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Income-tax implications and accounting in the Real Estate Sector – Demystifying JDAs and other construction contracts

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Introduction

"Buying real estate is not only the best way, the quickest way, the safest way, but the only way to become wealthy".[1]

This quote by renowned American businessman Mr. Marshall Field emphasizes the importance of the real estate sector. The real estate industry in India's economy currently provides about 6-8 percent of the country's GDP, and by 2025, it is projected to contribute roughly 13 percent. The Indian real estate market is predicted to reach $1 trillion by 2030, ranking third in the world. Now, it is the third largest employer in the nation, behind manufacturing and agriculture, with over 50 million workers.[2]

The real estate sector is evolving, encompassing expansion in the commercial and residential domains. Real estate projects could take the form of group housing societies, commercial complexes, residential townships, or industrial townships. Large sums of money and long-term agreements between developers, landowners, and eventual purchasers are involved in these projects. It has been challenging to comprehend the numerous transaction types, the year and form of income recognition, and to levy taxes on them due to the unique characteristics of these projects.

The author of this article has attempted to shed light on the nature of Joint Development Agreements (JDAs) and other construction contracts in the real estate sector, given a lengthy history of litigation. He has attempted to analyse the income-tax implications on the real estate sector under the following heads:

I. Joint Development Agreements (JDAs) and other Construction Contracts

II. Landowner - Income-tax implication

(*a*) Amount of consideration received and year of taxability
(*b*) Implication, if the JDA is not registered

(*c*) Exemption available to the Landowner on sale of property

(*d*) TDS Provisions

III. Builder or Developer - Accounting and Taxability

(*a*) Selection of Accounting method (Completed Contract Method (CCM) vs. Percentage of Completion Method (POCM))

(*b*) Applicability of guidelines and accounting standard in different scenarios

(1) Sale of constructed property

(2) Sale of under constructed property

(3) Taxability of unsold flats

(*c*) Deduction to Builder/Developers for affordable housing u/s 80-IBA

IV. Conclusion

I. Joint Development Agreements (JDAs) and other Construction Contracts

The development of real estate involves a huge amount of investment and a high degree of skill, effort, and time. It generally takes several years for the development and completion of a real estate project. The present is the age of collaborative science, where the resources of different agencies are collaborated on and put together to harness the expertise of different agencies. For the development of real estate, the JDA model has emerged as a popular one wherein land owners and developers combine their resources and efforts.

Under a typical JDA, the landowner contributes his land and enters into an arrangement with the developer to develop and construct a real estate project at the developer's cost. Thus, land is contributed by the landowner, and the cost of development and construction is incurred by the developer. The landowner may receive payment in the form of either:

(*a*) A lump-sum payment;

(*b*) A portion of the sales revenue; or

(*c*) A certain percentage of the newly built project, on the aforementioned plot of land.

In a JDA, the risk and reward associated with the construction of the property are generally with the landowner or the builder until possession of the house is transferred to the ultimate buyers. In some cases, the ultimate buyer can be the landowner himself, where he is rewarded with a certain percentage of the newly built project.

In other construction contracts, the builder or developer enters into a contract to construct a property in accordance with the specifications provided by the buyer, and he constructs the property on the buyer's instructions. Stated differently, under a JDA, the builder carries the risk and rewards until the buyer receives them; under other construction contracts, on the other hand, the transfer of risk and rewards happens prior to the transfer of property ownership. The upcoming paragraphs will give us a detailed understanding of it.

II. Landowner - Income-tax implications

In JDA, the landowner may get monetary or non-monetary consideration from the developer for contributing his land to the project, which is taxable as 'Capital Gain'. The taxability of capital gains in the hands of the landowner arising on the transfer of title of land from the landowner to the developer in a JDA has always been a litigative issue. The JDA model is often challenged by the assessing officers due to a lack

of clarity relating to taxation in the hands of landowners and also the determination of the amount of taxable consideration received by the landowner.

