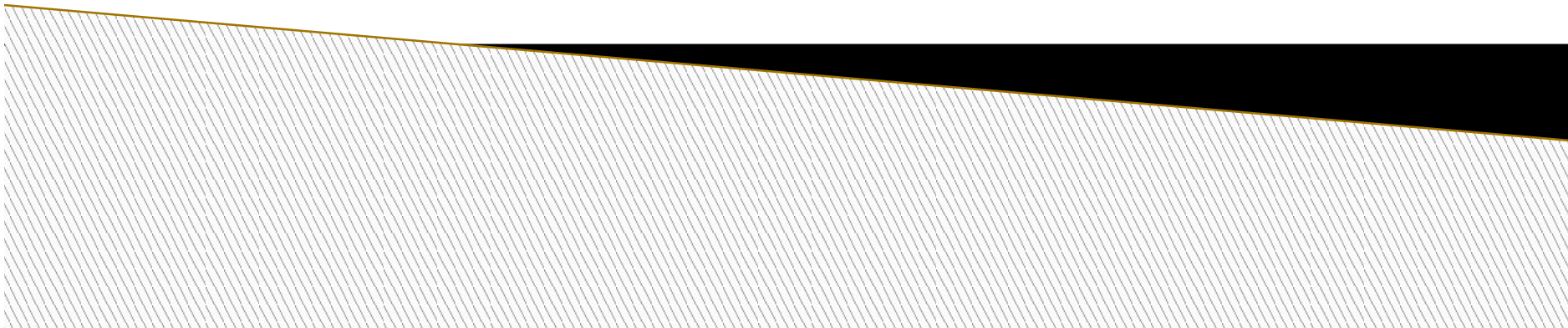


# Business Restructuring

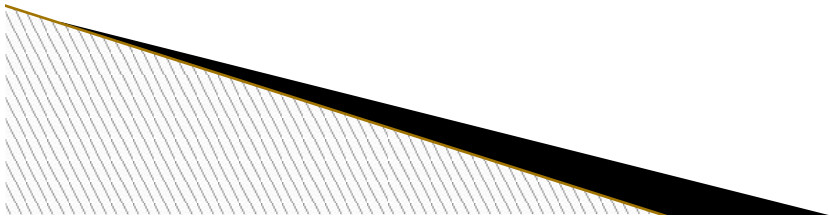


**Jp P. Shah**  
Institute of Technology

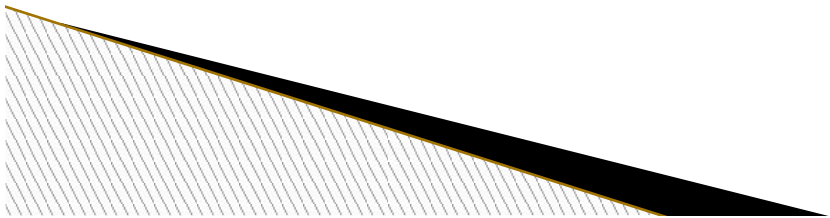
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# Scope



# Direct / Indirect Taxes



# Merger

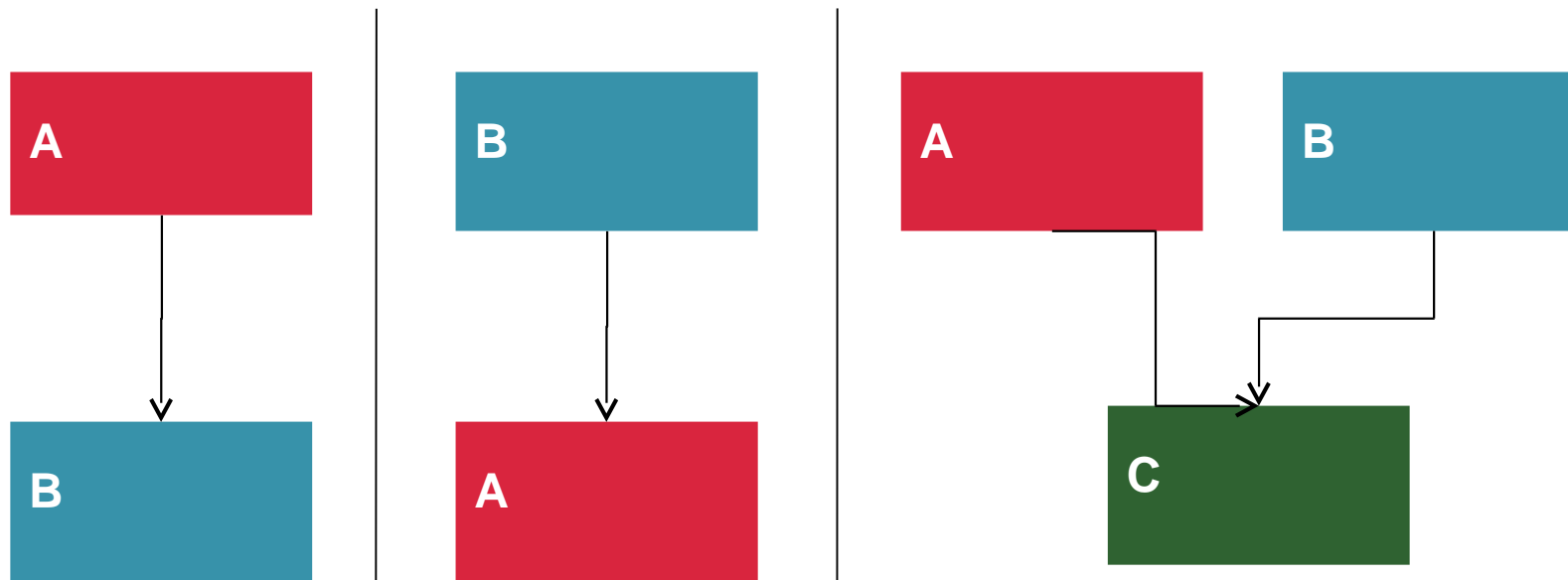


# Key Regulatory Aspects

- **Consolidation of Businesses of 2 / more Cos.**
- **NCLT Approval ~ Court's Stamp**
- **3/4th Majority required**
- **Auditor's Certificate on Method of A/c**
- **Reverse Mergers of Listed Cos. now not possible**

