

TAXATION OF JOINT DEVELOPMENT AGREEMENTS

Compiled by

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Taxation?

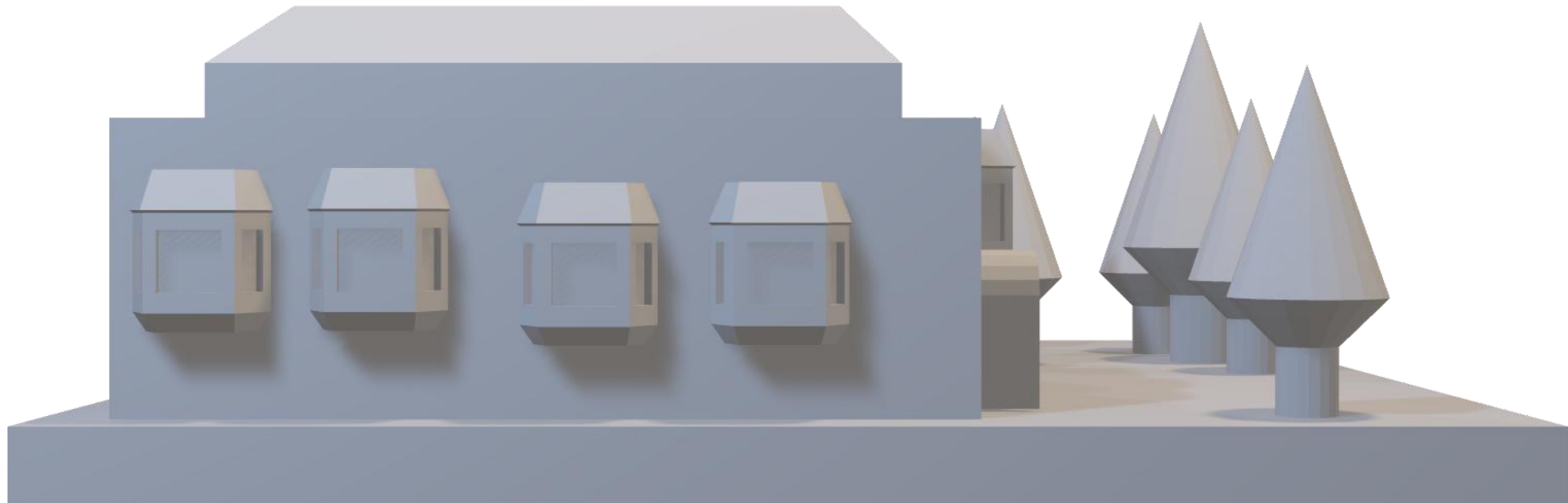
- **Land Owner**
 - ❖ **Mostly Capital Gains (either Long Term or Short Term)**
 - ❖ **At times, business income (depends on the facts of the case and the terms of the Joint Development Agreement, conversion of asset into stock-in-trade).**
- **Developer/Builder**
 - ❖ **Business Income**

Meaning of Transfer-Section 2(47)

“Transfer”, in relation to a capital asset, includes:

- (i) Sale, exchange or relinquishment of the asset;**
- (ii) Extinguishment of any rights in relation to a capital asset;**
- (iii) Compulsory acquisition of an asset;**
- (iv) Conversion of capital asset into stock-in-trade;**
- (v) Maturity or redemption of a zero coupon bond;**
- (vi) Allowing possession of immovable properties to the buyer in part performance of the contract;**
- (vii) Any transaction which has the effect of transferring an (or enabling the enjoyment of) immovable property; or**
- (viii) Disposing of or parting with an asset or any interest therein or creating any interest in any asset in any manner whatsoever.**

Section 45(5A) wrt SAs (JDAs) w.e.f AY 2018-19.



