Reassessment Provisions Revisited & Depreciation on Goodwill

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I. Reopening of Assessment : Section 147 to 151

"If you are losing at a game, change the game"

1. The Finance Bill 2021 vide clauses 35 to 40 and 42 to 43 made a major shift in reassessment provision. The Finance Bill has lowered the time limit for reopening of assessment to 3 years from 6 years earlier. While for cases involving income escaping assessments amounts to or likely to amount Rs 50 lakh and above, 10 years old cases can be reopened. The Second major shift in the reassessment provision was inclusion of search assessments. In, significant changes to the taxation process, among other tax measures, the FM recommended a paradigm change to the provisions relating to "Assessment in case of search or requisition viz. Section 153A to 153D". The third major change is that **"to disclose fully and truly all material facts"** is done away with. The fourth major change is incorporation of sec 148A provision which is a replica of Guidelines rendered by G K N Drive shaft decisions of Supreme Court with certain modifications in process to be followed. Lastly the fifth major change is that reopening shall now be based on ***"information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment". Explanation 1 to sec 148 provides meaning to the above phrase.***

2. The Chairman of Central Board of Direct Taxes (CBDT), the apex decision making body for income tax, said the rationalisation of reopening of cases announced in Budget would bring in more certainty to taxpayers. *"What was a heavily litigated area, we have tried to rationalise it to the extent that it is no longer left to the discretion of assessing officer. It would be more of information-based attempt to reopen the cases. It would be primarily based on data analytics and risk assessment which the system throws up which would lead to reopening of the assessment,"*

3. The scope and effect of a reopening of assessment was settled to great extent after various judgments of the Supreme Court and High courts. Reassessment is one of the distinguishing weapons in the armoury of the Department, empowers the Assessing Officer to assess, reassess or recompute income, turnover etc, which has escaped assessment. However earlier the maximum extent the dept could reopen assessment was upto 6 years, however now the same shall be upto 10 years exception is 50 lacs limit. Inspite of various guidelines laid down by courts, dept constantly prefer to disobey the same leading to quashing of the notice by Courts and Tribunal. To overcome the same and streamline the procedure for reopening assessment the earlier provisions are amended. To my experience maximum cases which are reopened involves income escaping above 50 lacs, thus finality to an assessment will not be till 10 years in such cases. To my view this will bring uncertainty as the sword of reopening will be hanging till 10 years now.

4. The new proposed provision sec 147 reads as under :

> ***"147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).***
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> ***Explanation.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.".***

Thus on perusal of the proposed section 147 it is noticed that there are no proviso now except one explanation which is earlier Explanation no 3 with modification. Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in proposed section 148A was not followed before issuing such notice for such income

5. Now there is no such requirement of "to disclose fully and truly all material facts", it is done away in the new regime. The Assessing officer may reopen an completed assessment subject to the proposed provision of sec 148 to 153. Further the section provides a fresh condition to be fulfilled by Assessing Officer before reopening i.e. sec 148A.

6. The proposed sec 148 reads as under :

> ***"148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:***
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> ***Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.***
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> ***Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,— (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time; (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the***

assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,— (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or (ii) a survey is conducted under section 133A in the case of the assessee on or after the 1st day of April, 2021; or (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation.3—For the purposes of this section, specified authority means the specified authority referred to in section 151.".

7. On perusal of the new provision sec 148 it is noticed that now the Assessing officer shall serve the notice u/s. 148 alongwith a order copy passed u/s. 148A clause (d)[i.e order disposing of objection/reply of assessee to reopen the assessment]

8. Further the section provides that *"....no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment...."*

Explanation 1 to sec 148 provides meaning to the above i.e In the case of the assessee for the relevant assessment year following shall be treated as information ;

(i) any information flagged in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of this Act.

9. **On perusal of Memorandum Explaining to Finance Bill the reason behind the change is noticed as under :**

> *"Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the Act (statement of financial transaction or reportable account). Similarly, information is also received from other law enforcement agencies. This information is also shared with the taxpayer through Annual Information Statement under section 285BB of the Act. Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or those*

who have not disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven.

In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases."

10. Thus now reopening will be based on information flagged by system. The flagging would largely be done by the computer based system. What would be risk management strategy formulated by the Board needs to be seen. However the Assessing officer will have to apply his mind to the same in accordance with proposed sec 148A. In the present regime we have seen lot of inconsistencies in information driven reassessment, the challenge will be still there. The order disposing of the same shall be tested by the courts based on such information. Correctness of the same shall always be a factual aspect which shall differ from case to case bases. Pre condition laid down in sec 148 A will have to be satisfied before proceeding any further in the matter.

11. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.

12. Further as per the proposed amendment sec 153A to 153D will no longer be applicable for search assessment in respect of search initiated u/s. 132 on or after 1 April 2021. Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

13. On perusal of the Memorandum the reasons for doing away with sec 153A to sec 153D of the Act are stated as under :

".....These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act. This was done due to failure of block assessment in its objective of early resolution of search assessments. Also, the procedural issues related to block assessment were proving to be highly litigation-prone. However, the experience with this procedure has been no different. Like the provisions for block assessment, these provisions have also resulted in a number of litigations....."

14. Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information. Interestingly, the concept of dual assessments seems to be revived again as the pending assessments now on the date of search shall not abate.

15. The Apex Court in the case of *GKN Driveshafts (India) Ltd. v. D.C.I.T. (2003) 259 ITR 1 (SC)* has laid down the procedure to challenge the reassessment proceedings. When a notice under section 148 of the Income-tax Act, 1961, is issued, the proper course of action;

(at present) ;

(a) is to file the return,

(b) if he so desires, to seek reasons for issuing the notices.

(c) The assessing officer is bound to furnish reasons within a reasonable time.

(d) On receipt of reasons, the assessee is entitled to file objections to issuance of notice,

(e) the assessing officer is bound to dispose of the same by passing a speaking order.

(f) the assessee if desires can file a writ challenging the order or can proceed with the assessment. However the assessee has still a right to challenge the reopening of assessment after the assessment order is passed, before appellate authority.

16. The new provision sec 148A reads as under:

> ***"148A. The Assessing Officer shall, before issuing any notice under section 148, —***
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> ***(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;***
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> ***(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);***
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> ***(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);***
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> ***(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:***
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> ***Provided that the provisions of this section shall not apply in a case where, —***
>
> ***(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or***
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> ***(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or***
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> ***(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.***
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> ***Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.".***

17. The new proposed section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries,

if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

18. The Courts have consistently warned the department not to harass taxpayers by Reopening assessments in a mechanical and casual manner. The courts have consistently held that the pre condition are jurisdiction conferring on the AO to reopen the assessment and their non fulfilment renders the initiation itself ab-initio void The AO's were also directed to strictly comply with the law laid down in GKN Driveshafts (supra) as regards disposal of objections to reopening assessment:

Pr. CIT v. Samcor Glass Ltd. (Delhi); www.itatonline.org;

CIT v. Trend Electronics(2015) 379 ITR 456 (Bom.) (HC).

19. According to me the legal position shall continue in the new regime in view of sec 148A of the Act. Assessing officer should consider and dispose off the assessee objection and serve the order on assessee. The reopening should be based on information. The AO is expected to deal with the assessee's objection vis a vis the information received and pass a speaking order. The AO has to apply his mind to the information so as to come to an independent conclusion that income has escaped assessment during the year.

20. The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

a. in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year.

b. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.

In specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;

21. Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.

22. The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be —

(a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

Key Points

A. Prior approval of specified authorities is required for any such enquiry u/s.148A of the Act.

B. Speaking order for section 148A is required to be passed.

C. Procedure under section 148A shall not be applicable in case of search, survey or requisition cases initiated or made or conducted.

D. In case proceeding u/s. 148A are stayed, the period of limitation for issuance of the notice u/s 148, would be extended by 7 days if the available time limit is of less than 7 days.

E. Once the reassessment proceeding u/s. 147 is initiated and subsequently some issue has been noticed by the Assessing Officer, for that subsequent issue, no requirement to comply with the provision of section 148A.

F. Substitution of Section 151 [Sanction for Issue of notice]

G. Reopening shall be based on information flagged by the computer system.

II. GOODWILL

The Finance Bill 2021 Clause 7,18 and 20 proposed certain amendment in stand of the department in regards to claim of depreciation. A business/professional set up which is very successful would generate a lot of goodwill/ reputation in the market. This reputation being an intangible benefit associated with the performance of the business is very subjective to value. If successful businesses are sold in a transaction, the seller obviously charges a premium on account of the transfer of reputation/goodwill which will benefit the buyer. Such premium was recognised in monetary terms in the books of accounts as "goodwill". There used to be a controversy regarding whether this acquired goodwill is a depreciable asset for tax purposes. This controversy was resolved in favour of taxpayers by the Supreme Court in the case of *CIT v. Smifs Securities Ltd.* wherein it was held that "Goodwill" is an asset on which the benefit of depreciable can be claimed. Such transactions then became a very tax efficient tool in the hands of the buyers. However, with a view to overrule this decision, Budget 2021 now proposes to amend section 32 to exclude goodwill. Hence, goodwill shall no longer be a depreciable asset.

