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UNDERSTANDING STAMP DUTY VALUE FOR COMPUTATION OF CAPITAL GAIN

1.0. Introduction

A registered valuer undertook a capital gain valuation assignment. He collected the relevant documents for valuation, where he observed the following facts.

The property was purchased on 06.05.2000. It was sold on 28.03.2021. The guideline value at the time of purchase was INR 1200 per square foot, whereas the purchaser paid a sale consideration of INR 1400 per square foot. The property was purchased at a higher rate due to the demand at that time and location. As of 01.04.2001, the guideline rate remains constant at INR 1200 per square foot. Since the assessee acquired the property at INR 1400 per square foot for which the stamp valuation authority has collected the stamp duty, and this becomes the cost of acquisition for the assessee. In the previous tax regime, up to 31.03.2021, under section 55, the assessee has the option of taking either the cost of acquisition or fair market value. Hence the registered valuer can adopt INR 1400 per square foot as of 01.04.2001, being the cost of acquisition.

If the registered valuer has to follow only INR 1200 per square foot (being the fair market value based on the guideline value), the assessee will lose the benefit of INR 200 per square foot in capital gain.

Now, the new tax regime under section 55, comes into force from 01.04.2021, and the assessee is permitted to consider only the fair market value based on stamp duty value.

This rationalisation of fair market value under Section 55 of the Income Tax Act in Finance Act 2020, the act provides the meaning of fair market value in comparison to stamp duty value for computation of capital gains and gives a concrete solution to the above problem. If the same above-mentioned property is sold after 01.04.2021, the registered valuer can adopt INR 1400 per square foot as of 01.04.2001, being the cost of acquisition as well as the stamp duty value. The guideline value will not play a role in the above example.

2.0. Earlier version of fair market value under Section 55 of the Income Tax Act

(b) in relation to any other capital asset,—

(i) where the capital asset became the property of the assessee before the 1st day of April 2001, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of April 2001, at the option of the assessee ;

2.1. Rationalisation of fair market value under Section 55 of the Income Tax Act in Finance Act 2020

Following proviso and the Explanation thereto shall be inserted after sub-clause (ii) of clause (b) of sub-section (2) of section 55 by the Finance Act, 2020, with effect from 01-4-2021:

Provided that in case of a capital asset referred to in sub-clauses (i) and (ii), being land or building or both, the fair market value of such asset on the 1st day of April 2001 for the purposes of the said sub-clause shall not exceed the stamp duty value, **wherever available**, of such asset as on the 1st day of April 2001.

Explanation.—For the purposes of this proviso, "stamp duty value" means the value **adopted or assessed or assessable** by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of the immovable property.

These amendments will take effect from 1st April 2021 and will, accordingly, apply in relation to the assessment year 2021-22 and subsequent assessment years.

3.0. Stamp duty value

The interpretation of 'stamp duty value' means 'stamp duty value' and this cannot be assumed as 'value as per guideline/circle rates'. The guideline rate remains constant, whereas, the stamp duty value can be revised on appeal. There is the possibility of the stamp duty value can be revised, when the assessee represents for a revision of the stamp duty value under section 47A of the Indian Stamp Act. Again, if the asset suffers a deficiency in case of litigation, encumbrance or encroachment, or defects in title deed, the stamp duty value can be reversed on appeal to the stamp duty authority under Rule 7 of the Stamp Act provides relief to the assessee.

The Supreme Court of India, in the case of the Inspector General of Registration, Tamil Nadu & Ors. vs. K. Baskaran - Civil Appeal No.2586 of 2020 @ SLP (C)No.15790 of 2019, explains that Rule (7) of the Stamp (Prevention of undervaluation of the instrument) Rules, 1968, reads as under:- Final order determining the market value.- 1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him [pass an order within three months from the date of first notice] determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty if any.

4.0. Explanation given on Stamp duty value in the act

The proviso and the explanation inserted in the act, explains the meaning of stamp duty value, by four words

- (1) Stamp duty value as adopted or
- (2) Stamp duty value as assessed or
- (3) Stamp duty value as assessable, and
- (4) Stamp duty value as wherever available

1. **The word adopted** denotes the stamp duty value of a specific property recorded in the registration department on the date of registration. This can be either guideline value or higher or lower value than the guideline value. The value so adopted by the stamp valuation authority will represent the stamp duty value for the specific year of execution.

2. **The word assessed** refers to the stamp duty value of a specific property recorded by the registration department on which the specific property for the specific year of execution is evaluated. When the buyer and seller submit the sale deed before stamp duty authority, irrespective of sale consideration value, the stamp duty value will be fixed by the registration department only after due assessment. Once again, this can be either a guideline value or a higher or lower value than the guideline value. Hence, the value assessed by the stamp authority will be the stamp duty value for the specific property for the specific year of execution.

3. **The word assessable** - Since both Section 50C as well as an amendment to Section 55 are special provisions, they apply to only freehold interest or land or building or both, but other rights in the larger spectrum of the bundle of rights such as leasehold rights or tenancy rights.