# Amalgamation - S.2(1B)

(A) Only of Companies: Not for LLPs / Firms



**Companies Act allows LLP to Co.  
but ITA only permits Co. with Co.**

# S.2(1B) – Definition

## Three Conditions:

- ▶ All properties
- ▶ All liabilities
- ▶ At least 75% shareholders (Valuewise) of Tor Co. should become shareholders of Tee Co.

*The above conditions are cumulative*

# Forward Merger



# Reverse Merger





# Forward v. Reverse Merger

	Forward Merger u/s. 72A	Forward Merger without s. 72A	Reverse Merger
<b>C/f Bus Loss</b>	Available	Available?	Available?
<b>C/f UAD</b>	Available	Available?	Available?
<b>Capital Loss</b>	Lapses	Lapses	Lapses
<b>MAT Credit of Loss making Co.</b>	Transferred - Skol Breweries Mum	Transferred	Remains with it
<b>Can GAAR apply?</b>	Seems No	Seems No	Yes

# Forward Merger – S.72A

- ▶ **Available to companies owning a few selected industrial undertakings :**
  - **Mfg. / IT/ Shipping / Telecom/ Hotel / Bank / Mining**
  - **Q. Loss-making companies in trading, finance, real estate, stock broking, etc?**
  - **Q. Hospital - Whether an “Industrial Undertaking”?**
    - **No Apollo Hospitals (Mad)**

# Forward Merger – S.72A

- **Conditions u/s. 72A & Rule 9C**

- **Tor engaged in Bus. For 3 years or more**
  - Engaged from is different than and wider than commencement of Business
- **Tor held 75% of BV of FA for 2 yrs prior to Merger**
- **Tee continues to hold 75% of BV of FA for 5 years**
  - **Q. Meaning of BV – Purchase Price or Book WDV?**
- **Only of Tor Co. for which it wants to claim losses – Not for any other merger**

# Forward Merger – S.72A

- **Conditions u/s. 72A & Rule 9C**

- Tee achieves production level of **50% of Installed Capacity within 4 yrs from merger** and continues till **5 yrs from Merger**
- This condition can be ascertained only at end of 4th year and not before –
- CA's Certificate for same - Form 62 – Only in 4th Year not before
- Ensures Revival of Business
- If desired level of production achieved, then revival automatically ensured

# C/f of Book Losses

## ▶ **Book Losses of Tor Co.**

- Available to be C/f to Tee
- Even if conditions of S.72A not complied with?
- S.115JB doesn't prescribe any conditions
- Helps Reduce MAT Liability of Tee Co.
  - **VST Tillers & Tractors (Bang)**
  - **Finolex Cables (Pune)**

# Appointed Date Of Merger

- ▶ **Merger with retrospective date – valid?**
  - **Marshall Sons & Co. (SC)**
    - **Appointed Date:**
    - **Effective Date concept under 1956 Act:**
    - **Effective Date relevant for Taxation?**
    - **Scheme must provide for Appointed Date –**
      - **2013 Act provides for same**
    - **Q. GAAR for Retrospective AD?**

# Appointed Date & Assessment ...

## ▶ **Transferee Co. can file Revised Return after Merger**

- To give effect to Merger
- Even if beyond Due Date u/s. 139(5) – Possible to file Return
  - **Pentamedia Graphics (Mad)**

## ▶ **Assessment on Transferor after Merger - Null**

- Even for periods prior to amalgamation for which assessment was not completed – **Intel Tech (Bang)**
- Even if Assessee participates in assessment proceedings on Transferor – **HCL Tech (Del)**

# Depn. on Goodwill

- **Goodwill arising on Merger?**
  - Transferee can claim Depreciation on Goodwill
    - **Smifs Securities (SC)**
  - Not a Mere Accounting Entry required under AS-14
    - **Toyo Engg (Bom)**
- **What if Brand Acquired under Merger**
  - Depreciation Allowed? Yes
    - **Same as Goodwill – KEC Int'l (Mum)**



# Taxation of Shareholder of Tor

**Co.** Any transfer by SH of Transferor – Not a Transfer (s.47(vii))

- Period of holding for shares in Transferee = Transferor Co.

- CoA of shares in Transferee = that in Transferor Co.

- If not a tax-neutral Amalgamation

- Exemption u/s 47 available - No

- Taxable Transfer – Yes. Grace Collis (SC)

- Exemption u/s. 47 for Trader - No

- Q. Whether Taxable? Yes

- How – FIM of Shares in Tee – Cost of Tor Shares = **Orient Trading (SC)**

# Taxation of Shareholder of Tor Co.

- ▶ **If SHs of Tor Co. receive Debentures/Cash instead of Shares, would CGT exemption be available? NO**
  - Favourable Decisions on ground that merger is not a Transfer
  - Grace Collis (SC) - Merger is a Transfer
  - S.47(vii) Exemption condition
- ▶ **What if Debentures / Cash issued in addition to Shares?**
  - Shares can be Equity or Preference
  - Exemption Should be Available – **MCTM Corp (Mad)**

# Merger – Tax Avoidance

- Can you do merger for tax avoidance?
  - No - **Wood Polymers (Guj) / Uma Enterprises (Raj)**
- What if Tax Benefit Incidental / One of the Objectives?
  - Permissible – **Indo Continental Hotels (Raj)**
- Merely because CGT & SD saved is it a Fraudulent Scheme? No- **Saroj Poddar (Bom)**
- GAAR?

