EXPLORING CAPITAL GAINS AS A HEAD OF INCOME

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INTRODUCTION

A capital gain accrues to the assessee when a transfer of a capital asset or assets takes place for a consideration which exceeds the cost of acquisition of the capital asset or assets(‘capital asset’ is defined under Section 2(14) of the Income Tax Act, 1961(the “**Act**”). However, as per Section 48 of the Act, not only is the cost of acquisition but any expenditure incurred wholly and exclusively in connection with such transfer, as also the cost of improvement, are deductible from such consideration. The net amount is a capital gain which has accrued to the assessee during the financial year upon which income tax at the rates specified by the Finance Act for the relevant assessment year is payable. Capital gains is one of the sources/heads of income under the Income Tax Act. Chapter IV-‘E’ of the Act deals with income from capital gains as a distinct source/head of income. Section 45(1) is the charging section which makes capital gains chargeable to income tax as income accruing in the previous year. Section 47 lists the transactions which are not to be regarded as a transfer for the purposes of Section 45(‘transfer’ is defined under S. 2(47) of the Act).

Generally, capital receipts are not chargeable to tax. A capital receipt is a receipt on capital account involving no ‘profit’ or ‘gain’ and can be classified as a receipt essential to the business, a receipt used by the business as capital to run the business and which produces profits, and it is only the profits resulting from the business which are chargeable to tax. Capital gain though a capital receipt, it is nevertheless a receipt chargeable to tax. I have outlined the basic principle(above) as to how a capital gain accrues to the assessee. But as one may see from the precedents below, whether capital gains has accrued to the assessee or it is a receipt from business, whether the capital gain is short-term or long term, or whether there is a capital asset which has been transferred etc. are all issues which are not straightforward and require analysis.

In this Article, I will be exploring capital gains as a source of income with the aid of a few case laws which hopefully will enrich readers with a better understanding of the concept and its application, in terms of law.

DISCUSSION

General

- In *Kartikeya V. Sarabhai vs. CIT*[1], the Supreme Court held that capital gains need not arise only by virtue of sale of a capital asset but there may be an extinguishment or relinquishment of the capital asset resulting in a capital gain. That what is contemplated by Section 45 is a 'transfer' of a capital asset and not a 'sale' thereof and the word transfer as defined under Section 2(47) of the Act may include extinguishment or relinquishment of rights in the capital asset as well. Thus, while sale would be a transfer of a capital asset, the transfer need not take place only by way of a sale. The facts of the case in brief were that a company wanted to reduce its share capital and for that purpose reduced the face value of its shares held with the shareholders. Thus, a share with the face value of Rs. 500/- was reduced to Rs. 50/- by compensating the shareholders by an amount of Rs. 450/- per share. The Supreme Court held that this amounted to an extinguishment of a right in the capital asset:

  (i) towards receiving dividend;

  (ii) towards voting rights in the company,

  since the value of the shares would be only Rs. 50/- thereby giving them only proportionate entitlements, and this extinguishment would be within the meaning of a transfer of a capital asset giving rise to capital gains.

- In a significant judgment titled *CIT vs. G. Narasimhan*[2], the Supreme Court was faced with the same issue of whether reduction in face value of shares/reduction in share capital by compensating the assessee would attract capital gains tax. The Court

[1] [1997] 228 ITR 163 (SC)
[2] [1999] 102 TAXMAN 66(SC)

took note of the decision in Kartikeya Sarabhai(supra) and observed that though the facts in that case were similar, in that case the Court did not consider the provisions of Section 2(22)(d) and Section 2(22)(e) of the Act. The Court observed that any distribution by the company to its shareholders to the extent the distribution is out of accumulated profits would be dividend in the hands of the shareholders. Therefore, insofar as the distribution by the company to the shareholder(in cash or kind) is out of accumulated profits, that portion would have to be deleted while computing capital gains since the same amounts to a dividend and cannot be taxed as capital gains. This ruling is significant since the Supreme Court has gone a step further and noted that if there is a reduction in share capital by reducing the face value of the shares and the shareholders are compensated, if this compensation is out of accumulated profits of the company, then that would be a dividend and the balance would attract capital gains tax in tune with the judgment of Kartikeya Sarabha(supra). In Narasimhan, there was cash as well as property which was transferred to the shareholders, and the matter was restored to the Tribunal to compute the value of the property and whether there was any capital gains by taking the cost of acquisition to be computed on that portion of the shares which had been diminished i.e on the difference between the original value of the share and the reduced value. Therefore, the cost of acquisition would have to be calculated on a proportionate basis for example:

If Rs. 500/- is paid for a share with a face value of Rs. 1000/- and the face value is reduced to Rs. 50/-, and Rs. 950/- for the share is given as compensation to the assessee, the cost of acquisition would be calculated proportionately on Rs. 950/- as follows:

$$\frac{500 \times 950}{1000}$$

Thus, the cost of acquisition would be Rs. 475/- in the above example and capital gains would be paid on Rs. 975-475= 500.

