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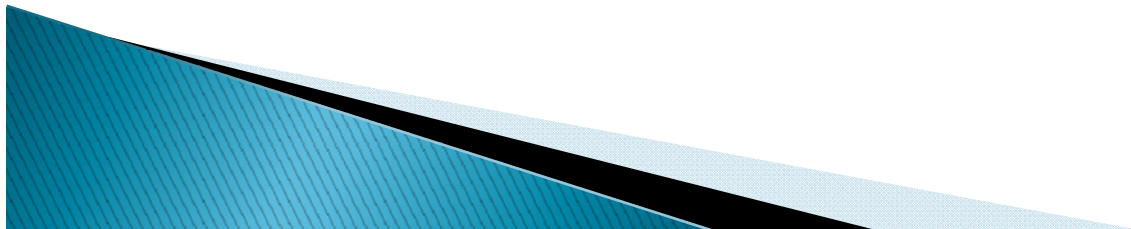
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Taxation of Stock Brokers.

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. Reporting in Tax Audit form Revised 3CD.
4. Taxation on Un – Expired Derivative Contract as on 31st March.
5. Capital Gain V/s Business Income w.r.t. sale of Shares.
6. TDS on Securities and Commodities transactions.
7. STC Loss without STT against STCG with STT or Vice Versa.
8. LTC Loss without STT against LTCG with STT or Vice Versa.

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

- A. Broking.
- B. Interest on FDRs with Banks.
- C. Trading / Arbitrage.
- D. Investment.
- E. 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.
- Initially BSE and NSE were Notified, now Commodities Exchanges also
- Definition and Explanation to Section 73.
- Applicable to Companies
- **“MEANING OF DEEMED”**
- Purchase and Sale of Shares. Whether Derivative Included?
- **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

What if there is a NET LOSS?

- **Delhi High Court: ITA 94/2013 Vs. DLF Commercial Developers Derivative Loss is also Deemed Speculation Loss regardless Section 43(5)(d).**
- **Arbitrage is one activity.- Chirag D. Tanna v/s Asstt. Commissioner of Income Tax ITA no. 5027/Mum./2010 - (Assessment Year: 2006-07)**

Reporting in Tax Audit form Revised 3CD.

- Whether the assessee has incurred the any speculation loss referred to section 73 during the previous year.

Proper understanding of “Speculation” and “Deemed Speculation” .

- **Is Opinion binding on Assessee/AO?**

Taxation on Un – Expired Derivative Contract as on 31st March.

- * **Derivative Expire on last Thursday of the Month.**
- * **Daily Mark to Market Pay in / Pay out.**
- * **Guidance Note issued by the ICAI.**
- * **Disclosure in the Notes about the Accounting Policy**
- * **CBDT Circular dated 23rd March 2010**
- * **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

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)



TDS on Securities and Commodities transactions.

- **Section 194H**

Explanation :- “Commission & Brokerage” includes any payment received or receivables ,directly or indirectly ,by a person acting on behalf of another person for services rendered or for any services in the course of buying or selling of goods or in relation to any transaction relating to any assets, valuable or things, **not being Securities;**

- The expression “**Securities**” shall have the meaning assigned to it in clause(h) of section of the securities contracts Act 1956.
- **Whether TDS is applicable to Brokerage on Commodities? Is commodity is a security ?**

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)**