

Lunawat & Co.



Accounting and Taxation of Real Estate Builders



LUNAWAT & CO.

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REAL ESTATE REGULATIONS

- ✗ **AS 7 – Construction Contracts**
- ✗ **AS 9 – Revenue Recognition (where in substance similar to delivery of goods)**
- ✗ **Guidance note on Accounting for Real Estate Transactions by ICAI – 2012**
- ✗ **Real Estate (Regulation and Development) Act 2016**
- ✗ **ICDS on Construction Contracts**
- ✗ **The Indian Contract Act, 1872**
- ✗ **Transfer of Property Act, 1882**
- ✗ **The Registration Act, 1908**
- ✗ **Special Relief Act, 1963**
- ✗ **Urban Land (Ceiling and regulation) Act (ULCRA), 1976**

REAL ESTATE REGULATIONS

- ✗ **The Land Acquisition Act, 1894**
- ✗ **The Indian Stamp Duty Act, 1899**
- ✗ **Rent Control Act**
- ✗ **State Laws Governing Property Tax**
- ✗ **Income Tax Act, 1961**
- ✗ **The Co-Operative Society , 1912**
- ✗ **The Multi state co-operative societies Act, 2002**
- ✗ **SEBI norms for Real Estate Mutual Funds**
- ✗ **FEMA**
- ✗ **Finance Act in relation to Service Tax**
- ✗ **Value Added Tax (VAT)**