Sec. 45(5A)

- **“(5A) Notwithstanding anything contained in sub-section (1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of section 48, the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset :**

Sec. 45(5A)

- **Provided that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this subsection, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.**

Sec. 45(5A)

- **Explanation.—For the purposes of this sub-section, the expression— (i) "competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;**
- **(ii) "specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;**
- **(iii) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.**

Memorandum to Finance Bill:

- **By virtue of transfer as per Section 2(47), JDA between owner and the developer triggers tax liability in the hands of the owner in the year in which possession is handed over to the developer.**
- **To minimize the genuine hardship which the owner of land faces in paying capital gains tax in the year of transfer, Section 45(5A) is introduced to trigger tax liability in the previous year in which completion certificate is issued for whole or part of the project**

Sec. 45(5A) w.r.t JDAs & SAs

- **Applicability: Inserted vide Finance Act,2017, effective from 1-4-2018.**
- **The section applies to the assessee being an individual or HUF on the transfer of the capital asset being land or building or both. The residential status of the assessee has no bearing on the section therefore, the section is applicable on both residents as well as non-residents transferors.**
- **It is a prerequisite condition that the transfer should take place. If in a transaction, transfer of the capital asset is not regarded as transfer, section 45(5A) shall not apply.**
- **However, if there is no transfer under section 2(47) in the case of a specified agreement, section 45(5A) does not apply.**
- **Transfer could be in any manifestation of section 2(47) and it is not confined to section 2(47)(v) alone.**
- **Does not apply to transfer of interest such as leasehold rights, tenancy rights, etc. in the capital asset being land or building or both Issue.**
- **If the capital asset is co-owned by an individual and a corporate entity?**
- **It would be prudent to apply this section proportionately to the share of individual assessee in the capital asset.**

Sec. 45(5A) w.r.t JDAs & SAs

❖ Specified Agreement:

- To transfer the capital asset being land or building or both by the owner of such an asset to the developer, it is mandatory to enter into a specified agreement.**
- The agreement must be registered with the state authorities.**
- By way of such agreement, the owner of the capital asset, being land or building or both, agree to allow other person to develop a real estate project on such land or building or both.**
- Consideration may be only area or area plus cash. However, it cannot be only cash.**

45(5A)- YEAR OF TAXABILITY & TRANSFER

❖Year of taxability:

PY in which the completion certificate is issued by the competent authority for whole or the part of project is the year of taxability.

❖Year of transfer:

- **–Section 45(5A)deals with two aspects**
- **(a)year of taxability and**
- **(b)full value of consideration. It does not deal with year of transfer.**
- **–‘Not withstanding clause’ under Section 45(5A) would apply only to aforesaid two aspects.**
- **–Therefore year of transfer remains same i.e. the year in which the transfer takes place under Section 2(47.)**
- **■Thus, the year of transfer might not be same as year of taxability.**
- **■Can the year of transfer be beyond the year of taxation?**

Sec. 45(5A) w.r.t JDAs & SAs

- *Some of the states don't issue completion certificate, instead issue occupancy certificate, will the provisions of section 45(5A) of the Act defer the taxability to indefinite period? No, instead of the year of issuance of the completion certificate, year of issuance of occupancy certificate shall be the year of taxability of capital gains.*
- **Year of Transfer:** The provisions of section 45(5A) of the Act only deals with the year of taxability and the full value of consideration. For the purpose of year of transfer, recourse to section 2(47) shall be made.
- **Full value of consideration:** The full value of consideration, of the capital asset being land or building or both, transferred for the purpose of entering into JDA, shall be **stamp duty value** on the date of issue of completion certificate of the **incoming developed capital asset** along with the consideration received in cash (if any).

Sec. 45(5A) w.r.t JDAs & SAs

- ***If the certificate of completion has been issued for part of the project when will be the tax incidence of the capital gains?***
- **It depends on the facts of the case. If the development has been carried out in separate phases, then the proportionate capital gain shall be taxable in the year of issue of part completion certificate. Otherwise, the whole of the capital gain shall be taxable in the year of the issue of part completion certificate.**
- ***What if the competent authority issues the completion certificate at a much later date when capital gain be taxable?***
- **Since there could be a delay from the competent authority, the assessee may face instances where the stamp duty value has gone up between the date of filing application for issuance of completion certificate and the actual date of issue of completion certificate. In such cases, the assessee can offer the capital gains to tax in the year of filing full/complete application for issuance of completion certificate.**

