

PROPERTY**16. *Jt. CIT v. Graphite India Ltd.* [2004] 89 ITD 415 (Kol. - Trib.)**

The term 'property' though has no statutory meaning but is of widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can acquire, hold or enjoy.

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***CIT v. Tata Services Ltd.* [1980] 122 ITR 594 (Bom.)**

The word 'property', used in section 2(14) of the Act, is a word of the widest amplitude and the definition has re-emphasised this by use of the words 'of any kind'. Thus, any right which can be called property will be included in the definition of 'capital assets'. A contract for sale of land is capable of specific performance. It is also assignable. A right to obtain conveyance of immovable 'property' is clearly a 'property' as contemplated by section 2(14).

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***Bafna Charitable Trust v. CIT* [1998] 230 ITR 864 (Bom.)**

'Capital asset' has been defined in clause (14) of section 2 of the Act to mean property of any kind held by an assessee, whether or not connected with his business or profession, except those specifically excluded. The exclusions are stock-in-trade, consumable stores or raw materials held for the business or profession, personal effects, agricultural lands and certain bonds. It is clear from the above definition that for the purpose of this clause, property is a word of the widest import and signifies every possible interest which a person can hold or enjoy except those specifically excluded.

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***Asstt. CIT v. Smt. Hansaben B. Mehta* [2004] 90 ITD 44 (Mum. - Trib.)**

The word 'property' used in section 2(14) is a word of the widest amplitude. Thus, any right which could be called property has been brought within the ambit of the definition of 'capital assets'.

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***Indian Aluminium Cables Ltd. v. Dy. CIT* [2000] 73 ITD 109 (Delhi - Trib.)**

The expression 'property' is a term of wide connotation and it is not only the thing which is the subject-matter of ownership but includes also the dominium of the right of ownership. The expression is indicative and descriptive of every possible interest which a person can have. It embraces within its purview both corporeal and incorporeal rights. Thus, the 'property' would comprise of bundle of rights and interests which a person may conceivably hold and enjoy or such rights which a person may lawfully exercise to the exclusion of others or which he is entitled to use and enjoy as he pleases provided he does not infringe any law of the State. The expression 'property' would take in both tangible and intangible assets. Right acquired on allotment of an industrial plot falls within the expression 'property of any kind' used in section 2(14) and is, consequently, a capital asset.

correct to say that merely because the land is in fact being used for agricultural purposes, it is agricultural land. But as a general proposition it may be stated without any fear of contradiction that ordinarily the actual user to which the land is being put would furnish *prima facie* evidence of the true nature or character of the land and, therefore, whenever a question arises whether a particular land is agricultural land or not, primarily regard must be had to the purpose for which the land is being actually used at or about the relevant time and that would ordinarily provide a satisfactory answer to the problem.

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Tea Estates India (P.) Ltd. v. CWT [1966] 59 ITR 428 (Cal.)

'Agricultural land' should comprise the following characteristics :

- a. It must be a land;
- b. It must pertain to or be connected with cultivation;
- c. It must involve expenditure of human labour and skill for the purpose of cultivation or for keeping it in a cultivable state.

♦♦

Smt. Manyam Meenakshamma v. CWT [1967] 63 ITR 534 (AP)

If a land is ordinarily used for purposes of agriculture or for purposes subservient to or allied to agriculture, it would be an agricultural land; if it is not so used, it would not be agricultural land.

♦♦

Venugopala Varma Rajah v. CED [1967] 64 ITR 358 (Ker.)

Agricultural land is land on which a prudent owner will undertake any of the processes of farming in its widest sense.

♦♦

Shiv Shankar Lal v. CIT [1974] 94 ITR 433 (Delhi)

In order to come within the category of 'agricultural land', the land must not only be capable of being used for agricultural purposes but should have been actually used as such at some point of time. A temporary non-user for agricultural purposes will not affect the character of the land but a permanent abandonment of user for agricultural purposes will affect the character of the land as agricultural land. The actual conversion of the land for non-agricultural purposes will also affect the character of the land as agricultural land. Whether such a conversion has taken place will depend on the facts of each case.

