



Direct Tax Refresher Course

Corporate Taxation & Business deductions – Important Issues

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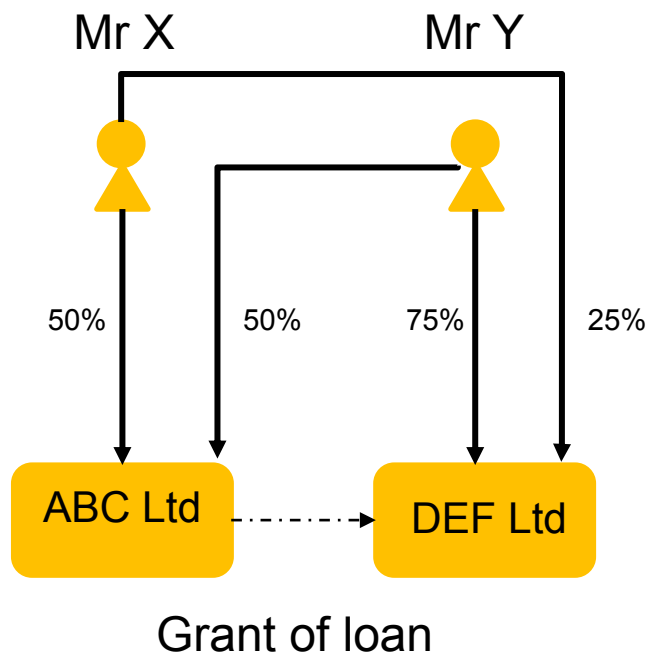
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Deemed Dividend Taxation



Background



Brief facts:

- ▶ Mr X and Mr Y are resident individuals
- ▶ ABC Ltd and DEF Ltd are closely held companies [not covered by s. 2(18)]
- ▶ The shareholding pattern of both the companies is as follows:

| Particulars | ABC Ltd | DEF Ltd |
|-------------|---------|---------|
| Mr X | 50% | 25% |
| Mr Y | 50% | 75% |
| Total | 100% | 100% |

- ▶ During FY 2018-19, ABC Ltd. advanced loan amount to INR 10 cr. to DEF Ltd
- ▶ ABC Ltd. has AP amounting of INR 15 cr. as on the date of granting loan to DEF Ltd

Position prior to amendment made by FA 2018

Deemed Dividend [S. 2(22)(e)]:

- ▶ Dividend includes any payment made by CHC by way of loan or advance to:
 - ▶ its shareholder having beneficial ownership of shares of not less than 10% (eligible shareholder); or
 - ▶ to a concern of a eligible shareholder in which he has 20% interest

Issues:

- ▶ **If loan is granted to a concern, whether taxation arose in the hands of the shareholder or in hands of concern?**
 - ▶ Taxation shall be in the hands of shareholder
 - ▶ Delhi HC in case of CIT v. Ankitech (P.) Ltd. [2012] 340 ITR 14
 - ▶ Affirmed by SC in the case of Madhur Housing (TS-462-SC-2017)]

Position prior to amendment made by FA 2018

- ▶ If there are more than one eligible shareholders (i.e. Mr X and Y in the present case), how taxation is governed in the hands of each shareholder?
 - ▶ **Whether in absence of computation mechanism, charge itself fails?;**
 - ▶ This argument is not accepted by Delhi tribunal in the case of Puneet Bhagat [2016] 66 taxmann.com 190
 - ▶ **Since both the shareholder are being eligible shareholder, taxation can be in the hands of both the shareholders?;**
 - ▶ This will lead to double taxation thus may not be correct view
 - ▶ **Proportionate tax (shareholding in lender company) supported by the decision of Hyderabad Tribunal in case of G. Indira Krishan Reddy v. ITO [ITA Nos. 1495 to 1500 / HYD / 2014; order dated 24 May 2017] and; shareholding in borrower company as per Delhi Tribunal in the case of Puneet Bhagat (supra)**
- ▶ **If eligible shareholder is a non-resident, no tax in the hands of NR shareholder**

Amendment by Finance Act 2018

Levy of DDT on deemed dividend [S. 115-O]:

- ▶ S. 115-O is amended to include dividend u/s. 2(22)(e) within the ambit of DDT levy
- ▶ Lender company liable to DDT @ 30% plus surcharge and cess (without grossing up)
- ▶ Shareholder / concern can claim exemption u/s. 10(34)

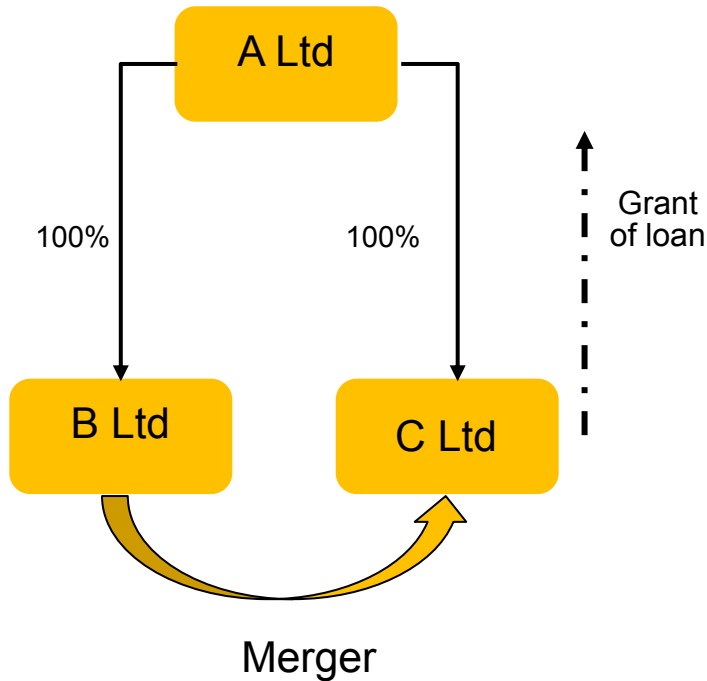
Analysis:

- ▶ Applies in respect of grant of loan / advance post 1 April 2018
- ▶ Controversy of taxation of shareholder is now academic
- ▶ Subject to above changes, all other provisions of Chapter XII-D will be applicable:
 - ▶ Rollover benefit will apply
 - ▶ Prosecution risk under s. 276B for non-payment of DDT

Definition of 'Accumulated Profit'



Background



Brief facts:

- ▶ B Ltd (subsidiary of A Ltd) is proposed to be merged with C Ltd.
- ▶ Position of reserves of both the companies pre and post merger is as follows:

| Particulars | B Ltd | C Ltd | C Ltd (Post merger) |
|--------------------|-------|-------|---------------------|
| Securities Premium | 200 | 0 | 0 |
| Capital Reserve | 500 | 0 | 1,000 |
| General Reserve | 300 | 0 | 0 |

- ▶ Thereafter, loan of 300 is granted by C Ltd. to its shareholder covered by s. 2(22)(e)

Definition of Accumulated Profit

Position prior to amendment vide FA 2018

- ▶ S. 2(22) taxes loan receipts as 'dividend', to the extent of accumulated profits (AP) possessed by company making distribution or payment
- ▶ In case of distribution by amalgamated company, ambiguity existed on inclusion of AP of amalgamating company
- ▶ View taken in past that profits of amalgamating company is not AP of amalgamated company

P. K. Badiani v. CIT (1976)(105 ITR 642)(SC):

- ▶ *“We think that the term "profits" occurring in s. 2(6A)(e) of the 1922 Act means profits in the commercial sense, that is to say, the profits made by the company in the real and true sense of the term.”*

CIT v. Urmila Ramesh (1998)(230 ITR 422)(SC):

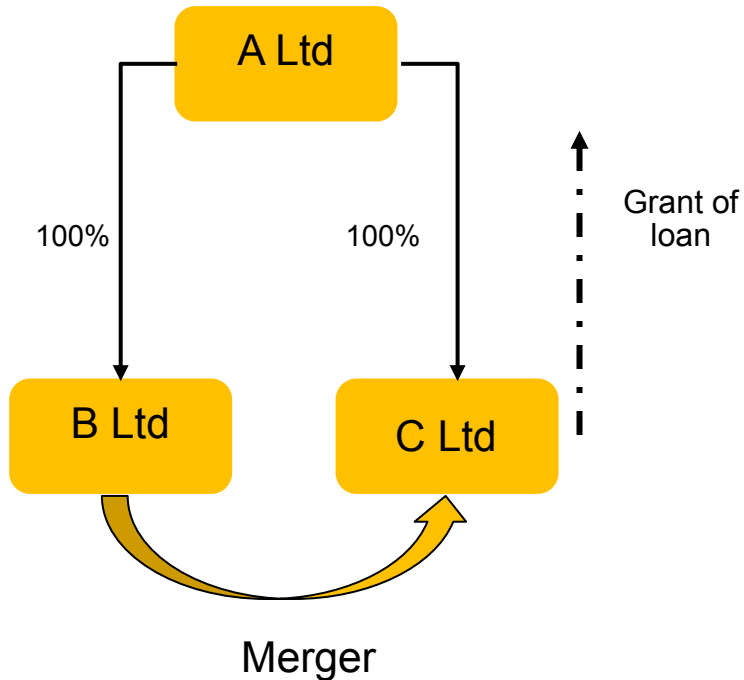
- ▶ *“There are cases where this Court had to consider situations relating to distribution of dividend by companies and it has consistently maintained that profits meant only commercial profits.”*

Definition of Accumulated Profit

Insertion of Explanation 2A to s. 2(22) vide FA 2018:

- ▶ In case of an amalgamated company, AP, whether capitalised or not, or loss, as the case may be, shall be increased by AP, whether capitalised or not, of amalgamating company on date of amalgamation
- ▶ Applies in relation to A.Y. 2018-19 and subsequent years
- ▶ Applicable only for cases amalgamation and not other business reorganisations

Variant to Case study 1



Brief facts:

- ▶ B Ltd (subsidiary of A Ltd) is proposed to be merged with C Ltd.
- ▶ Position of reserves of both the companies pre and post merger is as follows:

| Particulars | B Ltd | C Ltd | C Ltd (Post merger) |
|-------------------------|-------|-------|---------------------|
| Profit and Loss account | 200 | 0 | 0 |
| General Reserve | 300 | (700) | (200) |

- ▶ Thereafter, loan of 300 is granted by C Ltd. to its shareholder covered by s. 2(22)(e)

Computation of Accumulated Profit

Issue:

- ▶ Profits of amalgamating company wipes out due to existing losses of amalgamated entity – any implication due to Explanation 2A?