Transactions

Sale of plot without development

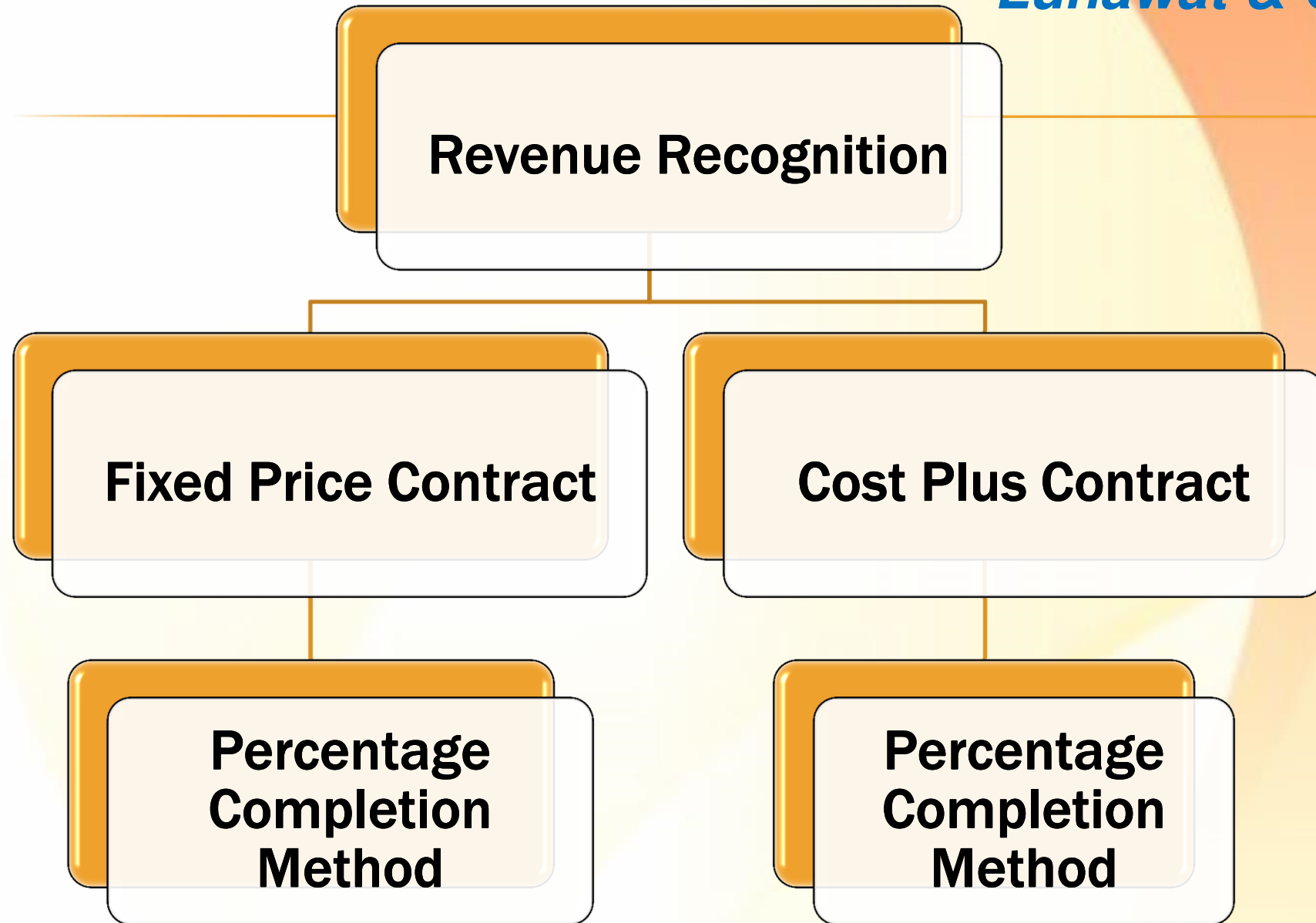
Sale of plot with development

**Development and sale of
residential and commercial units**

**Acquisition, utilisation and transfer
of development rights**

**Redevelopment of existing
buildings and structures**

Joint development agreements



REVENUE RECOGNITION

- ✘ **Transactions take place over years. Could be:**
 - + **Pre-launch**
 - + **Booking**
 - + **Buyer's agreement**
 - + **Handing over of Possession**
 - + **Registration of Sale deed / Conveyance deed**
- ✘ **When income to be recognized in the hands of the developer ?**

REVENUE RECOGNITION

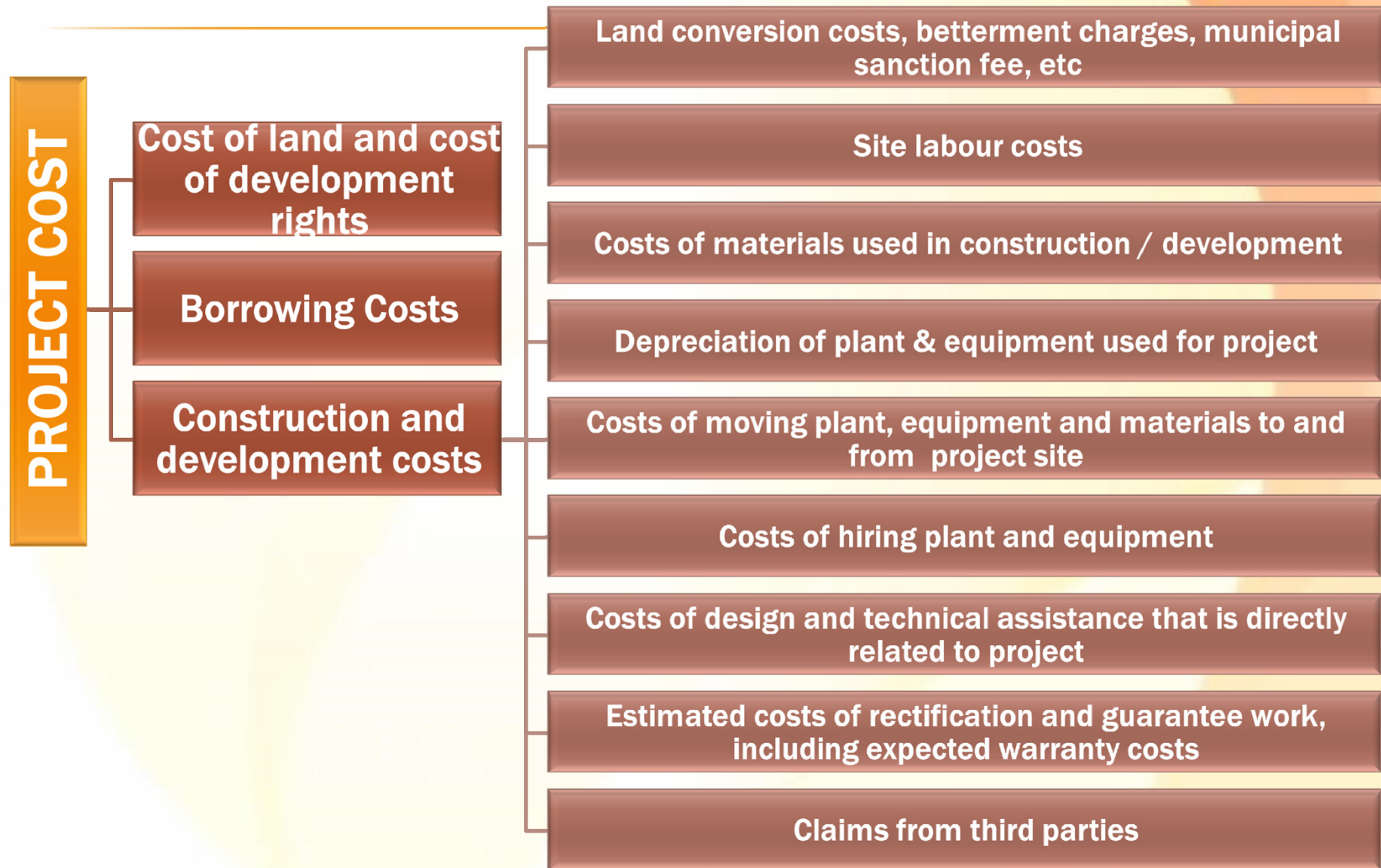
- ✖ Revenue to be recognised only when **all following** conditions are satisfied:
 - + Risks and rewards are transferred
 - + Seller doesn't retain any control over goods sold
 - + No significant uncertainty exists regarding collection
- ✖ **Agreement for sale** is also considered to have the effect of transferring all significant risks & rewards of ownership to the buyer
 - + provided the agreement is legally enforceable and subject to the satisfaction of conditions which signify transferring of significant risks & rewards
 - + even though the legal title is not transferred or the possession of the real estate is not given to the buyer

