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EY Tax Alert

Calcutta HC rules that deeming provision of substituting stamp duty value in computing capital gains tax levy not to apply to cases where transfer does not require stamp duty payment

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Executive summary

This Tax Alert summarizes a Calcutta High Court (HC) ruling, dated 24 February 2023, in the case of The Durgapur Projects Limited[1] (Taxpayer), wherein the issue before the HC was whether the stamp duty value of the property can be adopted as "full value of consideration" for the purpose of computing capital gains arising on compulsory acquisition of non-agricultural land parcel by the government, in place of receipt of actual compensation.

In computation of capital gains, the Income Tax Act, 1961 (ITA) require adoption of stamp duty value if actual consideration received on transfer of land or building is lower than the value adopted for the purpose of levy of stamp duty under the applicable state law.

The HC held that in case of compulsory acquisition of land by the government, there can be no scope of suppression in value of consideration received by the Taxpayer. Consequently, provision of adoption of stamp duty value fictionally, which was meant to curb the menace of unaccounted cash, has no applicability. The HC further held that computation of capital gains adopting stamp duty value will have no applicability where transfer is not otherwise liable to payment of stamp duty.

[1] Principal Commissioner of Income-tax v. The Durgapur Projects Limited [TS-81-HC-2023(CAL)]

Background

- Under the ITA, capital gains on transfer of capital asset are chargeable to tax with reference to the full value of the consideration received or accrued to the taxpayer. However, where the consideration received/accrued as a result of transfer of land/ building or both is less than the value adopted/assessed/assessable by the stamp valuation authority of the state government for the purpose of payment of stamp duty, then such stamp duty value of the property is deemed to be the full value of the consideration received/ accrued for the purpose of computing capital gains[2].

- Compensation received on compulsory acquisition of land is chargeable to tax under the ITA. However, provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Fair Compensation Act) provide that no income tax or stamp duty shall be levied on any award or agreement made under the ITA, except in certain specified exceptions[3].

Facts

- The Taxpayer owned a land parcel which was compulsorily acquired by the National Highways Authority of India (NHAI) in tax year 2014-15. The Taxpayer received a compensation from NHAI, which was lesser than the stamp duty valuation of such land parcel.

- The tax authority computed the Taxpayer's total income by adopting the stamp duty valuation as the "full value of consideration" and, accordingly, increased the Taxpayer's total income with deemed capital gains on transfer of land to NHAI.

- Being aggrieved, the Taxpayer filed an appeal before the first appellate authority which decided the appeal in favor of the Taxpayer. The tax authority's appeal before the Income Tax Appellate Tribunal was rejected. Being aggrieved, the tax authority filed an appeal before the HC.

HC's ruling

The HC rejected the tax authority's computation of capital gains on transfer of land parcel to NHAI by adopting stamp duty valuation for the following reasons:

- **Computation adopting stamp duty value as the "full value of consideration" has no applicability where the government is party to the transaction**

    - It is an admitted position that when compensation is determined by the authorities under the Fair Compensation Act, it is invariably lesser than the market value of the property as the determination is done in a particular manner by taking note of several factors. This is also evident from the fact that the Fair Compensation Act provides for an appellate remedy and further remedies to the landowner against inadequacy of determination of compensation.

    - Provisions of Section 50C of the ITA have been designed to control transactions where the correct market value of the property being transferred is not mentioned and there is suppression of the correct value by the parties to the transactions. In case of compulsory acquisition of land by the government, there is no room for suppressing the actual consideration received on such acquisition.

    - The HC distinguished on facts, the decision of the Madras HC in the case of Ambattur Clothing Company Limited[4] that was relied upon by the tax authority. In that case, the transaction of sale of immoveable property was between two private parties, where the sale consideration as per the agreement was lower than the stamp duty valuation.

- **Adoption of stamp duty value instead of actual consideration will have no applicability to cases where transfer is not subjected to payment of stamp duty**

    - Additionally, fiction of adoption of stamp duty value as the full value of consideration is applicable in cases where the transfer of a capital asset is

[2] Section 50C
[3] Where land is being purchased through private negotiations
[4] Ambattur Clothing Company Limited v. Assistant Commissioner of Income-tax (2009) (326 ITR 245) (Madras)

required to be affected only upon payment of stamp duty. Since, in case of compulsory acquisition, transfer of property takes place by operation of law and not under the Transfer of Property Act, 1882 or the Indian Registration Act, 1908, and is without payment of stamp duty, such fiction has no application.

  - Since compulsory acquisition of property by the government does not trigger payment of stamp duty, there is no requirement for assessment of valuation of property by the stamp duty authorities.

- Separately, the HC also held that capital gains on compulsory acquisition of land is not liable to tax under the ITA in view of the specific provision to that effect in the Fair Compensation Act which overrides the ITA. The HC noted that the Central Board of Direct Taxes (CBDT) had issued Circular No. 36/2016 dated 25 October 2016 which clarified that the compensation received in respect of award or agreement under the Fair Compensation Act is exempted from levy of income tax even where no specific exemption provision exists in the ITA for such type of compensation.

Comments

This HC ruling is a welcome one. The HC upheld the non-applicability of provisions adopting the stamp duty valuation in place of actual consideration in computing the capital gains in case of compulsory acquisition of land by the government. Though the HC emphasized on the underlying intent of introduction of the deeming provision to overcome the menace of unaccounted cash in real estate transactions, these observations were in the context of acquisition of land by the government where the presence of such menace may not be possible. It seems difficult to extend the proposition to transactions between two private parties.

Additionally, the HC provides useful guidance that adoption of stamp duty value instead of actual consideration will have no applicability to cases where transaction of transfer is not subjected to payment of stamp duty. The HC also held that if there is no trigger of payment of stamp duty, there is no requirement for assessment of valuation of property by the stamp duty authorities. While the HC’s conclusion provides useful defense to taxpayers in respect of transactions which are exempt from levy of stamp duty, one may have to explore the possibility of extending the defense to those transactions, although liable to levy of stamp duty, the applicable rate prescribed for such stamp duty is nil.

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