Points for consideration:

- ▶ Explanation 2A creates artificial extension in a provision which has even otherwise been construed as an artificial provision
- ▶ Needs a very strict construction

Taxability of waiver of loan



Background

Brief facts:

- ▶ M Ltd. is company into manufacturing of automobiles
- ▶ Below is an extract of liability side of M Ltd. as on 31 March 2018

| Liabilities | Amount (Rs. in lacs) |
|---|----------------------|
| Term Loan from SBI | 1,000 |
| Working capital loan from IDBI | 500 |
| Interest on Term Loan (admissible as deduction on payment basis) | 350 |
| Interest on working capital loan (admissible as deduction on payment basis) | 200 |

- ▶ Since M Ltd. is facing financial distress, all the lenders agreed to waive 75% of their claim on M Ltd. (for principal and interest both)

Issue: Whether waiver of aforesaid liability is taxable in the hands of M Ltd.?

Relevant provision of ITA

- ▶ **Cessation / Remission of liability [S. 41(1)]** – Benefit obtained by way of remission or cessation of a trading liability, loss or expenditure which is allowed as deduction in past is taxable in the year of remission or cessation
- ▶ **Benefits / perquisite [S. 28(iv)]** – Value of any benefit or perquisite, whether or not convertible into money, arising from business is considered as business income
- ▶ Taxability of waiver of loan is recently dealt by SC in case of CIT v. Mahindra & Mahindra Ltd. [2018] 404 ITR 1

Recent SC decision in the case of Mahindra

- ▶ Term loan was used for the purpose of acquisition of an capital asset.
- ▶ Working capital loan was obtained to meet day to day business operations.
- ▶ Whether the waiver of loan is taxable under the head PGBP?

Held:

- ▶ Claw back provision of s. 41(1) applies only if deduction is allowed in past.
- ▶ Since the principal amount of loan was never claimed as deduction, s. 41(1) does not have any applicability
- ▶ Waiver of loan results in extra cash in the hands of the borrower. S. 28(iv) contemplates to tax any benefit which is in some other form other than in shape of money. Thus, waiver of loan is not taxable u/s. 28(iv)

Recent SC decision in the case of Mahindra (Contd.)

Impact of SC ruling:

- ▶ Waiver of principal amount of loan whether term loan or working capital loan is not taxable
- ▶ Also, waiver of interest disallowed u/s. 43B not taxable
- ▶ Interest allowed as deduction in past on accrual basis: waiver thereof falls within the ambit of s. 41(1)
- ▶ However, in all the cases, taxability will arise under MAT provisions if waiver is routed through P&L account

'Angel' Tax Provision - Recent Development



Background

Section 56(2)(viib) (popularly known as ‘Angel’ Tax provisions)

- ▶ Anti- abuse provision applies when a **CHC** issues shares to a **resident person** at a premium and consideration is in excess of FMV of shares.
- ▶ Excess amount deemed as ‘Income from Other Sources’

Rule 11UA r.w. s.56(2)(viib)

- ▶ FMV of unquoted equity shares read with Rule 11UA is the higher of the following:
 - ▶ Net asset value as reflected in the audited balance sheet of the CHC (break-up value method)
 - OR
 - ▶ Discounted Cash Flow (DCF) value as determined by a Category-I Merchant Banker (MB) or Accountant
 - OR
 - ▶ The value that the company is able to substantiate to the satisfaction of the Tax Authority, basis the holding of various intellectual property rights (IPRs)
- ▶ Higher the FMV, lesser is the risk of taxability

Amendment – Recent Notification

Notification No. 23/2018 dated 24 May 2018:

- ▶ Ability to obtain valuation of unquoted equity shares from Chartered Accountant as per DCF method has been withdrawn

Impact:

- ▶ Taxpayers issuing unquoted equity shares on or after 24 May 2018 no more have the option of obtaining DCF valuation report from 'Practising Chartered Accountants'
- ▶ Imperative for company to obtain valuation from Category 1 MB
- ▶ However, empowerment of CA to provide valuation report w.r.t unquoted preference shares, and for other provisions has not been disturbed.
- ▶ ICAI has represented to CBDT to impress upon competence of CAs. It has also represented that CAs who have passed specialized course on valuation may, in any case, be permitted.

Angel Tax Provision: Valuation report of MB considered unreliable



Recent ruling of Delhi Tribunal

- ▶ Taxpayer obtained his valuation report based on DCF method from merchant banker in support of FMV of unquoted equity shares issued to residents
- ▶ Delhi Tribunal rejected report of MB, in the case of Agro Portfolio Pvt. Ltd. for following reasons
- ▶ **Held:**
- ▶ Report issued by MB cannot be relied as an evidence, owing to the long disclaimer spread over two pages, appended in the report
- ▶ The report clearly acknowledges that no independent enquiry, even on a test case basis, was made by MB to verify the accuracy / reasonableness of data / figures of projections furnished by the Taxpayer.

Recent ruling of Delhi Tribunal (Contd.)

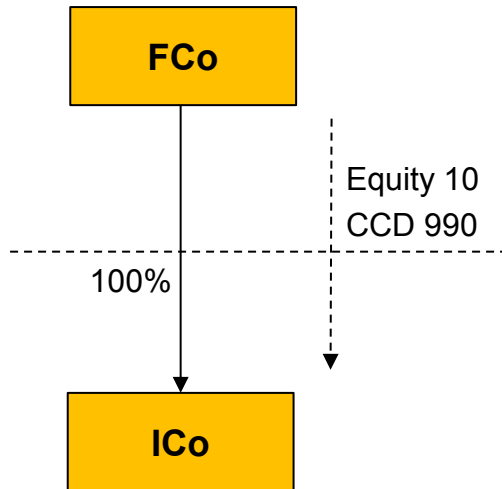
▶ Impact of the ruling:

- ▶ Tax payers are advised to maintain and furnish evidence justifying cash flow projections and other parameters adopted in any valuation report that they obtain.
- ▶ Obtaining valuation report may not be presumed to be a perfunctory compliance
- ▶ Valuers (including CA) are advised to satisfy themselves on reliability and correctness of data and projections before relying upon the same.

