

The background features a series of concentric circles in light gray, some solid and some dashed, creating a ripple effect. A large, solid green oval is positioned in the center, containing the main text. A thick, dark gray curved line sweeps across the bottom left, partially overlapping the green oval.

# Inter Play Between Sec 50 C , 56(2) and Sec 49 (4)

TG Suresh CA CMA and CS

# Agenda

- Introduction
- Legislative background and overview of the Section (s)
- Extract of the relevant portions of Sec 54 F / EC / 56(2)/49(4)
- Jagdish C Dhabalia V ITO (Bom HC)
- **Gouli Mahadevappa 2013( Kar HC)**
- **Raj Kumar Parashar (Jaipur - Trib.)**
- **Implications – Post amendment of Sec 56 (2) to include inadequate consideration**
- **Way Forward**

# Introduction

---

Sec 50 C provides for substitution of Stamp valuation as deemed Full value of consideration in certain circumstances .

---

Sec 56(2)(x) provides for taxing the difference between Stamp valuation and actual consideration as Income from other sources in certain circumstances.

---

Sec 54 Sec 54 F and Sec 54 EC provide for exemption for reinvestment in residential house (s) Specified bonds.

---

Conflicting decisions have been rendered by various courts on how the deeming provision of Sec 50 C to be considered for the purpose of exemption u/s 54 / EC/ F.

---

A detailed analysis with examples have been attempted in the subsequent slides

# Sec 50 C Background

## Introduced From

- AY 03 04

## Provides for

- Substituting Stamp Value as Consideration if it exceeds the Actual consideration

## Amendment by FA 2018

- Safe Harbor of 5 % is allowed

## Amendment by FA 2020

- Safe Harbor of 10 % is allowed

## Provides for

- Assessee to challenge the 50 C value before AO . AO may refer the value to Valuation officer

## Gift tax Background

---

Separate Legislation till 30<sup>th</sup>  
September 1998 in the form of Gift  
Tax Act 1958.

---

Donor based tax ( 30 % )

---

---

Removed from 1<sup>st</sup> October 1998 (   
for not collecting enough revenue)

# Background

- Re introduced from 1<sup>st</sup> Sep 2004 under IOS (Recipient based)
- Sec 56 (2) (v) – 1<sup>st</sup> Sep 2014 to 31<sup>st</sup> Mar 2006
- Sec 56 (2) (vi) – 1<sup>st</sup> April 2006 to 30<sup>th</sup> September 2009
- Sec 56 (2) (vii) – 1<sup>st</sup> October 2009 to 31<sup>st</sup> March 2017
- Sec 56 (2) (x) – 1<sup>st</sup> April 2017 to ????

# Sec 56(2)(v)/vi

## Sec 56(2) (v)

- Applicable only for **Individual or HUF**
- The Section will be applicable where any sum of money without Consideration in excess of **Rs.25,000** is received from any person between 1<sup>st</sup> Sep 2004 to 31<sup>st</sup> March 2006

## Sec 56(2) (vi)

- Applicable only for **Individual or HUF**
- The Section will be applicable where any **sum of money** without Consideration in excess of **Rs.50,000** in **aggregate** is received from any person between 1<sup>st</sup> April 2006 to 30<sup>th</sup> Sep 2009

# Sec 56(2)(vii)

- Applicable only for Individual or HUF
- The Section will be applicable where any **sum of money / Property** is received without Consideration from any person from **1<sup>st</sup> October 2009 to 31<sup>st</sup> March 2017**
- 9 Properties included by way of an exhaustive definition
- Land or building + 8 More properties included
- Up to 31<sup>st</sup> March 2013 , for land and building only no consideration was covered . From 1<sup>st</sup> April 2013 even inadequate consideration Is also covered .
- Corresponding amendments were made in Sec 49 (4) also .
- Section discontinued from 1<sup>st</sup> April 2017 .
- Replaced with new Section 56(2) (x) .



## Sec 56(2)(x)

- Applicable to **All persons**
- The Section will be applicable where any sum of money / **Property** is received without Consideration from any person on or after 1<sup>st</sup> April 2017

# Applicability of Section for Immovable Property

Like 50 C ,  
5 % and 10 % safe  
harbour extended to  
this Section also

## If the property is received without consideration

- Stamp Valuation of the property will be taxable provided the Stamp Valuation exceeds Rs.50,000.

## If the property is received for a consideration

- Stamp value Less consideration will be taxable provided stamp valuation exceeds consideration by Rs.50,000.



# Cost of Acquisition if recipient tax under IOS 49(4)

- Value taken into account for the purpose of section 56(2)(vii) or (x).