REVENUE RECOGNITION

- ✘ After such transfer any acts performed on the real estate by seller is performed on behalf of buyer and is in nature of contractor. Hence AS 7 [Construction contracts] applies.
- ✘ Individual contracts are part of a single project, although risks and rewards may have been transferred on signing of a legally enforceable individual contract but significant performance in respect of remaining components of the project is pending, revenue in respect of such individual contract should not be recognised until the performance on remaining components is considered to be completed on the basis of said principles.

REVENUE RECOGNITION – AS GOODS

- ✘ **When as goods, revenue to be recognised when:**
 - + **The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;**
 - + **The seller has effectively handed over possession of the real estate unit to the buyer forming part of the transaction;**
 - + **No significant uncertainty exists regarding the amount of consideration that will be derived from real estate sales; and**
 - + **It is not unreasonable to expect ultimate collection of revenue from buyers.**
- ✘ **Where transfer of legal title is a condition precedent, revenue should not be recognised till such time legal title is validly transferred to the buyer**



PROJECT COST

✘ Not be considered part of construction /development costs if material:

- + General administration costs**
- + Selling costs**
- + Research and development costs**
- + Depreciation of idle plant and equipment**
- + Cost of unconsumed or uninstalled material delivered at site**
- + Payments made to sub-contractors in advance of work performed.**

REVENUE RECOGNITION - DEVELOPERS

- ✕ Revenue should be recognized when **all the following conditions are satisfied:**
 1. All critical approvals necessary for commencement of the project have been obtained. These include, wherever applicable:
 1. Environmental and other clearances.
 2. Approval of plans, designs, etc.
 3. Title to land or other rights to development/ construction.
 4. Change in land use.
 2. When the stage of completion of the project reaches a reasonable level of development. i.e. expenditure incurred on construction and development costs is **>25 %** of the construction and development costs.

REVENUE RECOGNITION - DEVELOPERS

- 3. At least 25% of the saleable project area is secured by contracts /agreements with buyers.**
 - 4. At least 10 % of total revenue as per agreement of sale, etc. are realised at reporting date in respect of each of contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms as defined in the contracts.**
- + Example – If there are 10 Agreements of sale and 10 % of gross amount is realised in case of 8 agreements, revenue can be recognised with respect to these 8 agreements**

DETERMINATION – STAGE OF COMPLETION

- ✘ **Method of determination of stage of completion**
 - + **With reference to project costs incurred**
 - + **Surveys of work done,**
 - + **Technical estimation,**
 - + **Any other**
- ✘ **Computation of revenue with reference to other methods of determination of stage of completion should not, in any case, exceed the revenue computed with reference to the 'project costs incurred' method.**

ACCOUNTING - EXAMPLE *Lunawat & Co.*

App. Total Saleable area	20000 Sq. ft.
Area sold upto 31.3.2016	5000 Sq. ft
Total Revenue receivable 31.3.2016 (on agreement to sell executed)	Rs. 200 Lakhs.
Amount realized till 31.3.2016	Rs. 50 Lakhs
Estimated Project Cost (300 Land, 300 Construction)	Rs. 600 Lakhs
Actual Cost incurred upto 31.3.2016 (Land 300, Construction 60)	Rs. 360 Lakhs
% of completion	60% of project cost or 20% of cons. cost
Recognition (reasonable level of construction i.e., 25%, not achieved, though 10% of agreement amt realised.)	Nil

ACCOUNTING – EXAMPLE (CONTD.)