Sec. 45(5A) w.r.t JDAs & SAs

- **Benefit of Indexation:**
- **The benefit of indexation is available in case of transfer of the long-term capital asset is available up to the year of transfer.**
- ***Since there is a difference in the year of computing full value of consideration and the year up to which the benefit of indexation is available, would it not create hardship to the assessee?***
- **Usually, the benefit of indexation is available up to the year of transfer. There are several instances under the Act wherein the year of transfer differs from the year of taxability. In most of the instances, the year for computing the full value of consideration and the year of transfer for the benefit of indexation of cost of capital asset, is the same. Under the provisions of section 45(5A) of the Act, the inflation during the period between year of transfer and year of taxability is ignored, leading to the genuine hardship to the assessee.**

Sec. 45(5A) w.r.t JDAs & SAs

- **Analysis of the proviso to section 45(5A) of the Act:**
- **The proviso to section 45(5A) of the Act provides that the benefits of this section will not be available in case the assessee transfer his share in the project before the issuance of completion certificate. In this case, the capital gains will be deemed to be the income of the previous year in which the assessee transfer its share in the project.**
- **In a case where part of the share in the project is transferred before the issuance of the completion certificate, then in such a case, the proviso shall apply and this section shall not be applicable.**

Sec. 54 and Sec.54F

- **If on a JDA, multiple flats are received by the assessee, that has to be construed as one house and deduction u/s. 54 or 54F cannot be denied(up to AY 2014-15)**
- **Some case laws in favor of the assesseees (for issues up to AY 2014-15)**
- **CIT v. K.G. Rukminiamma, 331 ITR 221 (Kar)**
- **Acit, Circle-4(1), Hyderabad, vs Fazlunnisa Begum, Hyderabad, ITA No. 66/Hyd/2017 dated 9 January, 2018-ITAT, Hyderabad.**
- **Vittal Krishna Conjeevaram Vs. ITO, 2013 Tax Pub(DT), 2488(Hyd Trib.)**
- **CIT vs. Syed Ali Adil, 352 ITR 418(AP-HC),2013.**
- **NOTE:**
- **With effect from AY 2015-16, the word “a residential house” has been substituted by “one residential house” in India.**

Section 54 & 54F

- **From when to reckon time limits for availing the benefits of sec. 54 & 54F?**
- **From the date of completion certificate (logical).**

CASE STUDY 1

- **Developer and owner enter into JDA in the PY 2018-2019.**
- **The land held by the owner is transferred to him by way of gift from his father before 01.04.2001.**
- **The consideration for transfer of land is 40% of super built up area (SBU) [proportionate undivided interest in land (UDI) is retained by the owner]. Thus, the sharing ratio of the developer and owner is 60:40.**
- **By virtue of Section 2(47)(v)/(vi), transfer of land has taken place in the PY 2021-2022**
- **The Competent Authority issued completion certificate in the PY 2023-2024.**

CASE STUDY ANALYSIS

- **We may examine the computation under Section 48.**
- **There would be two-fold computation under Section 48 in the hands of owner:**
 - **For transfer of 60% of land to the developer**
 - **For transfer of 40% of SBU along with proportionate 40% of UDI**
 - ❖ **For transfer of 40% of UDI**
 - ❖ **For transfer of 40% of SBU**

Transfer of 60% of Land-Sec.45(5A)

We will consider the following aspects:

- **Year of transfer & Year of taxability**
- **Full value of consideration**
- **Cost of Acquisition**
- **Benefit of Indexation**
- **Rate of Tax**

- **Year of transfer:** As per Section 2(47)(v), PY 2021-2022
- **Year of taxability:** The PY in which the completion certificate is issued i.e. PY2023-2024.
- **Full Value of Consideration:** The Stamp Duty Value of the owner's share i.e. 40% of SBU on the date of issue of completion certificate

Transfer of 60% of Land-Sec. 45(5A)

■ Cost of Acquisition:

Section 55(2)(b)(i) defines ‘cost of acquisition’ in relation to immovable property acquired before 01.04.2001 to mean:

- the purchase cost of the capital asset or**
- the FMV of the same as on 01.04.2001, at the option of the assessee**

■ Benefit of Indexation:

- As per Explanation (iv) to Section 48, cost of inflation index (CII) is calculated from the year in which the long-term capital asset was held by the assessee to the year of ‘transfer of such asset’**
- In the instant case ‘year of transfer’ is different from ‘year of taxability’.**