# Merger of WOS with HoldCo

- **Q. Whether it would be exempt u/s.47(vi) because no shares issued?**
  - No CG No Loss
  - **Forbes Campbell (Bom)**
- **Whether Deemed Dividend by WOS to Holdco?**
  - No
  - **CBDT Cir of 1967** – Not regarded as a Transfer of Accumulated Profits by WOS to the Holdco

# Can Firm be Merged with Co.?

- ▶ **Can a Partnership Firm be merged into a Co?**
  - Bom HC in **Kirtidas Kalidas** –Firm is an Unregistered Co?
  - Unregistered Co. merge with a Co?
  - Firm is Dissolved
- ▶ **Not an Amalgamation under ITA since both must be Cos.**
  - S.45(4) applicable for Firm?
  - Dissolution = Firm pays CGT on FMV of capital assets transferred to Co. under Merger?
  - No clarity

# Stamp Duty - MSA

- **Art. 25 Conveyance**

- **10%** of Market Value of shs issued + consideration
- **But not exceeding higher of:**
  - **5%** of Market Value of **Immovable Property** of Transferor located in Maharashtra; or
  - **0.7%** of Market Value of **shares** issued
- **Upper limit if 5% of MV of IP > 10% of MV of shs**
- **For Market Value of Imm. Property –**
  - Refer to Ready Reckoner Value

- **SD also on issue of Certificate @ 0.1% of Amount**

# Stamp Duty Rates- MSA

Details	Scenarios		
	1	2	3
FMV of Shares	1000	1500	1700
FMV of Imm. Prop. In Mah.	3000	500	120
10% of FMV of Shares	100	150	170
5% of Imm. Prop.	150	25	6
0.7% of FMV of Shares	7	10.5	11.9
<b>Stamp Duty</b>	<b>100</b>	<b>25</b>	<b>11.9</b>

# Stamp Duty on Merger of WOS

- **Merger of WOS into Holdco**
  - **No Shares issued on merger**
    - **Charging Provision under Art.25(da) fails**
    - **10% of FMV of Shares = NIL**
  -



# Inter-State Mergers

- **Cos. situated in 2 diff. States**
  - **Separate Court Orders must be obtained**
    - **Calico Company (Bom)**
  - **Avoidance of Double Taxation in all Stamp Acts**
    - **Duty paid in one State on an instrument allowed as a set-off against Duty payable in another State on same instrument**
    - **E.g., Merger of RPL in Gujarat with RIL in Maharashtra**
      - **Rs. 10 cr. Duty paid in Gujarat and Rs. 25 cr. Payable in Maharashtra**

# Inter-State Mergers

- **CCRA v RIL (Bom FB)**

- **Merger takes effect by virtue of Court Order and not the Scheme**
- **Scheme is the same BUT Orders are different though transaction different**
- **Duty on a Court Order and not a Scheme**
- **Duty paid in Guj on Guj HC Order and in Mah on Bom HC Order**
- **Not the same Instrument – NO Set-off available since different Instruments**

# VAT

## ▶ **VAT on a Merger**

- No VAT → Sale of Business not of Assets

## ▶ **MVAT Provisions**

- Transactions between Appointed Date & Date of Order = Deemed to be between distinct Cos.
  - VAT payable on such transactions
  - Effective Date is Order Date even if AD is mentioned in Scheme
  - Registration cancelled wef Date of Order

