



Double Taxation on Sale of unquoted shares in India

1. Introduction on Double Taxation on sale of unquoted shares in India

(i) Sales consideration of unquoted shares in the hands of transferor

(a) Finance Act, 2017 has introduced **new section 50CA** under the Income Tax Act (ITA) 1961 for **adoption** of Fair Market Value (FMV) as **deemed sales** considerations against sale of unquoted shares where **actual sales** consideration is **lower than** the **FMV**.

(b) Taxpayers are required to **offer** the **FMV** as sales consideration and to **pay** Income **tax** or Capital gain tax accordingly. Hence **FMV** is to be **treated** as **deemed sales** consideration

(ii) Purchase consideration of unquoted shares in the hands of transferee

(a) **Old Section 56(2)(x)** under the ITA, 1961 for **adoption** of **FMV** as **deemed purchase** considerations against **actual purchase** consideration of unquoted shares where **actual purchase** consideration is **lower than** the **FMV**.

(b) Taxpayers are required to **declare** the **FMV** as **purchase** consideration and to **pay** Income **tax** under the head Income from **other sources** on the amount of **difference** between **purchase** consideration and **FMV** where the purchase consideration is **lower than** the **FMV**. Hence **FMV** is to be treated as **deemed purchase** consideration.

2. Definition of Double Taxation under the Court's Decisions

(i) **Supreme Court** of India has decided the definition of **double taxation** in the case of **Shri Krishna Das vs Town Area Committee, Chirgaon (AIR 1981 SC 463)** as under:

- **Double taxation** is **treated** where taxpayer is liable to **pay tax 2 or more** time on **same property**, same **matter**, same **purpose**, **same period**, same **territory**, same government (**Govt.**) or **same authority**.

(ii) *Mumbai High Court* has decided the definition of **double taxation** in the case of *Shakti Kumar Sancheti vs State of Maharashtra*, as under:

(a) **Double taxation** is *not treated* where taxpayer is liable to **pay tax 2 or more time** on the taxes levied by the *different authorities* like *Octroi* was levied by the *Bombay Municipal Corporation (BMC)* and *entry tax* was levied by *sale tax authorities*.

(b) This decision was also *confirmed* by the Supreme Court of India In *1995 SCC(1)*

3. **Definition of Double Taxation under the Section 50CA and Section 56(2)(x)**

(i) (a) Double Taxation is *not treated* where *transferor* is taxed on the *deemed sale consideration (FMV)* which is *higher than actual sale* consideration.

Transferor has *forgone* the *difference* amount between **FMV** and *actual sale* consideration. Hence **transferor** is liable to *pay* *Income tax* under the head *capital gains* on the **FMV**.

and

(b) Also double taxation is *not treated* where *transferee* is taxed on the *deemed purchase consideration (FMV)* which is *higher than the actual purchase* consideration.

Transferee has *deemed* to *accrue* the income as *difference* amount between **FMV** and *actual purchase* consideration. Hence **Transferee** is liable to *pay* *Income tax* under the head income from *other sources* on the **FMV**.

(c) Double taxation is *not treated* where *transferors* and *transferees* are *2 different persons*. Hence in accordance to the **Supreme Court's** of India decision in the case of *Shri Krishna Das vs Town Area Committee, Chirgaon (AIR 1981 SC 463)* **double taxation** is *not applicable* in this situation where the **transferors** and **transferees** are *not the same persons*.

4. Conclusion against applicability of Section 50CA and 56(2)(x) both

- (i) *Constitution of India is not permitting to levy tax 2 or more time on same property, same matter, same purpose, same period, same territory, same government (Govt.) or same authority.*
- (ii) *Constitution of India is permitting to levy tax 2 or more time where there are 2 different properties, different matter, different purpose, different period, different territory, different government (Govt.) or different authority.*
- (iii) *It is suggested that Central Board of Direct Taxes (CBDT) should clarify through issue of necessary clarification in view of the decision of the Supreme Court of India.*

Published By



CA. Satish Agarwal

B.com (Hons) FCA

Practicing Chartered Accountant Since 1985

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

- ***Disclaimer***

*The contents of this **article are solely for informational purpose**. Neither this article nor the information's as contained herein constitutes a contract or will form the basis of a contract.*

*The material contained in this article does **not constitute** or **substitute professional advice** that may be required before acting on any matter.*

*While every care has been taken in the preparation of this article to **ensure its accuracy at the time of publication**.*

***Satish Agarwal** assumes no responsibility for any error which despite all precautions may be found herein.*

*We **shall not be liable for direct, indirect or consequential damages** if any arising out of or in any way connected with the use of this article or the information's as contained herein.*

July - 2022