Section 50C: An in-depth analysis

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Why was 50C inserted:

Prior to 50C being enacted, understating the consideration for transfer of capital assets (land or building or both) in the instrument of transfer and paying a substantial part of the actual consideration with unaccounted money (cash) was a longstanding practice to evade tax on capital gains. 50C was inserted by the Finance Act, 2002 w.e.f 1-4-2003 to prevent large-scale undervaluation real estate and tax unaccounted money in transactions.

Realm of Section 50C:

Sub-section(1) of 50C reads as follows:

> *"Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed [or assessable] by any authority of a State Government (hereafter in this section referred to as the [1]"stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed [or assessable] shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer."[2]*

Sub-section(1) of 50C seeks to state that where the value adopted by the State Valuation Authority, herein after referred to as SVA, for the purpose of payment of stamp duty in respect of transfer of a capital asset, being land or building or both, by the assessee, is more than the value stated in the instrument of transfer or the actual consideration received, the value adopted by the SVA will be believed to be the full value of consideration

1 Inserted by the Finance (No. 2) Act, 2009, w.e.f 1-10-2009

2 Inserted by the Finance Act, 2002, w.e.f 1-4-2003

received for the purpose of computing income of the assessee under the head “Capital gains”.

In short, the value adopted by the SVA will be taken as the guideline value and the full value of consideration received as a result of the transfer.

It has been widely debated that the said section fails to take note of genuine cases, where for varied reasons, the assessee maybe compelled sell the asset at a consideration less than the full mark market price. Thus, the constitutional validity of this section was challenged in the ***K.R. Palaniswamy vs Union of India***[3]***.*** The division bench of Madras High Court upheld the 50C to be constitutionally valid and not hit by legislative incompetence of the Central government and stated that the said section cannot be said to be arbitrary because of adoption of guideline values or vilolative of Article 14 (reasonable classification) or principles of natural justice on the ground that no opportunity is given to the assessee. Sub-section 2 and 3 of 50C provide full proof safeguard to the assessee as the real value under the section is determinable only after the assessee is heard.

Exception:

Sub-section(2) reads as follows:

> [4]*“(2) Without prejudice to the provisions of sub-section (1), where-*
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> *(a) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;*
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> *(b) the value so adopted or assessed by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, Court or the High Court,*

3 [2008] 306 ITR 61

4 Inserted by the Finance Act, 2002, w.e.f 1-4-2003

> *the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act."*

Sub- section (2) sets out an exception to sub-section (1). 50C(2) provides that where the assessee claims to the Assessing Officer, herein after referred as AO, that the value adopted by the SVA under sub-section(1) exceed the fair market value, herein after referred as FMV, as on the date of transfer of the asset and if the said value is not disputed in any Court of law, the AO may refer the valuation of the capital asset to a District Valuation Officer, herein after referred as DVO.

Two issues arise under this sub-section: ***First being, does the word 'may' in this sub-section give the AO discretion to refer and not a case to the DVO considering that both ingredients under the sub-sections are present?***

The word in section 50C which talks about 'may' shall be understood as 'should' when it comes to reference to the DVO when there is a dispute in the value of transaction.[5] The word further signifies that even incase the AO is not satisfied with the explanation of the assessee, he 'should' refer the matter to the DVO.[6] ITAT Pune remanded the matter back to the AO with the direction to refer the matter to the DVO for determining the FMV as on date of transfer and to compute capital gains on the basis of the report of the DVO[7], ITAT Hyderabad held that the AO cannot simply brush aside the submissions of the assessee while adopting the value as mentioned by the SVA. Sub-section(2) imposes a statutory duty on the

5 CIT vs. Chandra Narain Chaudhri [2013] 38 ITR 275
6 Meghraj Baid vs. Income Tax Officer 114 TTJ 814 (Jd.)
7 Masud Ahmed Qureshi Jalna vs Assessee - citation

AO to obtain the value of the capital asset by referring the matter to the DVO[8].

The second issue being that market prices of land and building fluctuate from time to time based on economic factors like demand and supply and thus there will be cases where the value of the asset on the date of agreement to sell and on the date of actual sale differ. In such cases, what value should the SVA adopt under sub-section(1)?

