

RAMPRASAD CHARTERED ACCOUNTANT

Some important issues:

Sale of Land after division in to plots: Chargeable as Business income or Capital Gains?

Generally, if the holding period is substantially long and the person holding it enjoyed revenue from the said property during the holding period, a presumption may be drawn that he is investor and not a trader. The profit on subsequent sale of the property would be chargeable to tax as capital gains and not as business income. Case law: **G. Venkatswami Naidu and co Vs CIT (Supreme Court)**.

If the property is developed by the assessee shortly after its purchase and later sold in units it would be business income (**Raja J. Rameshwar Rao Vs CIT (Supreme Court)**).

Issue: The Assessee held a large portion of land and utilized for the agricultural purpose for a long period. At the end of such period, the assessee divided the land in to several residential plots and sold the same. The land is so divided because to make land marketable as large properties are not easy to sell in the open market. The assessee did not indulge in further development of land like laying of roads, drainage, sanitary connections etc.

Now the issue is whether the income from above transaction is taxable as business income or capital gain?

The assessee filed his return of income and declared the income from the above transaction as a capital gain in it.

The assessing office treated the income as business income and not as capital gains. The assessee has filed an appeal before commissioner (Appeals). The commissioner held that it is taxable as capital gain and not as business income.

Department has filed the appeal before the Tribunal. The tribunal has upheld the order of the commissioner (Appeals). The tribunal noted that the assessee has held the property for a long period and even used for agricultural purposes. Accordingly, the land has held as investment by the assessee and he had no intention to trade it. The tribunal mentioned that the division of land in to units is necessary to make the property marketable and get a better price. This act should be seen as Endeavour to achieve a proper realization of the capital asset and the surplus from such realization ought to have to be therefore assessed only as capital gains. The fact that the assessee did not indulge in further development of the property like sanitation work etc also support the assessee's stand.

Hence, the gains from the sale of plots were assessable as capital gains and not as business income.

ITO VS OMKARMAL RAMBILAS GINNING AND PRESSING FACTORY (2011) 44 SOT 544/10 taxmann.com 90 (Hyd).

Exemption under section 54F: Actual consideration received by the assessee or deemed consideration under section 50C?

Mr. X has sold a plot of land for agreed consideration of Rs. 20,00,000/-. This amount along with Rs. 4,00,000/- out of his own funds were invested towards purchase of a residential house and claimed exemption of Rs. 24,00,000/- (Rs. 20,00,000/- sale consideration and Rs. 4,00,000/- own funds).

The stamp duty value is Rs. 36,00,000/- and the assessing officer has computed the capital gains taking in to consideration of the said amount and he has not allowed exemption as the net consideration was not invested. i.e Rs. 36,00,000/-.

In the appellate proceedings, the Bangalore Tribunal held that the capital gains under section 48 has to be computed taking Rs. 36,00,000/- as the deemed consideration applying the provisions of the section 50C, the exemption under section 54F has to be computed taking in to the net consideration of Rs. 20,00,000/- and not Rs. 36,00,000/-.

The tribunal held that section 54F is a special code itself, which has to be construed independent of the computational provisions of section 48. The deeming provisions of section 50C should be confined to the provisions of section 48 and not extended to the provisions of section 54F.

The tribunal also held that what is required to be invested for purchase of residential house to claim exemption under section 54F is the "Net Consideration", which has been separately defined in the section 54F without reference to section 50C.

Relevant Extracts of the provisions for better understanding is as follows:

Section 54F: Explanation to section: For the purpose of this section –

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

GAULI MAHADEVAPPA VS ITO, BANGALORE, TRIBUNAL.

Note: please also refer CIT VS ACE BUILDERS Private Limited (2006) 281 ITR 210 (Bombay High Court).

In the next write up I will discuss whether section 50 and section 50C can be applied simultaneously.