(*a*) Amount of Consideration received and year of taxability

The landowner's capital gain was subject to Section 45(1) of the Act until March 31, 2017 (i.e., before the new Section 45(5A) of the Act was inserted). This meant that the gain was taxable in the year when the capital assets were transferred.

By virtue of this, the mere execution of JDA between the landowner and the developer triggered the tax liability under the head capital gains. When the JDA was signed and the developer received ownership of the immovable property, the landowner was responsible for paying taxes on these gains in that year.

It should be mentioned that, in most cases, the owner of a JDA would get consideration once the project is finished. Because of this, under the old tax system (i.e., before Section 45(5A)), the landowner was supposed to pay the capital gain tax at the time of signing a JDA, even though, in actuality, he was never paid anything at that time. There was no actual consideration received at that time, and the owner was forced to pay the taxes out of his own money, which was a genuine hardship.

The legislation pertaining to the JDA's point of transfer had developed as a result of a string of rulings. These rulings had established that on the day the JDA entered, the landowner "transfers" to the extent of the developer's share of the land, and that at that point, the landowner becomes entitled to any capital gains. In the *Chaturbhuj Dwarkadas Kapadia* v. *CIT*[3] case, the Bombay High Court ruled that, from the landowner's perspective, the "transfer" occurs on the day the JDA is entered into because giving possession to a developer would also fall under the purview of the "transfer" under Section 53A of the Transfer of Properties Act, 1882, read with Section 2(47)(*v*) of the Act. In view of the above, transfer happens on the date of entering JDA, itself.

The Tax Department considered the taxable event as and when the JDA was signed and entered into between the landowner and the developer. But the biggest question was, **'When the project is just on paper at the time of the signing of the JDA, with no real existence, what would be the taxable value of consideration in the hands of the landowner'.** To give the answer to the above question, the tax department contended that, as per the provisions of **Section 50D**of the Act[4], the taxable value of consideration in the hands of the landowner would be the **fair market value of the project, including land** on the date of execution of the JDA. Pursuant to provisions of **Section 50D** of the Act, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer',but projects under JDA take time to complete (2 to 3 years) and are subject to fluctuation risk. Therefore, the fair marketvalue of the project on the date of execution of JDA was not justified.

To minimise the hardship to the assessee, the amendment is brought up to insert section 45(5A) in the Act[5]. The Finance Act 2017 has inserted a new Section 45(5A) in the Act, which is applicable from FY 2017-18. In this regard, the explanation[6] for the insertion of the new sub-section states as follows:

> 'With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, it is proposed to insert a new sub-section (5A) in section 45 so as to provide that in case of an assessee being individual or Hindu undivided family, who enters into a specified agreement for development of a project, **the capital gains shall be chargeable to income-tax as income of the previous**

year in which the certificate of completion for the whole or part of the project is issued by the competent authority.'

After the introduction of the Section 45(5A) of the Act, capital gains to the landowner are now charged only **when construction of the project is complete and the completion certificate is received from the competent authority** in order to reduce the true hardship that the owner of land faced in paying tax despite the absence of real consideration. As a result, the year of transfer and the year of taxability are different.

The gist of the impact of Section 45(5A) is as follows:

(*i*) This section applies to individuals and HUFs for the JDAs registered on or after 01.04.2017.

(*ii*) The tax liability extended untill the date of completion certificate is received from the competent authority and is applicable only in the case of a registered agreement.

(*iii*) The full value of consideration will be the stamp value of the land or building on the date when the completion certificate is issued, as increased by the consideration received in cash, if any.

(*iv*) This section is not applicable where the share is transferred before the completion of the project. In such a case, normal provisions related to capital gain apply to such a transfer.

Period of holding

The period of holding shall be counted from the date of purchase or acquisition till the date immediately preceding the date on which the certificate of completion is issued by the competent authority.

However, if the owner of land or building transfers his share in the project to any other person on or before the date of issue of the certificate of completion, the capital gains shall be computed as per the general provisions of the Act without taking into account the above special provisions, and it shall be deemed to be the income of the previous year in which such transfer takes place.

