

ANALYSIS OF PROVISIONS OF SECTION 50D OF INCOME TAX ACT, 1961

Dear Friends,

As you are aware that “ Actual Sale Consideration”, of the “ Capital Assets” forms basis of calculation of “ Capital Gain” according to the provisions of Section 48 of IT Act,1961, except in situations in which the government has said for adoption of “ Fair Market Value” as the Full Value for consideration.

There was dispute in calculation of Capital Gain Tax earlier in cases where capital Assets transferred were self-generated, self-acquired etc. or in cases where sale consideration is not determinable, those transactions were not considered as transfer and no capital gain was charged. There are various cases of restructuring, business re-organisation, amalgamation, acquisition, transfer of goodwill, loom hours, tenancy rights, stage carrying permits etc., transfer of these were not considered as transfer and hence no Capital Gain Tax leviable.

There are various Advance Rulings relating to specific situations of “Transfer” of “Capital Assets”. The provisions of Section 50D has been introduced to nullify above Advance Rulings.

SOME ADVANCE RULINGS :

Capital Gain advance rulings have held that computation provision in Capital Gain generally fails when shares in Indian companies are transferred without consideration by companies as a part of restructuring exercise and therefore no Capital Gain will be charged under provisions of Section 45 of IT Act,1961.

1. Dana Corporation [2010]Taxman 187/321 ITR 178(AAR-New Delhi)
2. Goodyear Tire & Rubber Company[2011] 199 Taxman 121/334 ITR 69(AAR-New Delhi);
3. Amiantit International Holding Ltd. [2010] 189 Taxman 149/322 ITR 678(AAR-New Delhi)

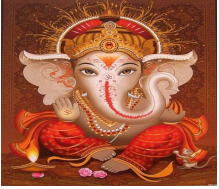
There are many more cases in which Authority for Advance Ruling held that ,since there is no consideration involved on transfer of Capital Assets and hence there will be no Capital Gain Tax on transactions. In these cases the AAR-New Delhi held that the consideration is better performance in future and same cannot be ascertainable and hence there is no capital gain on these transactions.

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LET'S DISCUSS ABOVE CASE LAWS IN DETAIL

1. **Amiantit International Holding Limited, Ind. Re [2010] 189 Taxman 149/322 ITR 678(AAR-New Delhi)**: the applicant was an investment company holding 70% shares of AFIL (Indian company engaged in manufacturing of glass, storage tank etc.). Another company named Amitech Cyprus Holding Limited (ACHL) was 100% subsidiary of applicant company i.e. AIHL. The applicant (AIHL) for more efficient working decided to split into two companies one for business in Europe and one for business in Asia and therefore proposed to transfer shares of AFIL (Indian Company) to ACHL without any consideration.

it was observed by AAR (Authority for Advance Rulings) that the possibility of applicant-transferor improving its overall business by virtue of re-organisation and the mere possibility or chance of the applicant making better returns in the near or distant future as a consequence of re-organisation can hardly be regarded as consideration accruing or arising to the transferor when he has not right to receive a definite or an ascertainable amount or benefit from the transferee.

A capital gains cannot arise on the basis of uncertain and indefinite contingencies or hypothetical and imaginary estimations. It cannot be ascertained as to whether there is any valuable consideration that has accrued or arisen to the transferor and how could it be calculated to ascertain Capital Gain Tax.

It was held that the charging Section 45 and Computational Section 48 are not applicable in a situation where the consideration for transfer is not capable of being valued in definite term or it is unascertainable as on the date occurrence of Taxable Event.

2. **Goodyear Tyre & Rubber Co., In re [2011] 199 Taxman 121/344 ITR 69(AAR-New Delhi)/ (2011)**: the revenue treated the creation of better business environment as consideration for transfer of shares of the applicant company to its wholly owned subsidiary and alleged the applicant for treaty-shopping for avoidance of tax.

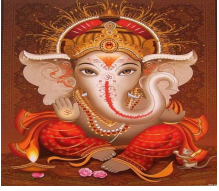
It was held that the profit or gain envisaged by Section 45 is not something which ambivalent or indeterminable and cannot be estimated on notional or hypnotical basis. There must exist a casual nexus between the transferor of capital asset and profit or gain accruing to or received by the assessee.