Impact of GAAR prone arrangement



Background



- ▶ FCo desires to infuse funds in ICo for business expansion
- ▶ FCo infuses its own funds as Equity + CCD in ICo (10L+990L) (1:99) [Coupon rate 6%; Interest = 60 L approx.]
- ▶ Interest is paid at ALP and within limitation of s. 94B
- ▶ There is apprehension that GAAR provision are invoked to re-characterize CCD as equity and deny interest deduction
- ▶ However, tax benefit does not exceed 3 cr.
- ▶ **Issue:** Can GAAR be considered to disregard interest expense?

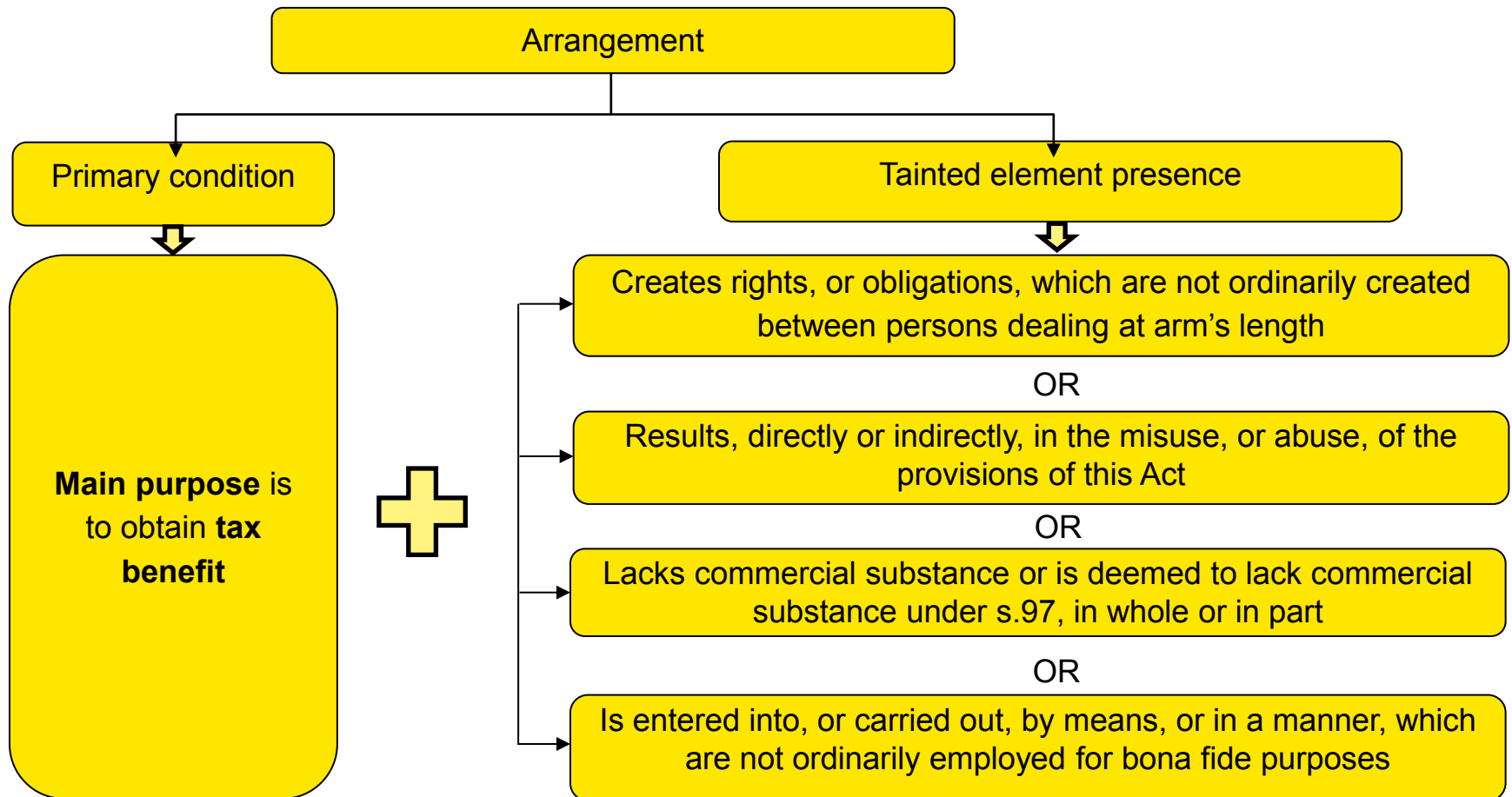
Additional Facts

Undisputed facts are:

- ▶ CCD is used for the purpose of business and interest allowable u/s. 36(1)(iii)
- ▶ Interest is at ALP
- ▶ No withholding default
- ▶ Interest expenditure satisfies interest limitation rules under s. 94B

When GAAR can be invoked?

