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## ***Sale on “going concern” basis is “slump sale,” not sale of depreciable asset covered under section 50(2)***

April 24, 2017

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### ***In brief***

In a recent judgement<sup>1</sup>, the Supreme Court (SC) has analysed the taxability of sale of business on a going concern basis and held that the sale is a slump sale and not sale of depreciable assets covered under section 50(2) of the Income-tax Act, 1961 (the Act).

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### ***In detail***

#### ***Facts***

- The taxpayer<sup>1</sup> was a company engaged in the business of manufacturing sheet metal components. It decided to sell its entire business, with all the assets and liabilities.
- The taxpayer filed its return of income, treating the sale to be in the nature of “slump sale” of going concern, resulting in long-term capital gain. Accordingly, it claimed deduction under section 48(2) of the Act.
- The tax officer (TO), did not accept the contention of the taxpayer. According to the TO the sale was of short-term capital asset, covered

under section 50(2) of the Act. The TO recomputed the gain as short-term gain under section 50, without allowing deduction under section 48(2), as claimed by the taxpayer.

- The taxpayer’s contention being accepted by the lower appellate and judicial forums, the revenue authorities appealed before the SC.

#### ***Issue before the SC***

Whether the sale of business on a going concern basis was liable to be taxed as long-term capital gain entitle to deduction under the section 48(2) of the Act or as short-term capital gain under section 50(2) of the Act.

#### ***Taxpayer’s contention***

The taxpayer contended that the sale of business on a going concern basis was in the nature of slump sale. Further, the undertaking, being in the nature of long-term capital asset was entitled to deduction under section 48(2) of the Act.

#### ***Revenue’s contention***

The Revenue contended that the taxpayer’s case was covered under section 50(2) of the Act resulting in short-term capital gain specified therein. Hence, gain on sale of business was not entitled to deduction under section 48(2) of the Act.

#### ***Supreme Court’s ruling***

- The SC opined that the case of the taxpayer did not fall within the four corners of section 50(2) of the Act. The said section applies where

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<sup>1</sup> TS-149-SC-2017

any block of assets was transferred, but where the entire business, carried on by the taxpayer for > 3 years, was sold along with assets and liabilities, such sale could not be considered as “short-term capital assets” liable to be taxed under section 50(2).

- The taxpayer sold the entire business as a going concern, with all assets and liabilities; therefore, it was rightly noticed by the CIT(A) that it was a case of slump sale of a “long-term capital asset.” Hence, it was required to be taxed accordingly.
- The SC further stated that the

said view was also supported with the law laid down by it in the case of Artex Manufacturing Co<sup>2</sup>. This view was also taken by the Bombay HC in the case of Premier Automobiles Limited<sup>3</sup>.

- The Revenue was not able to cite any decision taking a contrary view nor was it able to point out any error in the decisions cited by the taxpayer.
- Accordingly, the SC dismissed the appeal of the revenue authorities. .

### ***The takeaways***

This is an important decision

considering the changing scenario of upsurge in business takeovers and acquisitions. The SC has confirmed that sale of business carried on for long-term, on a going concern basis is a slump sale, and thus, should be liable to be taxed as long-term capital gains. It may be noted that similar ruling was given by the SC in the case of Electric Control Gear Manufacturing Company<sup>4</sup>.

### ***Let's talk***

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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<sup>2</sup> [1997(6) SCC 437 CIT]/ [1997] 93 Taxman 357 (SC)

<sup>3</sup> [2003] 264 ITR 193 (Bombay)/ [2003] 129 Taxman 289 (Bombay)

<sup>4</sup> [1997] 227 ITR 278 (SC) / [1997] 93 Taxman 384 (SC)

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