CHAPTER – V

CASE STUDY

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5.1 INTRODUCTION -

In the recent past, there have been some changes in the taxation of capital gains tax. The specific points getting attention and discussion at length are chargeability of certain sums to capital gains tax, capital assets, transfer, goodwill etc. There are many cases relating to the taxation of capital gains.

5.2 LEGAL DECISION -

A.R.Krishnamurthy and Anr.

Vs.

Commissioner of Income Tax.

(1989) 76 CTR (SC) 18

There are various cases on the taxability under the head capital gains. Here is taken only one case which is decided by the Supreme Court of India. This case is very classic and very good for research study because it is recent case and covers section 2(14) and 45.

"Capital asset" means property of any kind held by an assessee, weather or not connected with his business or

profession, but does not include - - ...

Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in section, 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.

In this case assessee preferred an appeal to Supreme Court.

The assessee purchased two pieces of land in the year 1966 measuring 14.55acres at a price of Rs. 27,260. By an instrument of lease-cum-licence dated 10th Sept.1970 they granted a mining lease in favour of M/s. SKP, an allied concern of the assessee. The lease was for a period of 10 years and the lessee had to pay premium or salami of Rs. 5 lakhs in addition to the payments of royalty of Rs. 12 per hundred cubic ft. of clay extracted subjected to a minimum of Rs. 60,000 per year. The question in this appeal is weather the grant of a mining lease for a period of ten years by the assessee can give rise to a capital gain taxable u/s 45 of Income-tax Act.

Under the terms of leasedeed right to exploit the land by extracting clay which right directly flows from the

ownership of the land was parted. Conceptually it seems that there is no "cost of acquisition" which is attributable to the right of limited enjoyment transferred by the grant of lease. But the said right evaluated in the terms of money forms part of the cost of acquiring the land. By giving a liberal meaning to the word 'transfer' in section 2(47), it was a transfer for consideration of Rs.5 lakhs under the instrument dated 10th Sept.1970. Transfer includes not only a permanent transfer but also a temporary transfer of title to the property. 'Transfer' of capital asset u/s45 includes grant of mining lease for any period. Hence, cost of acquisition of land includes cost of acquisition of mining right under lease, There is a live nexus between the cost of acquisition of land and the right granted under the lease.

The assessee paid Rs. 27,260 was not only the cost of acquiring the land but also acquiring bundle of rights in said land including right to grant lease.

There is no force in the contention of the assessee that conceptually there is no "cost of acquisition" which is attributable to the right of limited enjoyment transferred by grant of lease.

The value of lease hold rights in the cost of acquisition of land being determinable the computation provisions

under the Act are applicable and section 45 would be attracted tax liability. The assessee is liable to pay tax on long-term capital gains.

The appeal is dismissed with costs in the above case.

Cases referred to -

1. Gold Coast Selection Trust Ltd. Vs. Inspector of Taxes (1949) 17 ITR 19.
2. Trader and Mining Ltd. Vs. CIT (1955) 27 ITR 341

5.3 CONCLUSION -

From the study of aforesaid cases it is concluded that the value of leasehold rights in the cost of acquisition of land being determinable the computation provisions under the Act are applicable and Section 45 would be attracted. In the case of grant of mining lease for 10 years cost of acquisition is determinable and computation provisions are also applicable, attracting section 45.

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CHAPTER - VI

TAX PLANNING OF CAPITAL GAINS

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6.1 INTRODUCTION -

Tax planning involves a series of scientific steps undertaken with a view to understand and apply the principles of tax laws to the financial affairs of the tax-payer. The principles should apply in a manner that on the one hand, provisions of the law are complied with while on another hand the benefits of the various concessions, reliefs, deductions, allowances and expemptions are given to the maximum possible extent having regard to the nature of business and other activities of the tax-payer. Tax-planning involves a perfect compliance of tax-laws and discharging of tax obligations by any tax-payer. Compliance of tax laws is an intergral part of tax-planning otherwise tax concessions, allowances, exemptions, deductions etc. will not be available to the tax payer. As, any failure or default on the part of the assessee would involve non-allowance or withdrawal of a particular deduction or exemption under the tax-law and it may also result into levy of penalty, interest, fine and even prosecution in some cases and utimately the assessee will have to suffer.

