**Treatment of Capital Gains arising on sale of Residential Property**

For all those persons who are buying residential properties and selling such residential properties at a later date a question which generally crops up in the minds is with reference to tax treatment on sale of property at a later date.

It is also a well known fact that a property is purchased on a particular date when part payment of the property is made, and then allotment is made to the buyer. Thereafter installments are made in due course and finally possession of the property is granted to the investor at a later date.

The issue that pertains is whether the period of holding be reckoned from the date of allotment or from the date of offer of possession or from the date of registration of property in the buyer’s name, thereby making the property Long term or short term capital asset.

For better understanding, let’s take an example.

Mr. X sold a residential flat in March'14 which was acquired by him under the allotment & construction scheme of a builder ABC Infrastructure Ltd. Mr. X paid the first installment in Mar’2006 and consequently the said residential flat was allotted to him in December’06 via letter of allotment dated: 10.12.2006.

The incidence of events is as follows:

1. Date of allotment: Dec'06.

2. Payment of first installment: FY 2005-06.

3. Payments of remaining amounts: Over the period.

4. Offer of possession: May'13.

5. Registry: June'13.

6. Transfer of Residential Flat: Mar'14.

Relying on the decision of the Punjab and Haryana HC in the case of Vinod Kumar

Jain v CIT and Others (2012) 344 ITR 501 with facts similar to the above example, it is concluded that the period of holding of the said residential flat shall be reckoned from the date of issuance of allotment letter and not from the date of offer of possession.

In Vinod Kumar Jain v CIT and Others (2012) 344 ITR 501, the assessee relied on:

Another judgment of the High Court in the case of CIT v. Ved Parkash and Sons

(HUF) (1994) 207 ITR 148; and Circular No. 471, dated October 15, 1986 (1986) 162 ITR (St.) 41 & Cir. No. 672 dtd. 16.12.1993,

to contend that the *allotee gets title to the property with the issuance of allotment letter* and payment of installments is only a follow up action and taking of the delivery ofpossession is only a formality and no right as such accrues.

Circular: No. 471 [F. No. 207/27/85IT(AII)], dated 15101986.

The Board had occasion to examine as to whether the acquisition of a flat by an

allotee under the SelfFinancing Scheme (SFS) of the D.D.A. amounts to purchase or is construction by the D.D.A. on behalf of the allotee. Under the SFS of the D.D.A., the allotment letter is issued on payment of the first installment of the cost of construction. The allotment is final unless it is cancelled or the allotee withdraws from the scheme. The allotment is cancelled only under exceptional circumstances. The allotee gets title to the property on the issuance of the allotment letter and the payment of installments is only a follow up action and taking the delivery of possession is only a formality. If there is a failure on the part of the D.D.A. to deliver the possession of the flat after completing the construction, the remedy for the allotee is to file a suit for recovery of possession.

The Board have been advised that under the above circumstances, the inference that can be drawn is that the, D.D.A. takes up the construction work on behalf of the allotee and that the transaction involved is not a sale. Under the scheme the tentative cost of construction is already determined and the D.D.A. facilitates the payment of the cost of construction in installments subject to the condition that the allotee has to bear the increase, if any, in the cost of construction. Therefore, for the purpose of capital gains tax the cost of the new asset is the tentative cost of construction and the fact that the amount was allowed to be paid in installments does not affect the legal position stated above. In view of these facts, it has been decided that cases of allotment of flats under the Self Financing Scheme of the D.D.A. shall be treated as cases of construction for

the purpose of capital gains.

Circular: No. 672, dated 16121993.

Attention is invited to Board’s Circular No. 471, dated 15.10.1986.

The Board has considered the matter and has decided that if the terms of the schemes of allotment and construction of flats/houses by the cooperative

societies or other institutions are similar to those mentioned in para 2 of Board’s Circular No. 471, dated 15101986 (Sl. No. 428), such cases may also be treated as cases of construction for the purposes of sections 54 and 54F of the Incometax Act.

Finally while deciding the appeal the Honorable judges laid special emphasis on the above mentioned circulars of the CBDT and came to the conclusion that the allotee gets title to the property on issuance of an allotment letter and that the payment of installments is only a consequential action upon which the delivery of possession flows. The HC concluded that the right in the property vested on the day on which the specific number of the flat was allocated to the assessee & accordingly the period of holding shall be reckoned from date of issuance of allotment letter.

CONCLUSION:

Applying the above rationale in our example, and taking into consideration the date of allotment and not the delivery of the possession, the residential flat shall be considered as long term capital asset and the resultant capital gains as LTCG.

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