DAY 7

1. New Section 43CA[Effective from A.Y. 2014-15]

Rahul sold a building to Shweta, details of which are as under:

1. Date of entering into agreement: 1.8.2013.
2. Agreed consideration : Rs. 100 lakhs
3. Down payment of Rs. 5 lakhs was received by cheque on the date of agreement.
4. Stamp duty value of the building on the date of agreement was Rs. 135 lakhs.
5. On receipt of balance payment, registration of sale deed took place on 1.1.2014.
6. Stamp Duty value on the date of registration of sale deed was Rs. 145 lakhs.
7. Rahul has purchased this building for Rs. 65 Lakh on 12.07.2012.

Discuss tax implication in the hands of Rahul, if
Alternative 1: He is a property dealer.
Alternative 2: He is a Chartered Accountant.

Before, we go to the solution, lets comprehend amendment first.

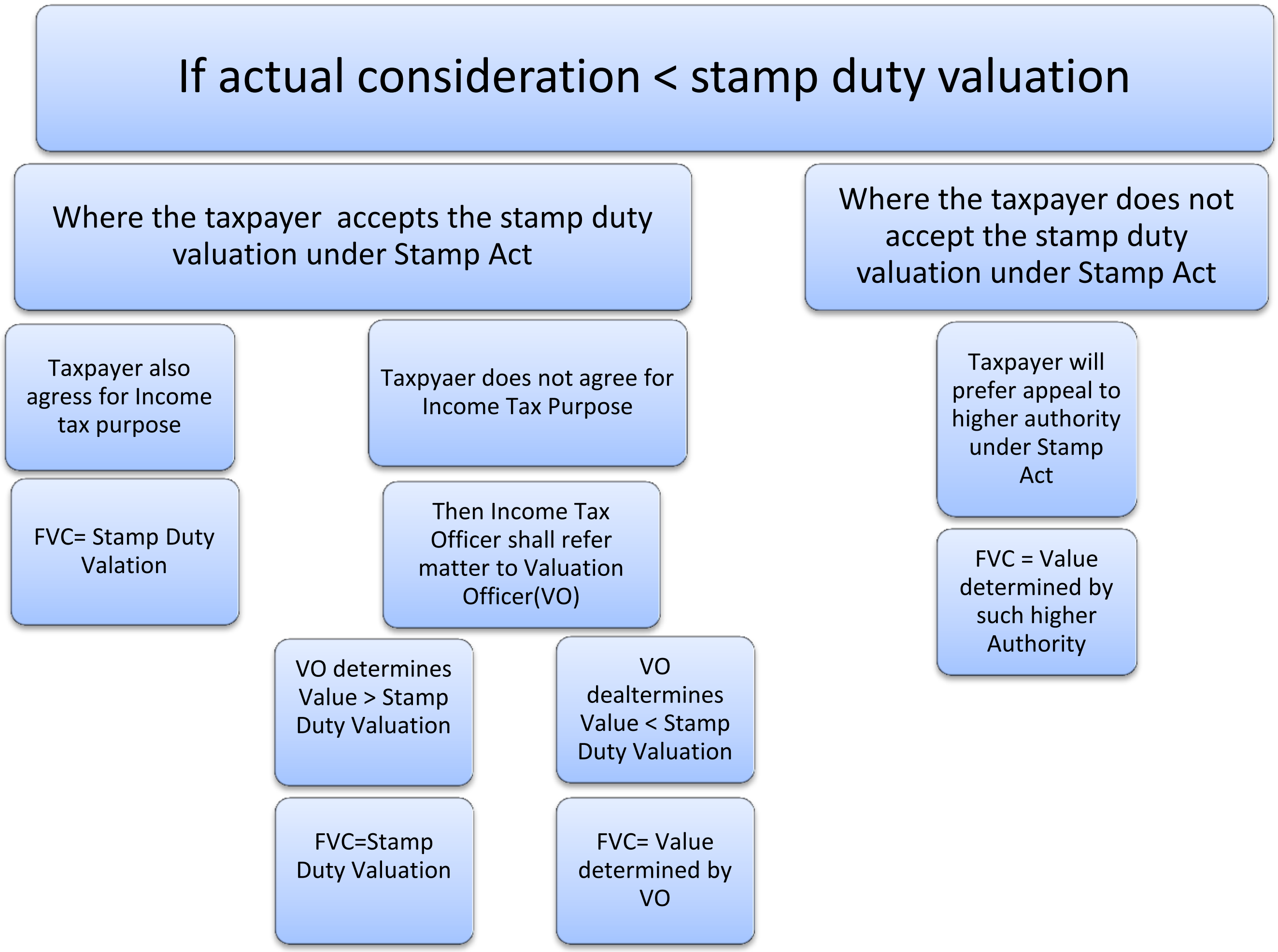
Stamp duty value of land and building to be taken as the full value of consideration in respect of transfer, even if the same are held by the transferor as stock-in-trade

(a) At present, the provisions of section 50C require adoption of stamp duty value of land or building or both, which are held as a capital asset, if the same are transferred for a consideration which is less than the value adopted, assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer.

(b) However, such provisions are not applicable in case of transfer of immovable property, held by the transferor as stock-in-trade.

(c) Therefore, as an anti-avoidance measure, new section 43CA has been inserted.

