



CA DHIREN V. DALAL

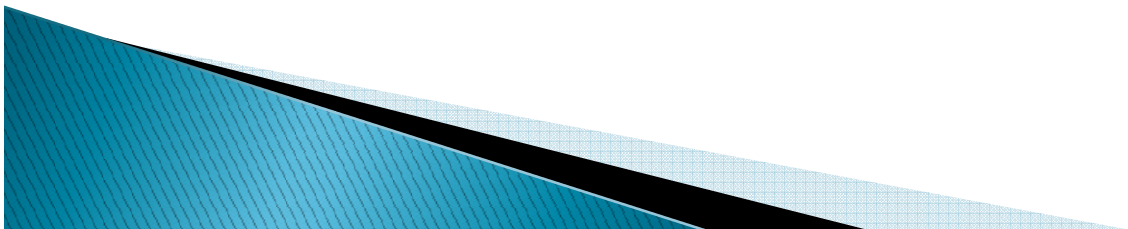
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# Taxation of Stock Brokers and Depository Participants.

1. Business Model w.r.t. SEBI Rules and Regulations.
2. Speculation – Section 43(5)(d) and “Deemed Speculation”- Section 73 Explanation w.r.t. to Trading / Arbitrage activity.
3. Taxation on Un – Expired Derivative Contract as on 31<sup>st</sup> March.
4. Conversion of Stock in Trade to Investment.
5. Capital Gain V/s Business Income w.r.t. sale of Shares.
6. Section 14A Dis-allowance.
7. TDS on Transaction Charges, VSAT and Internet Expenses.
8. Allowability Bad Debts and Penalty levied by the Exchange.
9. Valuation of Bonus Shares ( Stock in Trade).
10. FIFO method for Computing Capital Gain. Multiple Demat accounts.
11. STC Loss without STT against STCG with STT or Vice Versa.
12. LTC Loss without STT against LTCG with STT or Vice Versa.
13. Deemed Dividend. Section 2(22)(e). Margin Money.

# Business Model w.r.t. SEBI Rules and Regulations.

- A. Broking.
- B. Trading / Arbitrage.
- C. Investment.
- D. Fixed Deposit with Banks.
- E. Margin Funding.
- F. Securities Borrowing and Lending.
- G. NO OTHER ACTIVITY.



## Speculation – Section 43(5)(d) and “Deemed Speculation”- Section 73 Explanation w.r.t. to Trading / Arbitrage activity.

- Screen based electronically Trading, Contract Notes details.
- BSE and NSE. Are Notified.
- Definition and Explanation to Section 73.
- **Bombay High Court: Darshan Securities Pvt. Ltd. (Income Tax Appeal NO. 2886 of 2009)**

Consultancy Income	2.24
Delivery Share Loss	<u>-2.10</u>
Net Profit	0.14

- **Delhi High Court: ITA 94/2013 Vs. Dlf Commercial Developers Derivative Loss is also Deemed Speculation Loss regardless Section 43(5)(d) for the purpose of Carry Forward.**

**Silent about Set Off in the same Year.**

- **Arbitrage is one activity.:- Chirag D. Tanna v/s Asstt. Commissioner of Income Tax ITA no. 5027/Mum./2010 -(Assessment Year: 2006-07)**

# Taxation on Un – Expired Derivative Contract as on 31<sup>st</sup> March.

- \* **Derivative Expire on last Thursday of the Month.**
- \* **Daily Mark to Market Pay in / Pay out.**
- \* **Guidance Note issued by the ICAI.**
- \* **Derivative Contracts are akin to Stock in Trade.**

**Bombay ITAT in the case of Edelweiss**

**Securities. Edelweiss Capital Vs. ITO-ITA**

**No.5324/Mum/2007-Mumbai [ITAT](#)**

# Conversion of Stock in Trade to Investments

- No deeming provision under the act
- Withdrawal of goods at cost and not market value
- Cannot make profit by selling to self
- Minimum parties to be involved
- Rate of conversion
- Time of accrual of income
- *Ir. Bikabhai Remchand vs. CIT* (1961) 36 ITR 100 (SC)
- Bombay in the case of right tax investments [vt. . . .td](#)

