

# Safe Guard in the Tax Treatment in Respect of the Difference of Valuation under the Stamp Duty Value and Transaction Price as Envisaged U/S 56(2) (Vii) (B) read with Section 50C of the Income Tax Act, 1961

In the last decades one of the crucial issue in respect of transfer of immovable properties in a considerable quantum which is lower than the market value as determined by the stamp duty Registering Authority for the levy of stamp duty and registration fee. And the same has been faced by such assessee who has actually disclosed the difference of the same which is at least 10% thereon .i.e. the market value being higher than the transaction price at least by 10% of the transaction price as mutually determined both by the seller and buyer of the immovable property where the said assessee considers the transaction price simply ignoring the stamp duty valuation.

Consequently section 50C read with section 56(2)(vii)(b) is applicable where the stamp duty value will be deemed to be treated as the transaction price and the considerable tax is being implemented thereon. The involvement of two persons i.e. buyer and seller of the property are simultaneously effected for the payment of income tax thereon.

As regards seller of the property its very much clear about the increment of the deemed selling price which have only effect to increase the capital gain but in regards to the buyer though it's deemed capital payment to the seller there is no scope to taxed under head of capital gain as even if the selling price is replaced by the stamp duty valuation no gain persists in the hands of the buyer and as a result the tax authority logically considers that such capital payment was made from the source of the buyer which at all has not been



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disclosed and on the basis of the deeming provisions it is taxed under head of Other Source by virtue of section 56(2)(vii)(b).

In order to safe guard of the govt. revenue the Income Tax authority after insertion of section 56(2)(vii)(b) is applying the levy of penalty on misreporting of Income which is at all not become the actual income of the Assessee. For example when an assessee purchased an immovable property at a considerable price which becomes the lower of the stamp duty value as determined by the State stamp duty authority and the said difference quantum is at least more than 10% of the said transaction price, the difference of the stamp duty value and the actual consideration will be treated as deemed Income of the respective assessee where the buyer has no role on such value even if due to certain wrong estimation of the stamp duty authority the buyer is liable to pay income tax on the portion of the deemed income and also surprisingly the Assessing Authority charges penalty on such difference. And in that instant case due to the same valuation the difference of the estimated high level land value and transaction price of the low level land will be treated as Deemed Income of the Purchaser and Seller herein and also both have to face the penalty proceedings also.

As such the person dealing with such capital transaction on transfer of the immovable property should be cautious and should approach to correct such estimated stamp duty value before transfer otherwise such consequence will be endanger after two years at the time of income tax assessment U/s 143(3) or 147 or 153A. However presently it is also appearing even in the summery assessment as made U/s 143(1)(a) of the Act.

Actually the stamp duty authority estimated the value on

the basis of the area based on Mouza proximity of the area and other relevant factors. But on several occasions it appears that the high level land and low level land in the same mouza and in that particular area are being estimated as same value without comparing the nature of the land is situated at very low level and as such the buyer is actually paying less considerable price even if the estimated market value of that particular mouza or in that particular nature of area is higher.

The remedial measures has been envisaged under the Income Tax Act where the assessee having absolute right to challenge such alleged valuation and if the assessee place its objection thereon the Assessing Authority has no right save and except to send the same to the departmental valuation officer. And on the basis of the value as adopted by the departmental valuation officer such adopted value will be replaced by the value of the stamp duty valuer and the Assessing Officer is duty bound to obey the said valuation. The duty of the departmental valuer is to adopt the fair value in consideration of the nature of the property and still dispute arises the assessee may place the valuation report as reported by the private valuer who is duly approved by the commissioner of the Income Tax and relevant judiciary implementation will be adopted. Hence even if the whimsical valuation if considered by the departmental valuer the assessee has absolute liberty to make further objection producing the fair market valuation report valued by the private valuer which is accepted by several judicial pronouncements.

Hence the assessee should be cautious before the transfer of the property both in the hands of the seller and buyer being the parties of that particular transaction.