# CENVAT

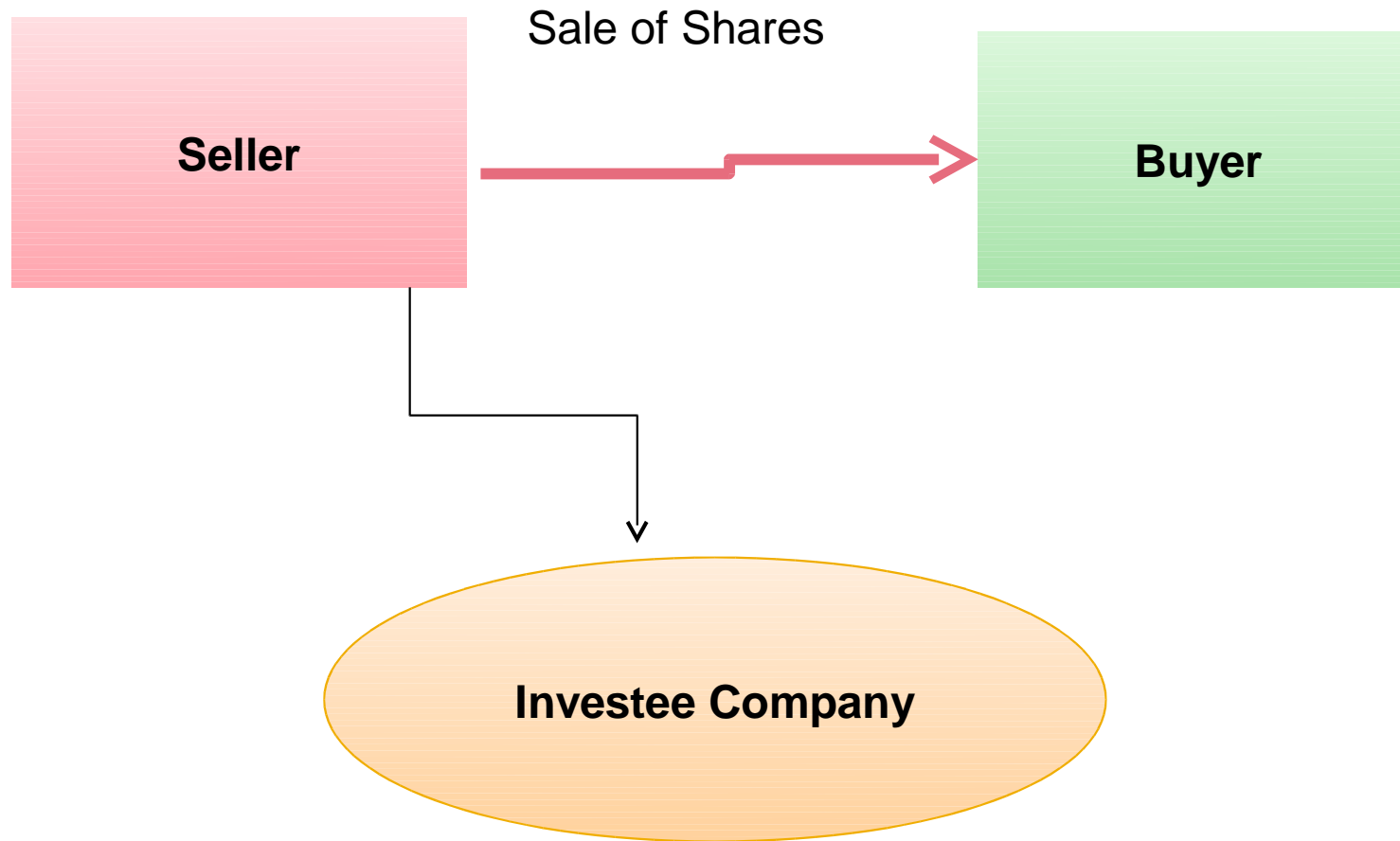
## ▶ CENVAT Credit of Transferor

- CENVAT Credit of Unit transferred to Tee?
  - Prior Approval required for transfer?
  - Hewlett Packard (Bang) / Kiran Pandy Chems (Chen)
- Service Tax as on a Sale applicable? No

# Acquisition of Shares



# Share Transfer



# Key Regulatory Aspects

## ▶ Share Purchase Agr.

- **SCRA ~ Spot Delivery Contract if off-market**
  - Payment and Delivery of shares must take place in 2 days
  - Applicable for Unlisted Public Companies also
  - Private Companies not covered
- **If On-market St. Ex. Settlement**
- **Consider Limits under s. 186 of Companies Act for Buyer Company**

# Sale of Shares

- **Sale at below FMV**
  - **Notional CGT on Seller? Deemed CG?**
    - **S.50CA same concept as s.50C**
    - **What is FMV – Book Value / DCF / Other Method?**
  - **S.56(2)(x) for any Buyer**
    - Purchase price at or above FMV
    - Currently FMV = Book Value u/R. 11UA for Unquoted Eq. Shares
    - Currently Appreciation in underlying assets irrelevant



# Sale of Shares

- **S.56(2)(x) Valuation**
  - **Audited B/S on Valuation Date required – Do you need to get an Audited B/s for every Share Transfer?**
  - **No Discount for Non-marketability**
  - **Revalued Assets cannot be devalued – *as is where is***
    - *But Reserves to be excluded from Liabilities – Hence, Revaluation Reserve to be excluded*
  - **Unquoted Preference / CCDs – No Methodology specified**

GA / MB can select any valid Method

# S. 79 - Sale of Unlisted Shares

- ▶ **Consider applicability of s. 79 in case of sale of shares**
  - Applies to Indian Co. whose:
    - Shares not listed or
    - More than 51% is held by Unlisted Cos.
  - S/o Unabsorbed Losses not available if more than 51% equity shares of such Co are sold
- ▶ S.79 applies to UAD or only to Business Loss?
- ▶ S.79 applies to c/f of Book Losses?

# Issue of Fresh Shares

- **Q. Would fresh issue trigger s. 56(2)(x)?**
- **Q. Would Rights Issue trigger s.56(2)?**
- **Arguments Against s.56(2)(x)**
  - Is it existing property or does it come into existence?
  - Is Allotment a Transfer?
- **Arguments in Favour of S.56(2)(x)**
  - Mum ITAT – Sudhir Menon HUF
  - Unjust enrichment at cost of others

# Stamp Duty - Takeover

## ▶ Takeover / Transfer of Shares

- SD covered by ISA and not MSA
- SD under ISA @ 0.25% of consideration on Share Trf Deed
- No SD if shares in Demat form
- **Share Purchase Agreement**
  - Art. 5(h)(A)(iv): SD @ 0.25% on Agr. creating Obligation / Right / Interest

# Land Sale by Co.

- Land in Co.- Substantial appreciation – Less than 3 years
- Shares in Co. owned for more than 12 months
- No Other Businesses
- **Substantial Stamp duty on sale of Land-**
  - Sale of Shares of Co.
  - ST / LT

# Land Sale by Co.

- **SD on Conveyance @ 5% or Shares @ 0.25%?**
  - **Can Revenue probe substance by disregarding Legal Form? No**
  - **Bhoruka Engg (Kar)**
  - **Does SH have interest in Company's assets?**
    - **No – Bacha Guzdar (SC)**