When the sale consideration is fixed at the point of time when the agreement to sale is entered into and there is a considerable gap between the parties agreeing to the transaction and actual execution of the transaction, it is the valuation at the point of time when sale consideration was fixed which is to be adopted for the purpose of computing the capital gains[9]. When there is a change in circle rates whereby the valuation of the capital asset is enhanced and the enhancement is beyond the control of the assessee (seller) and also not the case of the revenue that the buyer has given more consideration than that accepted in the agreement to sale, the SVA is bound to take the value as on the date when the agreement to sale was registered[10]. (ITAT – Hyderabad),in ***Mohd. Imran Baig vs. ITO[11]**,* held that it is the stamp duty value on the date of agreement and not the date of sale that has to be taken. It can be said that a comparison between the value as per sale deed and value on value as per SVA ceases to be devoid of a rational basis because the two values represent the values at different points of time.

However, the then existing 50C did not provide a clear position with respect to the above question. Therefore, the Legislature, in order to

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8 Asst. Commissioner of Income Tax, Circle – 5(1), Hyderabd vs. Lalitha Karan, Hyderabad [2017] 1 TMI 505

9 Himmatbhai Dharamshibhai Sonani vs. DCIT (ITAT Ahmedabad), IT No.1237/Ahd/2013

10 ITO vs. Modipon Ltd (ITAT Delhi) ITA No. 2171/Del/2015

11 2015-LL- 1127-152

remove the incongruity that resulted in undue hardship to the assessee, inserted, by way of the Finance Act, 2016, the following provision to 50C.

> [12] *"Provided that where the date of an agreement fixing the value of consideration and the date of registration of the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement maybe taken for the purpose of computing full value of consideration for such transfer".*

It is manifest that all amendments have only a prospective effect. However, amendments that are curative in nature and are being made to make the existing legislation reasonable and compassionate to negate the hardship it caused, like the above-mentioned amendment, can it be given a retrospective effect?

The amendment[13] made in 50C is curative and intended to remove undue hardship to the assessee and apparent incongruity. Thus, it should be given retrospective effect from 1st April 2003, i.e. the date from which 50C came in to effect[14]. ITAT Agra[15] and the Hon'ble Delhi High Court have, in respective cases, have held that the amendment (second proviso) to the said section [40(a)(ia)], inserted by the Finance Act 2013 w.e.f 1-4-2013 is declaratory and curative in nature and should be given retrospective effect from the date on which the original provision was enacted[16]. Therefore, once it is decided that a statutory amendment is made to overcome implementation problems or remove undue hardship to the taxpayers, such an amendment has to be treated as effective from the date on which the legislation containing such hardship or problems was introduced[17]. The Tribunal relied on the principle laid down by Hon'ble

12 Inserted by the Finance Act, 2016, w.e.f 1-4-2017
13 Inserted by the Finance Act, w.e.f 1-4-2017
14 Himmatbhai Dharamshibhai Sonani vs. DCIT (ITAT Ahmedabad), IT No.1237/Ahd/2013
15 Rajeev Kumar Agarwal Vs ACIT (2014) 149 ITD 363 (Agra)
16 Commissioner Of Income Tax-1 vs Ansal Land Mark Township (P) Ltd [2015] 377 ITR 635 (Del)
17 CIT vs. Alom Extrusions (Supreme Court) (2009) 319 ITR 306 (SC)

Supreme Court's in Alom Extrusions case[18] wherein the Supreme Court held that a proviso which is required to be read into the section to give the section a reasonable interpretation, it could be read retrospective in operation, particularly to give effect to the section as a whole.

Full-proof safeguard:

Sub- section 3 reads as follows:

> *"Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed [19][or assessable] by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed [or assessable] by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer."*

Sub-section(3) provides the assessee a full proof safeguard. It states that when the case is referred to the DVO under sub-section(2) and the market value determined by the DVO is higher than the valuation of the SVA, the valuation of the SVA shall be taken to be the full value of the consideration for the purpose of capital gains and not the valuation of the DVO.