(*b*) Implication, if the JDA is not registered

As mentioned above, the new sub-section has many essential conditions, one of which is that **the 'specified agreement' should be a registered document**. The said specified agreement should be registered; otherwise, the provisions of the new section cannot be made applicable to an unregistered agreement.

Further, after the judgment of the Hon'ble Supreme Court in the case of **CIT v. Balbir Singh Maini**[7] earlier provisions of taxation mentioned above (i.e., Section 45(1), Section 2(47)(*v*), and Section 50D shall not be applicable in the cases of unregistered documents. The Hon'ble Supreme Court in the case of Balbir Singh Maini (supra) held that the provisions of Section 2(47)(*v*) and (*vi*) will not apply in cases where the JDA is not registered. The Court held that 'transfer of land through an unregistered document by giving possession of the property for a limited purpose of development would not amount to a transfer and hence capital gains would not arise.' However, at the time of completion of project or completion of construction work, the landowner makes the registry of land and building in favour of developer for their part of land and building as per the agreement, there will be transfer of capital assets under section 45(1) of the Act and capital gain will arise in the hands of the landowner.

Further, it is also important to note that unregistered agreement is covered under **'Benami Transaction'**[8] **w.e.f. from 1.11.2016**, therefore, consequences thereof may be faced.

(*c*) Exemption available to the Landowner on sale of property

If the landowner purchases a portion of the property and pays the builder the cost of construction, such an amount is eligible for exemption under section 54 or 54F. The exemption taken by the owner in respect of the construction of the property will be withdrawn in the year of the sale of his portion, and the income will be treated as short-term capital gain in the year of sale if the landowner sells such property within three years of acquisition.

(*d*) TDS Provisions

According to Section 194IC of the Act, the land developer or builder is required to withhold tax **at the rate of 10% from any cash payments made** to the landowner for the purchase of his portion of the property under the joint development agreement.

There is no threshold limit for deduction of TDS. Tax has to be deducted on any monetary consideration paid to the landowner and not on the amount of capital gains that may arise to the land owner. The value or stamp duty value of the landowner's portion will not be added for the purpose of calculating TDS.

III. Builder or Developer - Accounting and Taxability

The income arising to the developer, whether it is under a JDA or other construction contracts, is considered his **'Business Income'** and is taxed as per the applicable provisions. However, the main issue lies in its calculation. For him, the assets would be stock in trade, and his income consists of the earnings he receives from the purchasers of the developed land, while his costs are related to the money used to develop the property and the cost of the land.

All of the components of a construction contract are often present in the majority of commercial and residential unit construction or development: site development, structural engineering, architectural design, and construction. These activities' inherent characteristics mean that most of the time, the start and end dates of the activity fall into multiple accounting periods. Such actions frequently take place throughout two or more accounting periods.

(*a*) Selection of Accounting method (Completed Contract Method (CCM) vs. Percentage of Completion Method (POCM))

A developer's or builder's income can be assessed based on one of two established accounting methods, *i.e.*:

(*i*) Completed Contract Method

(*ii*) Percentage of Completion Method

To address various transactions in different scenarios, the Institute of Chartered Accountants of India (ICAI) has issued the Accounting Standards (AS), Indian Accounting Standards (Ind AS), and Guidelines that which method should be used for accounting on transactions in the real estate sector. Additionally, the Government of India has also issued Income Computation and Disclosure Standards (ICDS) to address these types of transactions. Numerous judicial precedents exist in which the issue of selecting the correct method has been discussed. When there is a protracted legal dispute with no clear resolution, which approach should be applied?

The list of AS, Ind AS, guidelines and ICDS which have an impact on accounting are as follows:

(*i*) Accounting Standard (AS) 9 - Revenue Recognition

(*ii*) Accounting Standard (AS) 7 - Construction Contracts

(*iii*) Guidance Note on Accounting for Real Estate Transactions, Revised (2012)

(*iv*) Income Computation and Disclosure Standards (ICDS) - III - Construction Contracts

(*v*) Indian Accounting Standard (Ind AS) - 115 - Revenue from Contracts with Customers

(*vi*) Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable), 2016 - **has been withdrawn**

The upcoming paragraphs will attempt to clarify how the aforementioned standards interact and determine which method is appropriate in certain circumstances.:

(*i*) Accounting Standard (AS) 9 - Revenue Recognition

For recognition of revenue in case of real estate sales, it is necessary that all the conditions specified in **paragraphs 11 and 12 of Accounting Standard (AS) 9, Revenue Recognition**, are satisfied.

"Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection. The recognition of revenue to be postponed in case of uncertainties,"

As stated above, real estate sales take place in a variety of ways and may be subject to different terms and conditions as specified in the agreement for sale. Accordingly, the point of time at which all significant risks and rewards of ownership can be considered as transferred, is required to be determined on the basis of the terms and conditions of the agreement for sale. Once the seller has transferred all the significant risks and rewards to the buyer, the revenue is required to be recognized in the books of the seller.

(*ii*) Accounting Standard (AS) 7 - Construction Contracts

The percentage completion method (POCM) should be applied in the accounting of all real estate transactions/activities in the situations described in the AS-9, *i.e.*, revenue should be recognized when significant risks and rewards of ownership has been transferred. AS-7 also describes some further indicators of such transactions/activities are:

(I) The duration of such projects is beyond 12 months and the project commencement date and project completion date fall into different accounting periods.

(II) Most features of the project are common to construction contracts, *viz.*, land development, structural engineering, architectural design, construction, etc.

(III) While individual units of the project are contracted to be delivered to different buyers these are interdependent upon or interrelated to completion of a number of common activities and/or provision of common amenities.

(IV) The construction or development activities form a significant proportion of the project activity. **This method is applied when the outcome of a real estate project can be estimated reliably and when all the following conditions are satisfied**:

(*a*) total project revenues can be estimated reliably;

(*b*) it is probable that the economic benefits associated with the project will flow to the enterprise;

(*c*) the project costs to complete the project and the stage of project completion at the reporting date can be measured reliably; and

(*d*) the project costs attributable to the project can be clearly identified and measured reliably so that actual project costs incurred can be compared with prior estimates.

(*iii*) Guidance Note on Accounting for Real Estate Transactions, Revised (2012)

The Guidance Note, in paragraph 5.2 also mention that there is a rebuttable presumption that the outcome of a real estate project can be estimated reliably and that revenue should be recognised under the percentage completion method (POCM) only when the events in (*a*) to (*d*) below are completed.

(*a*) All critical approvals necessary for commencement of the project have been obtained. These include, wherever applicable: (*i*) Environmental and other clearances. (*ii*) Approval of plans, designs, etc. (*iii*) Title to land or other rights to development/construction. (*iv*) Change in land use

(*b*) When the stage of completion of the project reaches a reasonable level of development. A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25 % of the construction and development costs

(*c*) At least 25% of the saleable project area is secured by contracts or agreements with buyers

(*d*) At least 10 % of the total revenue as per the agreements of sale or any other legally enforceable documents are realised at the reporting date in respect of each of the contracts and it is reasonable to expect that the parties to such contracts will comply with the payment terms as defined in the contracts.

To illustrate - 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.

(*iv*) Income Computation and Disclosure Standards (ICDS) - III - Construction Contracts

For applying the percentage of completion method in respect of a project, the provisions of ICDS III on Construction Contract shall apply mutatis mutandis. In ICDS III on Construction Contract rest three conditions mentioned in (*b*), (*c*) & (*d*) are same except condition (*a*) is dispensed with. The same may be because now all new projects are registered under RERA and as per Section 4(2)(*c*) The promoter shall enclose with application for registration of real estate projects an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases.

(*v*) Indian Accounting Standard (Ind AS) - 115 - Revenue from Contracts with Customer

After introduction of Ind AS 115 Revenue from contracts with customer's, view came that the completion contract method is to be applicable instead of percentage completion method in case of under construction projects.

