

CHAPTER-7

CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

The present study has come out with certain undeniable contemporary truths and unquestionable conclusions about current scenario of taxation of real estate transactions in India. These conclusions derived on the basis of analysis of responses from and informal interaction with the various stakeholders in real estate deals are relevant for necessary corrective action which needs to be taken to reach the objective of determination and collection of correct and appropriate amount of taxes arising from the real estate transactions in India.

There is no doubt as to the existence of evasion of income tax in real estate transactions in India. Further, there is unequivocal acceptance of the fact of the existence of black money in real estate transactions in India. Due to the existence of large scale black money there is evasion of income-tax on circulation of such black money. But it is equally true that evasion of income tax does not take place invariably in all real estate transactions.

The winds of change are blowing and the real estate sector is also slowly getting organized. In the changed scenario several builders, generally concentrated in Metropolitan and Tier-1 cities, are getting into mainstream and considering their scale of operations they avoid cash collection and cash payment. Even in large group housing projects where majority of buyers avail of bank finance/ home loans the probability of cash transactions has diminished. Where the real estate industry is still unorganised there is existence of large scale black money

The extent of black money in real estate transactions varies from place to place, location to location, case to case, transaction to transaction etc. In such situation it is difficult to hazard a precise guess as to the extent of black money in real estate transactions and consequential tax evasion. However the estimate of extent of black money in real estate transactions in India is in the average range of 40-50%. The needs and requirements of cash component in real estate transactions are different for different people. The extent of black money is more in land transactions and comparatively less in sale/ purchase of flats/houses where the transactions are normally financed by banks/ housing finance companies. Generally the extent of tax evasion is to the extent of black money involved in the real estate transactions.

The primary reasons for tax evasion in real estate transactions in India are:

- (i) Existence of parallel economy with loads of unaccounted cash circulating in the country
- (ii) High rate of taxes and high stamp duty
- (iii) Collusion between buyer and seller to reduce incidence of income tax and other levies on real estate transactions.
- (iv) Misuse of deductions provided in the Act
- (v) Rampant corruption
- (vi) Low availability of capital in books of the purchasers
- (vii) Steep rise in property prices attracting higher taxes and statutory charges / levies
- (viii) Weak tax regime
- (ix) Behavioural pattern of the taxpayers as there is tendency of not paying tax
- (x) Non-transparency in real estate sector

- (xi) Tendency to underplay the capital gains especially when the sale of property is in a period where short term capital gains are chargeable.
- (xii) Absence of proper machinery to find out the real value of the real estate transaction

As far as the current scenario of taxation of real estate transactions is concerned the tax evasion in real estate sector has been found, in the present study, to be due to the following reasons also apart from the above primary reasons :

- (a) Unrealistic provisions of Income Tax law,
- (b) Defective assessment procedure,
- (c) Slack and ineffective enforcement mechanism, and
- (d) Poor tax administrative machinery.

It has been found that the adoption of stamp duty value of the property for the purpose of taxation has not been able to collect correct and appropriate amount of taxes arising out of real estate transactions. However, after insertion of section 50C in the Act it has improved the situation and has been able to address the evasion of income tax to some extent. Actually it has acted also as a deterrent to some extent. The tax collection scenario from the real estate sector is expected to improve further with the implementation of section 43CA, section 56(2)(vii)(b) and other legislative amendments brought about by the Finance Act, 2013. But unfortunately the fact remains that stamp duty values are generally not representative of the current market rates. There still exists generally a vast difference between stamp duty values and market values which is causing generation of black money and consequential tax evasion. Stamp duty value unless it represents market value does not help in achieving the objective of

determination and collection of correct and appropriate amount of taxes from real estate transactions.

Stamp duty authorities should fix circle rates more realistically. The circle rates should be brought in close vicinity of the prevailing market rates for stamp duty purposes. The circle rates need to be reviewed periodically. Stamp duty rates need to be lowered also.

Whatever may be the intrinsic compulsions of the Legislature or the Executive but the undeniable conclusion remains that the Income Tax law has not been able to capture the ground reality in the realm of taxation of real estate transactions in India. The present introduction of deeming provisions in the Act is a poor attempt at taxation of real estate transactions as the arms of the law cannot reach the factual reality even in this age of e-governance with plenty of tools available to track financial transactions. The failure to lay down a simplified taxation system for real estate transactions has made the comprehensive Income Tax law totally ineffective in determination and collection of proper and appropriate amount of taxes from the real estate sector.

Although no major changes in the administrative set-up in the tax administration have been contemplated but it has been found that there is inadequacy of manpower strength and expertise to deal with taxation of such an important sector which can garner a lot of revenue for the Government of India. The problem of ineffective implementation of Income Tax law has been found to be caused by shortage of manpower and redundant work including multiple reporting assigned to Officers and staff of the Department. Cumbersome and defective assessment procedure coupled with slack and ineffective enforcement mechanism have also been observed to be the stumbling blocks in the process

of taxation of real estate transactions in India. There is no assessment procedure on regular basis to check the real gain in the real estate transactions as compared to what is reported in the Income Tax returns. In scrutiny assessment normally there is a gap of two years between actual transaction and its assessment which makes it difficult to ascertain market value of property at the time of the transaction. The Assessing Officers lack expertise in assessment of real estate transactions. They rarely get specialised training to tackle such cases.

In the wake of the above conclusions which provide also the answers to research questions cited at items (a) and (b) in 'Research Questions' (Sub-heading 1.1 in Chapter-1), it is observed that the current provisions of Income Tax Act, 1961, assessment procedure and existing administrative machinery entrusted with their implementation are inadequate and insufficient to tackle the menace of tax evasion arising out of real estate transactions. All the reasons for tax evasion discussed above pose obstacles in the path of determination and collection of appropriate amount of taxes arising out of real estate transactions.

The present Income Tax law which contains complex provisions has generated a number of taxation issues and challenges emerging out of judicial interpretation of taxation provisions by the Tribunals and High Courts. The issues highlighted in Chapter-5 of this study, as part of exercise to find answer to research question cited at item (c) in 'Research Questions' (Sub-heading 1.1 in Chapter-1) which has been compiled within time constraints, are representative of the issues and challenges arising out of vortex of tax litigation. Every day while adjudicating the cases some Tribunal or High Court is giving new interpretation to the legal provisions which though help in widening the ambit of its understanding but at the same time raise new vistas of tax litigation. In the process the basic

purpose of collection of proper and appropriate amount of taxes arising out of real estate transactions gets defeated.

7.2 Recommendations

With a view to achieving the objective of determination and collection of proper and appropriate amount of taxes arising out of real estate transactions there is urgent need for taking up a comprehensive study to examine and identify the weaknesses in the present system of taxation and take further corrective measures so that the Govt. of India is not deprived of due and appropriate amount of taxes out of the ever-growing and high revenue-potential real estate sector. After due consideration of the ground realities and considering the initiatives taken by the Government of India the following measures are suggested:

1. **Control of parallel economy-** Stringent measures should be taken to control, if not eliminate parallel economy. Effective measures should be taken to control cash transactions in the economy. Stringent laws should be enacted against banks for allowing large cash transactions.
2. **Real estate as industry-** Real estate sector should be declared industry in order to avail of finances easily from banks and financial institutions so as to reduce its dependence on black money .
3. **Curb on corruption-** Corruption needs to be curbed in the country. There should be single window project clearances and approvals within a specific timeframe for the real estate builders/developers.
4. **Amnesty scheme-** In order to suck unaccounted cash floating in the parallel economy there should be one time amnesty scheme of voluntary disclosure of unaccounted income and wealth to allow it to come to the