Students shall consider following summary of 43CA:



NOTE:

As per sub-section (3) and (4) of Section 43CA, if there is a time gap between date of agreement and date of registration, **the stamp duty value may be taken as on the date of agreement** instead of the date of registration. However, for the same, at least a part of the consideration has been paid by any mode other than cash on or before the date of agreement.

Now let's compare section 43CA and 50C

Particulars	Land and/or Building held as Business Asset (stock-in-trade)	Land and/or Building held as Capital Asset.
Section Applicable	43CA [See Chart above]	50C [See Chart above]
Whether option to adopt stamp duty value on date of agreement is available?	YES [See Note above]	NO

Solution:

Alternative 1: Rahul is a property dealer.

(1) Provision Applicable

- ✓ Section 43CA is applicable since building represents his stock-in-trade and
- ✓ Consideration charged is less than the stamp duty value on the date of registration.

(2) Computation of taxable business income

Particulars	**Amount Rs. in lakhs**	**Remarks**
Sale Consideration	135	As per Section 43CA(3)& (4), if there is a time gap between date of agreement and date of registration, **the stamp duty value may be taken as on the date of agreement** instead of the date of registration. However, for the same, at least a part of the consideration has been paid by any mode other than cash on or before the date of agreement.
Less: Purchase Price	65	-
Business Income	**70**	-

Alternative 2: Rahul is a Chartered Accountant.

(1) Provision Applicable

- ✓ Section 50C is applicable since building represents his capital asset and
- ✓ Consideration charged is less than the stamp duty value on the date of registration.

(2) Period of holding:

- ✓ Period of holding is from 12.07.2012 to 01.01.2014 (i.e., not exceeding 36 months)
- ✓ So the gain would be considered as short term capital gain.

(3) Computation of taxable capital gain

Particulars	**Amount Rs. in lakhs**	**Remarks**
Sale Consideration	145	Under Section 50C, option to adopt stamp duty value on the date of agreement is not available. Therefore stamp duty value on the date of registration is to be taken as sale consideration.
Less: Cost of Acquisition	65	-
Short Term Capital Gain	**80**	-

2. Section 56(2)(vii) [Effective from A.Y. 2014-15]

Discuss tax implication of above transactions in the hands of Shweta (being purchaser of property)

Before, we go to the solution, lets comprehend amendment first.

As per section 56(2)(vii)(b)

- ✓ *If immovable property received (purchased) by an individual or HUF for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs.50,000.*
- ✓ *Then, the difference between stamp duty value and the consideration shall be taxed under the head "Income from Other Sources".*

Notes:

(1) As per proviso to section 56(2)(vii)(b), if there is a time gap between date of agreement and date of registration, **the stamp duty value may be taken as on the date of agreement** instead of the date of registration. However, for the same, at least a part of the consideration has been paid by any mode other than cash on or before the date of agreement. (W.e.f. A.Y. 2014-15)

Solution:

(1) Provision Applicable

- ✓ Section 56(2)(vii)(b)is applicable since Shweta received building (immovable property) being a capital asset, for inadequate consideration.

(2) Taxable Amountunder the head "Income from Other Sources".

Taxable Amount =Stamp Duty Value ***Less***Actual Consideration
= Rs.135 lakhs – Rs.100 lakhs
= Rs. 35 lakhs

(3) Further, Shweta shall deduct TDS under 194 IA (detailed provision are given below) at 1 % of consideration (Reader must note that 1% is not of stamp duty value, it is of consideration). Therefore, Shweta shall deduct TDS of Rs. 1,00,000/- while making payment to Rahul.

3. New Section 194-IA-[Effective from 01.06.2013]

Tax to be deducted from payment on transfer of certain immovable property other than agricultural land

(a) ***Who is liable to deduct tax at source under section 194-IA:-Any person being a transferee (purchaser)*** responsible for paying to a resident transferor (seller) any sum by way of consideration ***for transfer of any immovable property*** is liable to deduct tax at source under section 194-IA.

(b) ***Time of tax deduction:-*** Tax shall be deducted at the time of ***payment or*** at the time of giving ***credit*** to the transferor, ***whichever is earlier..***

(c) ***Tax rate:-*****1%**of consideration paid or payable.

(d) ***Limit:-***No tax is deductible where the consideration paid or payable for the transfer of an immovable property is less than **Rs.50,00,000**.

(e) ***Provisions of TAN not applicable:-***In order to deduct TDS, TAN is not required.

(f) ***This section is not applicable:-***

Provisions of 194 IA not applicable in following cases:-

- When person acquiring agricultural land in rural area.
- When there is a compulsory acquisition of immovable property, this section is not applicable but provisions of section 194LA are applicable.

(g) ***Time limit for deposit of TDS.***

Sum deducted under section 194-IA shall be paid to the credit of the CentralGovernment within a period of *seven days from the end of the month in which the deduction is made.*

(h) ***TDS Return***

Special challan-cum-statement in Form No. 26QB

(i) ***Time Limit for filing TDS Return***

Challan-cum-statement in Form No. 26QB shall be filed within a period of *seven days from the end of the month in which the deduction is made.*

(j) ***TDS Certificate***

TDS certificate in Form No. 16B

(k) ***Time Limit for issue of TDS Certificate***

A payer shall furnish theTDS certificate the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No.26QB