



Tax alert: Provision deeming stamp duty value as full value of consideration not applicable on contribution of immovable property by partner to a firm

5 February 2024

The Ahmedabad bench of the Income-tax Appellate tribunal (ITAT) has rendered its decision that capital asset transferred by a partner to a firm as its capital contribution, cannot be brought to tax under the deeming provisions of section 50C of the Income-tax Act 1961 (ITA) and accordingly, the consideration should be determined as per specific provision provided under section 45(3) of the ITA.

In a nutshell



Provision of section 50C(1) of the ITA is general provision whereas the provision of section 45(3) of the ITA is a specific provision dealing with the specific transfer of capital assets by the partner to partnership firm by way capital contribution.



When two conflicting provisions of law operate in the same field, the provision that specifically operates in that field would apply over the general rule.



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Background:

- The taxpayer¹ is an individual and engaged in the proprietary business of processing of plastic raw materials into articles. The taxpayer was also a partner in a partnership firm 'ABC'.
- The taxpayer during the Financial Year (FY) 2009-10, jointly with another person, acquired an immovable property in which his share was 50% only. During the year under consideration i.e. FY 2013-14, corresponding to Assessment Year (AY) 2014-15, the taxpayer along with his co-owner sold 5% of aforesaid property and the remaining 95% of property was transferred to partnership firm 'ABC' as partner's capital contribution (being taxpayer's share). The capital contribution was at a proportionate value lower than that at which the co-owner had sold 5% shares.
- During the course of audit proceedings:
 - The Assessing Officer (AO):
 - Considering the market value of 5% of the aforesaid property, believed that the remaining property should have been transferred to partnership firm at a higher value (being proportionate value of property considering the market value of 5% of property sold by the taxpayer) instead of at lower value it transferred to the firm 'ABC'.
 - Accordingly, the AO proposed to invoke the provisions of section 50C of the Income-tax Act, 1961 [ITA] (relating to special provision for computing sale consideration in certain cases) and treated the consideration in hand of the taxpayer at higher value instead of the value at which it was transferred to 'ABC'.
 - The taxpayer contended that:
 - The aforesaid property was transferred as capital contribution to the firm 'ABC'.
 - Hence, the transaction fell under the provisions of section 45(3) of the ITA wherein it is provided that a capital asset transferred to a firm by a partner by way of capital contribution, then the amount at which, the firm records such capital assets in its books, shall be deemed as full value of consideration for the purpose of section 48 of the ITA (relating to computation of capital gains).
 - Hence, the provisions of section 50C of the ITA could not be applied to the above-mentioned transfer of property.
 - However, the AO disagreed with the contention of the taxpayer and held that:
 - The provision under section 50C of the ITA is a special provision with respect to capital assets, being land or building. As per section 50C of the ITA, the full value of consideration on transfer of land or building shall be the value at which stamp duty is assessed or assessable.
 - Accordingly, the AO added difference amount (stamp duty value minus the value at which the capital asset transferred to the firm) to the total income of the taxpayer.
- Aggrieved, the taxpayer filed an appeal and in the course of the appellate proceedings, the matter reached before the Ahmedabad Bench of the Income-tax Appellate Tribunal (ITAT).

Relevant provisions in brief:

Extracts of section 45(3) and section 50C(1) of the ITA:

“Section 45(3). Capital gains.-

¹ Nareshbhai Ishwardas Patel vs. Income-tax Officer [2023] 155 taxmann.com 141 (Ahmedabad - Trib.)

(3) The profits or gains arising from the **transfer of a capital asset by a person to a firm** or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, **by way of capital contribution** or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, **the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.**"

"Section 50C. Special provision for full value of consideration in certain cases..-

(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 or assessable 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...."

Decision of the ITAT:

The ITAT noted that the question for their consideration was whether a capital asset transferred by the taxpayer to a firm as capital contribution could be brought under the net of provisions of section 50C of the ITA (as held by the revenue authorities) or the consideration should be determined as per the provision of section 45(3) of the ITA (as claimed by the taxpayer)?