It is well settled by plethora of decisions that as per section 50C (3) of the Act, if the fair market value of the land so computed by the DVO is higher than the value adopted by the valuation authorities for stamp duty purposes, the value adopted by the valuation authorities shall be used for assessment[20]. Where the SVA took Rs. 15,50,000 as sale consideration as against Rs.6,50,000 the actual consideration, by applying provisions of section 50C and at the assessee's instance, the matter was referred to the DVO and the DVO valued the property at Rs.11,42,000, it was held that the full value of consideration for the purpose of section 48, cannot be

18 (2009) 319 ITR 306 (SC)

19 Inserted by the Finance (No. 2) Act, w.e.f.1-1-2009

20 R.G. Bulchandani, Mumbai vs Assessee 2016-LL- 0728-31

taken at a higher figure than what was valued by the DVO when the value is lesser than the value adopted by the AO as mandated by sub-section(2) of 50C. When fair market valuation determined by the DVO is higher than the valuation or assessment as per the stamp valuation authority, the computation of capital gains is to be done with reference to the valuation or assessment as per the stamp valuation authority. In other words, valuation of property by the DVO cannot act to the detriment to the assessee; the assessee cannot be put to any disadvantage in case the matter is referred to the DVO[21].

Cost of acquisition for the buyer:

The cost of acquisition to the buyer and the sale consideration to the seller are two sides of the same coin. The cost of acquisition for a buyer can be construed from section 49(4). 49(4) states that incase where an individual or HUF holds a capital asset as a purchaser, at the time of transfer of the asset, the assessee can claim the amount of stamp duty value adopted for taxation under section 56(2)(vii) [or clause (x)] as cost of acquisition of such property.

For example: For assessee 'A', being the purchaser of a land, the SDV adopted under section 56(2)(vii) is Rs.1cr. Later, 'A' enters in to an agreement to sell the land to 'B' for a consideration of Rs.2Cr. The SDV on the date of agreement to sell is Rs.3cr. For the purpose of computing income of 'A' under the head 'Capital Gains', though Rs.3Cr will be taken as deemed consideration from the sale, the assessee will only be allowed to claim Rs. 1cr as cost of acquisition. Therefore, cost of acquisition for the buyer never changes even if deemed consideration for the seller changes. Legislation for cost of acquisition is provided merely for calculating capital gains when the property is sold or transferred at a later date.

Taxability in the hands of the buyer:

21 Ravi Kant vs Income Tax Officer, (2007) 110 TTJ Delhi 297

While 50C deals merely with taxability in the hands of the seller, 56(2)(vii) deals with taxability in the hands of the buyer on lines of 50C. 56(2)(vii) provides that when an individual or a HUF purchases immovable property for a consideration less than the stamp duty valuation, herein after referred to as SDV, and the difference between the purchase price and SDV is more than Rs.50,000, the difference will be treated as income under the head "Income from Other sources" for the purchaser.

For example, if 'A' purchases a land at Rs.1Cr. and the SDV of the land is 1.2Cr, the difference between the two, 20lakh, will be deemed to be income for 'A' under the head "Income from Other Sources".

Since 56(2)(vii) was restricted to taxing receipts of only certain assets for inadequate consideration in the hands of Individuals and HUFs alone, a new section, 56(2)(x) was inserted by the Finance Act, 2017. The proposed new section stretched both the category of assets and recipients under the tax bar.

It is also pertinent to note that though section 50C is an anti-abuse tax provision, it could lead to double taxation incases where the property is transferred for an inadequate consideration as the recipient is already taxed under 56(2)(x). The difference between the SDV and the actual consideration is taxable in the hands of both, the seller and the buyer, for the seller under the head 'Capital gains' and for the buyer under the head "Income from Other Sources".

Conclusion:

The scheme of 50C can be summarized as thus. It is manifest that under 50C, the value adopted by the SVA is deemed as the full value of consideration for computing capital gains. There is an exception when the assessee can show that the fair market value is lesser than the stamp duty valuation, the AO will have to refer the case to the DVO for determining the fair market price. Further, sub-section(3) provides the assessee full proof protection. The legislature was carefully enacted to ensure that the valuation of the property by the DVO could not act to be determent of the assessee; the rationale being that the assessee cannot be put to any disadvantage in case the matter is referred to the DVO. And finally, since the proviso to 50C was inserted to remedy the unintended consequences and to make the section workable it could read retrospective in operation.