App. Total Saleable area	20000 Sq. ft.
Area sold upto 31.3.2016	5000 Sq. ft
Total Revenue receivable 31.3.2016 (on agreement to sell executed)	Rs. 200 Lakhs.
Amount realized till 31.3.2016	Rs. 50 Lakhs
Actual Cost incurred upto 31.3.2016 (Land 300, Construction 90)	Rs. 390 Lakhs
% of completion	65% of project cost or 30% of cons. cost
Revenue Recognition (65% of 200)	Rs. 130 Lakhs
Proportionate Cost (5000 / 20,000) X 390	Rs. 97.50 Lakhs
Income from Project	Rs. 32.50 Lakhs
WIP (390 – 97.5)	Rs. 292.50 Lakhs

DISCLOSURE

- ✗ **An enterprise should disclose:**
 - + Amount of project revenue recognised as revenue;
 - + Methods used to determine project revenue recognised; and
 - + Method used to determine the stage of completion of project.
- ✗ **For projects in progress at end of period:**
 - + Aggregate amount of costs incurred & profits recognised (less recognised losses) to date;
 - + Amount of advances received;
 - + Amount of WIP & the value of inventories; and
 - + Excess of revenue recognised over actual bills raised (unbilled revenue).

PRE-CONSTRUCTION INCOME

- ✘ **AS 16** - In determining the amount of borrowing costs eligible for capitalization during a period, any income earned on the temporary investment of those borrowings is deducted from borrowing costs incurred.
- ✘ **ICDS** - Such income shall not be reduced from the contract costs but shall be treated and taxed as income in accordance with the applicable provisions of the Act

RECOGNITION OF LOSSES

- ✘ **AS - To be recognized fully and not in proportion to the percentage of completion.**
- ✘ **ICDS - Future or anticipated losses shall not be allowed unless such losses are actually incurred. Further, the losses incurred shall be allowed only in proportion to the stage of completion.**

ICDS - III

- ✖ **% of completion method is applicable, except during early stages of a contract when outcome of the contract cannot be estimated reliably.**
- ✖ **In this case, revenue is recognised to the extent of costs incurred. This is possible only when up to 25% of the work is completed otherwise proportionate method.**
- ✖ **Contract costs are to be recognised as an expense in period in which they are incurred. Expected loss should be recognised in proportion of work completed.**

ACCOUNTING POLICY – DLF 2015

- ✖ **Revenue from constructed properties for all projects commenced on or before March 31, 2012 and where revenue recognition commenced on or before the above date, is recognised in accordance with the provisions of Accounting Standard (AS) 9 on Revenue Recognition, read with Guidance Note on “Recognition of Revenue by Real Estate Developers”. Revenue is computed based on the “% of completion method” and on % of actual project costs incurred thereon to total estimated project cost, subject to such actual cost incurred being 30 % or more of the total estimated project cost.**
- ✖ **Revenue from constructed properties for all projects commenced on or after April 1, 2012 or project where the revenue is recognised for the 1st time on or after the above date, is recognised in accordance with the Revised Guidance Note issued by Institute of Chartered Accountants of India (“ICAI”) on “Accounting for Real Estate Transactions (Revised 2012)”.**

ACCOUNTING POLICY – DLF 2015

- ✦ **Sale of land and plots (including development rights) is recognised in the financial year in which the agreement to sell/ application forms (containing salient terms of agreement to sell) is executed and there exists no uncertainty in the ultimate collection of consideration from buyers. Where the Company has any remaining substantial obligations as per the agreements, revenue is recognised on the percentage of completion method of accounting, as per (i)(a) above.**
- ✦ **Sale of development rights is recognised in the financial year in which the agreements of sale are executed and there exists no uncertainty in the ultimate collection of consideration from buyers**

A/CING POLICY – PRESTIGE ESTATES PROJECTS 2015

- ✦ Revenue from real estate developmental projects under development is recognised based on 'Percentage Completion Method'. The Percentage Completion Method is applied when the stage of completion of the project reaches a reasonable level of development. For projects that commenced on or after 1st April 2012 or where revenue on a project is being recognised for the first time on or after that date, the threshold for 'reasonable level of development' is considered to have been met when the criteria specified in the Guidance Note on Accounting for Real Estate Transactions (Revised 2012) issued by the Institute of Chartered Accountants of India are satisfied, i.e., when:
- ✦ Sale of plots and completed units is recognised at the sale consideration when all significant risks and rewards of ownership in the property is transferred to the buyer and are net of adjustments on account of cancellation.