To conclude, even though reduction in the face value of shares is extinguishment of the right in shares and is a transfer of a capital asset, the payment to the shareholder may be from the accumulated profits lying with the company and to the extent this payment is from accumulated profits, the same would be dividend and any payment apart from the accumulated profits would invite capital gains.

- In *CIT vs. D.P. Sandu Bros. Chembur (P) Ltd. and Ors.*[3], the Supreme Court was faced with the issue of whether the amount received on surrender of a tenancy right would be subject to capital gains tax under Section 45 of the Act. The Court adverted to several decisions and held that surrender of tenancy rights was a 'transfer', tenancy rights were capital assets and also that the consideration received was a capital receipt(See: *A. Gasper v. CIT*[4]). However, the Court also adverted to the decisions of various High Courts which had held that where the cost of acquisition could not be ascertained with respect to such rights, then there can be no capital gains tax. The Supreme Court upheld the view of the High Courts in the present case primarily relying on the contention raised by the Revenue before the High Court that the cost of acquisition could not be ascertained. The Court also distinguished the case of *CIT vs. B.C. Srinivasa Setty*[5] and held that tenancy rights have a cost of acquisition and the determination thereof is a question of fact(See: *A.R. Krishnamurthy and Ors. v. CIT*[6]. Thus, the Supreme Court held that there can be no capital gains tax in the facts of the case. The Supreme Court also negated the argument of the Revenue that the receipt could be taxed under any other section/head of income under the Act, since if a receipt is taxable under a particular head of income, it is to be taxed only under that head and no other head of income.

- In *CIT vs. Madurai Mills Co. Ltd.*[7], the Supreme Court was faced with the question whether the assessee would be liable to pay tax on capital gains for income received by the assessee upon distribution of assets by virtue of shareholding in companies

[3] [2005]273 ITR 1 (SC)
[4] [1991] 192 ITR 382 (SC)
[5] [1981] 128 ITR 294 (SC)
[6] [1989] 176 ITR 417 (SC)
[7] [1973] 89 ITR 45(SC)

undergoing voluntary liquidation. The Court stated that what the assessee received upon such distribution was in the nature of a pre-existing right and something which it was already entitled to. That the liquidator acts only as a trustee on behalf of the members who are to receive what they are already entitled to, and do not have any interest in the property so distributed.

This decision of the Supreme Court which was a case under the 1922 Act was distinguished in *CIT vs. R.M. Amin*[8] which was a case under the 1961 Act. In R.M. Amin the Supreme Court held that but for the provision enacted in the 1961 Act i.e Section 46(2) it would be difficult to levy capital gains tax on such transactions in view of the decision in Madurai Mills. Therefore, newly introduced Section 46(2) expressly makes capital gains chargeable in the hands of the shareholder upon distribution of assets from a company upon liquidation. However, the Supreme Court in R.M. Amin ruled in favour of the assessee since in that case the company undergoing liquidation was a company located in Uganda and did not satisfy the definition of the word company as defined in Section 2(17) of the Act and used in Section 46(2) of the Act. Therefore, Section 46(2) was not applicable. The decision in RM Amin is followed in *Vijay Kumar Budhia and Ors. vs. CIT*[9] the only difference being that in Vijay Kumar Budhia Section 46(2) was applied and the assessee being a shareholder in the liquidated company was liable to pay capital gains tax.

Section 46(2) was interpreted and applied by the Supreme Court in *N. Bagavathy Ammal vs. CIT*[10], wherein the Court held that the word asset used in Section 46(2) would encompass assets of all kinds even if the same were not capital assets. Thus, agricultural land, which is not a capital asset by virtue of Section was still held to be an asset, and the intention of Section 46(2) being to levy capital gains on all 'assets' would include agricultural land as well. In this case, the assessee received agricultural assets upon liquidation. However, the question arises whether if the assessee does not have enough liquidity(cash/bank) with itself, can it be compelled

[8] [1977] 106 ITR 368(SC)
[9] [1993]204 ITR 355(SC)
[10] [2003] 259 ITR 678(SC)

to pay capital gains? Can it be compelled to sell the asset just for realising its tax liability? The argument was not taken up by the assessee but it is indeed difficult to imagine compelling the assessee to pay capital gains when only an asset has been received.