# Demerger



# Key Regulatory Aspects

- **Vertical Split of B/s – Focus on one Business**
- **Demerged Co. & Resulting Co.**
  - Compliance with ITA not mandatory
    - Indo Rama (Del) / Kishore Vadilal (Guj)
- **Companies Act, 2013 Old Draft Rules**
  - @ Book Value and must follow s.2(19AA) of ITA – Why?
  - New Draft Rules don't contain any provision on Demerger



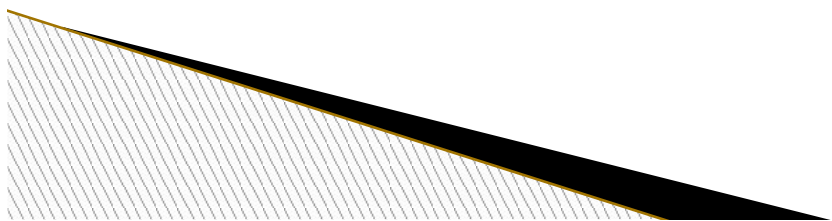
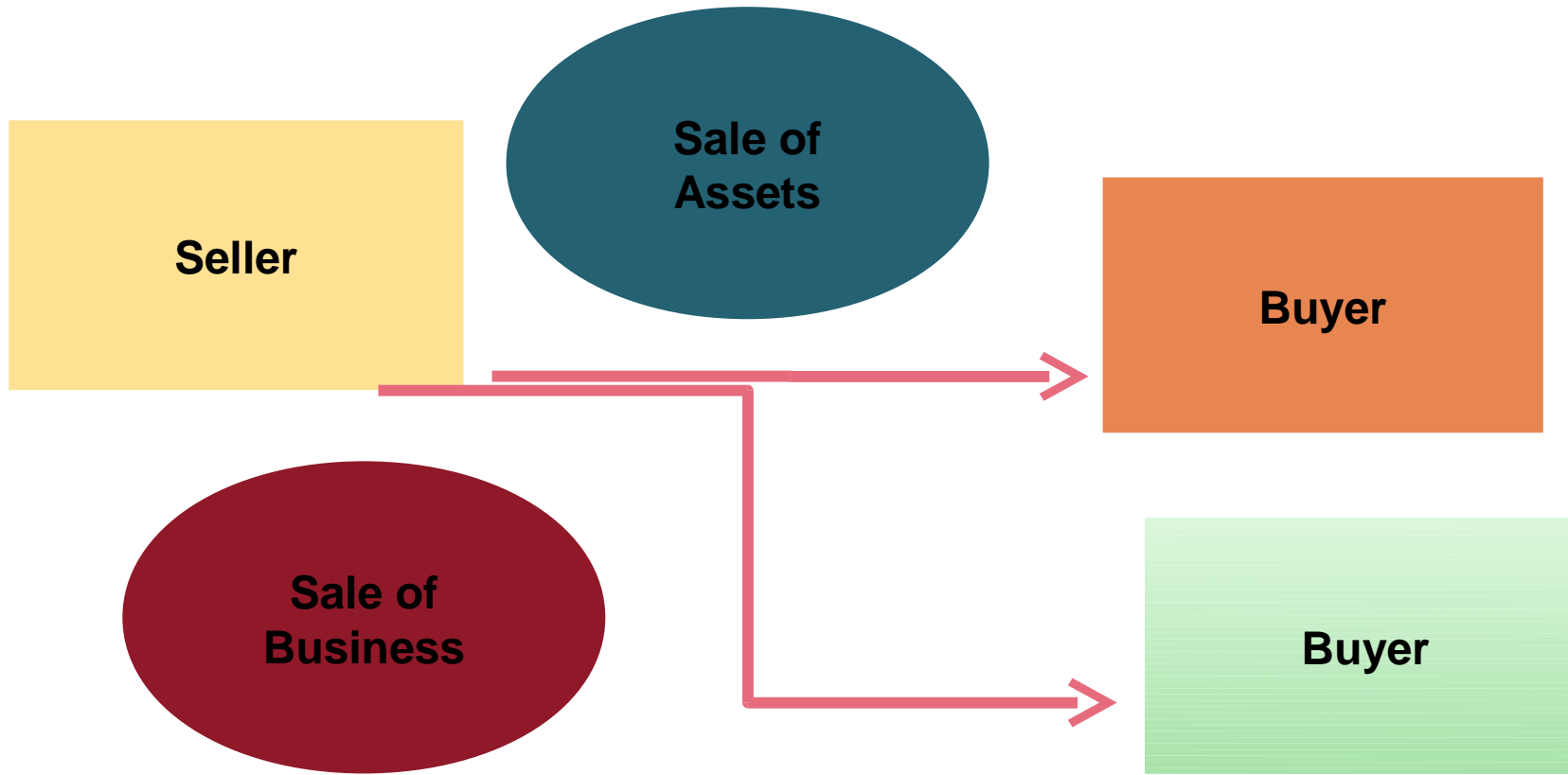
# Undertaking

- **Demerger of Undertaking ~ Undertaking includes:**
  - any part of undertaking or
  - a unit or division of an undertaking or
  - a business activity taken as a whole, but does not include individual assets or liabilities or a combination thereof not constituting a business activity
- **Q. X Ltd. has a business of BPO & Investment in Shares:**
  - Demerger of Shares into a New Entity
  - Is it an Undertaking as per Expln. 1 to s. 2 (19AA)?