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3. **Dana Corporation, in re [2020]186 Taxman 187/321 ITR 178(AAR-New Delhi)**; for the overall interest of the business transferred the entire assets and the entire liabilities to its successor company. The revenue contended that transfer of asset and liabilities amounts to transfer and is chargeable to capital gain tax. The applicant has contended in this case that the transfer was held for ease of doing business and for better administration of assets and liabilities for future profits or gain. The future profits or gains will not be ascertainable at this stage. The AAR has ruled in favour of the applicant.

SECTION 45 IN THE INCOME- TAX ACT, 1995- CAPITAL GAINS

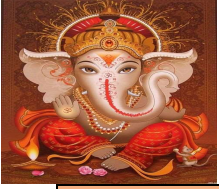
- (1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in Sections 54, 54B, 54D, 54E, 54F, 54G and 54H, be chargeable to income- tax under the head" Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.
- (2) Notwithstanding anything contained in sub- section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as, stock- in- trade of a business carried on by him shall be chargeable to income- tax as his income of the previous year in which such stock- in- trade is sold or otherwise transferred by him and, for the purposes of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.
- (3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co- operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

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(4) *The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.*

(5) *Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, tribunal or other authority, the capital gain shall be dealt with in the following manner, namely:-*

(a) the capital gain computed with reference to the compensation awarded in the first instance or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as income under the head "Capital gains of the previous year 2 in which such compensation or part thereof, or such consideration or part thereof, was first received]; and

(b) the amount by which the compensation or consideration is enhanced or further enhanced by the court, tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee. Explanation.- For the purposes of this sub-section,-

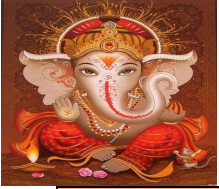
(i) in relation to the amount referred to in clause (b), the cost of acquisition and the cost of improvement shall be taken to be nil;

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(ii) the provisions of this sub- section shall apply also in a case where the transfer took place prior to the 1st day of April, 1988 ;

(iii) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head " Capital gains", of such other person.

6. Notwithstanding anything contained in sub- section (1), the difference between the repurchase price of the units referred to in subsection (2) of section 80CCB and the capital value of such units shall be deemed to be the capital gains arising to the assessee in the previous year in which such repurchase takes place or the plan referred to in that section is terminated and shall be taxed accordingly.

Explanation.- For the purposes of this sub- section," capital value of such units" means any amount invested by the assessee in the units referred to in sub- section (2) of section 80CCB.

SECTION 48 - MODE OF COMPUTATION OF CAPITAL GAIN

The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto:

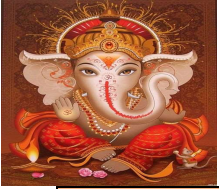
Provided that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or

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arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company :

Provided further that where long-term capital gain arises from the transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso, the provisions of clause (ii) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:

Provided also that nothing contained in the second proviso shall apply to the long-term capital gain arising from the transfer of a long-term capital asset being bond or debenture other than capital indexed bonds issued by the Government :

Provided also that where shares, debentures or warrants referred to in the proviso to clause (iii) of section 47 are transferred under a gift or an irrevocable trust, the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for the purposes of this section :

Provided also that no deduction shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.

Explanation.—For the purposes of this section,—

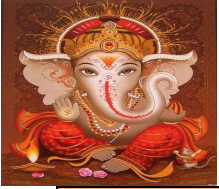
- (i) "foreign currency" and "Indian currency" shall have the meanings respectively assigned to them in section 2 of 95[the Foreign Exchange Management Act, 1999 (42 of 1999)];
- (ii) the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at the rate of exchange prescribed in this behalf;
- (iii) "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which

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the asset was held by the assessee or for the year beginning on the 1st day of April, 1981, whichever is later;

(iv) "indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;

(v) "Cost Inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent of average rise in the 96[Consumer Price Index for urban non-manual employees] for the immediately preceding previous year to such previous year, by notification⁹⁷ in the Official Gazette, specify, in this behalf.