- ▶ An **arrangement** is an impermissible avoidance arrangement (IAA) if:



Analysis

- ▶ If tax benefit < 3 cr., GAAR cannot be invoked

- ▶ Refer Rule 10U(1)(a):

an arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of rupees three crore

- ▶ Q. No. 14 of CBDT Circular No. 7 of 2017 dated 27 January 2017:

The application of the tax laws is jurisdiction specific and hence what can be seen and examined is the 'Tax benefit' enjoyed in Indian jurisdiction due to the 'arrangement or part of the arrangement'. Further, such benefit is assessment year specific. Further, GAAR is with respect to an arrangement or part of the arrangement and therefore limit of Rs.3 crores cannot be read in respect of a single taxpayer only

- ▶ Thus, though arrangement may perhaps be IAA under GAAR but tax benefit < 3 cr., no attempt of re-characterisation of instrument can be made

Withholding on Year-end provision



Background

- ▶ A Ltd., engaged in multiple businesses, made following provisions at the year-end i.e. as on March 2018:

| Nature of provision | Amount known | Payee known | Relevant section for withholding, if required |
|---|---------------------|--------------------|--|
| Rent of March 2018 (invoice awaited) | Yes | Yes | 194-I |
| Interest on cumulative transferable bonds (due on 30.6.2020) | Yes | No | 193 |
| Commission on net sales by distributors to ultimate customers | No | Yes | 194H |
| Estimated provision to account for expense on pending obligation under a contract which is substantially complete | No | No | 194C |

- ▶ But for withholding obligation, A Ltd is eligible to claim deduction of aforesaid expenditures
- ▶ Amount is not credited in payee's personal account since amount and / or payee is not known
- ▶ No withholding of tax done by A Ltd in March 2018

Withholding obligation

▶ **Rent expenditure of March 2018:**

- ▶ Payee and amount is known
- ▶ Mere formal rent invoice is yet to be received
- ▶ A Ltd cannot avoid withholding obligation

▶ **Interest on transferable bonds (due in June 2020):**

- ▶ Tax is required to be withheld in favour of identified payees on due date
- ▶ Payee not known, arguably no withholding obligation
- ▶ Supported by decision of Mumbai Tribunal in case of IDBI v. ITO [2006] 10 SOT 497

Withholding obligation

▶ **Commission on net sales by distributors to ultimate customers:**

- ▶ A Ltd. knows agent's eligibility for commission but exact quantum is not known
- ▶ A Ltd. makes provision on estimated basis
- ▶ Withholding obligation cannot be avoided merely because credit is on estimate
- ▶ However, favourable view is adopted by Bangalore Tribunal in case of DCIT v. Telco Construction Equipment Co. Ltd [ITA No. 478/Bang/2012; order dated 7 March 2014]

▶ **Estimated provision to account for expense on pending obligation under a contract:**

- ▶ Contract is substantially completed – Entire income is offered to tax
- ▶ Provision is made for certain pending work contractually committed which is claimed as deduction u/s. 37(1) [Basis SC decision in case of Calcutta Co. v. CIT [1959] 37 ITR 1]
- ▶ Arguably, no withholding obligation in absence of information of payee and quantum of amount to be paid
 - ▶ Arguable no disallowance u/s. 40(a)(ia)

Re-characterization to financial liabilities under Ind-AS



Background- Ind-AS accounting v. Legal perception

- ▶ Extract of Balance Sheet of ICO as per I-GAAP

| Liabilities | Amount | Assets | Amount |
|--------------|------------|--------------|------------|
| ESC | 10 | Cash | 100 |
| RPS | 90 | | |
| Total | 100 | Total | 100 |

- ▶ Extract of Balance Sheet of ICO as per Ind-AS

| Liabilities | Amount | Assets | Amount |
|-------------------------------------|------------|--------------|------------|
| ESC | 10 | Cash | 100 |
| RPS - Equity component | 30 | | |
| RPS - Financial liability component | 60 | | |
| Total | 100 | Total | 100 |

- ▶ ICo issues 5% non-convertible preference shares redeemable after 5 years (RPS).
- ▶ Under I-GAAP, RPS is classified as share capital
- ▶ Under Ind-AS:
 - ▶ RPS is not classified as share capital but as financial liability
 - ▶ Reclassification is based on 'substance' of the instrument which has attributes of financial liability.
 - ▶ Dividend on RPS is classified as Finance Cost in P&L account

Issues for consideration

- ▶ Whether, for tax purposes, RPS is a financial liability?
- ▶ Whether payment to RPS holder is deductible interest expenditure?
- ▶ Whether payment to RPS holder is interest expense for tax withholding perspective?
- ▶ Whether company relieved of DDT on payment to RPS holders?

Analysis

- ▶ Legal form to be respected for tax purposes, Tax Authority may ignore legal form only if fraud alleged
- ▶ Re-classification in books has no bearing on legal rights and obligations of company and preference shareholders
- ▶ Tax implications remain unaltered pre and post Ind-AS

Tax implications for Issuing Company

- ▶ DDT trigger to continue
- ▶ Finance cost being, in effect, dividend may not be deductible in computing business expense
- ▶ No WHT under s. 193 / 194A / 195 (as interest)
- ▶ Requires add back in computing MAT as 'dividends paid or proposed'

