

Taxation on Sale of Immovable Properties -Sections 43CA, 50C, 56(2)(vii)(b)

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Introduction

- Real estate transactions are one of the main source for generation and application of black money.
- The Government is regularly trying to plug loop holes in such transactions by inserting various provisions from time to time in the Income Tax Act
- Number of amendments have been introduced in the Income Tax Act in recent years.

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Introduction

- In an attempt to curb the black money, the Government introduced Chapter XXA in the Income Tax Act, 1961 which was in statute from 15.11.1972 to 30.09.1986.
- In Chapter XXA, the Government was required to determine the fair market value of the property but due to the view of the Supreme Court in the case of K.P. Verghese at 131 ITR 597, requirement of proving passing of under hand consideration from the buyer to the seller rendered Chapter XXA unworkable.

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Introduction

- In the case of K.P. Varghese vs The Income Tax Officer, the Hon'ble Apex Court held that :
“Understatement of consideration in a transfer of property is a necessary condition for attracting the applicability of sub-section (2) of section 52 of the Act, and Burden of proof of such understatement is on the Revenue. The sub-section (2) has no application in the case of an honest and bonafide transaction correctly disclosed by the assessee.”

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Introduction

- With effect from October 1, 1986, Chapter XXA was replaced by Chapter XXC which granted the Government pre-emptive right to purchase immovable property at a price agreed to by the transferor.
- Chapter XXC of the Act inter alia provided for the purchase of immovable property by the Central Government in certain cases of transfer. Whenever a person wanted to transfer an immovable property for a price exceeding specified amount, he could not do so before undergoing the procedure as laid down in Chapter XXC.

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Introduction

- Later, there were lot of litigations between the Income Tax Dept and the assesseees. The funds of the Government were unnecessarily blocked and Department was criticized for unnecessarily acquiring the high priced immovable properties.
- The Finance Act, 2002 deleted Chapter XXC w.e.f. 1st July 2002 and simultaneously introduced Section 50C w.e.f. 01.04.2003 (A.Y. 2003-04).

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Finance Act, 2013

- Most important amendments relating to the transfer of the immovable properties have been introduced vide Finance Act, 2013 w.e.f. 01.04.2014.
- Section 43CA and Section 56(2)(vii)(b) of the Income Tax Act, 1961 have been introduced.
- Also, introduced section 194IA for deduction of tax at source in case of sale of immovable property.

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Introduction

- The most important amendments made in the Income Tax Act, 1961 in regard to transfer of immovable property are section 50C, section 56(2)(vii) and section 43CA which cover more or less all types of transactions related to transfer of immovable property.

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Brief about Sec. 50C, 43CA, 56(2)(vii)

- Section 50C of the Income Tax Act, 1961 deals with consideration amount received on transfer of immovable property held as Capital Asset. It is applied in case of Capital Gain whether Short Term or Long Term.
- Section 56(2)(vii)(b) of the Income Tax Act deals with the valuation on transfer of an immovable property being received by an Assessee as Capital Asset.
- Section 43CA of the Income Tax Act, 1961 deals with consideration amount received on transfer of immovable property other than Capital Assets.

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SECTION 50C

- Text of Section 50C
- Salient Features of Section 50C
- Issues relating to the section

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Text of Section 50C (1)

“(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the “stamp valuation authority”) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.”

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Section 50C (1).....

- Sub-section (1) of section 50C seeks to provide that where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

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Text of Section 50C(2)

- (2) Without prejudice to the provisions of sub-section (1), where-
- (a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;
- (b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

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Text of Section 50C(2)

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1—For the purposes of this section, “Valuation Officer” shall have the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2- For the purposes of this section, the expression “assessable” means the price which the stamp valuation authority would have, notwithstanding anything to the contrary

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Text of Section 50C (3)

contained in any other law for the time being in force, adopted or or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

- (3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

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Salient Features of Sec 50C

- Where stamp duty valuation is higher than the stated consideration on transfer, the same is to be adopted for the purpose of computing capital gains.
- The exception is that in case the assessee can demonstrate that the fair market valuation is less than the stamp duty valuation, the fair market value is to be adopted.
- The safeguard is that the assessee's challenge to the stamp duty valuation before the tax authorities cannot put the assessee to any disadvantage.

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Salient Features of Sec 50C

- In effect, thus, when stamp duty valuation of a property is higher than stated value of sale consideration, only the onus to prove the fair market value has been shifted on to the assessee.
- As long as an assessee can reasonably discharge this onus, even under the scheme of section 50C, the consideration stated by him cannot be disturbed.

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Issues Relating to Sec 50C

- Section 50C imposes a heavy liability upon the assessee in respect of the full value of sale consideration of capital assets. The section only provides a sort of statutory presumption and places the burden on the revenue to prove that the under-consideration of the property sold is correct as per above rulings.