In the absence of a proper tax-planning, the tax-payer may have to carry on heavy burden of tax obligations and it would result in an undue large financial loss to him.

Tax-planning is a legal method of reducing tax liability of a tax-payer.

6.2 TAX-PLANNING VS. TAX-EVASION -

Tax-planning and Tax-evasion or avoidance should not be misunderstood or used interchangeably. Tax-planning have the object and effect of avoiding or reducing the tax liability of the taxpayer. However, the tax-planning does not have the object of evasion or avoidance of tax liability by fraudulent or illegal means or ways. Tax evasion involves use of illegal method of tax avoidance like making of false entries in financial books, making of ficticious entries in the records and making fraudulent adjustments with a view to reduce tax burden directly or indirectly. Tax evasion in any form exercised by tax-payer is viewed as contempt and disfavour by every authority on taxation including the Court. Therefore it should not be misunderstood that tax-planning has anything to do with tax-evasion in any form, directly or indirectly,though it involves tax avoidance.

6.3 TAX-PLANNING MEASURES -

1) No exemption is available in respect of transfer of a short term capital asset. Since long term capital assets are eligible for exemptions u/s 53, 54, 54D, 54E, 54F and 54G, it would be benefitial to the assessee if he transfers such asset only after they have become long-term capital asset. i.e. after holding them for more than 36 months (12 months in case of shares). Where a capital asset is acquired under any of the mode specified in sec-ction 49(1), the period for which they were held by the previous owner is also to be counted in computing 36 months.

2) No deduction is available in respect of transfer of short term capital asset. The entire amount of short-term capital gain is to be included in the Gross Total income of the tax payer. The tax-payer should transfer his capital assets after 36 months of their acquisition. This would entitle him the benefit of deduction.

3) Long-term capital gains bear lower tax, hence, the tax-payer should transfer his capital asset only 36 months after acquisition.

4) Capital gains arising from a transfer of a self generated goodwill was not assessable to tax as goodwill was not regarded as capital asset u/s.2(14) up to

the assessment year 1987-88. As such, the tax-payer should take goodwill separately at the time of transfer of business in the sale-deed.

5) In case where a capital is transferred by an individual to his minor son without adequate consideration, it should be sold only after the son attains majority so as to avoid clubbing of income.

6) The tax-payer should keep in mind the provisions of set off and carry forward and set off of losses. Taxpayer should project his transactions so as to take the advantage of set off and carry forward of capital losses against capital gains.

7) The tax-payer may take the benefit of Section 51 where by any advance or other money received by him in connection with negotiations for transfer of any capital asset on any previous occasions and same is retained, it would be deductible from the cost of acquisition of the asset or its written Down value or the fair market value, as the case may be.

8) Tax-payer should take the benefit of exemption u/s 54 by investing the capital gain arising from the transfer of residential house property in the purchase of a new house property, within the specified period.

9) In order to avail of exemptions u/s. 54, 54B, 54D, 54E and 54F the taxpayer should take care that the investment in new asset (other than purchase of house) is made only after effecting the transfer of capital asset.

10) For availing exemption u/s. 54, 54B, 54D, 54E, 54F the tax-payer should ensure that the newly acquired asset is not transferred within 36 months of its acquisition otherwise the exempted capital gains would be brought to tax.

11) In the case of companies transferring their assets in accordance with the modes specified in section 47(iv) or section 47(v), it should be ensured that assets so transferred are not converted into or treated as stock-in-trade by the transferee companies within 8 years of such transfer otherwise the amount of capital gains already exempted would be chargeable to tax.

12) The non-corporate assessee should take the benefit of deduction of Rs. 10,000 in respect of long-term capital gains and exemptions.

It may be concluded that the tax-planning may be legitimate provided it is within the frame work of law. Colourable devicescan not be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods.

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