. 50C(2), the onus to show that stamp valuation is not the Fair market value is on the assessee and hence it is necessary for the assessee to **specifically dispute** the stamp valuation before the Assessing Officer.




Hence, provisions of S.50C(2) has to be invoked by the Assessee as held in **Sanjaybhai Z. Patel vs. ACIT (2011) 48 SOT 231 (Ahd.)** and **Ambattur Clothing Co. Ltd. vs. ACIT (2010) 326 ITR 248 (Mad.)**

Though S.50C(2) does not lay down any specific mode in which the stamp valuation is to be disputed, it is better to have valuation done by an independent registered valuer for disputing the stamp valuation .

A.O. is not an expert in valuation as held in **Ajmal
Fragrances and Fashions P. Ltd. vs. ACIT (2009)
34 SOT 57 (Mum.)** and hence, it is incumbent upon
the A.O. to refer the valuation to departmental
valuation officer.

The word “may” used in S.50C(2) should be treated
as “shall” once the assessee objects to the stamp duty
value as held in **A.T..E Enterprises P. Ltd. vs. Dy.
CIT (2013) 55 SOT 175 (Mum.)(Trib.), Anant Raj
Ltd vs ACIT [2020] 116 taxmann.com 741
(Del)(Trib.)**



Department valuation report is binding on the Assessing Officer as held in **CIT vs. Dr. Indra Swaroop Bhatnagar (2012) 349 ITR 210 (All.) (HC)** and **Bharat Jayesh Sangani vs. ITO (2011) 128 ITD 345 (Mum.)** and hence where the valuation by DVO is less than stamp valuation it will not be open to the A.O. to take stamp value as sale consideration.


Report of DVO is not binding on the CIT(A) as held by the Chennai Tribunal in **ACIT vs. MIL Industries Ltd. (2013) 142 ITD 428** and hence CIT(A) is fully competent to go below the valuation given by DVO.

The DVO report is not binding on ITAT as held by the Mumbai Bench of the ITAT in **Abbas T. Reshamwala vs. ITO, ITA No.892/M/2012, dt. 20/2/2013.**

ITO vs. Gita Roy (2012) 135 ITD 345 (Kol.)

Reference to DVO can be made by the CIT(A) also.

The **Madras High Court in N. Meenakshi vs. ACIT (2010) 326 ITR 229** entertained the writ petition and set aside the order of the A.O. adopting stamp valuation during the pendency of report from DVO as the assessment was getting time barred.



The court held that a writ was maintainable as S.50C(2) grants statutory protection to the Assessee and extended the time limit for completing Assessment after receiving report from DVO. Sometimes, A.O. adopts stamp valuation U/s.50C subject to DVO report where assessments are getting time bared. In such cases remedy u/s. 154 can be invoked. Where assessee does not file a writ petition, assessee can either place reliance or dispute the DVO report at the appellate stage also.


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- Claim by assessee for reference need not be expressed – Sunil Kumar Agarwal vs. CIT (2015) 372 ITR 83 (Cal.)(HC)
 - Before reference to DVO, AO must reject valuation by assessee / registered valuer by Speaking order – CIT vs. Shri Chandra Narain Chaudhri (2013) 219 Taxman 60 (All.)(HC)
 - Seksaria Industries Pvt. Ltd. vs. ITO (2014) 36 ITR 409 (Mum.)(Trib.)[Stamp valuation challenged-no benefit]
 - Pr CIT v Rajabhai hadiya(2016) 65 taxmann.com 18(Guj)
SV < DVO – SV, DVO < SV- DVO
 - BMJ Real Estate (P) Ltd v CIT (2016) 65 taxmann.com 123(P&H)
SV < DVO- SV

Public Auction/Encumbrance/Distress/Sale Certificate.

- ❑ ITO vs Southern Steel Ltd. ITA 1220/Hyd/2016 dated November 10, 2017(Hyd)(Trib) – Public auction price accepted. Held 50C not applicable.
- ❑ Krishi Utpanna Bazar Samittee vs DCIT in ITA No.2043/PN/2012 & ITA No.2166/PN/2012 dated March 20, 2014(Pune)(Trib)
- ❑ Y.K. Mohan Rao and others vs Chief Revenue Controlling Authority and others Civil Miscellaneous Appeal No.2089 of 2013 dated February 27, 2014. [Stamp duty value has to correspond Sale Certificate]
- ❑ Appadurai Vijayaraghavan v JCIT [2014] 369 ITR 486 (Madras) the Court held that Valuation requires to be referred to DVO for valuation in case of distressed sale. The Lucknow Tribunal in ITO v Hari Om Gupta [2016] 45 ITR(T) 137 (Lucknow - Trib.) has held that Market Value cannot be taken in case of distress sale.
- ❑ ACIT v Royal Stitches Pvt Ltd (TS-5283-ITAT-2010)(Chennai)(Trib) [DVO must consider disputed title]

Position when stamp duty value is contested under stamp duty law / challenged in court.