- In *Sunil Siddharthbhai and Ors. vs. CIT*[11] the Supreme Court held that when a partner brings personal assets into the partnership firm as his capital contribution to the firm, there is a transfer of a capital asset within the meaning of Section 45 since an exclusive interest in that asset is transformed into a shared interest between the partners of the partnership firm. The partners' right in the assets which he brings into the firm as his capital contribution is no longer an exclusive right but is then a shared right between all the partner's of the firm. Thus, there is a transfer of a capital asset within the meaning of Section 45 since there is an extinguishment of rights of the partner holding an exclusive interest in the assets. However, the Court proceeded to examine whether there would be any consideration as a result of such a transfer of capital assets and came to the conclusion that the credit entry in the partners capital account upon such investment of personal assets is at most a notional entry. The assets are subject to monetary fluctuation during the subsistence of the partnership firm. Thus, there is no real income or gain which the partner realises on investment in the partnership firm as capital contribution. The consideration received is only the right to receive a share in the profits of the firm and a proportionate right in the net assets of the firm upon dissolution. Further, liabilities and losses are deductible from the consideration, which cannot be ascertained at the time of the investment into the firm and the event arises only at the stage of dissolution of the firm. The liabilities cannot be excluded in determining the consideration received for the purposes of computing capital gain. Thus, there is no consideration which the partner receives on transfer of his personal assets into the firm.

[11] [1985]156 ITR 509 (SC)

- In *CIT vs. Mohanbhai Pamabhai*[12], the Gujrat High Court held that when a partner retires from a partnership firm, there is no transfer of capital assets. The argument of the Revenue that what the partner receives upon retirement, after deduction of liabilities and prior charges, is consideration for transfer to the continuing partners of the assets was negated. Neither is there any relinquishment nor extinguishment of the rights in the capital assets of the partner. Thus, there is no transfer as contemplated by Section 45 of the Act. All that the partner receives upon retirement is his share of the partnership assets which always belonged to him. This decision was upheld by the Supreme Court in *CIT vs. Mohanbhai Pamabhai*[13]. The decision of the Gujrat High Court was also noticed by the Supreme Court in Sunil Siddharthbhai(supra), which held in the context of capital gains upon dissolution or retirement, that there is nothing strange if a right exists in praesenti but its realisation is postponed. That, what the partner gets upon retirement or dissolution is a pre-existing right or interest. Thus, there can be no question of the levy of capital gains tax[14]

- In *Tribhuvan Das G. Patel vs. CIT* [15], the Supreme Court has noted that although share in net assets upon retirement or dissolution would not attract capital gains tax, the share in the profits of the firm would be taxable. That this share of profits is required to be computed by the authorities and not the assessee.

- In *Escorts Farms (Ramgarh) Ltd. vs. CIT*[16], the Supreme Court held that the cost of acquisition of ordinary shares held in companies would have to be calculated by taking account even the bonus shares issued to the assessee. That, the price of the ordinary shares undergoes a change pursuant to the receipt of bonus shares by the assessee. The price of the ordinary shares falls closer to their nominal value/face value since the entitlement to dividend is only proportionate to the number of shares and the market value of the shares falls since the dividend payout is reduced(since

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[12] [1973] 91 ITR 393 (Guj)
[13] [1987] 165 ITR 166 (SC)
[14] Prashant S. Joshi vs. ITO[2010] 324 ITR 154(Bom)
[15] [1999] 236 ITR 515 (SC)
[16] [1996] 222 ITR 509(SC)

the dividend is to be spread out over even more shares). The Court distinguished the case of *Shekhawati General Traders Ltd. vs. ITO*[17] where the statutory cost of acquisition prevailed which the Court in Shekhawati held that it was permissible to take the benefit of the statute providing for the cost of acquisition to be computed on the fair market value. Since, the benefit was not available in the present case, the Court upheld the claim of the Department.

