



VASAI BRANCH OF WIRC OF ICAI

Seminar on 6TH February, 2011

Topic : Accounting and Taxation and related legal aspects in Real Estate Industry

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I. RELEVANCE OF SPECIFIC LAWS

II. TAXATION AND ACCOUNTING FOR BUILDERS AND DEVELOPERS

Distinction between contractor, builder and developer

**Section 145 & 115JB of the Income Tax Act,
1961- Section 211 of the Companies Act,
1956**



**AS 7 (old) & Decided case law under the
Income Tax Act**

AS 7 revised :

Applicable to only contractors

Percentage Completion Method

AS 9 for builders and developers



Revenue recognition as per GN

When seller has transferred to buyer all significant risks and rewards of ownership

When seller retains no effective control of the goods transferred to a degree usually associated with ownership

When no significant uncertainty exists regarding the amount of the consideration

Where there is no uncertainty about ultimate collection



**Acts thereafter are as a contractor-
Percentage Completion Method to be applied
Method of accounting for a builder/developer
MOFA, 1963**

Road ahead under IFRSs

**AS 7 and AS 9 Exposure drafts on lines of
IAS 11 and IAS 18 and subsequent dilutions
Tax Implications of convergence to IFRSs**

**Accounting, Auditing and Tax issues in projects
claimed u/s. 80IB(10)**

Issues in sec 35AD – for SRs from AY 2011-12



III. REAL ESTATE DEVELOPMENT BUSINESS AND PARTNERSHIPS/JOINT VENTURES :

Joint developments

**Distribution of assets on dissolution or
otherwise :**

Dissolution

Reconstitution

Retirement



Revaluation of assets & Credit to Partners

Sale of units by firm to a partner

**Dissolution and discontinuation
of business**



IV. DEVELOPMENT AGREEMENTS :

Implications of transfer of development rights

Income Recognition and Measurement in development and sub-development agreements



Taxability of income under a development agreement

Section 53A of TP Act :

Section 2(47)(v) of I. Tax Act

Whether adventure in the nature of trade

**Applicability of section 50C to development
agreements**



**Termination of a Development Agreement :
Legal and tax consequences**

**MOU then DA :
Legal & Tax consequences**

Subsequent events : Revision in terms



V. ISSUES IN SECTION 44AD :

Meaning of civil construction works for section 44AD

Sub Contractors

Land development activity

**Immunity from books of accounts :
implications**



Taxability of retention / margin money

Escalation clause

**Revenue recognized : Whether turnover
: ASI 29**

**Can a developer show income u/s. 44AD
if his turnover / gross receipts do not exceed
Rs. 40 lacs?**



VI. ISSUES IN PROVISIONS OF SECTIONS 50C AND 56(2) OF THE INCOME TAX ACT, 1961

i. Section 50C :

- ◆ **Chapter XXA :K. P. Varghese 131 ITR 597 (SC)**

Section 50C validity upheld



- ◆ **Finance Act, 2002 introduced 50C w.e.f. 01 04 2003**
- ◆ **Simultaneously Chapter XXC made inoperative w.e.f. 01 07 2002**
- ◆ **“Assessable” inserted w.e.f. 01 10 2009**
- ◆ **Valuation Proceedings**



- ◆ **Value determined: Higher/ Lower**
- ◆ **Valuation Report received after completion of assessment**
- ◆ **Coverage of term “land or building or both”**
- ◆ **Flats, shops, galas and other such units**



- ◆ **Units in co-operative hsg. society or other such organisations**
- ◆ **Development rights**
- ◆ **Tenancy rights**
- ◆ **Booking right in a unit**



- ◆ **For Builders and developers**
- ◆ **Stamp duty paid by Purchaser : Locus of Vendor**
- ◆ **Can sec. 50C be applied to purchaser ?**
- ◆ **Effect on exemption provisions**
- ◆ **Section 50C vis a vis sections : 45(2), 45(3), 45(4), 50, 50B**



ii. Section 56(2) :

Can a company receive gift ?

Sum of money : connotation

from non –relatives taxable

Gifts from relatives not taxable ?



- ◆ **Exceptions:**
 - From relatives**
 - On occasion of marriage**
 - Under a will or by inheritance**
 - In contemplation of death of payer**
 - From local authority ref sec 10(20)**
 - Institution etc. registered u/s. 10(23C)**
 - Trust or institution registered u/s. 12AA**



- ◆ **Substantial amendments w.e.f. 01 10 2009:**
- ◆ **Immovable property without consideration**
- ◆ **or for inadequate consideration**
(Deleted by Finance Act, 2010)
- ◆ **Stamp Valuation exceeding Rs. 50000/-**
- ◆ **Per immovable property**
- ◆ **Assessee can dispute stamp valuation**



- ◆ **Property other than immovable property :
Shares and securities, jewellery,
archaeological collections, drawings,
paintings, sculptures, any work of art
(Addition of “bullion” w.e.f. 01 06 2010)**
Receipt of shares of a closely held co. by firm or closely held company without consideration or at inadequate consideration
- ◆ **Taxable in like manner but w.r.t. FMV**
- ◆ **Taxation of leasing in SEZs**

Thank you

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