A/CING POLICY – PRESTIGE ESTATES PROJECTS 2015

- ✘ **Facility charges, management charges, rental, hire charges, sub lease and maintenance income are recognised on accrual basis as per the terms and conditions of relevant agreements.**
- ✘ **Recognition of revenue from contractual projects: Revenue from contractual projects undertaken is recognised on the basis of independent certification obtained in terms of the contract**

ACCOUNTING POLICY – GODREJ PROPERTIES 2015

- ✦ **The Company is following the “Percentage of Completion Method” of accounting. As per this method, revenue from sale of properties is recognized in Statement of Profit & Loss in proportion to the actual cost incurred as against the total estimated cost of projects under execution with the Company on transfer of significant risk and rewards to the buyer. Up to 31st March 2012 revenue was recognized only if the actual project cost incurred is 20% or more of the total estimated project cost.**
- ✦ **Effective 1st April 2012, in accordance with the “Guidance Note on Accounting for Real Estate Transactions (Revised 2012)” (Guidance Note), all projects commencing on or after the said date or projects which have already commenced, but where the revenue is recognized for the first time on or after the above date, construction revenue on such projects have been recognized on percentage of completion method provided the following thresholds have been met:**

ACCOUNTING POLICY – GODREJ PROPERTIES 2015

- ✦ **Determination of revenues under the percentage of completion method necessarily involves making estimates, some of which are of a technical nature, concerning, where relevant, the percentages of completion, costs to completion, the expected revenues from the project or activity and the foreseeable losses to completion. Estimates of project income, as well as project costs, are reviewed periodically. The effect of changes, if any, to estimates is recognized in the financial statements for the period in which such changes are determined. Revenue from projects is recognized net of revenue attributable to the land owners. Losses, if any, are fully provided for immediately.**
- ✦ **Revenue on bulk deals on sale of its properties is recognized on execution of documents.**
- ✦ **Income from operation of commercial complexes is recognized over the tenure of the lease / service agreement.**

ACCOUNTING POLICY – HDIL 2015

- ✦ **Revenue from the projects is recognised by applying Percentage of Completion Method in compliance of Guidance Note on Accounting for Real Estate Transaction (Revised 2012) issued by the ICAI. However, for the ongoing projects as on the date of introduction of Guidance Note on Accounting for Real Estate Transaction (Revised 2012) and also where Company has already commenced the recognition of the revenue from the projects, the Company follows completed project method of accounting (“Project Completion Method of Accounting”) where in allocable expenses incurred during the year are debited to work-in-progress account and the income is accounted for as and when the projects get completed or substantially completed and also the revenue is recognised to the extent it is probable and the economic benefits will flow to the Company and the revenue can be reliably measured.**

ACCOUNTING POLICY – HDIL 2015

- ✖ **Sale:**
- ✖ **i) Unit in real estate: Revenue is recognised when the significant risks and rewards of ownership of the units in real estate have passed to the buyer.**
- ✖ **ii) Sale / trading of goods and materials: Sales are recognised when goods are supplied and are recorded net of returns, trade discounts, rebates and indirect taxes.**

DEVELOPERS TAXATION



COLLABORATION / JOINT DEVELOPMENT

✗ Old Residential House:

- + Builder reconstructs**
- + Pays a certain amount**
- + Retains few flats**

✗ Land Development:

- + Sale proceeds to be shared**
- + Sharing of plots/ covered area, etc**
- + Subsequently owner's share also taken over and sold by the developer**

TAXATION

- ✘ **Taxation in the hands of the Developer**
 - + **Assessable as business income [*PM Mohd Meerakhan v. CIT 73 ITR 735 (SC)*]**
 - + **Sections 28 to 44**
 - + **Revenue Recognition, etc**
- ✘ **Taxation in the hands of the person providing land, could be:**
 - + **Business income**
 - + **Capital gains**
 - ✘ **Section 45 to 55A**
 - ✘ **Lower rate of tax u/s 112**
 - ✘ **Entitled to various deductions, wherever applicable**