- In *Sanjeev Lal vs. CIT*[18], the Supreme Court was dealing with the issue of treatment of long-term capital gain upon transfer of residential property with purchase of another residential property. Section 54 of the Act states that if an assessee transfers a residential house and within a period of one year before, or within a period of two years after, purchases a new residential house, the benefit on the long-term capital gain will be given. In this case, the residential property was transferred vide agreement to sell dated 27.12.2002, but the sale deed was registered only in the year 24.9.2004. By this time the new residential property was already purchased on 30.4.2003. Thus, ex-facie, the new residential house was purchased beyond a period of one year before the sale deed was registered. However, the Supreme Court noted that the date on which the agreement to sell is executed is the date on which the residential property is transferred for the purposes of Section 54. This is for the reason, that an agreement to sell creates rights in personam and if the vendor does not perform his part of the agreement, the vendee can sue for specific performance. Thus, a right is created in the property by virtue of the agreement to sell which amounts to a transfer since there is an extinguishment of rights in the property. The Supreme Court also noted that the sale deed could not be registered due to bona-fide reasons and that is why the agreement to sell must be taken as the date on which the transfer took place. In the author's view, for the reasons stated above, the date on which the agreement to sell is registered must be taken to be the date on which the transfer is taken place irrespective of the bona-fides regarding the

[17] [1971] 82 ITR 788(SC)
[18] [2014] 365 ITR 389(SC)

execution/registartion of the sale deed. On this basis, the Supreme Court upheld the claim of the assessee.

- In *Sarifabibi Mohmed Ibrahim and Ors. vs. CIT*[19], the Supreme Court was faced with the question of whether the land sold by the appellant was agricultural land or non-agricultural land for the levy of capital gains tax. The assessment year is 1970-1971. The Supreme Court noted that if the land is agricultural land then there can be no levy of capital gains tax since transfer of agricultural land was exempt by virtue of Section 47(viii)[transfer of agricultural land is not to be regarded as a transfer upto 1.4.1970]. The Court noted that the assessee admittedly did not use the land for agricultural purposes four years prior to its sale, that on the date of the agreement to sell it was decided that the land be used for housing purposes, and even permission was obtained to sell the land for non-agricultural purposes. Thus, the Court ruled in favour of the Revenue by holding that the land sold was non-agricultural land and there was a capital gain which had accrued to the assessee and it was liable to pay capital gains tax.

- In *Vania Silk Mills (P) Ltd. vs. CIT*[20] , the assessee purchased certain machinery which was let on hire to one company from which the assessee received annual rent. The machinery was subsequently destroyed in a fire. The machinery was insured and the assessee received an amount as compensation. The Assessing Officer sought to treat the difference between the amount received as compensation on account of the insurance and the written down value of the machinery as capital gain chargeable to tax. The Supreme Court held that though the machinery was destroyed by fire and therefore there was extinguishment of right, the same did not amount to a transfer within the meaning of Section 2(47) to attract capital gains tax. That, extinguishment of right simpliciter will not amount to a transfer within the meaning of transfer defined under the Act. There must be an actual transfer on account of the extinguishment of the right. Also, that extinguishment of right is preceded by the words sale, exchange, relinquishment etc. and applying the rule of noscitur a sociis

[19] [1993] 204 ITR 631(SC)
[20] [1991] 191 ITR 647(SC)

the said expression will derive their meaning from these expressions. Thus, the assessee was not liable to pay capital gains tax.

- In *Vatsala Shenoy vs. JCIT*[21] the Supreme Court was faced with the issue of sale of assets of a dissolved partnership firm. The Supreme Court noted that the assets sold were admittedly capital assets on which capital gains tax was chargeable. The Court refuted the contention of the assessee that the same amounted to a slump sale and was therefore not taxable since the provisions of Section 50B had not yet been introduced: the Court noted that the sale was not a slump sale since values were assigned to each individual asset from which liabilities were deducted. On the aspect of the transfer of goodwill as an asset not being chargeable to tax, the Court surprisingly held that the contention was not taken up before any lower forum and was liable to be dismissed. This finding in my opinion is not sustainable since the issue is fundamental to the case. The Court also noted that the income cannot be assessed in the hands of the partnership firm since it already stood dissolved and it was an AOP which was filing returns for the firm. That once the partnership firm stood dissolved it could not be assessed to capital gain and only the partners who received this income could be taxed. However, the Court noted when the sale took place 40% of the amount was to be retained by the purchaser of the assets towards tax and therefore the assessee could not be subject to tax and it was for the purchaser to file its return and pay the tax. In the circumstances, the petition was dismissed. The review petitions against this decision were also dismissed.[22]

- In *Raj Pal Singh vs. CIT*[23], the appellant-assessee was Karta of an HUF whose land was acquired by the government pursuant to an award passed on 29.9.1970 by the Collector under the Land Acquisition Act,. 1894. The CIT(A) made an addition(although the AO did not do so) on account of capital gains for Assessment Year 1971-1972.