Assessable word is used to address transactions that are not necessarily registered or do not undergo the scanner of registrar and stamp duty. In many such cases, a registered conveyance is not executed but transfers

are effected only through possession receipts merely on stamp papers of Rs.100 that are not registered because of inherently defective titles.

In the case of CIT vs R. Sugantha Ravindran on 6 March 2013 - Dated 06/03/2013 Tax Case (A) No. 21 of 2010 by the High Court of Madras, the court delivered its judgment:

“We are of the firm view that the insertion of words "or assessable" by amending Section 50C with effect from 01/10/2009 is neither clarification nor an explanation to the already existing provision and it is only inclusion of new class of transactions namely the transfers of properties without or before registration.

Before introducing the said amendment, only the transfers of properties where the value was adopted or assessed by the stamp valuation authority were subjected to section 50C application.

However after the introduction of the words "or assessable" after the words "adopted or assessed", such transfers where the value assessable by the stamp valuation authority are also brought into the ambit of section 50C.

Thus such introduction of a new set of a class of transfer would certainly have the prospective application only and not otherwise”.

4. Wherever available: If the stamp duty value is available for a nearby property, then, the valuer can adopt that value (subject to modifications). In the event of the non-availability of stamp duty value, section 50D plays a role.

Section 50 D: Fair market value deemed to be the full value of consideration in certain cases - Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

This applies to land and building or both and self-generated assets like goodwill.

5.0. Anomalies in guideline rate/ Circle rate

The guideline rate may be uniform for all the properties (for front roadside or rear-end property) located on a single road or for a single survey number whereas the market value may differ even for adjacent properties due to any number of reasons.

Due to policy revision, the local state government can lower or increase the guideline rate (Example: New Delhi Union Territory Govt from Feb 2021 – 20% reduction on circle rate, TN Government from June 2017 lowered the guideline rate by 33%, Pondicherry Union Territory Govt from 2017 decrease it by 25%, Karnataka Govt from 2020 onwards, no increase on circle rate and to remain constant for 3 years) whereas the market value changes due to the real estate trend and money market prevailing on the date of valuation. The guideline rate remains the same irrespective of supply and demand whereas the market value changes according to the demand.

The guideline rate is the same for all the properties irrespective of the fact whether they are marketable or non-marketable whereas no market value can be certified for non-marketable properties. The guideline rate is the same even for encumbered properties whereas market value will be less for encumbered properties.

The guideline rate is the same for land-locked lands, recess plots, tandem plots, narrow pathways, etc. whereas the market value will be less for such properties.

5.1. Sale consideration may or may not reflect the guideline rate

When the guideline rate is available on the date of registration, the stamp authorities must strictly adhere to this standard guideline rate. Instead of adopting these guideline rates, for want of more revenue or

some reason, they register documents on the higher value. The stamp value authority adopted and registered in many cases of sale documents on a higher value more than the circle rate, which means that the comparable stamp duty value becomes a realistic value and it can be evidenced that the sale instance rate is higher in that area at a particular time.

It is evident that when the comparable sale documents with a higher value are being registered, higher than that of guideline value, it is understood that value is also the “assessable stamp duty value” by the stamp valuation authority.

This mainly happens, in cases of a firm (LLP, private limited), they may buy the asset as a business asset on the prevailing market value and register the same on full sale value consideration paid, which may be more than the guideline value. For them, the full value consideration paid on the purchase of the business asset has to be reflected in the balance sheet of the firm. Hence, the prevailing market rate becomes the stamp duty value, which will be more than the guideline value.

This is not in the case for small investors, where they record lesser sale consideration as against the guideline rate. In these cases, they have to necessarily register on the guideline value, which will be the stamp duty value, irrespective of the sale consideration amount paid.

In the case of industrial layout, there are three different rates – rate fixed by the industrial layout authority (SIDCO, SIPCOT), the guideline rate as per the stamp authorities, and prevailing market rates. In most cases, if there are no industrial plots available, the comparison will be based on the guideline rate and prevailing market rates. Since the assets are meant for specific usage and purpose, the prevailing market rates will be always more / less than the guideline rate (being the guideline rate remains constant). Always prevailing market rates will not match with the guideline rate. Only in few cases, both sale consideration value and guideline value match, and forms the basis of stamp duty value.

Hence, when the real value through comparable sale instance, if it is available the valuer can adopt this comparable sale instance rate instead of the guideline/circle rate. The evidence must not be based on a particular case and will vary from case to case for many reasons. A comparison of a minimum or at least (say) 3 pieces of evidence must be scrutinised before arriving at a real value.

6.0. Section 50 C - Special provision for the full value of consideration in certain cases.

50 C (2) (b) without prejudice to the provisions of sub-section (1), where—

the value so adopted or assessed or assessable 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, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, 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.

Explanation 2.—for the purposes of this section, 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.