CG CHARGING SECTION – S. 45

- ✗ **Transfer of a capital asset effected in the previous year**
- ✗ **Resultant profits or gains from such transfer**
- ✗ **Those profits or gains would constitute the income of the assessee/transferor**
- ✗ **Such income shall be deemed to be the income of the same previous year in which the transfer had taken place**

PGBP / CG

- ✖ **Agriculture land purchased 40 yrs back. No other purchase sale of land. Sale of land by developing residential plots on land. Amounts to realization of investment rather than adventure in the nature of trade**

ITO v. DN Krishanappa (2010) 17 CPT 456 (Bang. Trib)

- ✖ **The activity of an assessee in dividing the land in to plots and not selling it as a single unit as he purchased, goes to establish that he was carrying on business in real property and it is a business venture.**

[Raja J. Rameshwar Rao v CIT 42 ITR 179 (SC)(1961)]

- ✖ **Mode of payment i.e. payment in installments is not a determinative factor if the income is in the nature of trade or capital gain.**

[CIT v Radha Bai 272 ITR 264 (Del) (2005)]

PGBP / CG

- ✗ **Where assessee constructed shops which were let out and rent has been received for 3 years, thereafter the shops were sold – Income from sale of shop is capital gain.**

[ACIT v Janak Raj Chauhan 102 TTJ 297 (Asr.)(2006)]

- ✗ **The assessee, after dividing the land into plots, sold land situated in a village which was beyond 8 kms, of the municipal limit. Such land was sold pursuant to an agreement to sell executed earlier. It was held that land in question was rural agriculture not eligible to CG.**

[CIT vs Sanjeeda Begum 154 Taxman 346 (All) (2006)]

- ✗ **Relinquishment of right in property against consideration shall attract capital gain**

[CIT v Smt Laxmidevi Ratani 296 ITR 0363 (MP)[2008]]

PGBP / CG

- ✖ **When land was acquired on basis of a will on death of her husband & she sold the same in parcels because the huge area could not be sold in 1 transaction. Such activity could not amount to trade/business.**

[CIT v Sushila Devi Jain 259 ITR 671 (P&H) (2003)]

- ✖ **Selling of own land after plotting it out in order to secure a better price is not in the nature of trade or business, more so when the land was gifted to the assessee.**

[CIT v Suresh Chand Goyal 209 CTR 410 (MP)(2007); Ram Saroop Saini (HUF) v ACIT 15 SOT 470 (Del)(2007)].

CONVERSION OF CAPITAL ASSET INTO STOCK IN TRADE

- ✘ **S. 45(2) - Notwithstanding anything contained in sub-section (1), the profits or gains arising from**
- ✘ **transfer by way of conversion by the owner of a capital asset into**
- ✘ **or its treatment by him as stock-in-trade of a business carried on by him**
- ✘ **shall be chargeable to income-tax as his income**
- ✘ **of the previous year in which such stock-in-trade is sold or otherwise transferred by him and,**
- ✘ **for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.**

CASE STUDY - 1

- ✗ **ABC P. Ltd. purchased land in Jan. 1971 for Rs. 6.5 Lacs**
- ✗ **Gave the land to B for building in March 1971. B to sell the properties and receive payments.**
- ✗ **A to get guaranteed sum of Rs. 8 Lacs as under:**

+	85000	before execution of agreement
+	100000	before 1.4.71
+	150000	before 1.5.71
+	350000	before 1.5.72
+	50000	before 31.3.73
+	40000	before 30.9.73
+	25000	before 31.12.73
- ✗ **Actual transfer of lease to be done only when entire construction complete.**
- ✗ **When does the income arise? AY 71-72; 72-73; or 73-74?**
- ✗ **It will accrue as mentioned in agreement as it had no right to receive the entire amount on the date of execution of agreement.**

CIT vs. Ace Builders P. Ltd. (1993) 202 ITR 324 (Bom)

CASE STUDY - 2

- ✗ **R owner of Land since 1958, could not retain the land due to Urban Land (Ceiling & Regulation) Act, 1976.**
- ✗ **She sold the plot to B to construct flats.**
- ✗ **POA given to builders for booking of flats**
- ✗ **Sale deed executed by both.**
- ✗ **R got fixed amount of Rs. 20 Lacs as per agreement.**
- ✗ **Is it PGBP or CG?**

CG – intended to trf only land

CIT vs. Smt. Radha Bai (2005) 272 ITR 264 (Del)

DEVELOPMENT AGREEMENT

- ✗ **Development agreement does not transfer the interest in the property to the developer in general law and therefore s. 2(47)(v) has been enacted.**

Chaturbhuji Dwarkadas Kapadia vs. CIT (2003) 260 ITR 491 (Bom.)