[21] [2016]389 ITR 519(SC)
[22] [2017]391 ITR 363(SC)
[23] [2020] 427 ITR 1 (SC)

The Supreme Court was faced with the question as to whether capital gains would accrue on the mere right to receive compensation or on the date when accrual takes place on the vesting of property pursuant to the scheme of the Land Acquisition Act ,1894. The Court answered the question by holding that it is when the capital gains has accrued that is the relevant point of time when capital gains tax will be chargeable for the relevant assessment year, this is on account of the scheme of the Act and a mere right to receive compensation is not decisive. Vesting of property in cases of compulsory acquisition is followed by possession and this is when the capital gains will accrue. Even if possession is taken prior to the vesting of property, for example under Section 17 of the Act on account of urgency acquisitions, the date when capital gains will accrue is on the expiry of 15 days from the date of publication of the notice under Section 9(1). In all other cases where possession is taken before the making of the award the said date of possession merges with the date of award and it is only the date of the award which is to be reckoned as the date when capital gains has accrued. Therefore, the Court upheld the decision of the High Court and held that capital gains was rightly charged for Assessment Year 1971-1972.

The ratio of this case is important since it seems illogical that capital gains can said to accrue on the mere right to receive compensation. If the mere right to receive compensation is taken as determinative, what amount would the assessee offer to tax for the relevant assessment year? What would the amount of capital gains be? Both these amounts would at that stage be unknown since although the right has accrued to receive something, capital gains cannot be levied on any hypothetical or unknown amount, and even if the assessee wishes to offer the amounts to tax, it cannot do so. These reasons are in conformity with the reasoning given by the High Court(and not by the Supreme Court) in the above case.

Slump Sale

A slump sale is defined under Section 2(42C) of the Income Tax Act, 1961 as '*the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities* *in such sales.* The said Section has two Explanations. Explanation 1 states that the word undertaking would have the same meaning as assigned to it in Explanation 1 to Section 2(19AA). Explanation 2 states that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty or registration fees or similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities. Explanation 3 inserted w.e.f 1-4-2021 states that the word transfer shall have the same meaning assigned to it under clause 47 to Section 2. Clause 47 defines 'transfer'.

Section 50B is the charging section. It contains the marginal note: *Special provision for computation of capital gains in case of slump sale*. Any profits or gains arising from a slump sale in the previous year will be taxable as profits as arising from a transfer of long term capital assets and as income of the previous year. As per the proviso to Section 50B, if the undertaking(s) is/are held for less than 36 months, the transfer would be deemed as that of short term capital assets. The net worth of the undertaking is to be the cost of acquisition as per sub-section 2. Net worth is defined under Explanation 1 as the aggregate value of total assets minus the value of liabilities of the undertaking as shown in the books of account. Explanation 2 sets out the mode of computation of the aggregate value of total assets.

- In *CIT vs. Bharat Bijlee*[24], the assessee transferred its lift division to another company for a consideration of Rs. 36.5 Crores under a scheme of arrangement and which consideration, as noted by the Tribunal, was receivable in preference shares and bonds. The relevant Assessment Year is 2005-2006. The High Court upheld the ruling of the Tribunal that if the consideration is not received in cash or is otherwise not for monetary value, then the transaction cannot be regarded as a sale. It is only an exchange. Therefore, the provisions of Section 50B read with Section 2(42C) are not attracted, since the requirement of slump sale is only 'sale' and nothing else.
  The appeal was therefore dismissed.

[24] [2014]365 ITR 258(Bom)

In my view, this ruling is incorrect in law. Counsel for the Department had specifically noted the legislative history of slump sale and even went to the extent of alleging that receiving consideration in the form of shares or bonds was an artifice to evade tax since the transaction would then not come within the purview of sale. It is inconceivable how an exchange cannot amount to a sale for the purposes of the Income Tax Act. The word sale in slump sale ought not be given a restricted meaning/strict interpretation and this is the reason for insertion of Explanation 3 w.e.f 1-4-2021 to defining transfer. The amendment is purely clarificatory/declaratory and ought to be construed as retrospective thereby making a consideration receivable in assets also within the meaning of slump sale. An SLP has been filed against the judgment which is pending adjudication by the Supreme Court- Notice has been issued[25]. The SLP is tagged with another matter[26].

