

J.B.NAGAR STUDY CIRCLE OF WIRC

**CASE STUDIES ON CAPITAL GAINS AND
PRESUMPTIVE TAXATION**



By CA Kinjal Bhuta

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CASE STUDIES IN CAPITAL GAINS



Case Study No.1

- Mr. B had sold one residential property in FY 21-22. Mr. B also had purchased an under construction residential property in FY:16-17, however the instalments of the said property are continued to be paid from the year 2016 to year 2023, can Mr. B claim the amount of instalments as deduction u/s. 54? (234 ITR 573 – Alh HC), (165 ITR 571 – Kar HC) , Circular No. 359 dated 10-05- 1983.
- Will the answer change if the assessee has already claimed deduction on the said property few years back for part payment done.
- Can certain amount be deposited in the CGAS and the amount paid in the year 2023 be considered as utilisation towards the purchase of new property?
- What will be the scenario if the Mr. B claims the deduction however does not deposit in CGAS – 111 taxmann.com 180 Mad HC.

Case Study No.2

- Mr. A has sold one residential property amounting to Rs.50 lakh and some mutual funds during the FY amounting to Rs.60 lakh. Within 6 months assessee purchased property amounting to Rs 2 crore. Can Mr. A claim exemption u/s. 54 for the residential property sold and exemption u/s. 54F for the mutual funds sold from the same property acquired worth Rs.2 crore?
- Sabir Mazhar Ali – 196 DTR 254, Mum ITAT
- Bipin N Sagar – ITA no. 1507/M/2017, Mum ITAT
- Venkat Raman Umareddy – ITA No. 522/Hyd/2012)

Case Study No.3

- Mr. C has sold a long term capital asset in the FY:21-22. Mr. C had purchased the property in the year 1986. The property was re-developed in the year 2001 in which Mr. C got additional 200 sq feet of area. Mr. B had purchased certain legal cost towards re-development in the same year. The assessee also purchased some additional area from the re-developer of around 300 sq.feet in the year 2003 when property was getting constructed. In the year 2005 Mr. C did interiors in the property when received possession amounting to Rs.50 lakh. In 2007 the assessee does certain civil work in the house, How the cost of acquisition/improvement will be worked and when can indexation be taken?

Case Study No.4

- Ms.D co-owned a parcel of land with other siblings inherited by them from their ancestors. The part of land was sold in 2002 by the ancestor to Mr. X. Mr. X in turn sold that parcel of land with some additional land not part of the agreement he had purchased in 2012 to Mr. Z. In the same year Ms.D sold remaining parcel of land to Mr. Y. Now Mr.Z filed a FIR against Ms.D of fraudulently selling the land to Mr.Y. In turn Mr. Z filed a suit before Bom HC for rightful possession and ownership of land. Later due to out of court settlement Ms. D paid 4 crore to Mr. Y for the said flat and the same was claimed as expenses towards sale of flat by filing a revised return. Can such claim of expenses be allowed ?
- Shakuntala Kantilal (190 ITR 56 BOM), V Lakshmi Reddy (333 ITR 359 Mad HC).

Case Study No.5

- Mr. E sold the shares of a company and invested the gains for purchase of house and claimed exemption u/s. 54F of the Act. The assessee also had nine residential flats in his name in the same building. Mr. E stays in one of those flats and the rest 8 flats are rented out as commercial premises. Whether deduction u/s. 54F can be allowed?
- Navin Jolly (424 ITR 462) Kar HC.

Case Study No.6

- Mr. F , a non-resident received property by way of inheritance and had to pay legal charges towards obtaining probate from HC. There were also certain travel expenses from foreign country to India for these transactions. Mr. F also spent certain expenses for vacating the tenants. Which of these expenses can be allowed towards the capital gain calculation? Should it be considered as part of the cost and indexation to be taken on the same or can simply be considered as an expenditure ? Alternatively, is it to be considered as cost of improvement ?
- 298 ITR 268 (Kar HC), 242 ITR 582 (Bom HC), 247 ITR 312 (Bom HC).

Case Study No.7

- When should be a property considered to be transferred as per section 2(47) :
 - On date of registering the sale deed with stamp duty authorities-transfer of title and ownership.
 - When consideration is paid in full (201 ITR 1032)
 - When possession is given of the property (226 ITR 625) SC
 - When letter of allotment is signed and rights are transferred.
 - When agreement to sell is signed (Sanjeev Lal - 46 taxmann.com 300 SC).
 - Jasbir Singh karkaria (294 ITR 196)

Case Study No.8

- Ms. G is dealing in business of shares and securities and is an intra day trader. She maintains two different portfolios viz- Investments and Trading. She also deals in F&O and other instruments. During the year she has sold a lot of shares of a company where she was the founder and had received shares in private placement before listing. As the price of the shares were blooming down she liquidated all shares and claimed the same as LTCG. Whether the gain from such shares should be considered as LTCG or business income ?
- In the above case what will happen if she has acquired the shares from the exchange and sold within a week's time, will it be STCG or business income ?
- Instruction no. 1827 dated 31st August, 1989, Circular No.4 of 2007 and Circular no.6 of 2016 dated 29th Feb,2016 and office memorandum dated 13.12.2015 giving guidelines.

Case Scenarios ... 9:

- Whether deductions u/s. 54/54F can be claimed on short term capital gains from sale of depreciable assets?
- Assessee have joint ownership of two flats, can claim deduction u/s. 54F as condition to have only one property is breached? 186 ITD 195 (Del), 185 ITD 418 (Bang).
- Whether benefit of deduction u/s. 54/54F can be available in case new asset is used partly for residential and commercial purposes? (132 taxmann.com 102- Indore)
- What if in above case, the premises are later on used for commercial purposes (120 taxmann.com 403 Mad HC).
- Any expenditure incurred to make house habitable after purchase can also be allowed u/s. 54/54F? (106 ITD 167) Mum.