# Implications

- Mr. A sells a vacant land to Mr. B for 100 Lacs. ( Stamp Valuation 150 Lacs).
- If A & B are not related to each other, the implications for A and B are as under ;
- A will have to pay Capital Gains by taking full value of Consideration as 150 Lacs
- B will have to pay tax under Income from other sources to the extent of 50 Lacs ( 150 – 100 ) .
- B can take the Cost of acquisition of the asset as 150 Lacs ( instead of Actual cost of 50 lacs u/s 49(4)
- The same transaction is getting taxed in the hands of both the buyer and the seller.
- Whether deemed full value of consideration of Sec 50 C should be considered for the purposes of exemption u/s 54 , 54 F etc.,
- We will discuss the Conflicting decisions on this matter and also the potential impact consequent to the changes made in 56(2) / 49 (4) , which the court(s) could not have considered due to non existence of the provision for the relevant asst. year

# Jagdish C Dhabalia V ITO

[2019] 104 taxmann.com 208 (Bombay)

## Brief facts

- Assessee sold a plot of land for sale consideration of Rs.25 lakhs and invested entire amount ( i.e Rs.25 Lacs ) in bond as specified under section 54EC.
- In return of income, assessee had declared **long-term capital gain on transfer of land at Rs. 21.19 lakhs** and claimed full exemption of such capital gain under section 54EC. **(i.e 21.19 Lakhs )**
- During course of scrutiny assessment, Assessing Officer determined **long-term capital gain of assessee at Rs.49.47 lakhs** based on Stamp duty valuation and accordingly, charged **Rs. 24.47 lakhs (Rs. 49.47 lakhs - Rs. 25 lakhs) to tax as capital gain .**
- Assessee contended that since entire sale consideration of **Rs.25 lakhs** was invested in specified bond, assessee must get full exemption from capital gain,( **i.e 49.47 Lacs )** irrespective of computation of deemed sale consideration under section 50C .

# Computation - comparison

## Assessee

|                       |        |
|-----------------------|--------|
| • FVC                 | 25.00  |
| • Indexed Cost        | 3.81   |
| • LTCG                | 21.19  |
| • Exemption u/s 54 EC | 21.19* |
| • LTCG Taxable        | NIL    |

( \*25 Lacs Restricted to 21.19 )

## Assessing officer

|                       |         |
|-----------------------|---------|
| • FVC                 | 53.28   |
| • Indexed Cost        | 3.81    |
| • LTCG                | 49.47   |
| • Exemption u/s 54 EC | 25.00** |
| LTCG Taxable          | 24.47   |

- \*\* Entire 25 Lacs invested by the assessee is allowed as exemption.
- Assessee's Contention is entire capital gains of 49.47 lacs is exempt.
- Can a Investment of 25 lacs result in exemption of 49.47 Lacs ??

## 54 EC Extract

- 54 EC - (1) Where the capital gain arises from the transfer of a long-term capital asset · being land or building (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, at any time within a period of six months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,
  - if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;
  - if the cost of the long-term specified asset is less than the capital gain  
.....





## 50 C Extract

- 50 C. - (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 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.**
-

## Assessee's Contention



- Effect of deeming provision would be limited to the purpose for which the same has been enacted.
- The relevant provisions would require harmonious construction.
- It was further contended that the legislature would not expect a person to perform an impossible task. If the assessee had received total sale consideration of Rs.25 lakhs from transfer of the land, he could not be expected to invest any amount in access thereto, for claiming full exemption under section 54 EC of the Act



## Revenue's Contention

- The interpretation advanced by the Assessee would effectively render the provisions of section 50C of the Act redundant.
- The exemption provision should be strictly construed.
- Assessee can claim exemption only in relation to investment made in the specified bond and not beyond.

## Decision

- The deeming fiction under section 50C of the Act, must be given its full effect and the Court should not allow to boggle the mind while giving full effect to such fiction.
- We are not opposing the proposition canvassed by the Counsel of the Assessee that deeming fiction must be applied in relation to the situation for which it is created.
- However, while giving full effect to the deeming fiction contained under section 50C of the Act for the purpose of computation of the capital gain under section 48, for which section 50C is specifically enacted, the automatic fallout thereof would be that the computation of the assessee's capital gain and consequently the computation of exemption under section 54EC, shall have to be worked out on the basis of substituted deemed sale consideration of transfer of capital asset in terms of section 50C of the Act.
- Any other interpretation, particularly one canvassed by the learned Counsel for the Assessee, would render the provisions of section 50C redundant.

**Gouli Mahadevappa 2013( Kar HC)**

**356 ITR 090**

**259 CTR 579**

## Brief Facts

- Assessee sold the land (property) for Rs.20,00,000
- Reinvested 24,00,000 in a new residential house. ( balance 4,00,000 was out of Agricultural Income )
- The AO assessed the capital gains by adopting stamp valuation of 36,00,000 .
- After considering investment of 20,00,000 ( 4 Lacs not considered ) for exemption u/s 54 F capital gains was arrived at by the AO.