MUNICIPALITY - SUB-CLAUSE (iii)(a)**21. CIT v. Murali Lodge [1992] 194 ITR 125 (Ker.)**

The word municipality has not been defined in the Income-tax Act. Generally understood, 'municipality' means a legally incorporated or duly authorised association of inhabitants of a limited area for local, governmental or other public purposes.

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Wilfred Pereira Ltd. v. CIT [1964] 53 ITR 747 (Mad.)

Any divestiture of title would amount to a transfer. The transferor may not be a willing party. But nevertheless his title to the property is divested from him and the result is their title is transferred. There is nothing in the context of section 12B of the Act to indicate that the word 'transfer' should not be interpreted in a comprehensive meaning including both a transfer by act of parties and a transfer by operation of law.

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Blue Bay Fisheries (P.) Ltd. v. CIT [1987] 31 Taxman 393/166 ITR 1 (Ker.)

The expression 'transfer' in section 2(47) must be read widely and not narrowly. The definition denotes extension and cannot be treated as restricted.

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CIT v. Narang Dairy Products [1996] 85 Taxman 375/219 ITR 478 (SC)

There are different shades of meaning of the word 'transfer', *viz.*, 'to make over possession of to another', 'a delivery of title or property from one person to another', 'to displace from one surface to another', 'removal', 'displace'. Definition of 'transfer' in section 2(47) is an inclusive one and does not exclude the contextual or the ordinary meaning of the word 'transfer'.

♦♦

Kantilal T. Sanghvi v. Asstt. CIT [2004] 89 ITD 282 (Mum. - Trib.)

'Transfer' is a word of the widest import and includes every means by which the property may be passed from one person to another. It includes transfer by operation of law *in invitum*. Transfer presumes both the existence of the asset and the transferee to whom it is transferred.

The word 'transfer' spoken of in respect of 'extinguishment of any rights therein' includes within its ambit the cases where there was extinguishment of the capital asset itself. A right in any property can be extinguished even when the property ceased to exist. Reading the word 'transfer', in the light of the use of the word 'effected' in section 45, it can be said that in the case of corporeal property, unless the owner of the capital asset is divested of his rights by the process of extinguishment resorted to and unless there is consideration for such extinguishment, there can be no transfer of the capital asset for the purpose of sections 45 and 48.

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CIT v. P.N. Panjawani [2012] 21 taxmann.com 458/208 Taxman 22/[2013] 356 ITR 676 (Kar.)

Under the provisions of the Indian Partnership Act, 1932, the firm is not recognised as a legal entity. However, the Income-tax Act recognises the firm as a distinct legally assessable entity apart from its partners. Therefore, in the context of the Income-tax Act, the identity of the firm as well as that of the partners for taxability of income are separate and distinct. The firm is a separate taxable entity liable to pay tax on income arising or accruing to it because of its

ties owned by different persons; that as a result of the transaction of exchange both the properties continued to exist; that as a result of such a transaction both the properties continue to be owned by two different parties but the ownership of one property is transferred to the owner of the other and *vice versa*.

SALE v. EXCHANGE - SUB-CLAUSE (i)

75. CIT v. Motors & General Stores (P.) Ltd. [1967] 66 ITR 692 (SC)

The word 'sale' is transfer of property in goods or of the ownership in immovable property for a money consideration. But in exchange there is a reciprocal transfer of interest in immovable property, a corresponding transfer of interest in movable property being denoted by word 'barter'. The difference between a sale and an exchange is this, that in the former the price is paid in money, whilst in the latter, it is paid in goods by way of barter.

The presence of money consideration is an essential element in a transaction of sale. If the consideration is not money but some other valuable consideration, it may be an exchange or barter but not a sale.

♦♦

CIT v. R.R. Ramakrishna Pillai [1967] 66 ITR 75 (SC)

Where the person carrying on the business transfers the asset to a company in consideration of allotment of shares, it would be a case of exchange and not of sale, and the true nature of the transaction will not be altered because for the purpose of stamp duty or other reasons the value of assets transferred is shown as equivalent to the face value of the shares allotted. A person carrying on business may agree with a company floated by him that the assets belonging to him shall be transferred to the company for a certain money consideration and that in satisfaction of the liability to pay that money consideration, shares of a certain face value shall be allotted to the transferor. In that case, there are in truth two transactions - one a transaction of sale and the other a contract under which shares are accepted in satisfaction of the liability to pay the price.