As per this standard below mentioned five steps are to be followed for Revenue Recognition

(*i*) Identify the contract(*s*) with the customer

(*ii*) Identify the separate performance obligations

(*iii*) Determine the transaction price

(*iv*) Allocate the transaction price to the performance obligations

(*v*) **Revenue Recognition when performance obligations are satisfied**

(*b*) Applicability of guidelines and accounting standard in different scenarios

It looks from the above-mentioned guidelines and accounting standards that **POCM should be applied for revenue recognition subject to fulfilment of certain conditions or criteria**. However, fulfilment of such criteria can cause a lot of issues which we will try to evaluate in different situations as mentioned below:

(1) Sale of completed Property

It is possible that a Real Estate Developer will sell Real Estate flats/commercial units after the construction of property is completed. In case of sale of completed property as per Ind AS 115 Real Estate Developer will be required to recognize revenue when control is transferred to the customer *i.e.*, at the time of sale of the completed property.

(2) Sale of under constructed Property

Majority of the transactions entered by the Real Estate Developers are sale of under construction property. **With the introduction of Ind AS 115** now Real Estate Developer has to account for Revenue by following the five steps approach as mentioned in the Ind AS 115 (**supra**), **wherein as per the 5th step**, revenue is to be recognized when entity satisfy each performance obligation. So now the question is whether the performance obligation is satisfied when the real estate unit is handed over to customer on delivery or it can be proved that performance obligation is satisfied over a period of time. However, to prove performance obligation is satisfied over a period of time one of the criteria to be met out of three which are

(*i*) The customer simultaneously receives and consumes the benefits provided by the entity's performance as the entity performs

(*ii*) The entity's performance creates or enhances an asset (for example work in progress) that the customer controls as the asset is created or enhanced or

(*iii*) The entity's performance does not create an asset with an alternative use to the entity and the entity has an enforceable right to payment for performance completed to date.

After going through the above-mentioned criteria for satisfaction of the performance obligation, it looks that in most of the cases of sale of under constructed property, developers have to recognize revenue on completed contract method (CCM) as against percentage of completion method (POCM). The press release of ICAI on **Implementation of Ind AS 115**[9]**, explains that,**

> "It has come to ICAI's attention that there have been misleading and confusing media reports that Ind AS 115, Revenue from Contracts with Customers, (issued by MCA *vide* notification dated March 28, 2018) permits only Completed Contract Method of accounting for real estate companies. We have come across statements like, "revenue in case of

real estate transactions can be booked only after the project is completed and the customer has taken possession of the unit (house/flat)". These kinds of reports may lead to misinterpretation of the principles laid down in the Standard. In view of the above, the ICAI would like to clarify that the Ind AS 115 does allow recognition of revenue using Percentage of Completion Method (POCM) and has explicit and specific requirements to recognise revenue, where performance obligation is satisfied over a period of time etc".

Based on the above discussion and press-release by the ICAI, it can be interpreted that in case of an under-construction project, the PCOM can be applied for revenue recognition only in such situations where performance obligations are satisfied. Hence, now it is almost impossible to apply POCM looking at the peculiar conditions for satisfaction of performance obligations and therefore many listed companies and even private limited companies having high net worth to whom Ind AS is applicable have to apply completed contract method of revenue recognition.

Applicability of ICDS III on real estate sector - under constructed property:

Section 43CB[10] of the Act provides the application of PCOM in respect of calculation of the profits and gains arising from a construction contract or a contract in accordance with the ICDS.

ICDS III, applies to construction contracts, where, construction contracts mean,

"a contract specifically negotiated for the construction of an asset or a combination of an assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use and includes:

(*i*) Contract for the rendering of services which are directly related to the construction of the asset, for example those for the services of project managers and architects;

(*ii*) Contract for destruction or restoration of assets, and the restoration of the environment following the demolition of an assets.

So, the plain reading of the above definition clearly suggests that the construction undertaken by Real Estate Developers does not satisfy the above definition as the contract is not negotiated only for the construction of asset rather the Real Estate Developer is a person who constructs the asset as per his own schemes and designs and contracts with the buyer to sell the assets.