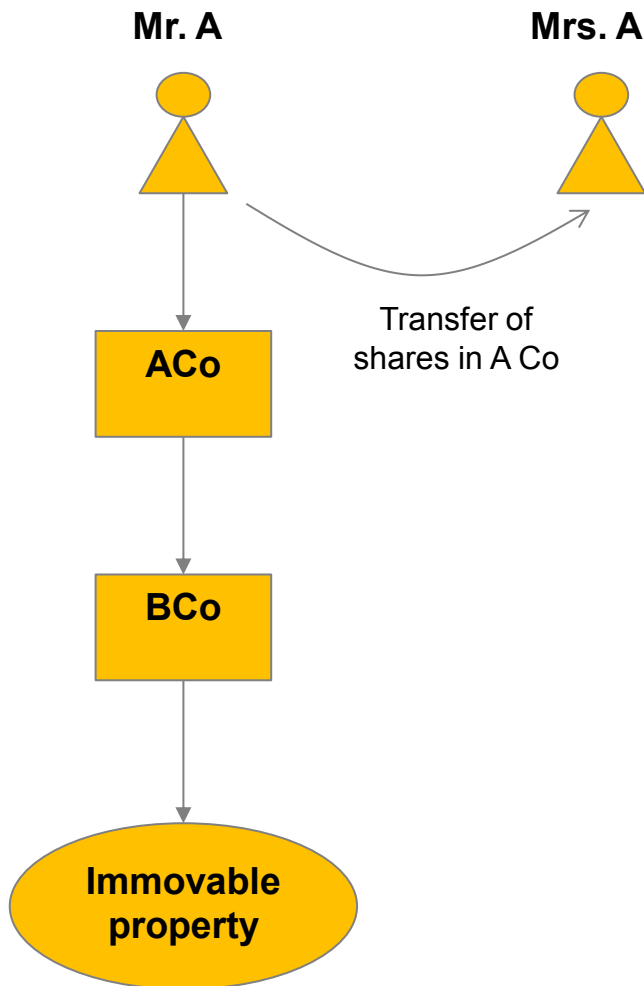
Tax implications for Shareholder

- ▶ Income received may continue to enjoy exemption under s. 10(34) and accordingly, s. 14A may apply
- ▶ Transfer of RPS to be considered as transfer of shares under ITA rather than that of debt

Valuation of immovable property under Rule 11UA



Facts and background



- ▶ Mr.A sells shares in ACo to Mrs.A
- ▶ ACo holds shares in BCo which in turn holds immovable property
- ▶ S.50CA deems FMV of shares of ACo to be full value of consideration for capital gains purposes
- ▶ FMV to be determined as on date of transfer in terms of Rule 11UAA r.w. Rule 11UA
- ▶ Rule 11UA relies on book value of all assets and liabilities except for specified assets (look-through approach)
 - ▶ Specified assets = jewellery, artistic work, shares, securities and immovable property
 - ▶ FMV reckoned for specified assets
 - ▶ Special valuation rules for each specified asset

Balance sheets re-casted by shareholder

► Balance sheet of ACo:

| Liabilities | BV | Assets | BV |
|----------------------------|--------------|---------------|--------------|
| Share capital (100 shares) | 1,000 | Shares in Bco | 1,000 |
| Total | 1,000 | Total | 1,000 |

► Re-casted Balance Sheet of ACo:

| Liabilities | FMV | Assets | FMV |
|---------------------|-----------------|---------------|-----------------|
| Share capital | 1,000 | Shares in BCo | 1,00,000 |
| Revaluation reserve | 99,000 | | |
| Total | 1,00,000 | Total | 1,00,000 |

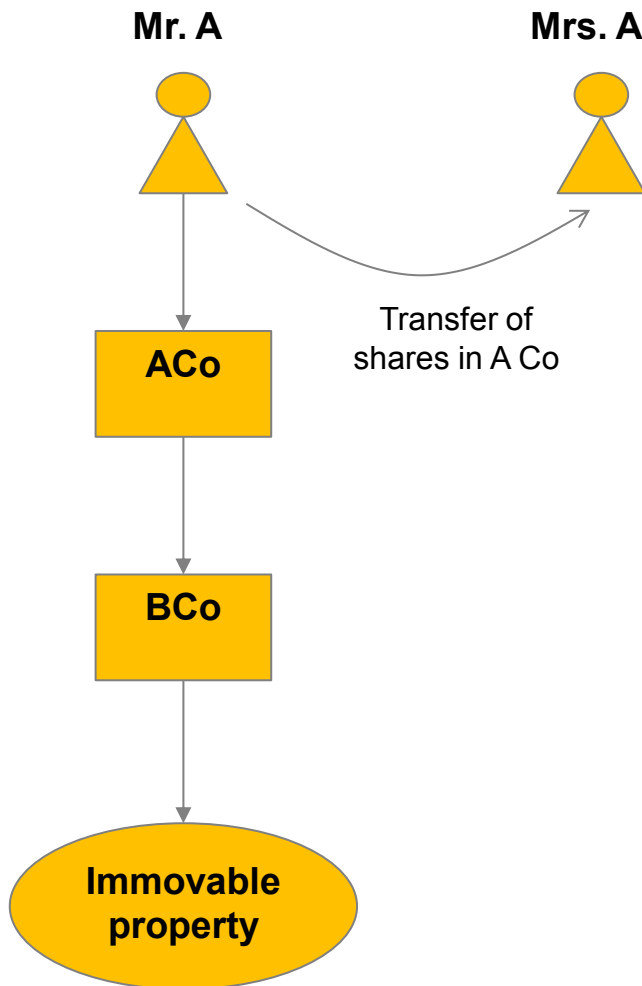
► Balance sheet of BCo:

| Liabilities | BV | Assets | BV |
|----------------------------|--------------|--------------------|--------------|
| Share capital (100 shares) | 1,000 | Immovable Property | 1,000 |
| Total | 1,000 | Total | 1,000 |

► Re-casted Balance Sheet of BCo:

| Liabilities | FMV | Assets | FMV |
|---------------------|-----------------|--------------------|-----------------|
| Share capital | 1,000 | Immovable property | 1,00,000 |
| Revaluation reserve | 99,000 | | |
| Total | 1,00,000 | Total | 1,00,000 |

Value of immovable property – FMV or BV?



