# ITO vs. Haresh Chand Agrawal HUF (ITAT Agra)

(Order Dated 20th December, 2013)

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**S. 147: Failure to compute capital gains u/s 50C does not lead to escapement of income**

The assessee sold property for Rs.6 lakh and offered capital gains on that basis. The AO accepted the claim without examining the applicability of s. 50C. He later (within 4 years from the end of the AY) reopened the assessment on the basis that the stamp duty valuation was Rs. 25 lakhs and the capital gains had to computed on that basis u/s 50C. The assessee challenged the reopening inter alia on the ground that the failure to apply s. 50C did not mean income had escaped assessment. The CIT(A) accepted the plea. On appeal by the department to the Tribunal HELD dismissing the appeal:

S. 50C is not a final determination to prove that it is a case of escapement of income. The report of the approved valuer may give estimated figure on the basis of facts of each case. Therefore, mere applicability of s. 50C would not disclose any escapement of income in the facts and circumstances of the case. The AO at the original assessment stage considered all the documents and material produced before him and has accepted the cost of property as was declared by the assessee. The reassessment is on change of opinion which is not justified.

**Question: Whether failure to voluntarily apply Section 50C attracts penalty u/s 271 (1) (c)? Answer: No it will not attract the penalty u/s 271 (1) (c) and it is followed by 3 judgements.**

1. **Renu Hinagorani vs. ACIT (ITAT Mumbai)**
2. **Chimanlal Manilal Patel vs. ACIT (ITAT Ahmedabad)**
3. **CIT vs. Madan Theatres (Calcutta High Court)**

# Renu Hinagorani vs. ACIT (ITAT Mumbai)

(Order Dated 22nd December, 2010)

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**Failure to voluntarily apply s. 50C does not attract penalty u/s 271(1)(c)**

The assessee sold a flat for Rs. 63 lakhs and offered capital gains on that basis while its stamp duty valuation was Rs. 72 lakhs. The difference of Rs. 9 lakhs was assessed by the AO u/s 50C which the assessee accepted. The AO levied penalty u/s 271(1)(c) which was confirmed by the CIT (A). On appeal to the Tribunal, HELD allowing the appeal:
The AO had not questioned the actual consideration received by the assessee but the addition was made purely on the basis of the deeming provisions of s. 50C. **The AO had not doubted the agreement or given any finding that the actual sale consideration was more than the sale consideration stated in the sale agreement. The fact that the assessee agreed to the addition is not conclusive proof that the sale consideration as per agreement was incorrect and wrong.** Accordingly, there was no concealment of income or furnishing inaccurate particulars of income.

**In the other two judgements the judgment of the Renu Hina Gorani vs. ACIT (ITAT Mumbai) was followed.**

**Chimanlal Manilal Patel vs. ACIT (ITAT Ahmedabad)**

**(Order Dated 22nd June, 2012)**

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**And**

**CIT vs. Madan Theatres (Calcutta High Court)**

**(Order Dated 14th May, 2013)**

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