As per S. 155(15), where capital gain is computed by adopting stamp valuation U/s.50C(1) & such value is revised in any appeal or revision or reference referred to in S.50C(2)(b), the Assessing officer shall amend the order of assessment to adopt the revised value by applying the provisions of section 154 and the period of four years shall be reckoned from the end of the previous year in which the order revising the value was passed in appeal or revision or reference.




The above scheme of implementing S.50C is harsh as the seller will have to bear assessment at stamp valuation and wait till the stamp valuation issue is decided in the case of the buyer. It would have been better if assessment is made on the basis of actual sale consideration till the stamp valuation issue is decided in the case of the buyer.

Whether stamp duty value as on date of Agreement to sell or date of registration of Sale Deed to be adopted for S.50C.

[Prior to introduction of First & Second Proviso to S.50C(1)]


S.50C is not the charging section.

U/s.50C, the term “assessable” has been introduced from 1-10-2009 to cover transaction of transfer before their registration or where they are not registered. Hence, after 1-10-2009, it appears that if there is a transfer under sec.2(47) at the time of entering into agreement to sell, the stamp duty value assessable on the date of such transfer has to be adopted for determining the full value of consideration and not the stamp duty value ultimately assessed by the Stamp Valuation Authority on the date of registration.




However, where the agreement to sell does not result into transfer as defined u/s.2(47), the stamp duty value assessable on the date of registration will have to be taken for the purposes of Section 50C(1).

DCIT v/s. Venkat Reddy (2013) 57 SOT 117 (Hyd.),
Agreement of Sale was entered into on 13-6-2005 for Rs.2,75,00,000/- and possession was parted with on the same day. The Sale Deed was finally registered on 25-11-2005 and the market value for the stamp duty was Rs.4,30,70,000/-. The SRO value as on 25-11-2005 was Rs.8,000/- per sq. yds whereas on 13/6/2005 it was Rs 4,800/sq yard.



Bagri Impex (P) Ltd., v/s. ACIT (2013) 214 Taxman 305 (Cal.)(H.C.), Agreement to Sale was entered on 15-10-1996 (A.Y.97-98), assessee received balance consideration in A.Y. 06-07, Conveyance was executed on 26-5-2006 (A.Y.07-08)and registered on 27-11-2007 (A.Y.08-09) on which date stamp duty was assessed. Assessee offered sale proceeds for taxation during A.Y.06-07. According to Assessee as sale took place in A.Y. 06-07, S.50C is not applicable as A.O. has no power to adopt “assessable” stamp valuation in A.Y.06-07 as such power is available only after 1-10-2009.



The High Court held that assessee had himself not followed the provisions of S.2(47)(v). It further held that S.50C would be applicable in A.Y.06-07 as A.O. while making assessment had the stamp valuation before it. The amendment made in 2009 may have made the things simple. By adopting devices to defeat the provisions, assessee cannot be heard to say that S.50C is not applicable.

- CIT v Shimbu Mehra (2016) 65 taxmann.com 142(All)
Agreement to sell 2001, Sale Deed April 2003. [Transfer in 2001]
- ITO v Modipon Ltd ITA NO 2049/Del/2009(Del)(Trib)
Execution of sale deed v Registration of sale deed. [Relates back]

Penalty u/s. 271(1)(c) in case of addition u/s.50C.

CIT vs. Madan Theatres (2013) 260 CTR 75 (Cal) (HC)

Invocation of s.50C was accepted by assessee. High Court held that there was no evidence of understatement.

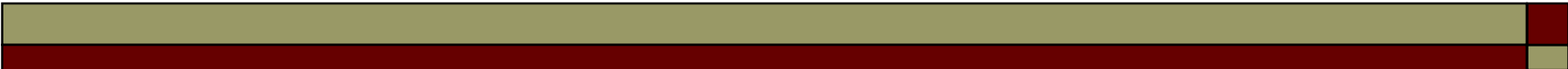
CIT v Fortune Hotels and Estates (P.) Ltd [2015] 232 Taxman 481 (Bom)(HC)

In terms of section 50C, higher sales consideration of property determined by DVO did not by itself amount to furnishing inaccurate particulars of income so as to levy penalty under section 27(1)(c)

Shri Chimanlal Manilal Patel vs. ACIT ITA No. 508/Ahd/2010

Assessee in revised return applied S.50C.

Renu Hingorani vs. ACIT ITA No. 2210/M/2010 dated (ITAT-Mumbai), assessee had agreed to stamp duty valuation u/s. 50C during assessment proceedings. A.O. consequently initiated penalty u/s. 271(1)(c). The Hon'ble ITAT held that A.O. had not questioned the actual sale consideration and addition was made only on the basis of deeming provision of the Income tax Act. Consequently, penalty levied u/s. 271(1)(c) was deleted by the Hon'ble ITAT. ⁶⁶



■ Similarly, penalty u/s. 271(1)(c) on additions u/s. 50C agreed by the assessee are deleted by the Chennai bench of the Tribunal in ACIT vs. Mrs. N. Meenakshi (2009) 125 TTJ (Chennai) 856 and Jodhpur bench of the Tribunal in Prakashchand Nahar vs. ITO (2007) 110 TTJ (Jd.) 886.