POSITION WHERE COST OF ACQUISITION IS NOT DETERMINABLE;

Prior to amendments brought by the Finance Act, 1987, similar position existed with respect to determination of "Cost of Acquisition" of various kind of assets. There were different judgments of different courts on this matter and it was interpreted that in case of "Cost of Acquisition", of a "Capital Asset" such as;

- i) Goodwill*
- ii) Trade Mark*
- iii) Copyrights*
- iv) Brand Name*
- v) Tenancy rights, etc, if not determinable /ascertainable, the computation machinery of provisions fails and no capital gain can be said to result and therefore, there was not Capital gain Tax liable on the "Transfer" of such assets.*

The legislature by amending Section 55 by Finance Act, 1987 and onwards wherein it was provided that in relating to a capital asset being Goodwill of a business or Trade mark or Brand Name associated with the business or a right to manufacture or tenancy rights or process any article or thing or right to carry on business or loom hours etc, which is not acquired by the assessee by way of purchase at a price shall be taken to be NIL.

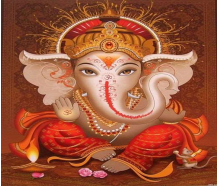
It means that in case of transfer of such assets under above circumstances, the entire Sale Consideration shall be Capital Gain arising from transfer of such Capital Asset, as the Cost of Acquisition in this case will be considered as NIL.

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Note: Please note that the provisions of amended Section 55(2) provide determination of Cost of Acquisition only for intangible assets and no other asset.

PLEASE NOTE THAT :

1. Prior to amendments brought by the Finance Act, 1987 & onwards similar position existed with respect to determination of “ Cost of Acquisition” of various kinds of assets. There are various cases by difference courts ,which decided that “ in case of cost of acquisition of ‘ Capital Asset’ such as Goodwill, Trade Mark, Brand Name, Tenancy Rights etc. is not determinable/ascertainable, the computation machinery of provisions fails and no capital gain can be said to result and therefore , there was no capital gain tax liable on ‘ transfer’ of such asset.

CIT Vs. Srinivasa Shetty[1981]128 ITR 294(SC)/1981(5) Taxman 1(SC)- the Apex Court held that the charging Section 45 and Computational Provisions of Section 48 together constitute an integral code and all transactions encompassed by Section 45 must fall under governance of its computational provisions. A transaction that cannot satisfy the test of computation must be regarded as never intended to be covered by Section 45.

it was further held that the “ **date of acquisition of asset**” was a material factor in applying computation provisions , without which the capital gain computation was not possible.

The above decision of Apex Court was further followed by various High Courts and other Judiciary Authorities in various cases.

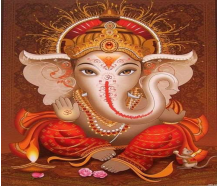
2. The Legislature has modified the above view taken by the Apex Court in case when ‘ Cost of Acquisition’ of Capital Asset is not determinable by amending provisions of Section 55 through Finance Act, 1987.
3. After 1987 amendments onwards wherein it was provided that in relation to a Capital Asset being ‘Goodwill’ of a business or ‘Trademark’ or ‘Brand Name’ associated with business or a right to manufacture or produce or process any article or thing or right to carry on any business or ‘Tenancy Rights’ or Stage Carrying Permit, Loom Hours

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which is not required by the assessee by way of purchase at a price shall be taken to be NIL, meaning thereby that in case of transfer of such Capital Asset under above circumstances , the entire sale consideration shall be the “ Capital Gain” arising on transfer of such Capital Asset, as “ Cost of Acquisition” considered as “ NIL” and assessee cannot take plea and evade Capital Gain Tax that the cost of asset is not determinable.

SECTION 55 IN THE INCOME- TAX ACT, 1995-MEANING OF" ADJUSTED"," COST OF IMPROVEMENT" AND" COST OF ACQUISITION"

(1) For the purposes of Sections 48 and 49,-

(a) Omitted by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 , w. e. f. 1- 4- 1988 .

(b) " cost of any improvement",-

(1) in relation to a capital asset being goodwill of a business shall be taken to be nil; and
(2) in relation to any other capital asset,-

(i) where the capital asset became the property of the previous owner or the assessee before the 1st day of April, 6 1981- means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after the said date by the previous owner or the assessee, and

(ii) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in sub- section (1) of section 49, by the previous owner, but does not include any expenditure which is deductible in computing the income chargeable under the head " Interest on securities", " Income from house property", " Profits and gains of business or profession", or " Income from other sources", and the expression " Improvement" shall be construed accordingly.

