



Taxation of Real Estate Development Contracts: Ready Reckoner of Case Laws

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(1) Housing Projects – [S. 80B(10)]

- (i) **CBDT Circular F. No. 205/3/2000/ITA II dt. 4-5-2001.** CBDT has clarified that “any project which has been approved by a local authority as housing project should be considered as adequate for purpose of Section 80B(10)”.
- (ii) **CIT vs. Brahma Associates (2011) 333 ITR 289 (Bom.).** Section 80B(10) allows deduction to the entire project approved by the local authority and not to a part of the project, if the conditions set out in section 80B(10) are satisfied, then deduction is allowable on the entire project approved by the local authority and there is no question of allowing deduction to a part of the project
- (iii) Whether projects commenced before 1/4/2005 would continue to be governed by the ratio of the **Bramha Associates** (Supra) after 1/4/2005. In **Saroj Sales Organisation vs. ITO** (2008) 115 TTJ 485 (Mum) & **Hiranandani Akruti JV vs. Dy. CIT** (2010) 39 SOT 498 (Mum).
- (iv) From 1/4/2010 clause (d) is liberalized by increasing the limit for shops and commercial to the higher of 3% of the aggregate built up area or 5,000 sq. ft.

(2) Owner of Land:

Radhe Developers & Ors. vs. ITO & Ors. (2008) 23 SOT 420 (Ahd.). Not necessary to be owner to be eligible for deduction.

(3) Sub Developer:

Saroj Sales Organisation vs. ITO (2008) 115 TTJ 485. The sub-developer is eligible for deduction.

(4) Single Sanction Plan:

Saroj Sales Organisation vs. ITO (2008) 115 TTJ 485 (Mum.) / (2008) 3 DTR 494 (Mum) One block eligible if satisfies requirement of S. 80B(10).

(5) Pro-rata Deduction:

- (i) As per following decisions assessee was entitled to deduction in respect of residential units below specified limit:-
 - (a) **C. V. Corporation vs. ITO** (2010) 38 SOT 174 / 43 DTR 329 (Mum.)(Trib)
 - (b) **SJR Builders vs. ACIT** (2010) 3 ITR 569 (Bang.)(Trib.)
 - (c) **Sreevatsa Real Estates (P) Ltd. vs. ITO** (2010) 41 DTR 497 (Chennai)(Trib.)

(d) **Bengal Ambuja Housing Development Ltd.** (IT Appeal No. 458 of 2006 (Cal. H.C.) dt. 5/1/2007 approving Tribunal decision in **Bengal Ambuja Housing Development Ltd. vs. Dy. CIT** (ITA No. 1595/Kol/2005, dt. 24/3/2006).

(ii) **Thistle Properties (P) Ltd. vs. ACIT** (2011) 138 TTJ 538 (Mum.)

(iii) Deduction denied **Sanghvi & Doshi Enterprise vs. ITO** (2011) 60 DTR 406 (Chennai)(TM)(Trib.) has held that once flats were sold separately and two flat owners themselves combined separate flats whereby the total area exceeded 1,500 sq. ft., deduction under section 80IB(10) cannot be denied to the assessee-developer on this ground.

(iv) With effect from 1/4/2010, Finance (No.2) Act, 2009 introduced two more conditions

- Only one residential unit to be allotted to person not being an individual.
- In case of Individual not to spouse.

(6) Minimum Alternate Tax:

(i) Even though profit from the development of a housing project is allowable as deduction, while calculating the book profit under section 115JB for Minimum Alternate Tax purposes, the same will not be reduced from the book profit.

(ii) XII-BA minimum alternate tax is applicable to Limited Liability Partnership (LLP). If project of an undertaking not being a company is approved before 31/3/2008 and later the undertaking is converted into LLP, minimum alternate tax may be applicable.