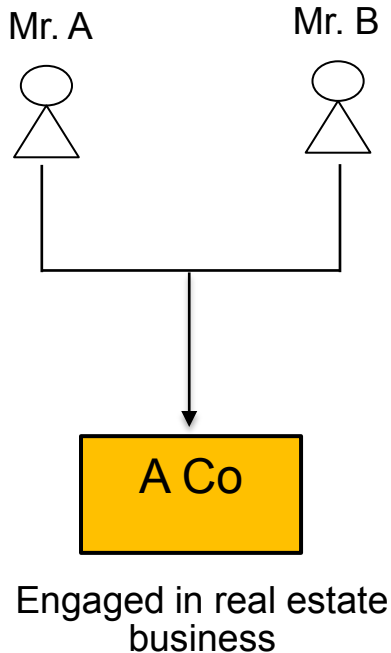
- ▶ For immovable property, FMV determined basis stamp duty valuation

*“D = the value **adopted** or **assessed** or **assessable** by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;”*
- ▶ There is no direct transfer of immovable property
 - ▶ No value “adopted” or “assessed” for stamp duty payment
- ▶ Explanation 2 to s.50C defines “assessable” as *“if it were referred to such authority for the purposes of the payment of stamp duty”*
- ▶ EM states it intends to cover only unregistered transfer instrument
- ▶ Without transfer, no value is “assessable”?

Characterisation of rental income



Taxation of rental income – Scenario 1



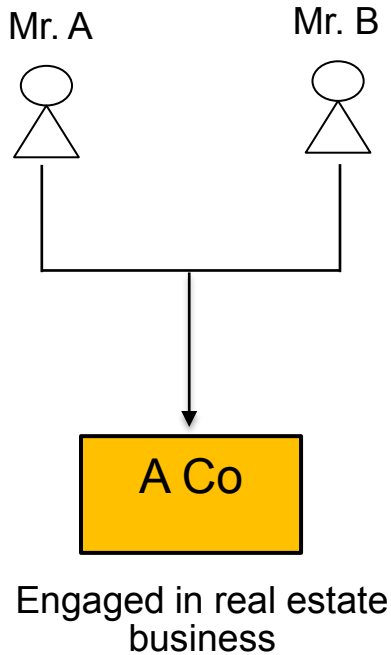
Facts

- ▶ A Co acquires real estate property and earns rental income thereon
 - ▶ This is the only main object of the company
- ▶ A Co earns only rental income during year
- ▶ Bare letting of property with no added facilities or services

Issue

- ▶ Will rent income be taxed as income from house property or as business income?

Taxation of rental income – Scenario 2



Facts

- ▶ A Co is engaged in construction and development of real estate property, selling the same and also earns rental income from unsold units
- ▶ A Co earns business income and rental income during current year
- ▶ Letting of property with minimal services such as lift, maintenance etc.

Issue

- ▶ Will rent income be taxed as income from house property or as business income?

Taxation of rental income – SC rulings

| Citation | Object clause | Actual Activity | Actual income | How assessed? |
|--|--|---|---|---|
| Chennai Properties & Investments Ltd vs CIT (2015) 373 ITR 673 (SC) | To acquire and hold two specified properties and to let out those properties | Holding and earning rent income from such property | Rental income as the only income | Business income |
| Rayala Corporation Pvt Ltd (2016) 386 ITR 500 (SC) | To deal in real estate and also to earn rental income | <ul style="list-style-type: none"> • Assessee had stopped its other business activities • Except leasing, company has no other business | Rental income as the only income | Business income |
| Raj Dadarkar & Associates vs ACIT (2017) 394 ITR 592 (SC) | Take premises on rent and sub-let the same or any other business as may be mutually agreed by partners | Took property on lease from government, developed the market area and let out shops and stalls therein | <ul style="list-style-type: none"> • Compensation from sub-licensees • Leave and license fees • Service charges for providing services such as utilities, security | House property income - no evidence on record that entire/substantial income was from letting |

Disallowance u/s 14A



Disallowance u/s 14A – Stock-in-trade

Balance sheet of ABC LLP

Rs. in lakhs

| Liabilities | Rs. | Assets | Rs. |
|---------------------------|------------|-------------------------------|------------|
| Share capital | 10 | Fixed assets | 90 |
| Reserves | 90 | Shares in group companies | 75 |
| Other current liabilities | 10 | Shares held as stock-in-trade | 75 |
| Loan | 140 | Other current assets | 10 |
| Total | 250 | Total | 250 |

Facts

- ▶ ABC LLP acquired shares as stock-in-trade, out of borrowed funds
 - ▶ Intention to earn business income
- ▶ Interest expenditure – Rs. 20 lakhs
- ▶ Dividend earned – Rs. 15L

Issue

- ▶ Does s. 14A trigger on shares held as stock-in-trade?

Analysis

- ▶ SC in Maxopp Investment held that s. 14A does not trigger if shares held as stock-in-trade and dividend earned by quirk of fate

Disallowance u/s 14A – Strategic investments & super rich levy u/s 115BBDA

Balance sheet of ABC LLP

Rs. in lakhs

| Liabilities | Rs. | Assets | Rs. |
|---------------------------|------------|-------------------------------|------------|
| Share capital | 10 | Fixed assets | 90 |
| Reserves | 90 | Shares in group companies | 75 |
| Other current liabilities | 10 | Shares held as stock-in-trade | 75 |
| Loan | 140 | Other current assets | 10 |
| Total | 250 | Total | 250 |

Facts

- ▶ ABC LLP acquired shares in group companies out of borrowed funds
 - ▶ Group company shares acquired to have controlling interest
- ▶ Interest expenditure – Rs. 20 lakhs
- ▶ Dividend earned – Rs. 15L
- ▶ Super rich tax levy u/s 115BBDA @ 10% in hands of ABC LLP on dividend > Rs. 10L

Issue

- ▶ Can disallowance u/s 14A trigger?