Remarks:

1. It provides that where the consideration declared to be received or accruing as a result of the transfer, is less than the value assessed by stamp duty authority for payment of stamp duty, the value so assessed

shall be deemed to be the full value of the consideration, and capital gains shall be computed accordingly under section 48 of the Income-tax Act.

2. It is further provided that, where the assessee claims that, the value assessed for stamp duty purposes exceeds the fair market value of the property and he has not disputed the value so assessed in any appeal or revision (Section 47 A of the Stamps Act) or reference before any authority (Collector / RDO) or Court, the assessing officer may refer the valuation of the relevant asset to a Valuation Officer under section 55A of the Income-tax Act.

3. The central Government under Finance Act 2016 amended Section 50C, to remove this anomaly in the law, As per the amendment, in case the date of agreement fixing the sale consideration and actual date of registration of sale of land or building is not the same, the value adopted by Stamp Authority as on the date of agreement can be taken as sale consideration.

4. In the Finance Act 2018, under section 50C of the Income-tax Act, in sub-section (1), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April 2019, namely: —

"Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five percent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration."

5. In the Finance Act 2020 under section 50C of the Income-tax Act, in sub-section (1), in the third proviso, for the words "five percent." the words "ten percent." shall be substituted with effect from the 1st day of April 2021.

In all these sections and amendments made in the act, the government stipulates to adopt the stamp duty value and not the guideline rate.

These insertions of sections and changes in the base year for Indexation have improved the systematic approach for the assessee in the computation of capital gain.

By this, the Central Government has detached all the anomalies in the act. By initializing this, the Government has removed all the hardships faced by the assessee. The sections of the act are very clear and removed the difficulties confronted by the assessee.

7.0. Registered valuer role in the computation of capital gains

The valuer can adopt the comparable stamp duty value, as well as, guideline rate whichever is higher / lower, provided that the valuer should be in a position to substantiate that value by proper reasoning, valid judgment, and justification before the assessing officer or tribunal while representing the assessee.

This case mainly applies for the determination of fair market value as of 01.04.2001 and also in the case of the non-availability of guideline value for that place on 01.04.2001.

The valuer must bring to his knowledge, the following points before applying this comparable sale instance value.

The property may be with legal defects either in title deeds, or encumbrance, litigations, leased/tenanted, or with physical defects like land classification, location, situation, size, shape, locked lands, recess plots, tandem plots, narrow pathways, etc. In many cases, the guideline rate is available either for a specific survey number or street-wise rate or may be in a residential/commercial area.

Whereas, either the legal or the physical defects in the property may not represent the real guideline rate. While adopting a higher value more than the stamp duty value as of 01.04.2001, the valuer must be very vigilant in adopting that rate. Necessary precautions must be taken by the valuer in representing the comparable sale value and this must be justified with valid reasons.

ITAT- Jodhpur, Navneet Kumar Thakkar vs ITO on 08.03.2007, Equivalent citations: 2008 110 ITD 525 Jodh, 2008 298 ITR 42 Jodh, (2007) 112 TTJ Jodh 76,

The Tribunal stated that: The value adopted or assessed by the stamp valuation authorities has to be of the very same property, which is the subject matter of transfer. The language of this section provides in unambiguous terms that the value adopted or assessed by the stamp valuation authority has to be substituted with the sale consideration of the "such property". Thus it is clear that the property in respect of which valuation is made for purposes of stamp duty must be the very same property, which is the subject matter of transfer for calculating capital gain by invoking the provisions of this section.

ITAT - Delhi, Anjali Dua, vs Income Tax - I.T.A.No.1008/Del/2011

The Tribunal observed that: The value of stamp valuation authority as reflected in the sale deeds furnished by the assessee does not pertain to the actual land which was sold, as is evident from the report of the valuation officer and actual physical inspection. In the instant case, it is evident from the material on the record of the Tehsildar and Sub-Registrar.

Inference: In the above tribunal case, there are three different rates on comparable sale instance values. These values must be kept in mind of the valuer and he must diligently do the valuation.

For the computation of fair market value as of 01.04.2001, while adopting the comparable sale instance for the nearby land, the valuer can derive the fair market value subject to the following comparison adjustments

1. Location	4. Size
2. Situation	5. Encumbrance
3. Shape	6. Legal factors
7. Time gap factor between the comparable sale date and the valuation date i.e. 01.04.2001	

8.0. Conclusion

These act insertions and base year change have enhanced the importance of the registered valuer's profession. The registered valuer plays a major role in his judgment and technical potential in deriving the real fair market value of the property, thereby avoiding the penalization of the assessee on the capital gain tax.

By representing the correct information on the property to elucidate the fair market value of the property as per statutory regulations will make the assessee avoid unnecessary burden on the capital gain tax. With more and better quality of data and statistics, the valuer can satisfy both the assessee and the income tax department.

Reference: The Income Tax Act and extract from my book TAX VALUATION – CAPITAL GAINS

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