(7) Direct Tax Code, 2010 - (2010) 326 ITR (St.) 41 (317)

As per clause 318 which deals with repeals and savings sub clause (2)(O) provides that deduction under section 80IB would be continued to be allowed under the code if the assessee is eligible for such deduction for the Assessment year beginning on the 1st day of April, 2012.

(8) Slum Rehabilitation Project

(i) By Finance (No.2) 2004, the legislature has removed the restriction of the project size by a proviso due to difficulties faced to developer in getting an area of one acre for development of a single society within the entire slum project.

(ii) **Allied Motors (P) Ltd. vs. CIT** (1997) 224 ITR 677 (SC)

(iii) One of the condition in the proviso is that the Slum Rehabilitation scheme has to be notified by the Board. Though the proviso was inserted by Finance (No.2) Act, 2004, the Board has notified the SRA scheme only in 2010. The notification no.67/2010 dated 3rd August, 2010 approved the SRA projects under Regulation 33(10) of the Development Control Regulations for greater Mumbai, 1991.



Assessing Authority & Ors. vs. Patiala Biscuit Manufacturers (P) Ltd. (1977) 1977 CTR 185 (SC),

- (iv) The Bombay High Court in **Ramesh G. Dedhia vs. ACIT** Income Tax Appeal No. 2469 of 2010 on 17/6/2011 has admitted the following question of law

“Whether the proviso to section 80B(10) of the Act inserted by the Finance (No.2) Act, 2004 and the subsequent notification No. 67/2010 dated 3/8/2010 issued by CBDT notifying the SRA projects is clarificatory in nature and in retrospective in operation?”

- (v) Notification No. 01/2011 dated 5/1/2011

(9) Completion of Project:

- (i) **Dy. CIT vs. Ansal Properties & Industries Ltd.** (2008) 22 SOT 45 (Del.) occupation certificate from BMC sufficient.
- (ii) When, construction is duly completed before 31-3-2008, but the sale of some flats take place in the subsequent year, deduction under section 80B(10) would be available in the subsequent years from the incomes from such sales.
- (iii) **Sanghavi & Doshi Enterprise (Supra)** it was held that where Assessee makes an application for completion certificate, grant of completion certificate after verification on subsequent date would relate back to the date on which application is made.
- (iv) The condition of completing of project before 31/3/2008 is not applicable where project is commenced before 1/4/2005 i.e., before the date from which requirement of completion of project before 31/3/2008 was introduced.

(10) Full Value of Sale Consideration – S. 50C:

- (i) **K. R. Palanisamy vs. UOI (2008) 306 ITR 61 (Mad.) - S / 50C is constitutionally valid.**
- (ii) Reference to DVO – Not Discretionary
 - **Meghraj Baid vs. ITO** (2008) 114 TTJ 841 (Jd.) / (2008) 4 DTR 509 (Jd.) – Mandatory.
 - **ITO vs. Smt. Manju Rani Jain** (2008) 24 SOT 24 (Del.)
 - **CIT(A) can also direct.**
 - **Hasmukhbhai vs. ACIT** (2011) 46 SOT 419 (Ahd.)(Trib.)
 - A.O. cannot substitute value which stamp.

(iii) Effect of DVO Valuation

(a) Ravi Kant vs. ITO (2007) 110 TTJ 297 (Del.)

It was held that, where apparent consideration of land and/or building as shown in the document of transfer is less than the stamp duty valuation fixed by State Government, it is the latter which shall prevail for computation of capital gains. In case the assessee claims that the value fixed for stamp duty purposes is higher than fair market value, the Assessing Officer shall refer the matter to DVO under section 50C(2) for determination of fair market value, which if less than the stamp duty valuation, shall be considered as fair market value; but if higher than the stamp duty valuation, the stamp duty valuation shall be treated by virtue of section 50C(3), to be the fair market value. Assessing Officer cannot disregard the valuation fixed by DVO.

It was further held that valuation by the DVO placing too much of emphasis on the valuation by the Stamp valuation authority which is based on circle rates is neither desirable nor permissible.