Brief Background

Section 2 Clause (11) defines block of assets to mean a group of assets falling within a class of assets comprising, tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed.

Section 32 of the Act relates to depreciation. Sub-section (1) of the said section provides for deduction on account of depreciation on tangible assets (Building, machinery, plant and furniture) and intangible assets (know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature) acquired on or after the 1st day of April, 1998 which are owned, wholly or partly by the assessee which are used wholly and exclusively for the purpose of business and profession while computing the income under the head Profits and gains of business or profession'.

Further, Explanation 3 to sub-section (1) provides that for the purposes of this subsection, the expression "assets" shall mean to be tangible assets, being buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Section 50 of the Act provides for conditions for the applicability of provisions of section 48 and 49 for computation of capital gains in case of depreciable assets where the capital asset is an asset forming part of a block of asset in respect of which depreciation has been allowed under this Act.

Section 55 of the Act provides meaning of terms "adjusted", "cost of improvement" and "cost of acquisition" for the purposes of sections 48 and 49 of the Act. In relation to a capital asset, being goodwill of a business or a trade mark or brand name associated with a business or a right to manufacture, produce or process any article or thing or right to carry on any business or profession, tenancy rights, stage carriage permits or loom hours, it is defined to mean the purchase price if it is acquired by purchase. In other cases it is nil except when it is covered by sub-clauses (i) to (iv) of sub-section (1) of section 49.

It is seen that Goodwill of a business or a profession has not been specifically provided as an asset either in the definition under clause (11) of section 2 of the Act or in section 32 of the Act.

The question whether goodwill of a business is an asset within the meaning of section 32 of the Act and whether depreciation on goodwill is allowable under the said section, is an issue which came up before Hon'ble Supreme Court in the case *Smiff Securities Limited [(2012) 348 ITR 302 (SC)*]. Hon'ble Supreme Court answered the question in affirmative. Thus, as held by Hon'ble Supreme Court, Goodwill of a business or profession is a depreciable asset under section 32 of the Act.

However, there are other sections of the Act which are relevant for calculation of depreciation under section 32 of Act. These are as under: Sixth proviso the section 32 of the Act mandates that in a case of succession/ amalgamation/demerger during the previous year, depreciation is to be calculated as if the succession or amalgamation or demerger has not taken place during the previous year and apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, as the case may be, in the ratio of the number of days for which the assets were used by them.

Explanation 2 of sub-section (1) of section 32 of the Act provides that the term written down value of the block of assets shall have the same meaning as in clause (c) of sub-section (6) of section 43 of the Act.

Clause (c) of sub-section (6) of section 43 of the Act, with respect to block of assets, inter-alia, provides that the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year is to be increased by the actual cost of any asset falling within that block, acquired during the previous year.

Sub-section (1) of section 43 of the Act which defines Actual cost as actual cost of the assets to the assessee. Explanation 7 to this section covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It clarifies that in this situation, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

Explanation 2 of clause (c) of sub-section (6) of section 43 of the Act also covers a situation where in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company. It also clarifies that in this situation, the actual cost of the block of asset in the hand of the amalgamated company would be written down value of that block in the immediate preceding

previous year in the case of amalgamating company as reduced by depreciation actually allowed in that preceding previous year.

Thus, while Hon'ble Supreme Court has held that the Goodwill of a business or profession is a depreciable asset, the actual calculation of depreciation on goodwill is required to be carried out in accordance with various other provisions of the Act, including the ones listed above. According to department once we apply these provisions, in some situations (like that of business reorganization) there could be no depreciation on account of actual cost being zero and the written down value of that assets in the hand of predecessor/amalgamating company being zero.

However, in some other cases (like that of acquisition of goodwill by purchase) there could be valid claim of depreciation on goodwill in accordance with the decision of Hon'ble Supreme Court holding goodwill of a business or profession as a depreciable asset.

According to Memorandum explaining the provisions of Finance Bill 2021 Goodwill, in general, is not a depreciable asset and in fact depending upon how the business runs; goodwill may see appreciation or in the alternative no depreciation to its value. Therefore, according to department there may not be a justification of depreciation on goodwill in the manner there is a need to provide for depreciation in case of other intangible assets or plant & machinery.

The Finance Bill has decided to propose that goodwill of a business or profession will not be considered as a depreciable asset and there would not be any depreciation on goodwill of a business or profession in any situation. In a case where goodwill is purchased by an assessee, the purchase price of the goodwill will continue to be considered as cost of acquisition for the purpose of computation of capital gains under section 48 of the Act subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22, then the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.