## Relevant portions of Sec 54 F /49 (4) EXTRACT

### Sec 54 F

- “Net consideration”, in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer

### Sec 49(4)

- Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (vii) [or clause (vii*a*)] or (x) of sub-section (2) of Sec 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) [or clause (vii*a*) or (x) ].

### Sec 56(2)(x)

- Where any person receives, in any previous year, from any person or persons on or after the 1st day of April 2017,—
  - b) any immovable property,
    - without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such 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:

# Decision

- The Assessing Authority has disallowed the benefit of exemption of Rs. 4,00,000. That part of the order of the Assessing Authority and the Appellate Authority does not appear to be sound and proper .
- When the capital gain is assessed on notional basis, whatever amount invested in new residential house within the prescribed period, under Section 54F of IT Act the entire amount invested, should get the benefit of deduction irrespective of the fact that the funds from other sources are utilized for new residential house.
- In that context, whatever total amount actually invested by the assessee for construction of house should be deducted irrespective of the fact that part of the funds invested are from different sources and not from the capital gains.



Raj Kumar Parashar (Jaipur - Trib.)

[2017] 86 taxmann.com 78

## Brief Facts

- Assessee sold the property for Rs.24,60,000 and has reinvested the entire amount in a new residential house.
- The AO assessed the capital gains by adopting stamp valuation of 96,03,000 .
- After considering investment of 24,60,000 for exemption u/s 54 F capital gains was arrived at by the AO.

# Assessee' s contention

- Sec 50 C should be applied only for computation of Capital gains u/s 48
- "Net consideration" is separately and specifically defined for the purpose of Sec. 54F, Thus, as against the deemed consideration, it is the actually received or actually accrued sale consideration, the full value of which, has to be considered for the purpose of Sec. 54F.
- Sec. 50C appears to be a general provision, whereas Sec. 54F is a special provision and law is well settled that special provision has always to prevail over or to be given preference and priority as against a general provision
- *Reliance was placed on the following decisions* *Gyan Chand Batra v. ITO* [\[2010\] 8 taxmann.com 22 \(JP\)](#) *CIT v. Nilofer I. Singh* [\[2009\] 309 ITR 233 \(Delhi\)](#), *Nandlal Sharma v. ITO* [\[2015\] 61 taxmann.com 271 \(JP. - Trib.\)](#), *Dhanveer Singh Gambhir v. ITO* [\[2015\] 68 SOT 343/56 taxmann.com 205 \(Indore - Trib.\)](#) *Prakash Karnawat v. ITO* [\[2012\] 49 SOT 160/\[2011\] 16 taxmann.com 357 \(JP\)](#) *Raj Babbar v. ITO* [\[2013\] 56 SOT 1/29 taxmann.com 11 \(Mum. - Trib.\)](#)

# Assessee' s contention

- Decision of Bombay HC in the case of Ace builders rendered in the context Sec 50
- Doctrine of Impossibility of performance
- In the case of *Gouli Mahadevappa (supra)* also to some extent this controversy was involved however, the Hon'ble Court in its wisdom did not dealt with this issue at all in as much as the very substantial questions of law formulated and admitted by the Hon'ble Court for its consideration, solely confined to the applicability/consideration of Sec. 45, Sec. 48(2) and Sec. 50C and there was not a single substantial question of law formulated or whispered therein as regards the applicability of Sec. 50C in the context of Sec. 54F of the Act.

## Assessee' s contention

- Even assuming for a moment that in *Gouli Mahadevappa (Supra)*, the Karnataka High Court has taken a contrary view in the context of Sec. 54F (though not admitted as stated above) the same may be having a persuasive value but not binding, not being a decision of Hon'ble Apex Court or of the Jurisdiction High Court.
- Jurisdictional bench in as many as three decisions cited above, had already taken a view in favour of the assessee and the rule of consistency demands to follow them
- The decision of Hon'ble Karnataka High court has already been considered in the case of *Prakash Karnawat (Supra)*
- In any case (assuming Karnataka High Court is read as deciding against the assessee), the issue becomes highly debatable and therefore, the view which favour the assessee, must be adopted, as per the law settled in the case of *CIT v. Vegetables Products Ltd.* [\[1973\] 88 ITR 192 \(SC\)](#) and followed thereafter in several cases.
- An incentive provision should be construed liberal as held in *Bajaj Tempo Ltd. v. CIT* [\[1992\] 196 ITR 188/62 Taxman 480 \(SC\)](#)

# Decision

- It is clear that where the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45.
- The net consideration for the purposes of section 54F has been defined as the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.
- In other words, the consideration which is actually received or accrued as a result of transfer has to be invested in the new asset. The consideration as determined under section 50C based on the stamp duty authority valuation is not a consideration which has been received by or has accrued to the assessee. Rather, it is a value which has been deemed as full value of consideration for the limited purposes of determining the income chargeable as capital gains under section 48 of the Act.