The CBDT has also clarified in the FAQ issued on 23rd March, 2017 [11] *vide* Circular No 10/2017 (Reply to Question No. 12) that this ICDS is not applicable to Real Estate Developers. The Q:12 is as follows:

Q:12: Since there is no specific scope exclusion for real estate developers and Build - Operate - Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS III and ICDS IV should be applied by real estate developers and BOT operators. Also, whether ICDS applicable for lease.

A:12: At present there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply

to these transactions as may be applicable. The CBDT has tacitly accepted that ICDS III not applicable to Real Estate Developers.

Further, **Section 5 of the Income Tax Act, 1961** states that the income is taxable in the year in which the same accrues to the taxpayer. Income is said to be 'accrue' when taxpayer has legal right to receive the income and accordingly, payer acknowledges a debt in favour of the taxpayer and hence there is no question of applicability of percentage completion method. Reliance can be placed on the judgment of Apex Court in the case of *CIT* v. *Excel Industries Ltd*[12]**.** As the provisions of Section 5 prevail over ICDS, contract revenue can be recognized on satisfaction of the test of accrual and not merely on the basis of reasonable certainty of collection of contract revenue.

As per one interpretation, AS-7 relating to construction contracts is not applicable to Developers/Builders so there is no question of recognizing the income on the POCM. ITAT Mumbai Bench decision in case of '*Awadhesh Builders* v. *ITO*[13] is relevant in which the ITAT held that in case of real estate developer, profit is earned only when the space constructed is sold. In case, due to some reasons, the project is terminated or is abandoned, the builder has to refund the advances received from the buyers and in that case, there cannot be any profit because the flats/shops could not be sold as the construction remained incomplete. In that case, it will be only be a case of investment by the builder, profit on which will arise only on sale of flats.

While interpreting the **Guidance Note for application of POCM**, the Bangalore ITAT in the case of *Krishna E-Campus Pvt Ltd* v. *Dy. CIT*[14], has held that, all conditions which has been defined in the Guidance Note should be appliable cumulatively and satisfaction of only one condition will not make it mandatory to follow POCM for revenue recognition.

It is evident that a difference has been made in normal construction contracts and real estate sector, where in order for POCM to be applied in the real estate sector, the conditions for recognizing revenue are very stringent. These requirements have become even more unusual with the introduction of new guidelines and standards, making it more difficult for developers to follow POCM.

(3) Taxability of Unsold Flats

Section 23(5)[15] of the Act, provides that where the property consisting of any building or land appurtenant there to is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.

Normally Developers develops the flat or commercial premises to sell and not to sublet so if flats are unsold then up to 2 years from the end of the financial year in which the certificate of completion of construction of property is obtained from the competent authority, then annual value of such property or part of the property should be considered as Nil. **Afterwards the same will be taxable as Income from House Property even if the Developer has developed flats or commercial premises for sale and not for subletting.**

(*c*) Deduction to Builder/Developers for affordable housing u/s 80-IBA [16]

To develop the affordable housing in India, the central government had provided deduction in respect of profits and gains from housing projects for small size of houses. Section 80-IBA of the Act provides that,

(*i*) 100% of profits and gains derived from the business of developing and building housing projects or rental housing project

(*ii*) The project should be approved by the competent authority between 01.06.2016 to 31.03.2022;

(*iii*) It should be completed within 5 years from the date of approval by the competent authority.

IV. Conclusion

After much deliberation, we can conclude that the landowner will have income-tax implications and will need to pay capital gain tax when the competent authority issues a completion certificate. Nevertheless, it is still unclear which accounting system—PCOM or CCM—a developer or builder should use to calculate income under the head of business or profession.

The dilemma relates to **under constructed property**, and the author understands that, after reviewing the Guidance Notes, accounting standards, and other judicial precedents,

(*i*) The builder should apply the CCM approach in cases where the risk and profit associated with the underlying property have been transferred to buyer.

(*ii*) If the builder can meet the performance obligations as stated in the contract, he should adhere to the POCM method, subject to the applicability of Ind AS 115 to him.