Applicability of S. 50C to Exemptions u/s. 54, 54F, 54EC etc.

The provisions of the Income tax Act granting exemption from capital gains are contained in S. 54, S. 54F, S. 54D, S. 54EC, S. 54G and S. 54GA. The exemption is available on the basis of investment of capital gains in new asset except S. 54F where exemption is based on investment of net consideration.


If S. 50C is applicable to the exemption provisions, then assessee would be expected to do the impossible i.e. make investment of notional capital gains computed by applying S. 50C for claiming the exemption. This would become more onerous in case of S.54F where net consideration is required to be invested. However, if S. 50C does not apply then the issue arises whether exemption computed on the basis of sale consideration without applying S. 50C would be restricted to capital gains computed without applying S. 50C or would apply to entire capital gains computed after applying S. 50C.

Illustration

Net sale consideration	Rs.10,00,000
Indexed cost of acquisition	Rs. 5,00,000
Stamp Duty value	Rs. 20,00,000
Capital Gains (after applying S. 50C)	Rs. 15,00,000
Capital Gains (without applying S. 50C)	Rs. 5,00,000


Now, if cost of new asset is Rs.6,00,000/- then entire capital gains of Rs.5,00,000/- (without applying S.50C) stand invested in new asset. The issue then is whether entire capital gains of Rs.15,00,000/- will be exempt or only capital gains of Rs.5,00,000 will be exempt.

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- In **Prakash Karnawat vs. ITO (2012) 49 SOT 160 (Jp)**, it was held that S. 50C is not applicable to **S. 54EC**. In this case, the entire capital gains calculated without application of S. 50C was invested. It was held that entire capital gains calculated after applying S. 50C was exempt as entire capital gains was invested as per S. 54EC. Hence, exemption was not restricted to capital gains computed without imposing S. 50C. Similarly in **Gyan Chand Batra vs. ITO (2010) 133 TTJ (Jp) 482**, it is held that if entire sale consideration without applying S. 50C is applied for buying new asset as per **S. 54F**, then entire capital gains calculated after applying S. 50C shall be exempted.
 - **Jagdish C Dhabalia v ITO (2019) 308 CTR 295(Bom)(HC)** Capital gains computed by applying S.50C has to be invested for purpose of **S.54EC**.
 - Will apply to S.54 but not 54F wherein net consideration is separately defined [50C states 48 but 54F doesn't. S.54F - “whole of such capital u/s 45 ”.



In **Gouli Mahadevappa vs. ITO (2011) 128 ITD 503 (Bang)**, it was held that S. 50C is not applicable to **S. 54F**. However, after giving effect to S. 54F, the capital gains which will be exempt u/s. 54F shall be the capital gains calculated without applying S. 50C and not the capital gains after applying S. 50C.

The above decision of Bangalore tribunal in Gouli Mahadevappa (supra) was challenged by the assessee before the Karnataka High Court. The Karnataka High Court reversed the decision of the ITAT and adopted the methodology of the AO and CIT(A) who had applied S. 50C to S. 54F and allowed the investment in new capital asset as a deduction. The High Court also observed that the assessee had not disputed the stamp valuation u/s. 50C(2) and hence the stamp valuation had become final. The High Court further granted benefit of investment made out of moneys from other sources against the addition on notional basis made u/s. 50C.



It may be noted that, the issue of applicability of S. 50C to S. 54F as well as the issue whether relief u/s. 54F is limited to the disclosed consideration without giving benefit to the addition u/s. 50C had not been specifically dealt with by the High Court and these were also not the substantial questions of law framed by the High Court.

The best way forward in case of genuine transactions would be to exercise the right of referring the valuation u/s. 50C(2) so that the deemed sale consideration u/s. 50C is same as disclosed consideration or atleast the difference between the two is minimal.

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- *Neela V. Shah vs. CIT (2012) 51 SOT 461 (Mum.)(Trib.) [54EC – Held 50C not applicable but exemption of actual amount invested only. Hence, balance will be taxable]*
 - *Nandlal Sharma v ITO 61 taxmann.com 271 (JP)[S.54 – in favour]*
 - *Dhanveer Singh Gambhir v. ITO [2015] 56 taxmann.com 205/68 SOT 343 (Indore - Trib.) [S.54- against – held 54F and 54 are different and Gouli was dealing with 54F]*

APPLICABILITY OF S.50C TO SALE OF TRUST PROPERTY

Relevant provision for computation – S.11(1A) similar to S.54F.

In ACIT v Shri Dwarikadish Temple Trust ITA NO 256/Luck/2011 (Lucknow)(Trib) and ACIT v M/s The Upper India Chamber of Commerce ITA No 601/Luck2011(Luck)(Trib) has held that where entire consideration received is reinvested than S.50C will have no application. Followed Gyan Chand batra(Supra)



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