- In *Premier Automobiles Ltd. vs. ITO & Ors.*[27], the Bombay High Court dealt with a case of whether a transaction of hiving off an undertaking constituted a slump sale or an itemised sale of assets. The Assessment Year in question was 1995-1996. At that point of time, there was no provision in the Act dealing with slump sale but the concept had evolved through judge made law. The facts in brief were that the assessee company PAL was in the business of manufacturing cars and had hived off its Kalyan undertaking to a joint venture company(KMCL renamed PPL) set up by PAL and another foreign company(AP) interested in doing business with the assessee company, i.e PAL. The entire undertaking had been hived off for a consideration of 210 crores plus net current assets through various agreements namely an MOU, Supplemental MOU, Slump Sale Agreement. The Assessing Officer treated the transaction as a sale of itemised assets and apportioned the sale price of each asset against the consideration receivable by the assessee from the transferee JV company. The Bombay High Court speaking through Justice SH Kapadia has given detailed reasons why the said transaction was a slump sale and not a sale of itemised assets

[25] SLP(C) 19476/2014
[26] SLP(C) 17473/2012
[27] [2003] 264 ITR 193(Bom)

where the sale price of each asset could be apportioned with the total consideration. The findings are as follows:

(i) The decisive test is whether the hiving off has resulted in continuity of business. Also, whether the assets that have been transferred are the entire business or individual assets. In the present case, the entire undertaking had been transferred and therefore, this requirement is satisfied.

(ii) Whether the transfer of the undertaking was for a lump sum price? If not, then the transaction cannot be regarded as a slump sale. The sale has to be for a lump sum price.

(iii) In the present case, there was a schedule of assets, a register of fixed assets. Not only land and building but the entire undertaking was transferred including licences, quotas etc. Therefore, the transaction met the requirement of a slump sale.

(iv) It cannot be said that no liabilities were transferred. Whilst examining whether liabilities have been transferred one has to take into account commercial principles. For example, just because the paint shop(being under construction) and being a liability was not transferred does not mean that it ceases to be a liability which has been transferred. There was an option with the assessee company to discharge the said liability with the contractor after the construction had been carried out and receive the full amount of consideration or transfer the liability beforehand and receive a lesser consideration. Either way, it amounts to the same thing and amounts to a transfer of liability. Another example is that the assessee company has to obtain an NOC from its lenders before it assigns its loans. This results in additional interest being charged by the lenders. PPL/KMCL agreed to reimburse PAL towards this additional interest, therefore, it cannot be said that there was no transfer of liabilities.

(v) It cannot be said that no plant and machinery was transferred and this finding of the Tribunal is erroneous since without such transfer of machinery there could not be a turnover of approx. 177 Crores. Hence, even this finding goes to show that the entire undertaking was transferred for a lump sum price.

(vi) Another erroneous finding is that since the entire land was not transferred, there was no slump sale. The piece of land on which the Kalyan factory was situated was transferred entirely and the remaining portion of the land consisted of a road and wall. Hence, it cannot be said that the 'entire' land has not been transferred since the assessee company has transferred its whole entitlement.

(vii) Even the finding that there were no separate accounts for the Kalyan business is errorneous. General ledgers have been produced for FY 1994-1995 showing sale of cars.

(viii) The entire Kalyan business has been sold as a going concern and this constitutes a slump sale.

These are the findings of the learned judge, to name a few, in this erudite judgment, which is a leading authority on cases of slump sale even today. It has been followed in a recent judgment of the Supreme Court in Equinox Solutions[28] where the principle that if an entire undertaking is transferred, it will constitute a slump sale of long term capital assets was upheld(*Exception: short term capital assets: See proviso to Section 50B*).

CONCLUSION

A perusal of the above case laws would show that a capital gain can arise in various circumstances. It is not a rigid concept, and it is a self contained code. Taxability of capital gains has led to massive litigation and is probably the most litigious issue cum law that exists in the field of income tax law today. I have attempted to provide readers with the knowledge of its basic principles which might be beneficial on the road ahead.

[28] CIT vs. Equinox Solution Pvt. Ltd. Civil Appeal 4399 of 2007 decided on 18.4.2017