# Slump / Itemised Sale



# Sale of Business / Assets



# Slump vs Itemised Sale

Factors	Slump Sale	Itemised Sale
<b>What is sold</b>	Business as a Going concern	Individual A & L
<b>Valuation</b>	DCF / ECM / Ad-hoc without assigning separate Values	Separate Values to each A & L
<b>Undertaking</b>	Must constitute a Business Activity	No such condition
<b>Must all A&amp;L be sold?</b>	Generally yes, unless facts permit otherwise	No
<b>Sale only</b>	Slump Sale – not Exchange	Can be an Exchange also
<b>Taxation</b>	S.45(1) r.w. s.50B	S.45 / s.50 / s.50C

# Key Regulatory Aspects

Factors	Slump Sale	Itemised Sale
Internal Process	Yes	Yes
Court Approval Required	No	No
Shareholders' Resolution	Ordinary / Special + Postal Ballot if Seller is a Listed Co.	Only if it is an Undertaking under 2013 Act
Other Approvals	Lenders / Bankers / Creditors	Lenders / Bankers / Creditors

# Tax Consequences

- **Slump Sale**

- **Lump sum consideration – No itemised break-up**
- **Excess of SC over Networth = LTCG / STCG**
  - Revaluation to be ignored
- **Gains Taxable u/s. 45 r.w. s.50B**

- **Itemised Sale**

- **Itemised Break-up over A&L**
- **Gains Taxable:**

# Slump Sale - Undertaking

Factors	Income-tax Act	Companies Act 2013
<b>Monetary Thresholds prescribed?</b>	None	<ul style="list-style-type: none"> <li>• Invst. &gt; 20% of Net Worth; or</li> <li>• Income &gt; 20% of Gross Income</li> </ul>
<b>Must Undertaking constitute a Business Activity?</b>	Yes.	Not required
<b>Is mere combination of A&amp;L an Undertaking?</b>	No	Yes as long as Thresholds met
<b>Can Key assets be omitted from Sale?</b>	Yes but Fact based – as long as Business Activity not hampered	Yes as long as Thresholds met
<b>Can Shares constitute an Undertaking?</b>	?	Yes as long as Thresholds met

# Valuation Challenges

Not a Slump Sale	Not a Slump Sale
Itemised Valuation of Land, Building and Plant carried out – <b>Vatsala Shenoy (SC)</b>	Finding that Assets taken over at individual prices – not a Slump sale – <b>Shahibaug Entrepreneurs (Guj)</b>
AO informed that Valuation based on Individual Items / Balance Sheet Break-up although Deed mentioned lump sum price– <b>Artex Mfg (SC)</b>	Documents contained notings which showed that the sale was of individual assets and not a slump sale – <b>LH Sugar Factories</b>
1st Agreement mentioned lump sum consideration but 2nd one gave break-up – <b>Jayantilal Bhogilal (Guj)</b>	Regd. Valuer appointed by seller to ascertain FMV of Land and Building to be sold – <b>Mahindra Sintred (Mum)</b>



# Computation

- ▶ **Net worth = Cost of Undertaking**

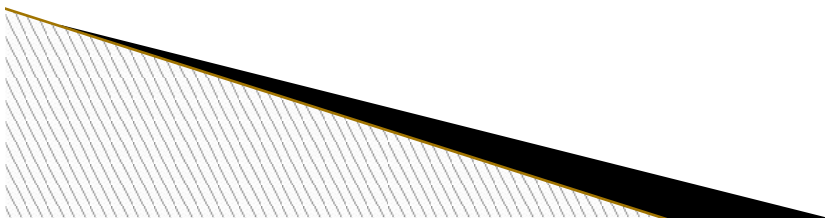
IT WDV of Fixed Assets of Undertaking

(+) Total Book Value of Other Assets (Excl'd Revaluation)

(-) Book Value of Liabilities

- ▶ **PNB Finance (SC)**

- **Without S.50B no mechanism to ascertain cost of unit**
- **S.48 computation fails and hence, no tax**



# S.50 & 50C Applicability

- ▶ **S.50C applicable to transfer of land & bldg.**
  - Applicable to Slump Sale?
  - S.50C applicable to sale of L&B
  - S.50C applicable to slump sale if unit includes L&B?
    - **Hyderabad Ind (Hyd) / Summit Securities (Mum)**
  
- ▶ **S.50 applicable to transfer of Depreciable Assets**
  - Applicable to Slump Sale?
  - S.50 NA to slump sale if unit includes Bldg, P&M
    - **Sankeya Chem (Mum) / Salora Int'l (Del)**

▶ **Is it Transfer of Individual Assets?**

# Negative Networth

## ▶ Excess Liabilities Taken Over

- **Should it be Ignored or Considered u/s. 50B?**
  - Eg Net worth -10 crores & Sale Consideration Rs. 1 lakh
  - **Capital Gains** = Rs. 1 lakh -(-10 cr.) = Rs. 10.01 cr.; **OR**  
Rs. 1 lakh – (Nil) = Rs. 1 lakh?
- **S.Kartikeyan (Mad) - adverse**
  - Subsequent Mumbai and Del ITAT decisions – favourable
- **Current adverse Delhi HC & Mumbai Special Bench decision**

# Slump or Asset Sale?

- **Retention of Some Assets by Seller**
  - **Is a Slump Sale if going concern not disturbed**
    - Tech. Know-how sold later on
    - Building for IT Co.
    - Doubtful Loans & Contingent Liabilities
  - **Treated as Itemised Sale (on Facts)**
    - Factory not sold
    - Land because of ULCR Act

# Slump Sale v Slump Exchange

- **Slump Exchange**

- **Issue of shares in lieu of Transfer as Going Concern**
- **Sale v Exchange ~ Difference?**
  - Barter / Exchange v Consideration discharged by issue of shares
- **Is it Taxable?**
- **What if Slump Sale done via Court Order – Is it taxable?**

# Sale Consideration- Upstreaming

## ▶ If Seller is a Company

- While distributing consideration to its Shareholders
  - Consider DDT @ 20% OR
  - Buyback Tax
- Consider MAT if Gains otherwise exempt / tax losses