# Decision

- Therefore, in the instant case, the provisions of section 54F(1)(a) are complied with by the assessee and the assessee shall be eligible for deduction in respect of the whole of the capital gains so computed under section 45 read with section 48 and section 50C of the Act.
- The decisions of the Coordinate Benches as referred supra support the case of the assessee.
- **The subject issue was not for consideration before the Hon'ble Karnataka High Court and hence, the same doesn't support the case of the revenue.**
- We are therefore of the considered view that the provision of section 50C(1) of the Act are not applicable to section 54F for the purpose of determining the meaning of full value of consideration.

## **For**

**Gyan Chand Batra v. ITO**

**[\[2010\] 8 taxmann.com 22 \(JP\)](#)**

**CIT v. Nilofer I. Singh**

**[\[2009\] 309 ITR 233 \(Delhi\),](#)**

**Nandlal Sharma v. ITO**

**[\[2015\] 61 taxmann.com 271 \(JP. - Trib.\),](#)**

**Dhanveer Singh Gambhir v. ITO**

**[\[2015\] 68 SOT 343/56 taxmann.com 205 \(Indore - Trib.\)](#)**

**Prakash Karnawat v. ITO**

**[\[2012\] 49 SOT 160/\[2011\] 16 taxmann.com 357 \(JP\)](#)**

**Raj Babbar v. ITO**

**[\[2013\] 56 SOT 1/29 taxmann.com 11 \(Mum. - Trib.\)](#)**

## **Against**

**Jagdish C. Dhabalia [2019] 104 taxmann.com 208 (Bombay)**

**Gouli Mahadevappa ( ? ) Karnataka**



## Let us deliberate further

- Actual consideration 100 Lacs
- Stamp Valuation 200 Lacs
- LTCG 120 Lacs
- S 1 New Residential house purchased for 100 Lacs
- S 2 New Residential house purchased for 150 Lacs
- S 3 New Residential house purchased for 150 Lacs  
( Stamp valuation 180 Lacs)

If 50 C is not considered

- Stamp valuation is considered for Computation of capital gains and
- Actual consideration for 54 F

|                                | Cost of the New RH 100<br>Lacs | Cost of the New RH 150<br>Lacs | Cost of the New RH 150<br>Lacs (Stamp Valuation<br>180 lacs) |
|--------------------------------|--------------------------------|--------------------------------|--|
| Full Value of<br>Consideration | 200                            | 200                            | 200  |
| ICOA                           | 80                             | 80                             | 80   |
| LTCG                           | 120                            | 120                            | 120  |
| Exemption u/s 54 F             | 120                            | 120                            | 120  |
| LTCT – Taxable                 | NIL                            | NIL                            | NIL  |

If 50 C is considered for exemption also

- Stamp valuation is considered for Computation of capital gains as well as Sec 54 F

|                                | Cost of the New RH 100<br>Lacs | Cost of the New RH 150<br>Lacs | Cost of the New RH 150<br>Lacs (Stamp Valuation<br>180 lacs |
|--------------------------------|--------------------------------|--------------------------------|---|
| Full Value of<br>Consideration | 200                            | 200                            | 200   |
| ICOA                           | 80                             | 80                             | 80  |
| LTCG                           | 120                            | 120                            | 120   |
| Exemption u/s 54 F             | 60                             | 90                             | 90 /108 ( ???)  |
| LTCT – Taxable                 | 60                             | 30                             | 30/12 ( ???)  |

# Way Forward

- Assuming the decision of Bombay HC is followed, Can deemed cost u/s 49(4) be considered for the purpose of Sec 54 F .
- Exemption u/s 54 F is calculated by applying the following formula ;

Cost of the New Residential house

----- X Capital Gains

Net Consideration

- If the denominator ( Net consideration ) is taken as the deemed value ( i.e Stamp Valuation u/s 50 C ) , the Numerator should also be given the benefit of deemed Value ( u/s 49 (4).
- It will be illogical to take “ Actuals in the numerator” and “Fiction in the denominator”.
- Hope , decisions in favour of the assessee is followed , so that we as a tax practioners , need not have to face , controversy within a controversy ( Though it is beneficial in our own interest )





TG Suresh FCA, CMA, CS  
98840 20900 | tgsuresh@sandbca.com

**Thank you**

**SURESH & BALAJI**  
CHARTERED ACCOUNTANTS