RELINQUISHMENT - SUB-CLAUSE (i)

76. CIT v. Rasiklal Maneklal (HUF) [1989] 43 Taxman 259/177 ITR 198 (SC)

A relinquishment takes place when the owner withdraws himself from the property and abandons his rights thereto. It presumes that the property continues to exist after the relinquishment.

♦♦

Anarkali Sarabhai v. CIT [1997] 90 Taxman 509/224 ITR 422 (SC)

The meaning of the word 'relinquish' as given in *Webster's Comprehensive Dictionary*, International Edition, 1984, is (1) to give up; abandon; surrender, (2) to cease to demand, renounce; to relinquish a claim, (3) to let go.

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Kantilal T. Sanghvi v. Asstt. CIT [2004] 89 ITD 282 (Mum. - Trib.)

The word 'relinquish' is derived from the Latin 'relinquere' implying leaving

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**DETERMINATION OF THE AMOUNT.... TO BE CARRIED FORWARD....
UNDER PROVISIONS OF SUB-SECTION (2) OF SECTION 32 -
SUB-SECTION (2) OF SECTION 115J**

759. Gujarat Petrosynthese Ltd. v. Dy. CIT [2001] 76 ITD 257 (Ahd.-Trib.)

The expression 'determination of the amounts in relation to previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32' used in section 115J(2) clearly envisages the determination of carried forward unabsorbed depreciation worked out by the Assessing Officer in relation to assessment years under consideration and carrying forward of the said amounts to the subsequent year or years uninfluenced and unaffected by the operation of deeming fiction of sub-section (1).

INCOME-TAX - SECTION 115JA

760. Bank of India, In re [2007] 165 Taxman 627 (AAR - New Delhi)

The expression 'income-tax' is used in section 115JA in a general sense, and not with reference to the income-tax chargeable under the provisions of the Act alone. There is no justification to restrict the scope of the expression 'income-tax' to Indian income-tax only.

PROVISION - EXPLANATION TO SECTION 115JA

761. Hitkari Fibres Ltd. v. Jt. CIT [2004] 90 ITD 654 (Mum.-Trib.)

The word 'provision' has been used in clause (i) of the *Explanation*. The provision has not been used with any further qualification as it has been done in clause (c) of the *Explanation*. Similarly word 'provision' has been used in clauses (a) and (d) without any qualification. Therefore, the word 'provision' in these clauses has to be understood in general terms unlike the same word used in clause (c) of the *Explanation* wherein it has been qualified with the expression 'other than ascertained liabilities'.

BUSINESS - EXPLANATION (iv) OF SUB-SECTION (2)

762. CIT v. DCM Sriram Consolidated Ltd. [2009] 176 Taxman 49/221 CTR (Delhi) 519

Term 'business', which prefixes generation of power in clause (iv) of *Explanation* to section 115JA(2), is not limited to one business which is prosecuted only by engaging with an outside third party; definition of 'business', which is inclusive, clearly brings within its ambit activity of assessee of captive generation of power for its own purposes.

SET ASIDE - CLAUSE (i) OF EXPLANATION 1 TO SECTION 115JB(2)

763. I Dream Productions (P.) Ltd. v. Asstt. CIT [2013] 27 ITR (Trib.) 169 (Mum.)

When the entire clause (i) of *Explanation 1* to section 115JB(2) is read, the simple

meaning of the words 'set aside' used therein comes out with reference to the amounts as 'reduced', on account of diminution in the value of the asset.

RESERVE v. PROVISIONS

764. Metal Box Co. of India Ltd. v. Their Workmen [1969] 73 ITR 53 (SC)

The distinction between provision and a reserve is in commercial accountancy fairly well known. Provisions made against anticipated losses and contingencies are charges against profits and, therefore, to be taken into account against gross receipts in the profit and loss account and the balance sheet. On the other hand, reserves are appropriations of profits, the assets by which they are represented, being retained to form part of the capital employed in the business. Provisions are usually shown in the balance sheet by way of deductions from the assets in respect of which they are made whereas general reserves and reserve funds are shown as part of the proprietor's interest. An amount set aside out of profits and other surpluses, not designed to meet a liability, contingency, commitment or diminution in value of assets known to exist at the date of the balance sheet is a reserve but an amount set aside out of profits and other surpluses to provide for any known liability of which the amount cannot be determined with substantial accuracy is a provision.