Disallowance u/s 14A – Strategic investments & super rich levy u/s 115BBDA

- ▶ SC in Maxopp Investment Ltd (402 ITR 640) held as follows:
 - ▶ Thus, s. 14A triggers in case of shares held as strategic investments
- ▶ S. 14A and s. 115BBDA
 - ▶ Tax @ 10% paid by ABC LLP on dividend income > Rs. 10 lakh u/s 115BBDA
 - ▶ Can taxpayer defend s. 14A on the ground that no exempt income earned since tax paid u/s 115BBDA?
 - ▶ Constraint of disallowance u/s. 115BBDA(2)

Can s. 14A disallowance be defended if no dividend income is earned during the year?

Treatment of MTM / expected loss



Background of ICDS

- ▶ ICDS were notified by the CG as a delegated legislation u/s 145(2) w.e.f. AY 2017-18
 - ▶ For computation of incomes under the head PGBP and IFOS
 - ▶ Applicable to all taxpayers following mercantile method of accounting
 - ▶ Not applicable to individuals and HUFs not liable to tax audit
- ▶ Impact was heavily impaired by decision of Delhi High Court (400 ITR 178)
- ▶ To provide legitimacy to ICDS and to bring certainty, FA 2018 introduced certain provisions in the Act, akin to ICDS
- ▶ Retrospective amendments to regularize compliance by large number of taxpayers and prevent any further inconvenience to them

Treatment of MTM / expected loss post ICDS

- ▶ MTM/ expected loss can be allowed as deduction only “in accordance with” ICDS [s. 36(1)(xviii), s. 40A(13)]
 - ▶ ICDS I prohibits MTM/ expected loss, unless permitted by other ICDS
 - ▶ Instances of losses permitted under other ICDS are:
 - ▶ Inventory valuation loss (ICDS II)
 - ▶ Foreseeable loss in a contract, but on POCM basis (ICDS III)
 - ▶ Provisions for liabilities on ‘reasonable certainty’ basis (ICDS X)
- ▶ “MTM” or “expected loss” not defined, to be understood in commercial sense. May include:
 - ▶ MTM loss on derivatives not covered by ICDS VI
 - ▶ Foreseeable loss on construction contract (except as allowed under ICDS III on POCM basis)

Treatment of MTM / expected loss post ICDS

- ▶ Instances not impacted by above amendment and thus, allowable as deduction
 - ▶ Already incurred loss quantified on actuarial basis (eg. Pension obligation)
 - ▶ Already incurred loss quantified on best estimate basis (eg. Loss by fire)
 - ▶ Provision created under AS-29 for paying damages/ compensation pursuant to law suit against the taxpayer
- ▶ S. 37(1) to cover real, actual or crystallised loss as opposed to MTM/ expected loss
- ▶ Once MTM loss is disallowed, loss to be claimed on actual settlement

Depreciation – Active v. Passive use



Depreciation – Active v. Passive use

- ▶ A Ltd. is engaged in the business of goods transportation
- ▶ Chronology of events:
 - ▶ January 2018 – Placed purchase order for acquiring vehicle
 - ▶ February 2018 – Vehicle is received by A Ltd.
 - ▶ March 2018 – Payment for purchase is made to creditor
 - ▶ April 2018 – Vehicle is used for the first time for the business
- ▶ **Issue:**
 - ▶ Whether A Ltd. is eligible to claim depreciation on vehicle for FY 2017-18 (subject to 50% limit)?
- ▶ **Points to consider:**
 - ▶ Asset is ready for use but not actually used for the purpose of business even for one day in the entire year
 - ▶ Arguably no depreciation is allowable??
 - ▶ Supported by decision of Bombay HC in case of Dineshkumar Gulabchand Agrawal v. CIT [2004] 267 ITR 768 (Bom)

Concessional tax rate of 25%



Concessional tax rates for companies¹

| Under Finance Act | |
|---|--|
| Finance Act 2017 @ 25% ² (A.Y. 2018-19) | Finance Act 2018 @ 25% ² (A.Y. 2019-20) |
| One time applicability for FY 2017-18 (AY 2018-19) | One time applicability for FY 2018-19 (AY 2019-20) |
| Applicable if total turnover or gross receipt \leq 50 crore in FY 2015-16 | Applicable if total turnover or gross receipt \leq 250 crore in FY 2016-17 |
| Could be an existing company in any business | Could be an existing company in any business |
| Qualifies next year for 25% rate if turnover \leq 250 crore only | May or may not qualify next year..... Wait for next year's budget!! |
| There is no concession/exception in MAT taxation | There is no concession/exception in MAT taxation |

Company can claim all tax incentives

Company can claim all tax incentives

¹ Rates applicable for regular income other than capital gains

² To be increased by applicable surcharge and cess

Concessional tax rates for companies¹

Under s.115BA - @25%²

Conditions:

- Optional for company setup and registered on or after 1 March 2016
- Engaged solely in manufacture or connected research
- Option to be exercised in first year of the company
- Option if exercised cant be withdrawn
- Company cannot claim incentive except s. 80JJAA

Tax rate continues to be 25% for all years to come³ so long as conditions are complied with

¹ Rates applicable for regular income other than capital gains

² To be increased by applicable surcharge and cess

³ Unless amended in future

Thank You!

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