# Slump Acquisition

- **Buyer acquired a Going Concern by Slump Acquisition**
  - **Excess Payment over NAV was termed by Buyer as Goodwill**
  - **Depreciation claimed on Goodwill**
  - **Depreciation allowed?**
    - **Areva T&D (Del)**
    - **Coca Cola (Del)**

# Stamp Duty

- **Business Transfer Agreement**
  - SD @ 0.2% of Consideration in Maharashtra
- If conveyance made of entire undertaking
  - Undertaking is Movable Property
  - Conveyance of Movable stamped @ 3% of Market Value



# Stamp Duty

## ▶ Slump Sale / Assets Sale

- Conveyance under MSA & ISA
- Bifurcate assets into Immovable & Movable
- Bifurcation for SD purposes does not negate IT Benefit –  
Expln. 2 to s.2(42C) of IT Act
- **Under MSA - SD on **Movables** @ 3%**
- **Under MSA - SD on **Immovables** @ 3-5%**
- Registrar's demand in some cases

# VAT / CENVAT

- **VAT?**

- **If Itemised Sale?**

- **If Slump Sale?**

- **Service Tax?**

- **CENVAT Credit of Unit available to Buyer Co.?**

- **Service Tax on Sale?**

# Corporatisation



# Firm to Company

- Firm ⇒ Co. u/s. 565 / s. 366 (“Part IX”)
- No Transfer of Undertaking from Firm to Co.
  - Statutory provision – ROC must Incorporate Co.
  - No separate Conveyance reqd.
  - Statutory vesting of property
  - **SD** payable on such Conversion?

- Similarly for conversion of Firm to LLP

# Firm to Company

- **Any Transfer of Undertaking from Firm to Co.**
  - **Capital Gains payable on such Conversion**
    - **S.45(4), applicable?**
    - **Texpsin Engg (Bom)**
    - **Rita Mechanical (P&H)**
  - **Ch.VI-A Deductions of Firm continue?**
    - **Technology Books (Del ITAT)**

# Sale by Firm to Co. & Exemption

- **Slump / Itemised Sale by Firm / LLP for to Buyer Co.:**

- **Exemption u/s.47(xiii):**

- **All A / L of Firm / AOP become that of Co.**
- **All Partners become SHs in same proportion**
- **Partners do not receive any other consideration**
- **SH of all Partners is at least 50% of Voting Power**
- **50% SH of Partners continues for 5 years**

- **Exemption N.A. if Sale to LLP**

# Sale by Firm to Co. & Exemption

- **Analysis of s. 47(xiii):**

- Can it be a New Co.? **Yes**
- Firm can trf. 2 Businesses to 2 Cos.? **No**
- Only Business A/L to be trf.? **Yes**
- Can RPS be issued to partners? **Yes**
- Shares can be issued at a Premium? **Yes**
- Transfer inter se Partners permissible in 5 years? **Yes**

• **If conditions violated - Pay CG Tax in Year of violation**

# Co. to LLP – Tax-free

## Conversion

### ▶ Tax Exemption from conversion u/s.47(xiiib)- 7

#### Conditions

- a) All A&L of Co. become that of LLP
- b) SHs become Partners with PSR & Capital same as SH%
- c) Aggregate PSR of SH  $\geq 50\%$  continues in LLP for 5 Yrs.
- d) No benefit to SH other than PSR and Capital
- e) Gross Receipts from Bus / Profession of Co.  $\leq$  Rs 60 lakhs and Book Value of Total Assets  $\leq$  Rs 60 lakhs 5 cr. in any of Preceding 3 FYs prior to conversion
- f) No Amt. paid to Partners out of Acc. Profits for 3 Yrs.

▶ If above not met – Gains on transfer of Capital Asset



# Co. to LLP – Tax-free Conversion

a) All A&L of Co. become that of LLP

- Easy to comply since not a Transfer
- Not just those of business but all compare with s.47(xiii)

b) **SHs become Partners with PSR & Capitals same as SH%**

- Capital Contribution & PSR = SH% in Co.

c) **Aggregate PSR of SH  $\geq$  50% continues in LLP for 5 Yrs.**

- 50% for all partners put together
- Can change inter se / Can add new partners subject to 50%
- LLP must continue for 5 yrs. – Can't go out of existence

# Co. to LLP – Tax-free Conversion

- d) No benefit to SH other than PSR and Capital.
- e) **Gross Receipts from Bus / Profession of Co.  $\leq$  Rs 60 lakhs in any of Preceding 3 FYs prior to conversion**
  - Only amt taxable as B&P considered?
  - CG / HPI / Div / Exempt Income – Not Included?
  - Can exceed in Year of Conversion?
- f) **Total Book value of assets  $\leq$  Rs 5 cr. in any of Preceding 3 FYs prior to conversion**



• Book Value not FMV

# Co. to LLP – Tax Implications

Implication	Remarks
B/f losses & UAD of Co = that of LLP in the Yr of Conversion	<ul style="list-style-type: none"><li>• Conditions of s.47(xiiiib) a must</li><li>• Else Income of LLP in yr of non-compliance</li><li>• 8 Yrs C/f period starts afresh?</li><li>• Would s.79 apply to erstwhile Co.?</li></ul>
Depreciation to LLP = WDV to Co.	<ul style="list-style-type: none"><li>• No increase in WDV to LLP</li></ul>
Pro-rata Depn. In yr of conversion	<ul style="list-style-type: none"><li>• Apportion between Co &amp; LLP (No. of Days for which asset used)</li></ul>
Actual Cost & Holding period of Capital Assets = same as that to Co.	<ul style="list-style-type: none"><li>• Previous Owner concept</li></ul>