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Vazir Sultan Tobacco Co. Ltd./Ballarpur Industries Ltd./Bengal Paper Mills Co. Ltd./Echjay Industries (P.) Ltd./Hyco Products (P.) Ltd. v. CIT [1981] 132 ITR 559 (SC)

The expression 'reserve' has not been defined in the Act and, therefore, one would be inclined to resort to its ordinary natural meaning as given in the dictionary but the dictionary meaning, though useful in itself, may not be sufficient, for the dictionaries do not make any distinction between the two concepts 'reserve' and 'provision' while giving their primary meanings whereas in the context of the Companies (Profits) Surtax Act, 1964, clear distinction between the two is implied.

According to the dictionaries (both Oxford and Webster), the applicable primary meaning of the word 'reserve' is 'to keep for future use of enjoyment; to set apart for some purpose or end in view; to keep in store for future or special use; to keep in reserve', while 'provision' according to Webster means 'something provided for future'. In other words, according to the dictionary meanings, both the words are more or less synonymous and connote the same idea. Since the rules for computation of capital contained in the Second Schedule to the Act proceed on the basis of the formula of capital *plus* reserve, a formula well known in commercial accountancy, it becomes essential to know the exact connotation of the two concepts 'reserve' and 'provision' and the distinction between the two as known in commercial accountancy.

Besides, though the expression 'reserve' is not defined in the Act, it cannot be forgotten that it occurs in a taxing statute which is applicable to companies only and to no other assessable entities and as such, the expression will have to be

Further, section 217(1) of the Companies Act, 1956, read with regulation 87 of Table A in the First Schedule, clearly showed that creating reserves out of the profits is a stage distinct in point of fact and anterior in point of time to the stage of making recommendation for payment of dividend and the scheme of the provisions suggests that appropriation made by the Board of Directors by way of recommending a payment of dividend cannot, in the nature of things, be a reserve.

In the circumstances, any appropriation made by the directors for proposed dividend would not constitute 'reserves' and the amounts so set apart would have to be ignored or excluded from capital computation.

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Vazir Sultan Tobacco Co. Ltd./Ballarpur Industries Ltd./Bengal Paper Mills Co. Ltd./Echjay Industries (P.) Ltd./Hyco Products (P.) Ltd. v. CIT [1981] 132 ITR 559 (SC)

Ordinarily, an appropriation to gratuity reserve will have to be regarded as a provision made for a contingent liability, for, under a scheme framed by a company, the liability to pay gratuity to its employees on determination of employment arises only when the employment of the employee is determined by death, incapacity, retirement or resignation - an event (cessation of employment) certain to happen in the service career of every employee; moreover, the amount of gratuity payable is usually dependent on the employee's wages at the time of determination of his employment and the number of years of service put in by him and the liability accrues and enhances with the completion of every year of services; but the company can work out on an actuarial valuation, its estimated liability, *i.e.*, discounted present value of the liability under the scheme on a scientific basis and make a provision for such liability not all at once but spread over a number of years. It is clear that if by adopting such scientific method any appropriation is made, such appropriation will constitute a provision representing fairly accurately a known and existing liability for the year in question; if, however, an *ad hoc* sum is appropriated without resorting to any scientific basis, such appropriation would also be a provision intended to meet a known liability, though a contingent one, for, the expression 'liability' occurring in clause 7(1)(a) of Part III of the Sixth Schedule to the Companies Act, 1956, includes any expenditure contracted for and arising under a contingent liability; but if the sum so appropriated is shown to be in excess of the sum required to meet the estimated liability (discounted present value on a scientific basis), it is only the excess that will have to be regarded as a reserve under clause 7(2) of Part III to the Sixth Schedule.

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CIT v. Century Spg. & Mfg. Co. Ltd. [1953] 24 ITR 499 (SC)

The term 'reserve' is not defined in the Act and resort must be had to the ordinary natural meaning as understood in common parlance. The dictionary meaning of the word 'reserve' is :—