

Section 56(2)(vii) applicable to ‘property’ in the nature of capital asset and not which is traded in the normal course of business or trade

May 6, 2019

In brief

Recently¹, the Jaipur bench of the Income-tax Appellate Tribunal (Tribunal) held that the intention of clause (vii) of section 56(2) of the Income-tax Act, 1961 (Act) is not to tax the transactions entered in the normal course of business or trade, where the profits are taxable under the specific income head.

In detail

Facts

- The taxpayer, an individual, is engaged in real estate business and regularly dealt in sale and purchase of land and buildings.
- During the year, the taxpayer purchased land for a consideration for which the stamp authority adopted a higher value.
- The taxpayer recorded the purchase of the land in its trading account.
- According to the Tax Officer (TO), the taxpayer received the land for an inadequate consideration, which invoked the provision of section 56(2)(vii)(b)(ii) of the Act. Thus, the differential amount² was taxed as deemed income of the taxpayer.

- The Commissioner of Income-tax (Appeals) [CIT(A)] confirmed the TO's action.

Issue before the Tribunal

- Whether provision of section 56(2)(vii)(b)(ii) of the Act is applicable to ‘property’, that is, land (not a capital asset), purchased in the normal course of business?
- Consequently, whether there could be an addition on account of suppression of the purchase price, that is, the difference between the value adopted by stamp duty authority and the actual consideration paid?

Taxpayer's contention

- The taxpayer contended that provision of section 56(2)(vii)(b)(ii) of the Act is not applicable in the instant case. This is so as the said

provision would be considered in case of purchase of a capital asset.

- The taxpayer also contended that the intent is not to tax transactions entered into the normal course of business or trade, the profits of which are taxable under specific heads of income.
- Further, the scope of section 56(2)(vii) of the Act is restrictive in nature. Moreover, it was amended to only include property that is in the nature of a capital asset.
- The taxpayer contended that the TO made no allegation of laundering of unaccounted income. Hence, invocation of section 56(2)(vii) of the Act is bad in law.

¹ ITA No. 392/JP/2019

² Value of land adopted by the stamp authority less consideration paid towards purchase of land

- The TO failed to refer the matter to the valuation officer before invoking the provision.

Tribunal's ruling

- The Tribunal observed that the provision of section 56(2)(vii) of the Act was introduced as a counter evasion mechanism to prevent laundering of unaccounted income.
- The Tribunal further observed that the intent is not to tax transactions entered into in the normal course of business or trade, the profits of which are taxable under specific heads of income.
- Hence, the Tribunal held that section 56(2)(vii) of the Act

will have application to a 'property' which is in the nature of a capital asset. Therefore, it would not apply to a stock-in-trade, raw material and consumable stores of any business of such recipient.

- The Tribunal restored the matter to the TO for deciding the matter afresh. According to the Tribunal the lower authorities had not properly appreciated the relevant provisions of the Act with regard to land purchased by the taxpayer, which was a part of stock-in-trade.

The takeaways

- This decision provides

guidance on the interpretation of the term 'property' as appearing in section 56(2)(vii)(b) of the Act and now for section 56(2)(x)(b) of the Act.

- It also re-emphasises that the intent is not to tax transactions entered into normal course of business. However, going forward this is likely to evolve further where transactions of similar nature could potentially be challenged.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

Our Offices

Ahmedabad

1701, 17th Floor, Shapath V,
Opp. Karnavati Club,
S G Highway,
Ahmedabad – 380051
Gujarat
+91-79 3091 7000

Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th
Floor, Road No. 10, Banjara Hills,
Hyderabad – 500034,
Telangana
+91-40 44246000

Gurgaon

Building No. 10, Tower - C
17th & 18th Floor,
DLF Cyber City,
Gurgaon – 122002
Haryana
+91-124 330 6000

Bengaluru

6th Floor
Millenia Tower 'D'
1 & 2, Murphy Road, Ulsoor,
Bengaluru – 560 008
Karnataka
+91-80 4079 7000

Kolkata

56 & 57, Block DN.
Ground Floor, A- Wing
Sector - V, Salt Lake
Kolkata - 700 091
West Bengal
+91-033 2357 9101/
4400 1111

Pune

7th Floor, Tower A - Wing 1,
Business Bay, Airport Road,
Yerwada, Pune – 411 006
Maharashtra
+91-20 4100 4444

Chennai

8th Floor
Prestige Palladium Bayan
129-140 Greams Road
Chennai – 600 006
Tamil Nadu
+91 44 4228 5000

Mumbai

PwC House
Plot No. 18A,
Guru Nanak Road (Station Road),
Bandra (West), Mumbai – 400 050
Maharashtra
+91-22 6689 1000

For more information

Contact us at
pwctr.knowledgemanagement@in.pwc.com

About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with over 250,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

In India, PwC has offices in these cities: Ahmedabad, Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai and Pune. For more information about PwC India's service offerings, visit www.pwc.in

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see www.pwc.com/structure for further details.

© 2019 PwC. All rights reserved

Follow us on:



For private circulation only

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PwCPL, its members, employees and agents accept no liability, and disclaim all responsibility, for the consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it. Without prior permission of PwCPL, this publication may not be quoted in whole or in part or otherwise referred to in any documents.

© 2019 PricewaterhouseCoopers Private Limited. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.