(2) For the purposes of sections 48 and 49, " cost of acquisition",-

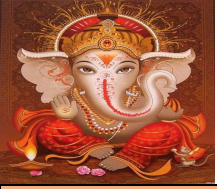
(a) in relation to a capital asset, being goodwill of a business, tenancy rights, stage carriage permits or loom hours,-

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(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 any other case not being a case falling under sub- clauses (i) to (iv) of sub- section (1) of section 49, shall be taken to be nil;

(aa) in a case where by virtue of holding a capital asset, being a share or any other security within the meaning of clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) (hereafter in this clause referred to as the financial asset), the assessee becomes entitled to subscribe to any additional financial asset, then, subject to the provisions of sub- clauses (i) and (ii) of clause (b)],-

(i) in relation to the original financial asset, on the basis of which the assessee becomes entitled to any additional financial asset, means the amount actually paid for acquiring the original financial asset; and

(ii) in relation to any right to renounce the said entitlement to subscribe to the financial asset, when such right is renounced by the assessee in favour of any person, shall be taken to be nil ill the case of such assessee;

(iii) in relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, means the amount actually paid by him for acquiring such asset;

(iiia) in relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial asset, shall be taken to be nil in the case of such assessee;

(iv) in relation to any financial asset purchased by any person in whose favour the right to subscribe to such asset has been renounced, means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution, as the case may be, for acquiring such financial asset;

(b) in relation to any other capital asset,-

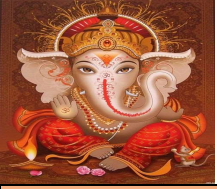
(i) where the capital asset became the property of the assessee before the 1st day of April, 2 1981, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of April, 1981, at the option of the assessee;

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(ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of] section 49, and the capital asset became the property of the previous owner before the 1st day of April, 1981 , means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of April, 1981 , at the option of the assessee;

(iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income- tax under the head" Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution;

(iv) Omitted

(v) where the capital asset, being a share or a stock of a company, became the property of the assessee on-

(a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares,

(b) the conversion of any shares of the company into stock,

(c) the re- conversion of any stock of the company into shares,

(d) the sub- division of any of the shares of the company into shares of smaller amount, or

(e) the conversion of one kind of shares of the company into another kind, means the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

(3) Where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

PLEASE NOTE THAT

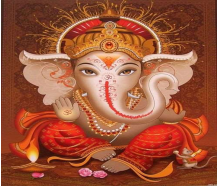
1. To address above lacuna provisions of Section 55 was introduced by Finance Act, 1987 for determination of Cost of Acquisition, in cases where Cost of Acquisition is not ascertainable /determinable on transfer of such Capital Asset. As we have read it provides that where Sale Consideration is not determinable /ascertainable, providing that in such cases Fair Market value of such asset on the date of transfer shall be deemed to be the Sale Consideration of Asset.

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2. provisions of Section 55(2) prescribed certain kinds of intangible assets. We can conclude that in case of other assets, whose Cost of Acquisition cannot be determined/ascertained property for the purpose of calculation of Capital Gain, then the judgment of Apex Court in case of **CIT Vs. Srinivasa Shetty[1981]128 ITR 294(SC)/1981(5) Taxman 1(SC)** will be considered and there will be no capital gain on transfer of such assets.
3. **In Bharat Bijlee Ltd. Vs. Addl.CIT[2012]54SOT 571(MUM-TRI)** -case that where bonds/preference shares were issued in consideration for transfer of undertaking, the transaction does not amount to 'sale' but involves 'exchange' and therefore the provisions of Section 50B (Slump Sale) is not applicable. It was further held that the 'Cost of Acquisition' of business as a going concern was not ascertainable, the computation mechanism failed and therefore the transaction was not liable to tax u/s. 45.
4. **Avaya Global Connect Ltd. Vs. Asst. CIT[2008]26 SOT 397(MUM)** -the assessee transferred its undertaking under a scheme of demerger which provided that neither the assessee nor its shareholders would receive any consideration from the transferee company as the value of liabilities taken over were more than the value of assets taken over. The assessee treated the difference between the assets and liabilities as 'Capital Reserve'.

In this case also it was held that in so far as the provisions of Sections 45 & 48 were concerned, the subject matter of transfer was "Going Concern" for which "Cost of Acquisition" could not be predicted and hence machinery of provisions of Sections 45 & 48 could not be applied.