(*iii*) If Ind AS 115 does not apply to him, he can follow the guidelines as stated in the Guidance Note published by the ICAI in 2012; in that case, he should adhere to the POCM method.

The Revenue will always favour adhering to the POCM in order to expedite the taxation of income. In addition, the listed firms that are developers or builders will choose to follow the POCM to ensure consistency in financial statements rather than profitability in a particular year after contract completion. Further, POCM might result in fewer lawsuits than CCM.

Despite the government's best efforts to bring clarity to the real estate industry through a plethora of guidelines and accounting standards, litigation is unavoidable given the high stakes involved and the industry's dynamic and growing character. The well-known Hebrew saying that highlights the significance of real estate in a person's life could be used to end the article.

"He is not a full man who does not own a piece of land." [17]

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1. https://quotefancy.com/quote/1564849
2. Indian Investment Grid. (https://indiainvestmentgrid.gov.in/sectors/real-estate)
3. [2003] 129 Taxman 497/260 ITR 491 (Bom)
4. Section 50D of the Income tax Act, 1961, reads as under:

"Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as

capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer."

5. Section 45(5A) of the Income tax Act, 1961, reads as under:

(*5A*) *Notwithstanding anything contained in sub-section* (*1*)*, where the capital gain arises to an assessee,* ***being an individual or a Hindu undivided family****, from the transfer of a capital asset, being land or building or both, under a* ***specified agreement****, the capital gains shall be chargeable to income-tax as* ***income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority****; and for the purposes of section 48,* ***the stamp duty value, on the date of issue of the said certificate****, of his share, being land or building or both in the project, as* ***increased by the consideration received in cash****, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset :*

Provided *that the provisions of this* ***sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion*** *, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of this sub-section, shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer.*

Explanation. —For the purposes of this sub-section, the expression—

(*i*) *"Competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;*

(*ii*) *"* ***Specified agreement" means a registered agreement*** *in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;*

(*iii*) *"Stamp duty value" means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.* **(*Emphasis Applied*)**

6. Explanation to memorandum to the Finance Act, 2017

7. [2017] 86 taxmann.com 94/251 Taxman 202/398 ITR 531 (SC)

8. Explanation under Section 2(9) of The Prohibition of Benami Property Transaction Act, 1988

9. Implementation of Ind AS 115, Revenue from Contracts with Customers in context of Real Estate Sector - (20-07-2018)

10. **Computation of income from construction and service contracts.**

43CB. (1) The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:

Provided that profits and gains arising from a contract for providing services, —

(*i*) with duration of not more than ninety days shall be determined on the basis of project completion method;

(*ii*) involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight-line method.

(2) For the purposes of percentage of completion method, project completion method or straight-line method referred to in sub-section (1)—

(*i*) the contract revenue shall include retention money;

(*ii*) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

11. Clarification on ICDS notified u/s 145(2) of the Income-tax Act, 1961, Circular No. 10/2017 issued on 23.03.2017

12. [2013] 38 taxmann.com 100/219 Taxman 379/358 ITR 295 (SC)

13. [2010] 37 SOT 122 (Mum.)

14. [2022] 141 taxmann.com 385/196 ITD 700 (Bang. - Trib.).

15. **Annual value how determined.**

23. (1) ....

(5) Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be nil.

16. "**Deductions in respect of profits and gains from housing projects.**

80-IBA. (1) Where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall, subject to the provisions of this section, be allowed, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business.

98[(1A) Where the gross total income of an assessee includes any profits and gains derived from the business of developing and building rental housing project, there shall be allowed a deduction of an amount equal to hundred per cent of the profits and gains derived from such business.]

(2) For the purposes of sub-section (1), a housing project shall be a project which fulfils the following conditions, namely: —

(*a*) the project is approved by the competent authority after the 1st day of June, 2016, but on or before the 31st day of March, 98a[2022];

(*b*) the project is completed within a period of five years from the date of approval by the competent authority:

Provided that, —

(*i*) where the approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority; and

(*iii*) the project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority;

..........."

17. https://www.leapdfw.com/blog/inspirational-quotes-for-real-estate-investors/