

Some important issues:

Application of section 50 and 50C simultaneously:

Is it right in law in applying the section 50C and section 50 (depreciable assets) while computing capital gains on sale of depreciable assets?

Assessee is a partnership firm. It has sold the office building used earlier for business purpose during the previous year. The asset was sold for a consideration of Rs. 49, 43,525/-. The written down value of the said building after claiming depreciation for past years is Rs. 49,43,525/- and hence assessee declared the capital gains as NIL.

During the course of assessment proceedings the assessing office noticed that the value of the property as per the stamp duty valuation was Rs. 76, 49,000/-. According to him the full value consideration for transfer of the building is the value adopted for stamp value as per section 50C and after deducting the written down, value the balance amount is taxable as capital gains from transfer of building.

Against the assessment order passed by the assessing officer under section 143(3) of Income Tax Act, 1961 assessee has filed an appeal before CIT (A). It was submitted on behalf of the assessee before learned CIT (A) that the provisions of section 50C cannot be invoked in case of depreciable assets where the provisions of section 50 applicable.

It was submitted that provisions of section 50C are applicable to capital asset being land or building or both while section 50 is applicable to the assets forming part of block of assets. It was contended that the legal fiction created in section 50 and section 50C are for the definite purpose and they cannot be extended beyond their legitimate field unless it is clearly and specifically provided in the relevant provisions.

The learned CIT (A) found the merit in the contentions of the Assessee and deleted the addition made by the assessing officer. The CIT (A) stated that the provisions of section 50 and 50C are mutually disjoint provisions and are specific provisions for specific purposes. He also stated that the provisions of section 50C are not overriding in nature over the provisions of section 50.

CIT (A) also stated the purpose of creating the legal fiction for the sale consideration of the land based on stamp duty prescribed because the nature of land that always appreciates in its value and people tend to not disclose full amount of its value. He also stated that if the land is part of block of assets it cannot be covered under section 50C in view of the special provisions created by section 50 which covers all the assets forming part of block of depreciable asset without any exception. As there no explicit provision to exclude land out of block of depreciable assets within meaning of section 50 and take it to the section 50C. Hence the assessing officer was directed to apply provisions of section 50 of the Income Tax, 1961 in respect of land which form part of block assets and on which depreciation was allowed.

The revenue has preferred appeal before the tribunal.

The department representative submitted that the provisions relating to computation of capital gains are contained in the section 48 of the Income Tax Act, 1961. The expressions used in the section are 'full value consideration received or accrued as result of transfer of capital asset' and 'cost of acquisition' is relevant for the purpose of calculation of capital gains.

He contended that going by legislative intention the term of cost of acquisition used in section 48 was modified by section 50 and full value consideration is modified by section 50C. He further contended that there being nothing in section 50C to exclude specifically its applicability to the provisions of section 50, it cannot be said that 50C is not applied in cases where the section 50 is applicable.

The learned counsel for assessee submitted that the provisions of section 50 and 50C operate in different fields and both deeming provisions, the provisions of section 50C cannot be extended and applied to in cases which are covered under section 50.

He contended that there is difference in the concept of capital asset being land and building whereas the section 50 deals with capital asset forming part of block of assets.

The tribunal held that for the purpose of section 50 the provisions of section 48 and 49 have been modified for the purpose of computation of capital gains on depreciable assets.

A perusal of the provisions of section 50C also shows that there is no distinction as to depreciable or non depreciable capital asset and it, therefore cannot be said that the said provision is not applicable in a case of transfer of depreciable asset which is covered by section.

On interpretation of the relevant provisions of section 48, 50, 50C, we are of the view that there are two deeming fictions created in section 50 and 50C. The deeming fiction modifies the term 'cost of acquisition' used in the section 48 for the purpose of computing the capital gains arising from transfer of depreciable assets whereas the deeming fiction created in section 50C modifies the term 'full value of consideration received or accruing as a result of transfer of capital asset' used in the section 48 for the purpose of computing capital gains from transfer of capital asset being land or building or both.

It is thus not a case where any supposition has been sought to be imposed on other supposition of law. There are two different fictions created in two different provisions and going by legislative intentions to create said fictions, the same operate in different fields.

The harmonious interpretation of the relevant provisions makes it clear that there is no exclusion of applicability of one fiction in case where other fiction is applicable.

In our opinion, the Assessing officer was right in applying the provisions of section 50C to transfer of depreciable capital asset covered by section 50 and in computing the capital gain arising from the said transfer by adopting the stamp duty valuation.

ITO VS UNITED MARINE ACADEMY – MUMBAI TRIBUNAL.