



Tax alert: Supreme Court: Taxability of receipt of amalgamated company's shares where amalgamating company's shares are held as "stock-in-trade"

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The Supreme Court (SC) has clarified that the exemption under Section 47(vii) of the Income-tax Act, 1961 (ITA), on receipt of the amalgamated company's shares is available only where the amalgamating company's shares are held by the shareholder as "capital assets". Where the amalgamating company's shares constitute "stock-in-trade" in the hands of the shareholder, receipt of the amalgamated company's shares may give rise to "business income" taxable under Section 28 of the ITA (upon allotment of the amalgamated company's shares) in certain situations.

In a nutshell



Exemption under Section 47(vii) of the Act on receipt of the amalgamated company's shares is available only where the amalgamating company's shares are held by the shareholder as "capital assets".



Where the shares of the amalgamating company constitute "stock-in-trade" in the hands of the shareholder, receipt of the shares of the amalgamated company would give rise to "business income" under Section 28 of the Act where the shares of the amalgamated company are freely marketable with a definite, ascertainable market value.



In such a case, taxability would depend upon allotment of the shares of the amalgamated company.



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Background:

- The appeals before the SC arose from a restructuring within the Group involving a scheme of amalgamation between two operating companies, viz A Co. with B Co.
- The taxpayer¹ were investment companies of the Group, holding shares of A Co. These shares were reflected as “Investments” in their balance sheets, representing controlling interest, and were subject to the non-disposal undertakings given to the lenders of the above operating companies.
- A Co. was amalgamated with B Co., and pursuant to the scheme, shareholders of A Co. were allotted shares of B Co. in lieu of the shares of A Co. held by them.
- The taxpayers, treating the shares of A Co. as “capital assets”, claimed exemption under Section 47(vii) of the ITA, on receipt of the shares of B Co., in lieu of the shares of A Co.
- The Assessing Officer (the AO) treated the shares of A Co. as “stock-in-trade” and while denying the exemption under Section 47(vii) of the ITA, taxed the receipt of the shares of B Co. as “business income” under Section 28 of the ITA (i.e. in computing the value thereof with reference to their market value). The action of the AO was upheld by the Commissioner of Income-tax (Appeals) (the CIT(A)).
- The Income-tax Appellate Tribunal (the ITAT) allowed the appeals of the taxpayers against the order of the CIT(A), holding that no profit accrues unless the shares received are sold, irrespective of the classification of the assets as “capital assets” or “stock in trade”.
- In the appeal filed by the tax department, the Delhi High Court (the HC) held that while receipt of the shares of B Co. by the taxpayers would be exempt under Section 47(vii) of the ITA if the shares of A Co. were “capital assets” in their hands, the same would represent realization of trading assets if the shares of A Co. were “stock in trade” in their hands, and be taxable as “business income” under Section 28 of the ITA. The HC remanded the matter back to the ITAT for a determination as to whether the shares of A Co. were “capital assets” or “stock in trade” in the hands of the taxpayers.
- The taxpayers took the matter before the Supreme Court (the SC), and the SC ruled on the appeal on 9 January 2026.

Issue before the Supreme Court

Whether receipt of the shares of the amalgamated company in lieu of the shares held in the amalgamating company (as “stock in trade”) gives rise to “business income” that is taxable under Section 28 of the Act on receipt of the shares of the amalgamated company?

Decision of the Supreme Court

- The SC clarified that the exemption under Section 47(vii) of the ITA on receipt of the shares of the amalgamated company is available only where the shares of the amalgamating company are held by the shareholder as “capital assets”.
- Where the shares of the amalgamating company constitute “stock-in-trade” in the hands of the shareholder, the taxability of receipt of the shares of the amalgamated company needs to be evaluated under Section 28 of the Act.
- The provisions of Section 28 of the ITA are wide and are designed to bring within the tax net, all real profit and gains arising in the course of business, whether received in money or in kind or convertible into money. While evaluating the taxability under Section 28 of the ITA, the legal character of the transaction of

¹ M/s Jindal Equipment Leasing Consultancy Services Ltd & Ors. vs. CIT (CA No. 152 of 2026)

“amalgamation” is not determinative but more on whether the taxpayer has obtained a real and presently realisable commercial benefit from a transaction in the course of its “business”.

- In an amalgamation, there is a statutory substitution of holdings in the hands of the shareholder, i.e. the shares of the amalgamating company cease to exist and are replaced by shares of the amalgamated company. Where the shares of the amalgamating company were in the nature of “stock in trade” and the shares of the amalgamated company actually received are freely marketable with a definite, ascertainable market value, such substitution/receipt pursuant to an “amalgamation” can amount to a commercial realization of business assets in the hands of the shareholder, giving rise to “business income” taxable under Section 28 of the ITA. In such case, the taxing point is the allotment of the shares of the amalgamated company.
- In view of the application of these principles to the taxpayer’s case being fact specific, the matter was remanded back to the ITAT for fresh adjudication.

Key takeaways:

- The ruling reinforces the legal position that the exemption under Section 47(vii) of the Act is available only where the shares of the amalgamating company are held as “capital assets”.
- Where the shares of the amalgamating company constitute “stock-in-trade” in the hands of the shareholder, receipt of the shares of the amalgamated company would give rise to “business income” under Section 28 of the Act (upon allotment of the shares of the amalgamated company) where the shares of the amalgamated company are freely marketable with a definite, ascertainable market value.

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