In this regard, the ITAT noted / observed as follows:

- Section 45(3) of the ITA is specific provision dealing with regard to value of consideration in the case of a capital asset transferred by the taxpayer to a firm or Association of Persons (AOP) / Body of Individuals (BOI) in which such taxpayer is partner or member, and such capital asset is transferred as capital contribution. Whereas section 50C(1) of the ITA deals with the value of consideration in the case of a capital asset being land or building transferred by a taxpayer for a consideration which is less than the value adopted for charging stamp duty on such transfer.

Thus, the provision of section 50C(1) of the ITA is general provision in the given facts and circumstances, whereas the provision of section 45(3) of the ITA is specific provision dealing with the specific transfer of capital assets by the partner to partnership firm by way capital contribution.

- It is the accepted rule of construction that special provisions would prevail over general provisions as per the famous latin maxim 'Generalia Specialibus Non Derogant'. When two conflicting provisions of law operate in the same field, the provision that specifically operates in that field would apply over the general rule.

Reliance was placed on an earlier Supreme Court ruling² wherein it was held as under:

"The rule of harmonious construction of apparently conflicting statutory provisions is well-established for upholding and giving effect to all the provisions as far as it may be possible, and for avoiding the interpretation which may render any of them ineffective or otiose."

- In the case under consideration, the taxpayer was a partner in a firm 'ABC' and transferred land property to such partnership firm by way of capital contribution. This was a specific transaction between partnership and partner, for which there is special provision enacted by the legislator vide section 45(3) of the ITA.
- Hence, the consideration in the hand of the partner (present taxpayer) should be determined as per the provision of section 45(3) of the ITA and not as per the provisions of section 50C of the ITA.

² State of Rajasthan v. Gopi Kishan Sen AIR 1992 SC 1754

- The special Bench of the ITAT in another ruling³ had held that personal assets contributed by the partner into firm as capital contribution was capital transaction and the same should be taxed as capital gain and the consideration for the same should be taken as per the provision of section 45(3) of the ITA.
- With respect to the earlier ruling⁴ of the Allahabad High Court (HC) relied upon by the first appellate authority:
 - While confirming the order of the AO, the taxpayer had offered capital gain on transfer of land property to partnership firm by adopting the full value of consideration prescribed under section 45(3) of the ITA. However, the AO disputed the same and invoked the provision of section 50C of the ITA and worked the full value of consideration accordingly.
 - On perusal of the finding, the HC held that the entire transaction of establishing partnership firm and thereby transferring land to firm for a minor share in profit was sham transaction designed for evading due taxes. As such, the actual transaction was sale of land by the taxpayer to partnership firm.

Accordingly, the principles laid down by the HC could not be applied in the case of the taxpayer and thereby, the first appellate authority had erred in applying such principles in the present case.

In view of the above, the ITAT directed the AO to take full value of consideration as prescribed under section 45(3) of the ITA and work out the amount of capital gain accordingly.

Comments:

Partners often contribute land/building as their capital contribution to a partnership firm. There may be cases where the stamp duty value of the land brought into the firm is more than the value at which it is recorded in the books of the partnership firm. In such scenarios, a question arises whether the provisions of section 45(3) or 50C of the ITA would apply.

The ITAT in this ruling, while specifically dealing with sections 45(3) and 50C of the ITA, has held as follows:

- Provision of section 50C(1) of the ITA is general provision whereas the provision of section 45(3) of the ITA is specific provision dealing with the specific transfer of capital assets by the partner to partnership firm by way of capital contribution.
- When two conflicting provisions of law operate in the same field, the provision that specifically operates in that field would apply over the general rule.

Taxpayers with similar facts may want to evaluate the impact of this ruling to the specific facts of their cases.

³ DLF Universal Ltd. v. Dy. CIT [2010] 36 SOT 1 (Delhi -Trib.)

⁴ CIT v. Carlton Hotel (P.) Ltd. [2017] 399 ITR 611 (All-HC)

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