

SEMINAR ON CONSTRUCTION AND REAL ESTATE INDUSTRY
DIRECT TAX ISSUES – CONSTRUCTION AND REAL ESTATE INDUSTRY

T.BANUSEKAR, FCA, CHENNAI
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ISSUE 1

The assessee a developer carrying on a project had filed the return of income for the assessment year 2011-12 offering income on the basis that 78% of the project has been completed. The case was taken up for scrutiny and the assessment was to be completed in March 2014. The project was completed in financial year 2012-13. The Assessing Officer in the course of assessment proceedings required the assessee to give year wise cost incurred on the project which project has been started and completed over a period of 5 years. The assessee has since been visited with a show cause notice stating that the expenditure incurred upto the previous year ended on 31.03.2011 in comparison to the total cost of the project incurred upto completion was 85% of the total cost and that therefore the assessee should have recognized 85% of the income. Is this view of the Assessing Officer tenable?

ISSUE 2

A and B are co-owners being equal owners of a property admeasuring 14,398 Sq. Ft which was purchased on 08.04.1977. The cost of acquisition of the property was Rs.10 lakhs. A joint development agreement was entered into on 16.07.2010 and the approvals were obtained by A and B. The developer has then demolished the existing building and a construction has been done which was completed in November 2013. The constructed area is 21,600 Sq. Ft. A & B are allotted three flats admeasuring 6814 Sq. Ft. in November 2013. The builder's share in the flat and corresponding undivided share in land was registered during the period June 2012 to November 2013. In these circumstances what would be

1. the year in which the capital gain will arise
2. the sale consideration that should be taken in the hands of A & B
3. the Fair Market Value (FMV) as on 01.04.1981. Can this be based on an approved valuer's certificate
4. The extent of deduction u/s 54 / 54F / 54EC that can be claimed by A & B.

CIT v Geetadevi Pasari [2009] 17 DTR (Bom) 280
Chaturbhuj Dwarkadas Kapadia v CIT[2003] 260 ITR 491 (Bom)
Jasbir Singh Sakaria 294 ITR 196 (AAR)
Najoo Dara Deboo 38 Taxmann.com258 (All)

ISSUE 3

Mr.X owned a residential house property. He decided to give the same to a developer for the purpose of joint development. Mr.X entered into joint development agreement with M/s.Construction Company Ltd. for building 8 flats and gave possession of the house property to the developer. As per the joint development agreement Mr.X is entitled to 4 flats. Will Mr.X be entitled to claim exemption u/s.54? What will happen if Mr.X sells two out of the four flats within one year from the date of taking possession of the flats?

CIT & Anr. v. D. Anand Basappa (2009) 309 ITR 329 (Kar) SLP dismissed (2010) 320 ITR (St.) 19

CIT & Anr. v. Smt. K.G. Rukminamma (2011) 331 ITR 211 (Kar)

CIT v Gita Duggal [2013] 84 CCH 084 Del HC

ISSUE 4

In the above issue 3, will it make a difference if the two flats are gifted to the major son of Mr.X instead of being sold, within the 3 year period?

ISSUE 5

An assessee sold an asset but has not invested the sale consideration in the capital gains account scheme before the stipulated time. However the assessee has utilized the said sum for acquiring a new residential house before the time allowed for filing the return of income u/s.139(4). Will exemption be allowable to the assessee u/s.54F?

CIT v. Rajesh Kumar Jalan (2006) 286 ITR 274 (Gau).

CIT v. Ms. Jagriti Aggarwal (2011) 339 ITR 610 (P & H)

ISSUE 6

An assessee owned a vacant plot and a residential house property. During the previous year relevant to assessment year 2013-14 the assessee has sold the vacant site and the house property and invested the entire proceeds in a new residential house. The new residential house was in the joint names of the assessee and his wife. Will the assessee be eligible to claim exemption both under section 54 and 54F?

Venkata Ramana Umareddy v. DCIT (2013) 142 ITD 16 (Hyd)

CIT v. V. Natarajan (2006) 287 ITR 271 (Mad)

ISSUE 7

Estate Pvt Ltd. is a company carrying on the business of real estate development. It had acquired some lands in 2009 under Power of Attorney and had paid the sale consideration to the erstwhile owners. Due to business constraints it will be unable to develop the lands in the near future and therefore wants to register the lands in its

name. In the light of the increase in guideline values it is now in a dilemma. If it registers the lands at the actual cost of the lands, will the provisions of Section 43CA be attracted?

