KPMG

TAX FLASH NEWS

6 December 2016

Determination of consideration in case of sale at less than stamp duty value and for computing exemption from capital gains tax

Background

The Income-tax Act, 1961 (the Act) provides for determination[1] of full value of consideration in certain cases of sale of immovable property. The Act also allows for tax exemption[2] of capital gains arising from sale of a capital asset other than a house property upon investment in a house property. Recently, the Vishakapatnam Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Dr. Chalasani Mallikarjuna Rao (the taxpayer) held[3] that in case of sale of house property under an unpossessory sale-cum-General Power of Attorney (GPA) for a value less than that considered for stamp duty and registration, the full value of consideration shall be the value as adopted for the purpose of stamp duty and registration of the property. Further, the Tribunal has also held; for computation of tax exemption as per the Act, net consideration received would be applicable and not the value adopted for stamp duty/registration of the property.

Facts of the case

- The taxpayer had filed his India Tax Return (ITR) for the assessment year 2007-08. The taxpayer had sold a residential house property under an unpossessory sale-cum-GPA for an amount of INR60,00,000 while the value adopted for the purpose of stamp duty and registration of the property was INR82,04,000.

- The assessment was completed in 2009. However, the assessment was reopened subsequently and the case was selected for scrutiny in 2011.

- During the course of the scrutiny assessment proceedings, the Assessing Officer (AO) noticed that the taxpayer had claimed tax exemption in respect of a transaction giving rise to capital gains. The AO issued a notice to the taxpayer calling for details in order to verify the correctness of the claim of tax exemption from capital gains under Section 54F of the Act and the applicability of Section 50C of the Act with respect to the sale of the house property.

- The taxpayer furnished details relating to capital gains and the tax exemption claim in respect of such capital gains:

  - Capital gains on sale of house property was arrived at by considering the sale value as per the sale deed.

  - Section 50C of the Act was not applicable as the sale of house property was under an unpossessory sale-cum-GPA.

  - Such capital gains was claimed to be exempt from tax under Section 54F of the Act upon investment of an amount of INR62,74,701 in a new house property.

  - Construction of the new house property commenced in November 2004 and was completed in March 2007.

- The AO did not accept the contention of the taxpayer that Section 50C of the Act was not applicable as the property was sold under an unpossessory sale-cum-GPA.

[1] Section 50C of the Act
[2] Section 54F of the Act
[3] DCIT v. Dr. Chalasani Mallikarjuna Rao [2016] 75 taxmann.com 270 (Visakhapatnam)

- The AO passed the assessment order by recomputing capital gains on sale of house property and rejecting the claim of tax exemption of capital gains on the following grounds:

  - The taxpayer admitted that the sale resulted in capital gains in his hands; hence, Section 50C of the Act was applicable to such sale, regardless of the fact that the sale of the house property effected by the taxpayer was under an unpossessory sale-cum-GPA.

  - Exemption from tax under Section 54F of the Act was applicable only where the capital asset sold was not a residential house property. As the taxpayer had sold a residential house property, exemption from tax under Section 54F was not applicable to the capital gains arising on such sale.

  - As the taxpayer had invested in the new house property prior to the sale of the house property in question, the taxpayer was not eligible to claim a tax exemption under Section 54F or Section 54 of the Act.

- Aggrieved by the assessment order, the taxpayer preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)].

- The CIT(A) reversed the order of the AO on the following grounds:

  - As the property was transferred under an unpossessory sale-cum-GPA and was not registered, value adopted for stamp duty and registration was not applicable; hence, Section 50C of the Act was not applicable;

  - The taxpayer was eligible to claim a tax exemption of capital gains under Section 54 of the Act as it was immaterial whether the construction commenced before the sale of the house property in question.

Issues before the Tribunal

- Whether Section 50C of the Act was applicable in the case of sale of house property under an unpossessory sale-cum-GPA at a value less than that adopted for the purpose of stamp duty and registration?

- Whether the taxpayer was eligible to claim tax exemption under Section 54 of the Act, as the construction of the new house property had commenced before the sale of the house property in question?

- Whether the taxpayer needed to invest the full value of consideration in order to claim tax exemption from capital gains under Section 54F of the Act or Section 54 of the Act when Section 50C of the Act is applicable?

Tribunal's ruling

- The house property which was sold under an unpossessory sale-cum-GPA was registered with the sub-registrar's office adopting the value of INR82,04,000 upon payment of an adhoc stamp duty of INR50,000. Hence, it cannot be said that the property was not registered and therefore Section 50C was not applicable.

- Further, as the transfer of the property took place as per the provisions[4] of the Act, Section 50C of the Act was applicable as the sale consideration was lower than the value adopted for stamp duty and registration. Therefore, as per Section 50C of the Act, the full value of consideration for the purpose of computing capital gains would be the value adopted for stamp duty and registration.

- Section 54 of the Act specifies that completion of construction of house property should be within three years from the date of sale. The date of commencement of construction was not relevant and the construction could have started before the date of sale as held in various judicial precedents[5].

- As the Act does not stipulate any condition as to the commencement of construction, the taxpayer was eligible to claim tax exemption under Section 54 of the Act.

---

[4] Section 2(47)(v) of the Act

[5] CIT v. Bharti Mishra [2014] 222 Taxman 2 (Del), CIT v J.R. Subramanya Bhat [1987] 165 ITR 571 (Kar), CIT v. H.K. Kapoor [1998] 234 ITR 753 (All)

- The terms ‘net consideration’ and ‘full value of consideration’ were different. Net consideration refers to the sale consideration accruing or arising to the taxpayer after deducting expenses incurred wholly and exclusively for the purpose of such sale. Full value of consideration as defined in Section 50C of the Act is applicable only for the limited purpose of computation of capital gains under Section 48 of the Act as held in other judicial precedents[6].

- Hence, when computing the tax exemption of capital gains under Section 54 or 54F of the Act, net consideration shall be considered. As, in this case, the taxpayer’s investment in the new house property was higher than the net consideration from the sale of the house property in question, the taxpayer is eligible to claim exemption under Section 54 of the Act.

- The Tribunal reversed the order of the CIT(A) and directed the AO to recompute capital gains that were considered to be the full value of consideration as per Section 50C of the Act and to allow exemption under Section 54 of the Act.

Our comments

This decision has been in alignment with earlier judgements with similar fact patterns. The decision stems from the fact that, though the sale was under an unpossessory sale-cum-GPA, the property was registered adopting a value higher than the sale consideration and the applicability of Section 50C of the Act in such cases. The ITAT had also allowed the taxpayer to claim a tax exemption under the applicable provisions of the Act based on the language used in the provisions in respect of completion of construction of new house property as well as net consideration for investment in order to be entitled to such exemption, as in the judicial precedents quoted in the judgement.

[6] Gyan Chand Batra v. ITO [2010] 6 ITR(T) 147 (Jai), CIT v. Smt. Nilofer I. Singh [2009] 309 ITR 233 (Del), CIT v, Ace Builders (P.) Ltd. [2006] 281 ITR 210 (Bom), CIT v. Assam Petroleum Industries (P.) Ltd. [2003] 262 ITR 587 (Gau)

www.kpmg.com/in

Ahmedabad
Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru
Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh
SCO 22-23 (Ist Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai
No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi
Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad
8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi
Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata
Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai
Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida
6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune
703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

© 2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.