(b) Waqf Alal Aulad vs. Additional Commissioner of Income Tax (2010) 37 SOT 58 (Del.) it was held that where rent control act applies valuation to be done as per rent capitalization method.

Jitendra Mohan Saxena vs. ITO (2008) 117 TTJ 974 (Luck.)

(iv) No Registration – Section 50C Not Applicable

Navneet Kumar Thakkar vs. ITO (2007) 112 TTJ 76 (Jd.) / (2008) 110 ITD 525 (Jd.)

(v) Section 50C does not apply to buyer for invoking Section 69B

ITO vs. Optec Disc Manufacturing (2008) 11 DTR 264 (Chd.)(Trib.)

(vi) Business Income

Inderlok Hotels Pvt. Ltd. vs. ITO (2009) 32 SOT 419 (Mum.).
S. 80C not applicable.

(vii) Development Right

ArifAkhtar Husain vs. ITO (2011) 59 DTR 307 (Mum.)(Trib.)

- S 50C applicable.

Chairanjeev Lal Khannavs ITO (Mum.) (Trib.) Source: www.itatonline.org.

(viii) Section 50C : Applies to Depreciable Assets – (S. 2(11), 48, 50)



The Mumbai Special Bench in ITO vs. United Marine Academy (2011) 130 ITD 113 (Mum.)(SB)(Trib.).

(ix) Section 50C : Does not apply to transfer of “leasehold rights”

Atul G. Puranik vs. ITO (2011) 132 ITD 499 / 11 ITR 120 (Trib.) (Mum.)

(x) S. 50C : Ownership of Land - (S. 45)

ITO vs. Sushma Gupta (Smt.) (2011) 44 SOT 568 (Delhi)(Trib.)

The Tribunal held that in order to apply provisions of section 50C, it is not necessary that assessee should be direct owner of property.

(xi) Valuation by DVO- Binding.

Bharti Jayesh Sanghani (Smt) vs. ITO (2011) 55 DTR 212 (Mum.) (Trib.).

(xii) Stamp Duty Valuation under section 50C and Deduction under section 54F

Mohd. Shoib vs. Dy. CIT (2010) 127 TTJ 459 – S. 50C applicable. Gyan Chand Batra vs. ITO (2010) 133 TTJ 482 (JP.) – S.50C not applicable.

Gouli Mahadevappa vs. ITO (2011) 128 ITD 503 (Bang.)(Trib.) S.50C not applicable.

(xiii) Assessable

The Finance (No.2) Act, 2009, w.e.f. 1/10/2009 has introduced the word “assessable” in section 50C. As per Explanation 2, the expression “assessable” “means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty. Hence, even if the sale document is not put up for registration and there is no stamp valuation by stamp Authorities, this amendment empowers Assessing officer to determine the price as per stamp valuation.

(xiv) Direct Tax Code, 2010 - (2010) 326 ITR (St.) 41 (80)

Under the bill clause 50(2)(h) provides that in the case of transfer of land or building the full value of consideration will be stamp duty value of the asset. However there is no provision in the bill for the assessee to object this valuation or to request the Assessing officer to refer the question of valuation to DVO as is there in section 50C of Income Tax Act, 1961.

(11) Conversion of Tenancies into Ownership:

- (a) **Dr. D. A. Irani vs. First ITO** (1984) 7 ITD 160 (Bom.) (SB) - Extinguishment of rights.
- (b) **CIT vs. D. P. Sandu Bros Chembur (P) Ltd.** (2005) 273 ITR 1 (SC) – As cost of acquisition is Nil – no capital gains.
- (c) Cost of Acquisition - **Balmukund P. Acharya vs. ITO** (2010) 133 TTJ 640. Similar view is also held by Bombay High Court **CIT vs. Abrar Alvi** (2001) 247 ITR 312. Market value of tenancy right when it was surrendered.

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