ISSUE 8

Home Construction Ltd is developing a project consisting of 120 flats. The company has sold a house property to Mr.A in the financial year 2008-09. Subsequently the company has sold another house property to Mrs.A in the financial year 2009-10. Will the company be eligible to claim deduction u/s.80-IB(10) since the company has sold more than one house to an individual and to his relative.

ISSUE 9

The assessee is a partnership firm consisting of five partners. The partners have in their individual name, on behalf of the firm purchased a land at Chennai measuring 40 grounds and 373 Sq. Ft in the aggregate. The assessee firm is formed by a partnership deed which deed specifically provides that “the partners are also authorised to register the land if necessary in their personal name for dealings of the firm. However the same should be debited in the books of the firm”. The querist firm proposes to construct flats in this land, which measures more than one acre. The carpet area and built up area of each of these flats would be less than 1500 Sq. Ft. The actual sale will however include common area which would include a club house area comprising of a banquet hall, gymnasium and health club apart from parking area which will be sold on individual basis to the buyers of the flats based on their requirements. The actual area sold including the common area and where applicable the parking area could exceed 1500 Sq. Ft. The following issues may be discussed in this connection

- a. Whether the firm will be entitled to the deduction u/s.80-IB particularly where since including the common area, the area sold exceeds 1500 Sq. Ft.
- b. Will the sale of parking area affect the firm’s claim for deduction u/s.80-IB
- c. Will the deduction u/s.80-IB be affected as a result of these lands being registered in the name of the partners though this would be accounted as the asset of the firm

CIT v Sanghvi & Doshi Enterprise [2013] 255 CTR (Mad) 156
CIT v Mahalakshmi Housing 2012 TIOL 951 HC – Mad - IT

ISSUE 10

The assessee is the owner of land (referred to as land owner), which is held by the assessee as stock-in-trade. The land owner proposes to enter into an agreement with another person who is engaged in the business of promoting houses (referred to as promoter), for jointly promoting the property. This, the land owner proposes to enter into as a business venture. Will the land owner and the promoter be entitled to claim the deduction u/s.80IB.

Bajaj Tempo Ltd v CIT [1992] 196 ITR 188 (SC)

ISSUE 11

The assessee company is carrying on the development of a residential project at Chennai. This project is outside the city limits of Chennai and is being developed on 40.90 grounds (2.25 acres approx). The project will consist of 27 blocks with two duplex flats and two flats in each block totaling to 108 flats. The project turnover will be around 16 crores and is a joint venture between the assessee company and the landlord who will share the builtup area in the proportion of 70:30. The projects are approved in the financial year 2005-06. The approval has been applied for and granted for each of the 27 blocks independently. The project is likely to be completed within 28 months.

- a) Does this project qualify for deduction u/s.80IB(10)?
- b) If this answer is in the affirmative what is the quantum of deduction that can be claimed?
- c) What is the time limit within which the project must be completed to avail of the deduction?
- d) Are there any other points to be considered for availing of the deduction?

Radhe Developers & Ors v ITO & Ors [2007] 113 TTJ (Ahd) 300 affirmed in [2012] 341 ITR 403 (Guj)

CIT v Shreeji Developers [2013] 37 Taxmann.com 272 (Guj)

B.M & Brothers 2013 [10] TMI 290 (Guj)

Vandana Properties v ACIT [2009] 128 TTJ (Mum)(UO) 89 affirmed in [2013] 353 ITR 36 (Bom)

ISSUE 12

Explanation to clause (a) of section 80-IB(10) provides that the date of completion of construction of the housing project shall be taken as the date on which the completion certificate in respect of such housing project is issued by the local authority. Will it be considered that the construction is completed in the following circumstances:

1. Occupation certificate indicating inhabitable nature of the property issued by a local authority – *DCIT v Ansal Properties & Industries Ltd [2008] 22 SOT 45 (Del)*
2. Certificate from an architect stating that the project is complete in time – *ACIT v North City Developers [2011] TIOL 672 (ITAT) (Kol)*
3. Assessee has completed the project well within time and has applied for completion certificate but the same was delayed beyond the time allowed for completing the project, due to some processing problem in the office of the local authority – *CIT v Tarnetar Corporation [2012] 210 Taxman 206 (Guj) (Mag)*

