

Section 50C is applicable to transfer of leasehold rights of a land for 99 years since it is a capital asset

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Background

As per Section 50C of the Income-tax Act, 1961 (the Act) when a capital asset, being land or building or both, is transferred for a consideration which is less than the value assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then such stamp duty value is taken as full value of consideration under section 50C of the Act. There have been conflicting decisions by Courts/Tribunals on whether transfer of tenancy/leasehold right is a transfer of a capital asset, and would fall within the ambit of Section 50C of the Act.

Recently, the Lucknow Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Shri Hari Om Gupta¹ (the taxpayer) held that the leasehold right of a land for 99 years is a capital asset to which the provisions of Section 50C of the Act are applicable. Therefore, the capital gain on the transfer of such leasehold right is to be computed in accordance with the provisions of Section 50C of the Act.

Facts of the case

The taxpayer has acquired the leasehold rights for a period of 99 years and subsequently, transferred such rights for the remaining period of lease. The Assessing Officer (the AO) made addition on account of long-term capital gains on such transfer by invoking the provisions of 50C of the Act.

The Commissioner of Income-tax (Appeals) [CIT(A)] held that Section 50C of the Act is related only to transfer of capital assets and not to the transfer of leasehold right in capital assets. In the present case, the taxpayer was not owner of the land but was only the holder of leasehold rights for 99 years and therefore, the property transferred is not a capital asset.

¹ ITO v. Shri Hari Om Gupta [ITA No.222/LKW/2013] (Assessment Year - 2007-08)

Tribunals ruling

The Tribunal held that leasehold right is a capital asset and therefore provisions of Section 50C of the Act are applicable to the transfer of leasehold right for 99 years.

Accordingly, the long-term capital gain on the transfer of leasehold rights for 99 years is taxable by invoking provisions of 50C of the Act.

Our comments

The Courts/Tribunal have held in some of the cases² that the provisions of Section 50C of the Act are not applicable to transfer of leasehold rights. The Kolkata Tribunal in the case of Tejinder Singh held that Section 50C of the Act will apply on receipt of consideration on 'transfer of a capital asset, being land or building or both' but will not apply in case of transfer of tenancy / leasehold rights. Similarly, the Mumbai Tribunal in the case of Shri Atul G. Puranik held that Section 50C is a deeming Section and the fiction created in this section cannot be extended to any asset other than those specifically provided therein. Section 50C applies only to a capital asset, being land or building or both, therefore it cannot be made applicable to leasehold rights in a land.

It is important to note that the Chennai Tribunal in the case of Foxconn India Developer (P) Ltd³ held that the definition of rent under Section 194-I covers the payment made for long term lease agreement. Therefore, taxes have to be withheld under Section 194-I of the Act on long term lease arrangement.

In the present case, the Lucknow Tribunal has held that the leasehold right of a land for 99 years is a capital asset and therefore, the provisions of 50C are applicable on transfer of such rights. The Tribunal has not discussed the difference between the leasehold rights of a land and specific capital assets being 'land or building or both' provided under Section 50C of the Act.



² DCIT v. Tejinder Singh (ITA No. 1459/Kol/2011), Atul G. Puranik v. ITO [(2011) 141 TTJ 69 (Mum)], ACIT v. Munson Textiles (ITA No. 6320/M/2010), Kishori Sharad Gaitonde v ITO (ITA No. 1561/Mum/09), Pradeep Steel re-rolling Mills Pvt. Ltd. (ITA No. 341/Mum/2010)

³ Foxconn India Developer Ltd v. ITO [2012] 24 taxmann.com 48 (Chen)

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