# CAPITAL GAIN V/S BUSINESS INCOME W.R.T. SALE OF SHARES.

- **Various Determinants – Frequency, Volume, Holding period, Intention at the time of Purchase, Dividend, Ratio of LTCG, Demat Accounts maintained, other business.**
- **Interpretation of CBDT Circular No.4 dated 15<sup>th</sup> June 2006**
- **Two Major Relief.(Both Activities and Over all)**
- **Rule of Consistency**
- **Discussion on Judicial pronouncements...**



# CAPITAL GAIN V/S BUSINESS INCOME W.R.T. SALE OF SHARES.

## ○ Discussion on Judicial pronouncements...

A) Capital Gain is allowed to Share Brokers

Walfort Financial Services Ltd. Vs. ACIT (ITA  
No.847/Mum/2009 dt 30/06/2010)

B) Rule of Consistency. –Supreme Court Judgment.

Gopal Purohit 228 CTR 582 (Bom)

C) Other activity and Capital Gain –BOM ITAT

Janak S.Rangwala Cit, Range-12(2)

D) Not only one criteria but over all –BOM ITAT

Hitesh sathishchandra Doshi ITA No.6497/Mum/2009  
(A.Y. 2003-04)





## Section 14A Dis-allowance.

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- ▶ **Calculation of disallowance as per Rule 8D (2)**
- ▶ **Whether Investment includes Stock in Trade**
- ▶ **Gross Interest or Net Interest**
- ▶ **Whether Rule 8d (2) – Always to be applied ?**
- ▶ **AO to prove Nexus between Borrowed Fund and its application**
- ▶ **Rule of Consistency**
- ▶ **Discussion of various Judicial pronouncements viz. Bombay ITAT**  
**India Advantage Securities Ltd.**

**Service Tax :- Disallowance of CENVAT credit for Proprietary Transactions.**

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## TDS on Transaction Charges, VSAT and Internet Expenses.

- » Sub-Brokerage payable whether covered u/s 194H. Security as covered under Securities Regulation Act. Hence Derivatives covered .
- » **Transaction charges paid to Exchanges are covered u/s 194J. Bombay High Court in the case of Kotak Securities. Appeal No.3111 of 2009**
- » Advisable to Deduct TDS on other payments to the Exchange and also for internet, lease line and VSAT usage charges.
- » Disallowance u/s 40a(ia) for Non Deduction of TDS.



# Allowability Bad Debts and Penalty levied by the Exchange.

- Bad debts allowable.- Bombay High Court in the case of Shri Shreyansh S.Morakhia. Appeal no.89 of 2011.
- Fine/ Penalty allowable : CIT vs. The Stock and Bond Trading Company (Bombay High [Court](#))

# VALUATION OF BONUS SHARES (STOCK IN TRADE).

- ◉ Value of Bonus Shares when Original Shares held as Investments : Sec. 55(2)(aa)(iiia)
- ◉ Value of Bonus Shares when Original Shares held as Stock - in - Trade

FIFO method for Computing Capital Gain.  
Multiple Demat accounts.



- **CBDT Circular No.768 dated June 24 1998 - Compulsory FIFO i.e. No weighted Average even though accepted by AS – 2**
- **If more than one Demat Account – FIFO Per Demat Account**

## STC Loss without STT against STCG with STT or Vice Versa.

- **Compute STCG as per provisions of Sec.46 to Sec.55**
- **Sec.72 (on Losses) is silent on STCG on which STT is paid**
- **Special Rate on STT paid securities prescribed u/s.111A**
- **Conclusion based on above Facts**
- **First State Investments (Hong Kong) Ltd. V. Addnl. DIT (International Tax) Mumbai ITAT.**

## LTC Loss without STT against LTCG with STT or Vice Versa.

- **Whether same as STCG ?**
- **LTCG on which STT paid is exempt u/s.10(38)**
- **LTCL on which STT paid is not allowed to be**  
**“Set off” or “Carried forward” in any year**
  - **G.K.Ramamurthy V/s. JCIT (ITAT Mumbai)**

**DEPOSIT MARGIN MONEY STRICTLY  
IN CLIENTS ACCOUNT.**