Cases RW **LEASE**

Mining lease

– piece of India purchased of assessee – mining lease to excavate clay from that land granted – Right to grant lease follows directly from ownership of land - cost of acquisition of right to grant mining lease in computable – Nexus between "cost of acquisition" and "grant of lease" exists – S. 45 attracted.

Section. 2(14) of the define "capital asset" as "property of any kind held by an assessee". Where a piece of land is purchased by assessee for some amount and a mining lease to extract clay from that land is granted. What is parted with by the assessee under the term of lease deed is the right to exploit the land by extracting the clay which right directly flows from the ownership of land. The said right evaluated in term of money forms part of the cost of acquiring the land. Transfer of capital asset in S. 45 include grant of mining lease for any period therefore, the 'cost of acquisition' of the land would include the 'cost of acquisition' of the mining right under the lease. Undisputedly the grant of a lease being a transfer of an asset there is not escape from the conclusion that there is live nexus between the cost of acquisition of the land and right granted under the lease. The purchase price paid by the assessee would not only be the cost of the acquiring the land but also of acquiring bundle of rights in that land including the right to grant lease. It cannot be said that conceptually there is no cost of acquisition which is attributable to the right of limited enjoyment transferred by the grant of lease. It can be said that conceptually there is no "cost of acquisition" which is attributable to the right of limited enjoyment transferred by the grant of lease. So far as the apportionment of the cost of acquisition is concern it is a question of fact to be determined by the Income-tax officer in each case on the basis of evidence. The determination of the cost of right to excavate clay in the land in the term of money may be difficult but is nonetheless of a money value and the best valuation possible must be made. Once the cost of the lease-hold right it determined there is no difficult in making apportionment. The value of lease hold in the right in the cost of acquisition of land being determinable the computation provision under the Act is applicable and S. 45 would be attracted. 1981 Tax LR 1670 (Mad), Affirmed. M/s. A.R. Krishnamurthy v. Commissioner of Income-tax, Madras. **AIR 1989 SC 1055: 1989 Tax LR 385: (1989) 1 SCC 754: (1989) 176 ITR 417.**

Partnership firm – Retirement of partner – Amount of share received by partner – Whether capital gains. **(1987) Taxation 85 (2), 12(1) (SC).**

--sale of old any unyielding rubber trees during relevant accounting year – no capital gain arises or accrues on such transaction.

ITR Nos. 164 and 165 of 1982, D/-12-2-1987 (Kerala), **Reversed.** M/s. Kalpetta Estates Ltd. v. Commissioner of Income-tax, Cochin. **AIR 1996 SC 2419: 1996 AIR SCW 2955: 1996 Tax LR 703: 1996 (6) JT 587: 1996 (9) SCC 510.**

Leasing out factory by assessee – Agreement as to, in fact a veiled agreement of lease-cum-sale – Not a stopgap exploitation of commercial assets – conduct of assessee not supporting that it was using godown and machinery as business asset and not as owner of property – income received by assessee by leasing out factory – Not a business income.

No precise test can be laid down to ascertain whether income (referred to by whatever nomenclature, lease amount, rents, licence fee) received by an assessee from leasing or getting out assets would fall under the head 'Profit and Gain of business or profession; it is a mixed question of law and fact and has to be determined from the point of view of businessman in that business on the fact and on the circumstances of each case including true interpretation on the agreement under which the assets are let out; where all the assets of the business are let out is relevant factor to find out whether the intention of the assessee is to go out of business assets are let out temporarily while the assessee is carrying out his other business activity then it case of the exploiting the business assets otherwise then employing them for his own use for making profit for the business.

Where the agreement for leasing out the factory was in fact a veiled agreement for lease-cum-sale and licensing was not meant to be stop-gap exploitation of commercial assets, and conduct of assessee did not support that it was using godown and machinery as business assets and not owner of property, it could be concluded that assessee had dismantled his business never to return back to it and income received by assessee by leasing out factory could not be held the business income. Universal Plast ltd. v. Commissioner of income-tax, Calcutta. **AIR 1999 SC 1641: 1999 AIR SCW 1255: 1999 Tax LR 480: 1999 (5) SCC 189: 1999 (2) Scale 243: 1999 (3) Supreme 257.**