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SECTION 43CA

- Introduction to Section 43CA
- Text of Section 43CA
- Salient Features of Section 43CA
- Issues relating to the section

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Introduction of Section 43CA

- Under the provisions of the Income Tax Act, when a capital asset, being immovable property is transferred for a consideration lesser than the Stamp Duty Value, then the stamp duty value is taken as the full value of consideration u/s. 50C. However, these provisions did not apply to transfer of immovable property held as stock in trade.
- Accordingly, section 43CA was inserted in the Income Tax Act which is effective from 01.04.2014 and accordingly will apply to the assessment year 2014-15 and subsequent assessment years.

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Text of Section 43CA..

"(1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

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Text of Section 43CA..

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset."

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Salient Features of Sec 43CA

- This section applies to trading assets and not to capital assets. It applies to land or building or both (other than capital asset)
 - Will include, land, commercial units, residential house, etc.
 - Continuing controversy on scope of 'Land or building'
 - e.g .whether extends to transfer of development rights, Leasehold/Tenancy rights, etc.
- If the consideration amount has been paid by cheque either partly or fully in the year of agreement prior to the year in which the registration of the property is done, the stamp value of the property of the year in which agreement to sell was executed shall be treated as deemed consideration in the year of registration for the purpose of Income Tax.

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Salient Features of Sec 43CA

- The consideration value should be less than stamp duty value.
- Where taxpayer objects to SD value, he can seek valuation by DVO
 - In case, DVO's valuation is lower than SD, tax authority is bound by DVO's such lower valuation. However, where DVO's valuation is higher than SD, taxation will be w.r.t. SD value.
 - Valuation can be challenged in appeal proceedings

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Salient Features of Sec 43CA

- Provision may not apply to following cases :
 - Case of transfer of business undertaking, on slump basis as there is no identifiable consideration paid in respect of land or building
 - Case of contribution of stock in trade to partnership firm, since arguably, consideration is indeterminable in view of ratio of Sunil Siddharthbhai v. CIT (1985) 156 ITR 509 (SC)], in particular since section 45(3) applies for capital asset.
 - Point need to be considered whether section 56(2)(vii)(b) will get triggerred off, if introduction is at lower rate than FMV as per tax officer.

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Issues Relating to Sec 43CA

1) Hardship in Let out Property:

- Sections 43CA of the Income Tax Act, 1961 and section 50C of the Income Tax Act, 1961 create problems for genuine Assessees.
- If a person has a building which is occupied by tenants, cannot fetch market price if sold. Such property can hardly fetch 25% value of the stamp duty value. Such property owner may have to pay tax more than consideration amount being received by him. Difficulties will arise in sale of litigated or let out property.

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SECTION 56(2)(vii)(b)

- Introduction to Section 56(2)(vii)(b)
- Text of Section 56(2)(vii)(b)
- Salient Features of Section 56(2)(vii)(b)
- Issues relating to the section

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Introduction of Section 56(2)(vii)(b)

- Section 56(2)(vii)(b) before the amendment, provided that where any immovable property is received by an individual or HUF without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property would be charged to tax in the hands of the individual or HUF as Income From Other Sources.
- The said provision did not cover a situation where the immovable property has been received by an individual or HUF for inadequate consideration. Accordingly, the provisions of clause (vii) of sub-section (2) of section 56 have been amended.

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Text of Section 56(2)(vii)(b)

"(vii) where an individual or a Hindu undivided family receives, in any previous year, from any

person or persons —

“(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) 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:

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Text of Section 56(2)(vii)(b)

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property“

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Salient Features of Sec 56(2)(vii)(b)

- The section applies only to individuals and HUFs. Transactions related to purchase of property by company, partnership firm, LLP, Trust, AOP, AJP are out of the purview of this section.
- The stamp duty value of immovable property should be more than Rs.50,000/- if property is transferred without any consideration.

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Salient Features of Sec 56(2)(vii)(b)

- The difference in stamp duty value and consideration amount received should be less than Rs.50,000/- if the immovable property is transferred without inadequate consideration.
- With reference to above, stamp value shall be treated as deemed consideration for the purpose of Income Tax, if the value of stamp duty is higher than consideration value by more than Rs.50,000/-.

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Salient Features of Sec 56(2)(vii)(b)

- In case of property transferred without consideration, stamp duty value shall be treated as deemed consideration for the purpose of Income Tax.
- If the consideration amount has been paid by mode other than cash either partly or fully in the year of agreement fixing consideration, is entered into prior to the year in which the registration of the property is done, the stamp value of the property of the year in which agreement was executed shall be treated as deemed consideration in the year of registration for the purpose of Income Tax.

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Issues Relating to Sec 56(2)(vii)(b)

1) **Double Taxation:**

- There is an apparent double taxation where the above provisions come into play.
- Where a property whose stamp duty value is Rs.50 lakh, is sold for Rs.40 lakh by the builder, these Rs.40 lakh will constitute his part of earnings from sale along with the excess Rs.10 lakh which is the difference between the sale price and the stamp duty value. Thus the whole Rs.50 lakh will be offered as earnings (gross) in the hands of the Builder.
- Though here the whole amount of transaction of a certain property has been offered as earnings to be taxed, the same Rs.10 lakh (difference) is again taxed as deemed gift under Section 56(2)(vii)(b) in the hands of the purchaser, effectively taxing the net income on the difference of same Rs.10 lakh.