Case Scenarios ... 10 :

- Can deduction be allowed if the amount is spend towards remodelling the house or constructing another floor over existing property. (47 Taxman 89) Mad HC, 132 ITR 661 (Del HC)
- Deduction In a case when new house purchased in joint name (351 ITR 4, 402 ITR 117, 327 ITR 278, 203 Taxman 208)
- If HUF transfers a residential HP held in its name and gain is invested in name of one of the coparceners, whether HUF can claim deduction? (98 taxmann.com Guj HC)
- Whether for claiming deductions, the purchase should be made from sale consideration or it could be from borrowed/surplus funds too? (20 SOT 468, 81 ITD 545)

CASE STUDIES IN PRESUMPTIVE TAXATION



Case Study No.11

- Ms. H is a Doctor by qualification and runs a clinic where she earns Rs. 40 lakh as consultancy income. She also sells medicines from the same clinic and her turnover out of that is 1.20 crore. Whether she can show income under section 44AD and 44ADA both ?
- Will answer change if the pharmacy sales is 4.5 lakh so overall income is less than 50 lakh?
- Is section 44AD qua assessee or qua income ?
- Can He chose as which section is beneficial to him and offer income accordingly?
- Will the answer differ if she is not a qualified Doctor but a B-pharm graduate ?

Case Study No.12

- Mr. I has business turnover of Rs. 1.8 crore. The cash turnover from above is Rs. 1 crore and rest is through banking channels. His actual profits after deducting expenses is Rs. 1 crore. Can Mr. I offer profit of 8% and 6% respectively as per section 44AD?
- Are presumptive sections mandatory or optional to the assessee?
- How will assessee know the profits are more than 8%/6% if not maintaining books of account ?
- Constitutionality of sections
- In the above case, Mr.I has paid certain professional fees of Rs.40,000, is he required to deduct tax at source?

Case Study No.13

- M/s. J is a partnership firm of architects having turnover of Rs.48 lakh and has loss from F & O trading. Can the firm offer profits u/s. 44ADA?
- What would be the scenario when the partnership firm is into some other business but having only F & O loss during the year ?
- In the second scenario, will the answer differ if it was not partnership firm but an individual ? Would audit become mandatory u/s. 44AB

Case Study No.14

- Ms. K is a practising Chartered Accountant and also teaches in colleges on contract basis. She has received Rs.30 lakh from practice and teaching fees of Rs.15 lakh.
- Will the turnover of professional receipts u/s. 44ADA be Rs. 30 lakh or Rs.45 lakh.
- If she was a partner and received remuneration and interest of Rs.10 lakh, can that be included in the gross receipts calculation? (ITA No. 2135/Kol/2008, ITA No. 692/Kol/2012, CIT v. Ramniklal Kothari - 74 ITR 57 (SC), 168 *Taxman* 43).
- Is the firm to be considered as doing profession or the partner ? 430 ITR 391 (Mad HC), 139 *taxmann.com* 164 (BOM HC)

Case Study No.15

Sub section (4), of section 44AD has mandated carrying out tax audit if the presumptive tax is not opted for continuous 5 years.

Q1. Ms. L has opted for section 44AD in AY: 2019-20. In AY: 2020-21, her business turnover is 3 crore, will she have to conduct tax audit u/s. 44AB(e) of the Act.

Q2. If she has turnover of Rs. 90 lakh in AY: 2020-21, but she also has started other business and has income from commission of Rs. 15 lakh, will she have to do tax audit u/s. 44AB (e) ?

Case Study No.16

- Can assessee offer income under presumptive taxation for the first time while filing return under re-opening provisions ?
- Can AO make addition u/s 68 and 69 for the receipts and investments related to the business of the assessee?
- In a case where, even though presumptive taxation is applied, the assessee nevertheless maintains books of account for his own purposes, can the AO make addition in respect of both cash credits under section 68 as well as business income estimated by him under section 44AD after rejecting books of account maintained by assessee finding those books as unreliable?
- If the turnover from business/profession exceeds Rs. 2 crore/50 lakh, can AO apply presumptive provisions suo moto? 61 taxmann.com 17, 224 Taxman 358, 229 Taxman 367, 59 TTJ 723).

Case Study No.17

- Mr. M is dealer in real estate and sells a flat at a price lesser than the stamp duty value determined. He desires to declared income under presumptive provisions of section 44AD.
- Section 43CA intends to tax the difference between stamp duty value and actual sale price as business income of the assessee.
- Can AO add such differential income to the profit declared by Mr.M under presumptive provisions ?
- Can Mr. M add the difference suo moto between such values as business income and consequently turnover and then calculate 8 % on such total turnover?
- Can one deeming provision apply to another deeming fiction ?

Case Scenarios No.18

- Whether other disallowance like section 14 can be made or section 40A(2) or (3) if assessee opts presumptive taxation?
- Books not to be maintained if adopting sec 44AD – bifurcation is required to be maintained between cash sales and digital sales/receipts , how will one do that ?
- Applicability to person doing business regularly on credit basis - Issues also with traders dealing in small consumables having cash sales.
- Whether the provisions of Section 40(a)(ia) of the Act is applicable to computation of presumptive income under section 44AD ? (39 SOT 13, 192 Taxman 264)
- Whether Section 43B applies to income declared u/s. 44AD. Applicability when there are two non-obstante provisions.

Thank You !!!

Kinjal Bhuta and Co.

kinjalbhuta@gmail.com

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