THE CRITICAL ISSUE UNDER SECTION 56(2)(VII)(B) IN RESPECT OF PURCHASE OF IMMOVABLE PROPERTY

Shri Tapas Mazumdar
Tax Consultant

The very crucial issue in respect of transfer of immovable properties in a considerable quantum which is lower than the market value as determined by the state Registering Authority for the levy of stamp duty and registration fees.

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 5% of the said stamp duty value and here the difference of the stamp duty value and 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. 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.

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 area are being estimated as same value without comparing that the nature of the land is situated at very low level and as such the buyer is actually paying less. 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.

However the Hon'ble Finance Minister recently while delivering the situation of in the Income Tax related issues of startups business stated that it should be handled with "utmost care" and a final-action-taken report on their grievances should be submitted within three working days It has also asked the regional heads of the Income Tax Department to constitute a startup cell at their offices.

"The issue relating to startups are to be handled with utmost care. All the officers in your charge must handle such issues accordingly," the order sent to all regional chiefs of the I-T Department said. PTI has accessed the order. It also issued directions on handling of grievances of startups. In case of any grievance, the preliminary action taken report is to be submitted to this office (CBDT) by the next day, that is within one working day of calling of the report by this office, the order said."Startup entities can approach the cell for speedy resolution of their grievances. This initiative is the latest among the recent initiatives taken by the CBDT to further ease the compliance issues pertaining to startups," a CBDT spokesperson had said while describing the role of the new unit.

Finance Minister Nirmala Sitharaman had, during a press conference last month, announced the creation of such a cell in the CBDT and had declared exempting startups from the so-called angel tax.

"To mitigate genuine difficulties of startups and their investors, it has been decided that section 56(2)(vii)(b)) of the Income-Tax Act shall not be applicable to a startup registered with DPIIT," Nirmala Sitharaman had said, adding that a startup having any income tax issue can approach the cell for quick resolution of the same. But not still considered any recourse on the other assessees genuinely being suffered U/s 56(2)(vii)(b).

ITO Vs Shri Trilok Chand Sain (ITAT Jaipur) 159 ALL ITAT (6366)

The taxpayer, an individual, is engaged in real estate business and regularly dealt in sale and purchase of land and buildings. During the year, the• taxpayer purchased land for a consideration for which the stamp authority adopted a higher value. The taxpayer recorded the• purchase of the land in its trading account. According to the Tax Officer• (TO), the taxpayer received the land for an inadequate consideration, which invoked the provision of section 56(2)(vii)(b)(ii) of the Act. Thus, the differential amount2 was taxed as deemed income of the taxpayer.