Transfer of 60% of Land-Sec. 45(5A)

- **If indexation is restricted up to the year of transfer as against year of taxability, the effect of inflation during the period between the year of transfer and year of taxability will be ignored.**
- **This may defeat the objective in granting the benefit of indexation.**
- **Further, while the indexation during the aforesaid period is ignored, the stamp duty value applied will be as on the date of issue of completion certificate [year of taxability]. This causes lack of parity.**
- **Therefore, it may be said that cost inflation index as stood in the year of taxability should be applied.**

■ Rate of Tax: 20%

Summary

Particulars	Transfer of 60% of land
Section	Section 45(5A)
Year of Taxability	Previous year in which the completion certificate is issued
Full value of consideration	Stamp Duty Value of 40% of SBU on the date of issue of completion certificate
Cost of Acquisition	Proportionate [i.e. 60%] purchase cost of land or Proportionate fair market value of the land as on 01.04.2001 subject to indexation
Rate of Tax	20%

Transfer of 40% of UDI of Land along with SBU-Sec. 45(1) -SUMMARY

Particulars		Transfer of 40% of UDI	Transfer of 40% of SBU
Section		Section 45(1)	
Year Taxability	of	Previous year in which SBU's are sold along with UDI	Previous year in which SBU's are sold along with UDI
Full value consideration	of	Actual consideration received or SDV as per Section 50C, whichever is higher	Actual consideration received or SDV as per Section 50C, whichever is higher
Cost Acquisition	of	Proportionate [i.e. 40%] purchase cost of land or Proportionate fair market value of the land as on 01.04.2001 subject to indexation	Proportionate SDV as computed under Section 45(5A) on transfer of 60% land Indexation is available if SBU is long term capital asset
Rate of Tax		20%	If long-term capital asset: 20% If short-term capital asset: 30%

PROVISO TO SEC.45(5A)-ISSUES

- ❖ **As per Proviso, Section 45(5A) would not apply where the assessee i.e. Individual or HUF **'transfers his share' before the issue of completion certificate.****
- ❖ **Whether expression 'Transfers his share' would mean 'complete transfer' of owner's share or it includes even 'part-transfer'?**
- ❖ **Under Section 45(5A) the taxable event takes place, even when the competent authority issues completion certificate for the part of the project.**
- ❖ **Similarly, even transfer of part of owner's share would come under proviso to Section 45(5A),**

PROVISO TO SEC.45(5A)-ISSUES

- **However in case of 'part transfer' of owner's share, whether Proviso would apply:**
 - **To entire land or**
 - **Only to the extent of land proportionate to the transfer of part of owner's share**
- **Whether in case of 'part transfer' of owner's share, applicability of Section 45(5A) is barred wholly or only to the extent of part transfer?**
- **There is no clarity.** Therefore, we may examine the implications of Proviso considering both the interpretations i.e. non-applicability of Section 45(5A) **wholly as well as partially.**

PROVISO TO SEC.45(5A)-ISSUES

- **Non-applicability of Section 45(5A) wholly,** would mean application of Proviso [i.e. Section 45(1)] to the entire land.
- **Non-applicability of Section 45(5A) partially** would mean application of:
 - Proviso [i.e. Section 45(1)] to the extent of land proportionate to the transfer of owner's share before the issue of completion of certificate.
 - Section 45(5A) to the extent of completion certificate issued by the Competent Authority.

PROVISO-CASE STUDY-2 TRANSFER-FACTS

- **Developer and owner enter into JDA in the PY 2018-2019.**
- **The land held by the owner is transferred to him by way of gift from his father before 01.04.2001.**
- **The consideration for transfer of land is 40% of super built up area (SBU) [proportionate undivided interest in land (UDI) is retained by the owner]. Thus, the sharing ratio of the developer and owner is 60:40.**
- **By virtue of Section 2(47)(v), transfer of land has taken place in the PY 2021- 2022**
- **Owner transferred part of his share [say 10% out of 40% of SBU along with UDI in the PY 2022-2023 i.e. before issue of completion certificate**
- **The Competent Authority issued completion certificate in the PY 2023-2024.**