SECTION 2(47)(V)

- ✕ Transfer includes any transaction involving**
 - + the allowing of the possession of any immovable property**
 - + to be taken or retained**
 - + in part performance of a contract**
 - + of the nature referred to in section 53A of the Transfer of Property Act, 1882.**

PART PERFORMANCE

- ✕ **Section 53A of Transfer of Property Act**
 - + **There should be a contract for consideration**
 - + **Contract should be in writing**
 - + **It should be signed by the transferor**
 - + **Should pertain to immovable property**
 - + **Transferee should have taken the possession of the property**
 - + **Transferee should be ready and willing to perform his part of the contract**

SECTION 53A TPA

- ✖ **Amendment made in sec. 53A of TP Act, 1882, by which requirement of registration of transfer deed has been indirectly brought on statute need not be applied while construing meaning of 'transfer' with reference to sec. 2(47).**

[Sureshchandra Agarwal v. ITO 15 taxmann.com 115 (ITAT-Mum.) (2011)]

- ✖ **Where the transferee had taken over the possession of plot, constructed the building thereon, paid a sum of Rs.20 lakhs to the assessee in cash and had also undertaken to allot a flat in the building so constructed then the case was covered u/s 2(47)(v) accordingly gains arising on such transfer were taxable.**

Vide Bertha T. Almeida v. ITO (2012) 44 (II) ITCL 307 (Mum 'B'-Trib)

DEVELOPMENT AGREEMENT

- ✗ The point where the capital gains are deemed to accrue will purely depend on the terms of Joint Development Agreement.
- ✗ If the possession is not transferred but deferred until the construction is completed by limiting the rights of developer, the liability to capital gains tax will arise in the year in which the developer completes the construction.
- ✗ Where the agreement is of such nature that possession is given in part performance of a contract, the liability of capital gains tax will arise on the handing over of such possession to the builder.

CASE STUDY - 3

- ✗ **A entered into builders agreement to erect multistory building at 21 Barakhamba Road.**
- ✗ **50% constructed area to be kept by A and 50% by AP & Co. Space agreed.**
- ✗ **Rs. 10 Lacs to be paid as security to A.**
- ✗ **PGBP or CG?**
- ✗ **Agreement was on principle to principle basis – no partnership**

CIT vs. Ashok Kapur HUF (2007) 213 CTR (Del) 241

CASE STUDY -4

- ✖ **J entered into collaboration agreement with XYZ Builders on 8.6.2005.**
- ✖ **Builders to obtain letter of intent and other permissions**
- ✖ **Developer to have 84% & owner to have 16%.**
- ✖ **Owner to be given built up area as consideration free of cost**
- ✖ **Ownership shall vest exclusively with owners till it gets constructed area as per agreement.**
- ✖ **Payment of EM of Rs. 1 Crore at time of agreement**

CASE STUDY – 4 (CONTD.)

- ✘ SPOA to be executed in favour of developer to get necessary approvals
- ✘ If LOI not received by 8.3.06 agreement stands terminated.
- ✘ On fulfilling conditions of LOI owners to execute GPOA to book & sell units out of developers share & collect money for same. However sale deeds to be executed after owners receive their share.
- ✘ After CLU & earmarking their areas, both can sell or lease out their areas.
- ✘ GPA executed on 08.05.2006
- ✘ On completion of built up area (AY 2007-08), owner to give POA to developer to transfer Rights, title, etc.
- ✘ **WHEN DOES CG ARISE?**

CASE STUDY – 4 (CONTD.)