ISSUE 13

For claiming deduction u/s.80-IB(10) one of the conditions is that the project should be on the size of a plot of land which has a minimum area of one acre, subject to exception in certain cases. Will this condition be taken as satisfied in the following cases:

1. In a project though the land area is more than one acre the built up area of the project is less than one acre – *Haware Engineers & Builders Pvt Ltd v ACIT [2011] 46 SOT 27 (Mum) (URO)*
2. The size of the vacant plot for building a residential unit is less than one acre but the entire plot on which several residential units are built is more than one acre – *CIT v Vandana Properties [2013] 353 ITR 36 (Bom)*
3. Assessee entered into a joint development agreement with landowner. As per agreement 51% of the developed area belongs to the assessee and the assessee has claimed deduction u/s.80-IB(10) in respect of its share in the joint development. However the land proportionate to the assessee's share is less than one acre. – *Mudhit Madanlal Gupta v ACIT [2011] 51 DTR (Mum)(Trib) 217, Kura Homes Pvt Ltd v ITO [2012] 139 ITD 445 (Hyd)*

ISSUE 14

Silicon Housing Ltd undertakes a housing project which is eligible for deduction u/s.80-IB(10). The project was approved after 01.04.2005 and so the same has to be completed by 31.03.2010. The profits are derived by using the project completion method as a method of revenue recognition. The assessee makes a claim for deduction in respect of the profits from the eligible housing project in the first year of its operation when the work on the project is going on. The Assessing Officer denies the deduction on the ground that it would be granted only if the assessee completes the construction within five years from the end of the financial year in which the project is approved. Is the Assessing Officer correct in denying the claim of deduction u/s.80-IB(10)?

If the claim is allowable in each year, what will be the position if the assessee does not complete the project within the stipulated time?

Instruction No.4 / 2009 dated 30.06.2009

ISSUE 15

Will the following incomes be treated as income derived from the development of housing project in the hands of the developer:

1. Income from sale of transferable development rights
2. Income collected from buyers towards providing certain amenities which are not part of the agreement for sale

ISSUE 16

A land owner entered into a joint development with a developer. For some reasons the developer was unable to continue the project and hence the joint development arrangement breaks down. As per the joint development agreement, the land owner claimed compensation from the developer and the same was paid to the land owner by the developer. Will the compensation paid by the developer be allowed as a revenue expenditure. Will such payment attract deduction of tax at source?

ISSUE 17

An assessee, a builder was found on being searched to have received unaccounted cash as part of sale proceeds of shops and houses. The amount was assessed by the Assessing Officer in the year of search. The assessee contended that such money being part of sale proceeds, should be taxed the same way as any other sale proceeds in accordance with the method of accounting regularly followed. Since the assessee followed the project completion method, it contended that the income as detected should be taxed in the year of completion of the project. Is the assessee correct in its claim?

Dhanvarsha Builders & Developers Pvt Ltd v DCIT [2006] 102 ITD 375 (Pune)

ISSUE 18

In a joint development agreement entered into by a land owner with the developer, the land owner will get built up area as consideration for transfer of land to the developer. In such cases how would the developer meet the requirements of deduction of tax at source?

ISSUE 19

Homes India Ltd, a real estate developer includes charges for amenities like sports, facilities, gymnasium, swimming pool, parking etc. in the consideration for sale of a residential unit. Whether such charges where they are separately levied, will be part of the consideration for transfer of the residential unit and subject to deduction of tax at source u/s.194-IA

ISSUE 20

The assessee a real estate developer has developed 75 apartments out of which he has sold 70 apartments. The balance 5 apartments was unsold and but was ready for delivery. In order to generate revenue, the assessee has let out the said 5 apartments for rent. Will the rental income from the 5 apartments be taxed in the hands of the assessee under the head income from house property or under the head profits and gains of business or profession?

Sultan Brothers Pvt Ltd v CIT [1964] 51 ITR 353 (SC)

East India Housing and Land Development Trust Ltd [1961] 42 ITR 49 (SC)

Azimganj Estates Pvt Ltd v DCWT [1997] 60 ITD 348 (Cal)

CIT v Anamika Builders Pvt Ltd [2001] 251 ITR 585 (Cal)