Therefore, to give effect to the above decision, it has been proposed to,

(a) amend clause (11) of section 2 of the Act to provide that block of asset' shall not include goodwill of a business or profession;

(b) amend clause (ii) of sub-section (1) of section 32 of the Act to provide that goodwill of a business or profession shall not be considered as an asset for the purpose of the said clause and therefore not eligible for depreciation. Further, it is also proposed to amend Explanation 3 to sub-section (1) of the said section to provide that goodwill of a business or profession shall not be considered as an asset for the said sub-section.

(c) amend section 50 of the Act to provide that in a case where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on the 1st April, 2020 and depreciation has been obtained by the assessee under the Act, the written down value of that block of asset and short term capital gain, if any, shall be determined in the manner as may be prescribed.

(d) amend section 55 of the Act by substituting clause (a) of subsection (2) to provide that in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours,—

(i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and

(ii) in the case falling under sub-clause (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and

(iii) in any other case, shall be taken to be nil

(e) provide that in case of goodwill of business or profession acquired by the assessee by way of purchase from a previous owner (either directly or through modes specified under sub-clause (i) to (iv) of sub-section (1) of section 49) and any deduction on account of depreciation under section 32 of the Act has been obtained by the assessee in any previous year preceding the previous year relevant to the assessment year commencing on or after the 1st April, 2021, then the cost of acquisition will be the purchase price as reduced by the depreciation so obtained by the assessee before the previous year relevant to assessment year commencing on 1st April, 2021.

These amendments will take effect from 1st April, 2021 and will accordingly apply to the assessment year 2021-22 and subsequent assessment years.

AMENDMENT IN SEC 45

Under the existing provisions of section 45(4), any profits and gains from the transfer of capital asset by the firm to a partner on account of dissolution or reconstitution is chargeable to the firm under the head capital gains. The transaction will be taxable in the previous year in which the transfer takes place. Further, for the purpose of computation of capital gains, the fair market value of the asset transferred shall be considered as the full value of consideration.

In *PCIT v. R.F. Nangrani HUF, 93 taxmann.com 302*, the Bombay High Court held that amount received by retiring partner on retirement from firm on account of goodwill shall not be subjected to capital gains tax, to the partner. In the case *CIT-III, Pune v. Riyaz A. Sheikh, 41 taxmann.com 455*, the same view has been taken.

This view is also backed by the Apex Court in the case of *Commissioner of Income-tax v. R. Lingamallu Raghukumar, 124 Taxmann 127* has held that excess amount received by the assessee on retirement from two partnership firms was not assessable to capital gains tax, since there was no transfer of any assets as contemplated by expression "transfer" as defined u/s 2(47).

Proposed Amendment:

Sub-section (4) of section 45 of the Income-tax Act is proposed to be substituted by the Finance Bill 2021 inter alia amongst other amendment .

- The amendment states that in determining the capital account balance of the specified person, any increase on account of revaluation of any asset or due to self-generated goodwill or any other self-generated asset has to be excluded.

The terms "self-generated goodwill" and "self-generated asset" mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession;

An important point arising out of the amendment is that in determining the capital account balances of the partners prior to the dissolution or reconstitution, any increase on account of revaluation of any asset or due to self-generated goodwill or any other self-generated asset has to be excluded.

Insertion of sub-section (4A)

Apart from the amendment discussed above, a new sub-section (4A) is sought to be inserted. The proposed amendments in this regard are as follows:

- Further, in determining the capital account balance of the specified person, any increase on account of revaluation of any asset or due to self-generated goodwill or any other self-generated asset has to be excluded.
- Any capital asset, representing capital account balance of the partners received by the partners will be taxable to the firm. This provision is likely to bring into tax ambit consideration received for goodwill by partners on retirement / reconstitution.
- Any revaluation exercise done by the firm prior to such dissolution / reconstitution, whereby there is an increase in the value of any asset will have no bearing in determination of capital account balances. Further, any increase on account of self-generated goodwill or any other self-generated asset will also have to be excluded in the process.
- While amended section 45(4) is applicable only in case of receipt of capital assets by the partners of the firm, the new sub-section proposed brings into tax ambit any money received by the partner in excess of the capital account balances.
- In determination of value of consideration received, the fair market value of the asset received has to be taken into consideration. However, in the context of proposed section 45(4A), to determine the cost of acquisition to the firm, the capital account balance of the partners excluding the effect of upward revaluation to assets, or self-generated goodwill etc. has be excluded.

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