PROVISO-CASE STUDY-TRANSFER-ANALYSIS

- It is a case part transfer.
- In case of part transfer, it is not known whether the non- applicability to Section 45(5A) is to the extent of transfer of
 - Entire 60% of land, or
 - Land proportionate to the transfer of share
- Therefore, we may have to examine the issue under both aspects i.e. non-applicability of Section 45(5A) wholly as well as partially

PROVISO-CASE STUDY-TRANSFER WHOLE-ANALYSIS

- **Let us assume that Section 45(5A) is wholly not applicable.**
- **There will be two-fold computation as under:**
 - **On transfer of 60% of land to the developer.**
 - **On transfer of proportionate rights to receive in 40% of SBU along with UDI.**
- **On transfer of proportionate rights to receive in 40% of SBU**
- **On transfer of proportionate 40% of the undivided interest in land**

PROVISO-CASE STUDY-On transfer of 60% of land to the developer.

Particulars	Transfer of 60% of land
Section	Section 45(1)
Year of Taxability	Previous year in which owner transfers his right in 40% of SBU before issue of completion certificate
Full value of consideration	The value of the SBU on the date of transfer is not ascertainable. Therefore, as per Section 50D, FMV of 60% of land on date of transfer constitute full value of consideration. Section 50C is not applicable.
Cost of Acquisition	Proportionate [i.e. 60%] purchase cost of land or Proportionate FMV of the land as on 01.04.2001 subject to indexation
Rate of Tax	20%

PROVISO-CASE STUDY-On transfer of proportionate rights to be received in 40% of SBU along with UDI.

Particulars		Transfer of rights in 40% of SBU	Transfer of 40% of UDI
Section		Section 45(1)	
Year Taxability	of	Previous year in which SBU's are sold	Previous year in which SBU's are sold
Full value consideration	of	Actual consideration Section 50C does not apply	Actual consideration received or SDV as per Section 50C, whichever is higher
Cost Acquisition	of	Proportionate FMV as computed under Sec. 50D for transfer of 60% land, subject to indexation	Proportionate purchase cost of land or Proportionate F of the land as on 01.04.2001, subject to indexation
Rate of Tax		If long-term capital asset: 20%, else: 30%	20%

PROVISO-CASE STUDY 3- TRANSFER PART-ANALYSIS

- Partial **non-applicability** of Section 45(5A) would mean:

The application of Proviso to Section 45(5A) to the extent of transfer of:

- **Land (out of 60%) to the developer proportionate to the rights in SBUs sold by land-owner before the issue of completion certificate**
- **Transfer of owner' share i.e. SBU (out of 40%)**
- **Transfer of undivided interest in land proportionate to right in SBU which is transferred**

PROVISO-CASE STUDY- TRANSFER PART-ANALYSIS

The application of Section 45(5A) to the extent of transfer of:

- **Land (out of 60%) to the developer proportionate to the SBUs retained by land-owner (out of 40%);**
- **Transfer of owner' share i.e. SBU (out of 40%)**
- **Transfer of undivided interest in land proportionate to right in SBU which is transferred**

CASE STUDY-4

- **Developer and owner enters into JDA in the PY 2018-2019.**
- **The **agricultural land** held by the owner is transferred to him by way of gift from his father before 01.04.2001. **Owner converts the said land into stock-in-trade****
- **The consideration for transfer of land is 40% of super built up area (SBU) along with proportionate undivided interest in land (UDI). Thus, the sharing ratio of the developer and owner is 60:40.**
- **By virtue of Section 2(47)(v)/(vi), transfer of land has taken place in the PY 2021-2022**

CASE STUDY 4-ANALYSIS

- **The provisions of Section 45 do not apply to a case of stock-in-trade. Therefore, even if it is a case of JDA, the provisions of Section 45(5A) do not apply.**
- **However, the provision of Section 45(2) would apply in case a capital asset is transferred to stock-in-trade.**
- **Income arising out of transfer of land or building or both held as stock-in-trade constitute business income chargeable to tax under Section 28**

IMPLICATIONS OF JDA FOR STOCK IN TRADE

Implications on Conversion of land held as capital asset into stock-in-trade are:

- **On transfer of 60% of converted land to the developer: Capital gains under section 45(2).**
- **On transfer of 60% of converted land to the developer: Business profits under Section 28.**
- **On transfer of 40% of converted land [when 40% of SBU is sold]: Capital gains under Section 45(2)**
- **On transfer of 40% of converted land [when 40% of SBU is sold]: Business profits under Section 28**
- **On transfer of 40% of SBU: Business profits under Section 28**

IMPLICATIONS OF JDA FOR STOCK IN TRADE

- **The following issues have to be examined:**

- **Year of taxability**

- **Full value of consideration**

- **Year of Taxability:**

- **As per Section 45(2), the year of taxability is the year in which stock-in-trade (SIT) is 'sold or otherwise transferred'.**

- **In case of JDA, when 60% of the converted land is said to be 'sold or otherwise transferred'?**

IMPLICATIONS OF JDA FOR STOCK IN TRADE

- **Therefore, the year in which owner transfer all his interest in land except the title is the year of taxability. In JDA, generally the owner does not transfer all his interest in land unless the developer delivers 40% of SBU to the owner. Reference can be taken from**
 - **Wipro Ltd. [2016] 382 ITR 179 (Karnataka)**
 - **R. Gopinath (HUF) [2010] 133 TTJ 595 (Chennai)**
- **Therefore, the year in which developer delivers 40% of SBU, is the year of taxability**

....Contd.

■ Full Value of Consideration:

- **As per Section 45(2), FMV of the asset on the date of conversion shall be deemed to be FVC received or accruing as a result of the transfer of capital asset.**
- **Section 2(22B)(i) defines FMV in relation to capital asset to mean the price that the capital asset would ordinarily fetch in the open market on the relevant date**
- **Therefore, FMV of 60% of converted land on the date of conversion constitute FVC.**
- **Once Section 45(2) is applied, deeming fiction Section 50C does not apply. In Carlton Hotel Pvt Ltd 399 ITR 611 [SLP dismissed in 2017-TIOL-417-SC-IT] held that ordinarily if section 45(3) applies, Section 50C does not apply**
- **However, it is advantageous to apply Section 50C for the reason that higher stamp duty would mean higher capital gains chargeable at 20% and a corresponding higher actual cost while determining business profits chargeable at 30%.**

TRANSFER OF 60% OF CONVERTED LAND- SEC. 45(2)-SUMMARY

Particulars	Transfer of 60% of converted land
Section	Section 45(2)
Year of Taxability	Previous year in which the developer delivers 40% of SBU
Full value of consideration	Fair market value of the 60% land on the date of transfer as determined under section 2(22B)(i)
Cost of Acquisition	Proportionate purchase cost of land or Proportionate fair market value of the land as on 01.04.2001 subject to indexation
Rate of Tax	20%

TRANSFER OF 60% OF CONVERTED LAND-SEC. 28-SUMMARY

Particulars	Transfer of 60% of converted land
Section	Section 28
Year of Taxability	Previous year in which the SBU's are received by the Assessee
Full value of consideration	<p>(a) FMV of the 40% of SBU on the date of transfer.</p> <p>(a) As per Section 43CA, if such fair market value is less than the stamp duty value adopted by the stamp duty authority, the stamp duty value shall be deemed to be the full value of the consideration.</p> <p>(a) If such stamp duty value does not exceed 120% of the fair market value of the 40% of the SBU, the said fair market value shall be deemed to be the full value of the consideration.</p>
Deductions	Fair market value computed under Section 45(2) on conversion of 60% of land and all other admissible business expenses and allowances.
Rate of Tax	30%

TRANSFER OF 40% OF CONVERTED LAND-SEC. 45(2)-SUMMARY

Particulars	Transfer of 40% of converted land
Section	Section 45(2)
Year of Taxability	Previous year in which the 40% of SBU's are sold on pro-rata basis
Full value of consideration	Proportionate FMV of the 40% land on the date of transfer as determined under section 2(22B)(i) on pro rata basis
Cost of Acquisition	Proportionate purchase cost of land or Proportionate fair market value of the land as on 01.04.2001 subject to indexation
Rate of Tax	20%