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Issues Relating to Sec 56(2)(vii)(b)

2) **Cost of Acquisition: [Section 49(4)]**

- The value which has to be taken into account for the purpose of section 56 (2) (vii) (b) is covered by Sub-section (4) in section 49 of the Act w.e.f. 01.10.2009.
- Section 49(4) states that for calculating capital gains on transfer of a property, the cost of acquisition of the property, value whereof is subject to tax under section 56(2)(vii)(b) shall include such value.

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Compulsory Acquisition

In respect of compulsory acquisition of immovable property, TDS is also required to be made on compensation amount exceeding Rs 2,00,000/- @10% as per provision of section 194LA of the Income Tax Act, 1961. This section does not apply in case of compensation received for agriculture land.

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Comparative Study of Special Provisions

Sr No.	Points	Sec 43CA	Sec 50C	Sec 56(2)(vii)(b)	Sec 194-IA
1	With Effect from	A.Y. 2014-15	A.Y. 2003-04	A.Y. 2014-15	01.06.2013
2	Substantive / Procedural	Substantive	Substantive	Substantive	Procedural
3	Aims at What ?	Computing Business Income - for builders - for dealers / traders	Computing Capital Gain	Discouraging purchase at less than Stamp Duty Value	Collection Through TDS + Covering in Tax Net / Reporting of Transaction as soon as transaction takes place (through TDS Returns)
4	Substitutes / Amends What ?	Sale Price	Sale Price	Purchase Price	N.A
5	Applies to Seller / Buyer	Seller (who is Builder / Trader)	Seller	Buyer	Buyer to Deduct TDS, if Value exceeds 50 lacs, if seller is Resident. If seller is Non-Resident 194-IA does not apply.

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Comparative Study of Special Provisions

Sr No.	Points	Sec 43CA	Sec 50C	Sec 56(2)(vii)(b)	Sec 194-IA
6	Applies to which kind of persons ?	All	All	Individual and H.U.F	All
7	Applies to which nature of Asset :- - Stock in Trade (SIT) or - Capital Asset (CA) or - BOTH	Other than Capital Asset	Capital Asset	Capital Asset	BOTH
8	Exactly which immovable properties are covered?	Land / Building / Both	Land / Building / Both	Land / Building / Both	Land / Building / Part of Bldg., [excluding redefined Agricultural land u/s. 2(14)]
9	Role of Departmental Valuation Officer	Yes	Yes	Yes	N.A
10	Are Properties in Union Territories hit / escaped ?	Escaped	Escaped	Hit	N.A
11	Word "Consideration" defined ?	No	No	No	No

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Comparative Study of Special Provisions

Sr No.	Points	Sec 43CA	Sec 50C	Sec 56(2)(vii)(b)	Sec 194-IA
12	"Transfer" defined ?	No	Yes, sec. 2(47)	"Receives" not defined	No
13	SDV (i.e. Stamp Duty Value) As on which date is to be taken ?	Date of Transfer	Date of Transfer	Date of Transfer	N.A
14	Can anything done prior to Date of Transfer gives option to put or consider SDV on such date ?	Yes (through s/s 3)	No such provision	1st Proviso to Clause (b)	N.A
15	Plugging Backdate ?	Yes (through s/s 4)	No such provision	Yes, through 2nd proviso	N.A
16	Counter Benefit	No	No	49(4) enables buyers to claim such SDV as COA	No

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Section 55A

With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the [Assessing] Officer may refer the valuation of capital asset to a Valuation Officer—

(a) *in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the [Assessing] Officer is of opinion that the value so claimed [is at variance with its fair market value];*

(b) *in any other case, if the [Assessing] Officer is of opinion—*

(i) *that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or*

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Section 55A

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do, and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the [Assessing] Officer under sub-section (1) of section 16A of that Act.

Explanation.—In this section, "Valuation Officer" has the same meaning, as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

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Sec 16A of Wealth Tax Act, 1957

- Section 16A provides that for the purpose of making an assessment Assessing Officer may refer the valuation of any asset to a Valuation Officer, if the Assessing Officer is of the opinion that –
 - Estimated value made by the registered valuer is less than its fair market value; or
 - The fair market value of the asset exceeds the value of the asset as returned by more than 33.33% of the assets as returned by more than Rs.50,000/-; or
 - It is necessary to do so on account of the nature of the asset and other relevant considerations.

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Sec 16A of Wealth Tax Act, 1957

- On a reference having been made to the Valuation Officer, he will proceed to value the assets after giving notice to the assessee asking for the various documents that he may require.
- After considering all the evidences which the assessee produced and considering all the documents that the Valuation Officer may have gathered, he shall estimate the value of the assets irrespective of whether the earlier estimation of the assessee was correct or no.
- The Valuation Officer then passes an Order and sends the copy of the same to the Assessing Officer and the assessee.

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Sec 16A of Wealth Tax Act, 1957

- The Assessing Officer is statutorily bound by the valuation report submitted by the Valuation Officer and he has no option but to complete the assessment in conformity with the assessment of the Valuation Officer insofar as the valuation of the assets in question is concerned.

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