# Co. to LLP – Tax Implications

Implication	Remarks
COA of Rights of Partners in LLP = COA of shares in Company	<ul style="list-style-type: none"><li>• What about Profits &amp; Reserves credited to Partners' A/c? No Cost?</li></ul>
MAT Credit of Co. cannot be c/f to LLP	<ul style="list-style-type: none"><li>• Lapses on conversion</li></ul>
Tax Holidays in Co.	<ul style="list-style-type: none"><li>• No express provisions</li><li>• Should be allowable</li><li>• Similar cases under Part IX</li></ul>

# Co. to LLP –Taxable at all?

- **Conversion taxable even if no exemption u/s. 47(xiiiib)?**
  - **Would it have been taxable if no exemption provided by Law?**
- **For Company**
  - **Is it not Statutory Vesting? Are 2 Parties present at the same time?**
  - **No Conveyance of property in favour of LLP**
  - **No consideration to Company and hence, s.48 fails?**
  - **Texspin Engg (Bom) & Rita Mechanical (P&H) under Part IX**
  - **What about use of Word 'Transfer' in LLP Act?**

# Co. to LLP –Taxable at all?

- **For Shareholders**

- **Is Extinguishment of shares in Company a Taxable Transfer?**

- **If yes, what is consideration?**

- Capital Balance in LLP credited to him?

- Is that in proportion to shares held in company?

- Does Allotment have correlation with vesting of property in LLP?

- **Texspin Engg (Bom) / United Fish Nets (AP)**

- **S.50D Applicability?**

- **Risk Factor for Shareholders?**

# Co. to LLP

- **Aravali Polymers LLP (Koi ITAT)**
  - **In Yr of Conversion – loan to Partners out of Acc Profits**
  - **Held, s.47 violated in Yr of Conversion**
  - **∴ No Exemption – Taxable Conversion u/s. 45(1)**
  - **AO computed CG on LLP with reference to:**
    - **FMV of Assets on date of conversion**
  - **ITAT's Direction to AO – Compute CG with reference to:**
    - **Book Value of Assets standing in B/S**
    - **No deeming provision to adopt FMV**

# Co. to LLP

- **Aravali Polymers LLP (Koi ITAT)**

- **Did not examine whether conversion taxable at all in the first place even if s.47(xiiib) not available?**

- **No discussion on principles of taxability**

- **Texspin neither cited not considered**

- **Taxability in the hands of the erstwhile SHs not an issue in this case and hence, not examined by ITAT**

- **Nevertheless, some respite that taxation should be wrt Book Value and not FMV of Assets**

**∴ Conversion @ Book Value may reduce CGT Liability**



# Co. to LLP – Stamp Duty

- ▶ **Statutory vesting – No conveyance required**
  - **No Stamp Duty payable on conversion**
  - **Old Decisions under Part IX Conversion**
  - **Practical reality**
    - **Does Sub-registrar accept these arguments?**
    - **SD @ 5% on Immovable Properties based on Ready Reckoner Values?**
    - **What if Property Card not altered at all- Title Clear?**

# Merge Co. into LLP

- **Can Co. be merged with an LLP?**
  - **Do Companies Act 1956 / 2013 and LLP Act 2008 permit merger of a Company with an LLP?**
  - **Is such a Merger tax neutral under Income-tax Act?**

# Firm to LLP

- **No provision in Income-tax Act for conversion**
- **Firm and LLP both treated as a partnership firm – s.2(23)**
- **Is it that no provision required under the Act for conversion since status under Act remains the same?**
- **No tax on conversion? FB 2012- Memorandum**
- **PAN /TAN remains the same since both are firms?**

# Return of Capital



# Reduction of Capital

- **Capital in Excess paid back to Shareholders**
- **Capital Gains:**
  - Amount Received (-) Cost of Shares
  -
- **Receipt on Reduction : Accumulated profits taxed as Deemed Dividend**



Who pays Tax on Deemed Dividend?

# Buyback by Co.

- **Buyback by Listed Co.**
  - **Capital Gains** on Shareholder
    - **Gains = SC – Cost of Acquisition**
    - **Indexation** also available
  - **No Deemed Dividend on Company**

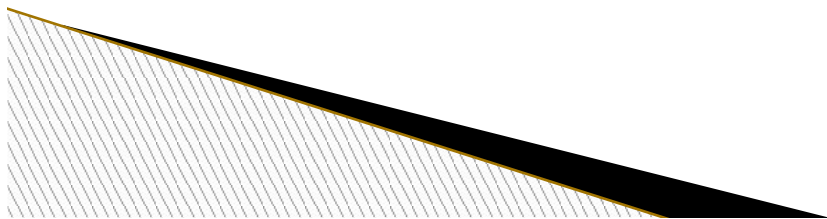
# Buyback Tax

- **Buyback by Unlisted Public / Private Cos.**
  - No longer yields Capital Gains in hands of Investors
  - DDT @ 20% + Surcharge + Cess on Co. buying back
  - No Tax on Investor
  - Tax payable even if no other Income of Co.
  - No credit for Tax to Co.
  - No credit for Tax by Co. to an International Investor
  - Tax payable on “**Distributed Income**” = Consideration paid on buyback less Amount received by Co. for issue of

# Buyback Tax

## ► Issues / Implications

- **Buyback out of Securities Premium / Free Reserves**
  - Tax applies irrespective of source of buyback?
  - Tax even if not out of Accumulated Profits
- **Shares purchased – What is amount received by Co?**
  - Original Investment / Nil / Premium Paid
- 





*Thank You !!*