TRANSFER OF 40% OF CONVERTED LAND-SEC. 28-SUMMARY

Particulars	Transfer of 40% of converted land on Pro-rata basis
Section	Section 28
Year of Taxability	Previous year in which the SBU's are sold on pro-rata basis
Full value of consideration	(a)Actual Consideration received or (a)As per Section 43CA, if such consideration received is less than the stamp duty value adopted by the stamp duty authority, the stamp duty value shall be deemed to be the full value of the consideration. (a)If such stamp duty value does not exceed 120% of the actual consideration received, the said actual consideration shall be deemed to be the full value of the consideration.
Deductions	Fair market value computed under Section 45(2) on conversion of 40% of land and all other admissible business expenses and allowances.
Rate of Tax	30%

TRANSFER OF 40% OF CONVERTED SBU-SEC. 28-SUMMARY

Particulars	Transfer of 40% of SBU
Section	Section 28
Year of Taxability	Previous year in which the SBU's are sold on pro-rata basis
Full value of consideration	(a)Actual Consideration received or (a)As per Section 43CA, if such consideration received is less than the stamp duty value adopted by the stamp duty authority, the stamp duty value shall be deemed to be the full value of the consideration. (a)If such stamp duty value does not exceed 120% of the actual consideration received, the said actual consideration shall be deemed to be the full value of the consideration.
Deductions	Proportionate FVC computed under Section 45(2) on conversion of 60% of land and all other admissible business expenses and allowances
Rate of Tax	30%

SOME IMPORTANT CASE LAWS

- 2014 TaxPub(DT) 2459 (AP-HC) : (2014) 059 (I) ITCL 0423 : (2014) 365 ITR 0249 : (2014) 26 CTR 0325 : (2014) 106 DTR 0096
- **Potla Nageswara Rao Vs. Dy. CIT** Income Tax Act, 1961, Section 2(47)
- **--Capital gains--Transfer under section 2(47)** *Possession of land handed over to developer vis-à-vis transfer agreement entered in relevant assessment year --Assessee was entered into agreement with a builder on 7-3-2003 and the plan of the building was approved on 31-3-2003. Since all the dates fall in the relevant assessment year, Tribunal was of view that assessee was liable to pay tax on capital gain on transfer of land being capital asset to the developer for the relevant assessment year. Assessee submitted that the transfer has taken place the moment agreement was entered into followed by possession for the purpose of computing capital gain as there was no payment of consideration and there had been only an agreement, he was not liable to pay tax on capital gain on transfer of land in the relevant year.*
- **Held:** *When the transfer was complete, automatically, consideration mentioned in the agreement for sale has to be taken into consideration for the purpose of assessment of income for the assessment year when the agreement was entered into and possession was given. Since both the aforesaid aspects took place in the relevant year, Tribunal was justified in holding that assessee was liable to pay tax on the capital gains on transfer of land to the developer for the relevant assessment year.*

SOME IMPORTANT CASE LAWS

CIT Vs. Balbir Singh Maini (Supreme Court of India)

Capital gain arising under a Joint Development Agreement (JDA) which never materialized for want of necessary permissions was nothing but a hypothetical income and the same could not, therefore, be taxed under section 45 read with section 48.

In the facts of the present case, it is clear that the income from capital gain on a transaction which never materialized is, at best, a hypothetical income. It is admitted that, for want of permissions, the entire transaction of development envisaged in the JDA fell through. In point of fact, income did not result at all for the aforesaid reason. This being the case, it is clear that there is no profit or gain which arises from the transfer of a capital asset, which could be brought to tax under section 45 read with section 48 of the Income Tax Act.

SOME IMPORTANT CASE LAWS

- **Seshasayee Steels P. Ltd. v. ACIT (2020) 421 ITR 46 / 313 CTR 375/ 187 DTR 241/ 275 Taxman 187(SC)**
- **S. 45 : Capital gains-Transfer-Permission to builder to start advertising, selling, construction on land-Licence to builder not amounting to possession of asset-Memorandum of compromise in 2003 under which agreement confirmed, and receipt by assessee of part of agreed sale consideration confirmed-Gains arose in previous year in which memorandum of compromise entered into, and taxable in that assessment year. [S. 2(47)(v), 2(47)(vi), Transfer of Property Act, 1882, S.53A]**

Thank

You

