



Amendment to Section 50C introduced by the Finance Act, 2016 for determining full value of consideration in the case of immovable property, is curative in nature and will apply retrospectively

Background

Recently, the Ahmedabad Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Dharamshibhai Somani¹ (the taxpayer) held that amendment² made in Section 50C³ of the Income-tax Act, 1961 (the Act) is curative in nature and therefore applies retrospectively with effect from 1 April 2003, i.e. the date when Section 50C of the Act was introduced. The amendment to remove an apparent incongruity which resulted in undue hardships to the taxpayers should be treated as retrospective in effect. Therefore, even when the statute does not specifically state so, such amendments, can only be treated as retrospective and effective from the date when the related statutory provisions were introduced.

Facts of the case

- During the Assessment Year (AY) 2008-09, the taxpayer, along with a co-owner, had sold certain land for a consideration of INR 4.5 million. However, as per the stamp duty valuation authority, the land was valued at INR 7.62 million.

- The registered 'agreement to sell' was executed on 29 June 2005. However, the sale deed of land was finally executed on 24 April 2007. The land was agricultural land and the buyer was a private limited company, which could have purchased only non-agricultural land. The land was required to be converted into the non-agricultural land before execution of sale deed.
- The taxpayer claimed that the stamp duty valuation as on 24 April 2007 was not relevant for ascertaining the sale consideration for the purpose of Section 50C of the Act. However, the Assessing Officer (AO) added INR 1.56 million to the value of sale consideration, for the purpose of computing capital gains. The AO held that the relevant date for the purpose of the transaction is on the date on which the sale deed is executed. Accordingly, the AO adopted sale consideration under Section 50C at stamp duty valuation rate.
- The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO.

Tribunal's ruling

- The fundamental purpose of introducing Section 50C of the Act was to counter suppression of sale consideration on sale of immovable properties, and this section was introduced in the light of widespread belief that sale transactions of land and building are often undervalued resulting in leakage of legitimate tax revenues. This Section provides for a

¹ Dharamshibhai Somani v. ACIT (ITA No. 1237/Ahd/2013) – Taxsutra.com

² Vide the Finance Act, 2016

³ Where the date of agreement fixing the amount of consideration and the date of registration for 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 may be taken for the purpose of computing full value of consideration for such transfer provided that consideration or part of consideration has been paid via account payee cheque or draft or using electronic clearing system of bank on or before the date of agreement for the transfer

presumption that the value, for the purpose of computing stamp duty, adopted by the stamp duty valuation authority represents the fair indication of the market price of the property sold.

- There is sometimes the considerable gap in parties agreeing to a transaction and the actual execution of the transaction. The very comparison between the value as per sale deed and the value as per stamp duty valuation cease to be devoid of a rational basis since these two values represent the values at two different points of time. In a situation in which there is a significant difference between the point of time when the agreement to sell is executed and when the sale deed is executed, it should ideally be between the sale consideration as per registered sale deed, which is fixed by way of the agreement to sell. If at all any suppression of sale consideration should be assumed, it should be on the basis of stamp duty valuation as at the point of time when the sale consideration was fixed.
- The Tribunal referring to the Memorandum⁴ explaining the provisions of the Finance Bill, 2016 observed that the government has recognised the genuine and intended hardship in the cases in which the date of agreement to sell is prior to the date of sale, and introduced welcome amendments to the statute to take the remedial measures. However, through these amendments the taxpayer does not get relief since the amendment is introduced only with prospective effect from 1 April 2017.
- There cannot be any dispute that the amendment made in Section 50C is to remove an incongruity, resulting in undue hardship to the taxpayer. The Easwar Committee in its report⁵ recognised such incongruity. Once it is not in dispute that a statutory amendment is being made to remove an undue hardship to the taxpayer or to remove an apparent incongruity, such an amendment has to be treated as effective from the date on which the law, containing such an undue hardship or incongruity, was introduced.

- The Tribunal finds support from the decision of Delhi High Court in the case of Ansal Landmark Township Pvt Ltd⁶ wherein it was observed that a curative amendment to avoid unintended consequences is to be treated as retrospective in nature even though it may not state so specifically. The same principle, when applied in the present context, leads to the conclusion that the amendment to remove an apparent incongruity which resulted in undue hardships to the taxpayers, should be treated as retrospective in effect. Therefore, even when the statute does not specifically state so, such amendments, can only be treated as retrospective and effective from the date when related statutory provisions were introduced. Thus, the proviso to Section 50 C should also be treated as curative in nature and with retrospective effect from 1 April 2003, i.e. the date effective from which Section 50C was introduced.
- The Tribunal relied on the Supreme Court's decision in the case of Alom Extrusions Ltd⁷ wherein the Supreme Court observed that when a proviso is inserted to remedy unintended consequences and to make the section workable, a proviso which supplies an obvious omission in the section and which proviso 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.
- The Tribunal remanded back the matter to the AO to decide the matter afresh. In case he finds that a registered agreement to sell, as claimed by the taxpayer, was actually executed on 29 June 2005 and the partial sale consideration was received through banking channels, the AO, so far as computation of capital gains is concerned, will adopt stamp duty valuation, as on 29 June 2005, of the property sold as it existed at that point of time.

Our comments

Whether a particular amendment will apply with retrospective effect or not, has been a subject matter of debate before the courts.

⁴ Which explains the basis of amendment including recommendation of R V Easwar committee

⁵ The (*then prevailing*) provisions of Section 50C do not provide any relief where the seller has entered into an agreement to sell the asset much before the actual date of transfer of the immovable property and the sale consideration has been fixed in such agreement

⁶ CIT v. Ansal Landmark Township Pvt Ltd [2015] 377 ITR 635 (Del)

⁷ CIT v. Alom Extrusion Ltd [2009] 319 ITR 306 (SC)

The Ahmedabad Tribunal has observed that the amendment to remove an apparent incongruity which resulted in undue hardships to the taxpayers should be treated as retrospective in effect. Therefore, even when the statute does not specifically state so, such amendments, can only be treated as retrospective and effective from the date when related statutory provisions were introduced.

In the case of R.B. Jodha Mal Kuthiala⁸ the Supreme Court has held that a proviso which is inserted to remedy unintended consequences and to make the provision workable requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.

Relying on the aforesaid Supreme Court's decision the Mumbai Tribunal in the case of Bansal Parivahan (India) (P) Ltd⁹ in the context of disallowance of Section 40(a)(ia) observed that the provisions of Section 40(a)(ia) as they stood prior to the amendments made by the Finance Act, 2010 were resulting into unintended consequences and causing grave and genuine hardships to the taxpayers. The taxpayer has substantially complied with the relevant TDS provisions by deducting the tax at source and by paying the same to the credit of the government before the due date of filing of their returns under Section 139(1A) of the Act. In order to provide a remedy to this position and to remove the hardships being caused to the taxpayers, amendments have been made to the provisions of Section 40(a)(ia) of the Finance Act, 2010. Although the said amendments have been made with effect from 1 April 2010, it was held that the said amendments are remedial/curative in nature and therefore, would apply retrospectively with effect from 1 April 2005.

The decision of the Ahmedabad Tribunal will provide relief to taxpayers who are facing similar challenges.



⁸ R.B. Jodha Mal Kuthiala v. CIT [1971] 82 ITR 570 (SC)

⁹ Bansal Parivahan (India) (P.) Ltd. v. ITO [2011] 43 SOT 619 (Mum)

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