- ✖ On 15.9.2005 supplementary agreement entered that Owners sells its 16% to Builders at 42 Cr. in installments starting from 8.6.06 and last to be paid by 8.6.07.
- ✖ Now, When does CG arise?
 - + AY 2007-08 when CLU obtained?
 - + AY 2008-09 when final payment received?
 - + Proportionately in 06-07, 07-08 & 08-09?
- ✖ 2(47)(v) comes into full play and year of major performance i.e. AY 2007-08 is the taxable year and not year of receipt of full payment

Jasbir Singh Sarkaria, In Re (2007) 294 ITR 196 (AAR)

CASE STUDY – 5

- ✗ S agrees with builder for construction.
- ✗ No written agreement.
- ✗ Date of construction and date of ultimate sale is different.
- ✗ **WHEN DOES CG ARISE?**
 - + Date of construction?
 - + Date of ultimate sale?
- ✗ 2(47)(v) comes into operation only if condition of S. 53A of Transfer of Property Act is satisfied & written agreement is there. – CG in year of sale.

S. 53A CASE LAW

- ✗ **S. 53A -If a buyer is put in possession of a property in part performance of the obligations under the agreement on the buyer paying a substantial portion of the sale consideration, the contract of sale is treated to be in part performance.**
- ✗ **Terms and conditions of the agreement clearly indicates that the intention of the parties is to sell the property as such to the buyer, or their nominees and a power of attorney is given to enable the buyer to sell the undivided share of land in favour of purchasers of apartments to be constructed by the buyer of the land.**
- ✗ **The execution of the sale deed is deferred as at the time when the possession of the property is transferred to the builder, there is no purchaser for the property.**

S. 53A CASE LAW (CONTD.)

- ✘ In other words, the builder himself has crept into the shoes of the purchaser of the property and the registered instruments were created subsequently and the idea of keeping alive the agreement and execution of power of attorney in favour of the builder is only for the purpose of avoiding duplication of registered instruments and payment of stamp duty.
- ✘ In this case, the assessee themselves executes the sale deed after several years on the request of the builder. Therefore, in principle, the actual transfer takes place between the assessee and the builder and it is thereafter the builder transfers possession to the purchaser of the apartments.

Cochin Stock Exchanges Limited vs. CIT [2015-ITRV-HC-KER-009]

OTHER CASE LAWS

- ✘ **Assessee sold ancestral land after plotting – not an adventure in nature of trade**
CIT vs. MLM. Mahalingam Chettiar (1977) 107 ITR 236 (Mad)
- ✘ **In cases of development agreement, year of chargeability of CG is year in which contract is executed, where by reading of the contract indicates complete passing of property in favour of developer, substantial performance of contract is not relevant.**
Chaturbhuj Dwarkadas kapadia Vs. CIT (2003) 260 ITR 491 (Bom)
- ✘ **Assessee business being construction, any addition towards cost of construction on basis of DVO's Valuation Report was invalid.**
CIT vs. Star Builders (2007) 294 ITR 338 (Guj)
- ✘ **Repurchase of a part of the property sold will entitle assessee to claim benefit u/s 54**
CIT v. Phiroze H. Patel (1994) 205 ITR 377 (Bom)

OTHER CASE LAWS

- ✖ **Assessee owner of land having parted with possession of land under a development agreement for construction of flats having handed over possession of vacant land to developer on promise to be handed over 45% of constructed area, it was a case of transfer by exchange within the meaning of s. 2(47)(i)**
- ✖ **Property was handed over in part performance u/s. 53A of TP Act and it could not be said that transaction was without consideration; possession of land being handed over to developer only in December, 1999, the transfer took place in December, 1999, hence capital gain accrued and was chargeable in asst. yr. 2000-01 and not in asst. yr. 2001-02; transfer of land and transfer of flats allotted in consideration of transfer of land are two transactions and not one for purposes of charge of capital gains.**

Dr. Maya Shenoy vs. ACIT - (2009) 124 TTJ 0692 Hyd

JOINT VENTURE CASE LAW

- ✘ **Assignment of land by assessee company towards joint venture with another company for development thereof into a commercial complex which is to be compensated by 50% rights in the built-up area did not amount to transfer of a capital asset as nothing happened in the relevant year other than execution of the agreements and the assessee cannot be said to have sold or extinguished or relinquished any of its existing assets/rights to the co-venturer and, therefore, no capital gains are chargeable in the relevant year. It was not a case of transfer of land u/s 2(47)**

[Vijaya Productions (P.) Ltd. v. Adl. CIT (2012) 66 DTR 314 (ITAT-Chennai)(TM)]

CONCLUSION

- ✗ **Transfer can be:**
 - + **On the date of agreement**
 - + **On completion of the transaction**
 - + **On possession**
 - + **On substantial compliance**
- ✗ **Substance of the agreement is important**
- ✗ **Necessary precaution needs to be taken at the stage of drafting of the agreement**

THANK YOU

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