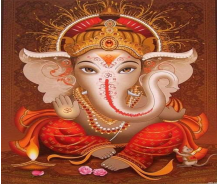
PLEASE NOTE THAT : though the provisions deeming the determination of "Cost of Acquisition" of various types of "Capital Assets" was enacted in the Act, 1961 by amending Section 55(2) by Finance Act, 1987 & onwards, but the situation regarding the "Sale Consideration" being not determinable/ascertainable, could not be envisaged and amended at that point of time.

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FINANCE ACT, 2012 after taking notice of certain Advance Rulings has introduced Section 50D to cover cases of “ Transfer” of “ Capital Assets” where “ Sale Consideration” is not determinable/ascertainable , providing that in such cases “ Fair Market Value” of such asset on the date of transfer shall deemed to be “ Sale Consideration” of the asset.

SECTION 50 D: Fair Market Value deemed to be Full Value of Consideration in Certain cases;

“Where the consideration received or accruing as a result of transfer of a Capital Asset by an assessee is not ascertainable or cannot be determined , for the purpose of computing income chargeable to tax as Capital Gains, the Fair Market Value of the said asset shall be deemed to be Full Market Value of consideration received or accruing as a result of such transfer.”

MAIN OBJECTIVE OF INTRODUCTION OF SECTION 50D

“The existing provisions of the Income-tax Act provide that on the transfer of a capital asset, capital gains are calculated as the difference between the sale consideration and the cost of acquisition.

It is proposed to insert a new section 50D so as to provide that 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.

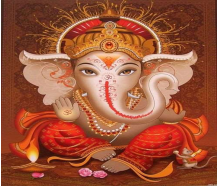
This amendment will taken effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.”

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SALIENT FEATURES OF THE PROVISION OF SECTION 50D;

- a) **There must be transfer of a Capital Asset;** for applicability of this section the asset transferred must be in nature of Capital Asset and not business asset or stock in trade etc., the Capital Assets transferred must be covered under definition of Capital Assets under provisions of Section 2(47) of the Act, 1961.

The transfer must be definite and absolute transfer and not a limited or contingent transfer.

- b) **Consideration for such transfer is not ascertainable or cannot be determined;** the consideration of Capital Asset transferred must be not ascertainable/determined. Provisions are applicable in such case also where in an agreement between parties the Sale Consideration mentioned as NIL, but it is a debatable issue.

- c) The Capital Gain on such transfer shall be chargeable to tax in the previous year in which transfer of Capital Asset takes place irrespective of the fact whether sale consideration is received or not. Please note that Actual Realisation of Sale Consideration is not relevant for determination of liability to pay capital gain tax.

- d) For computing Capital gain tax, the Fair Market Value of asset at the date of transfer shall be considered as Sale Consideration.

PLEASE NOTE THAT: Section 50D covers the situation when sale consideration prescribed in Sale Transaction is not determinable/ ascertainable. In case “ sale consideration” in a transaction is mentioned as “ NIL”, in this case we cannot apply Section 50D, since in this case we cannot say that “ Sale Consideration” is not determinable/ ascertainable. In this case the transaction will be covered under provisions of Section 50C & 56 of the IT Act, 1961.

WHAT IS FAIR MARKET VALUE OF ASSET; Section 2(22B) of the Act, 1961 defines FMV as Fair Market value of a Capital Asset means-

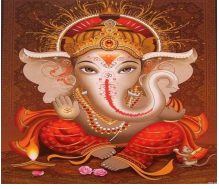
- i) The price that the Capital Asset would ordinarily fetch on sale in the open market on the relevant date;
- ii) Where the price referred to in sub-section(i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act.

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PLEASE NOTE THAT: Market Value cannot construe as “ Full Value of Consideration”- the expression full value of consideration cannot be construed as “ Market Value” but as the price bargained for the parties to the sale. The expression “ Full Value” means the Whole Price without any deduction whatsoever and it cannot refer to the adequacy of the price bargained for.

CONCLUSION; Section 50D is a further attempt by the legislature to dilute the concept of Actual Sale Consideration for computing capital gains. Situations where sale consideration is not ascertainable or cannot be determined, are those cases where apparently there is no exchanged between the seller and the buyer. When there is no Sale Consideration ascertainable or determinable the provisions of deeming Section 50D are applicable and Sale Consideration will be considered as Fair Market value of capital asset at the date of transfer. This deeming provision is not in line with provisions of Section 48 of the Act, 1961. The main purpose of introduction of Section 50D is to check and prohibit freebies distributed by large business corporations to unrelated or strangers to avoid payment of tax.

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