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L.B Part - IIIrd
Paper - VIIIth
Taxation Laws

Capital asset [Section 2(14)]

The term 'capital asset' means property of any kind held by an assessee, whether or not connected with his business or profession, but it does not include the following:-

(i) Any stock-in-trade consumable store or raw material held for the purpose of his business or profession.

(ii) Personal effects, movable property held for personal use by the assessee and any member of his family dependent on him the wearing apparel and furniture are included within the meaning of the term "personal effect" but jewellery has now been specially excluded from the ambit of personal effects. For the purpose of this clause the term "jewellery" includes - (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi precious stone and whether or not worked or sewn into any wearing apparel and (b) precious

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or semi-precious stones set in any furniture, utensil or other worked or sewn into any wearing apparel.

(iii) Agriculture land in India not being land situate - (a) in any area which is comprised within the limit of municipality or cantonment board which has a population of not less than 10,000 according to the last census or (b) in any area within such distance not being more than 3 kilometers from the local limits of any municipality or cantonment board referred to in item (a) as the Central Government may specify in this behalf by notification in the Official Gazette.

A close reading of Section 2(14)(iii) (a) seems to suggest that it is the population of the municipality that has to be taken into account for the purpose of that section and not the population of any area within the municipality.

(iv) $6\frac{1}{2}$ percent Gold Bonds, 1977 or 7 percent Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government.

(v) Special Leaser Bonds, 1991 issued by the Central Government.

(vi) Gold deposit Bonds issued under the Gold Deposit Scheme 1999 notified by the Central Government.

Thus the term "capital asset" includes all types of property whether

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moveable or immoveable excepting the above. It also includes goodwill a partnership share in a firm, a manufacturing licence, the right to subscribe for the shares of the company, leasehold rights and the rights in managing agency. The transfer of capital asset in S. 45 includes grant of mining lease for any period. Mining right is a capital asset and allowing the right under lease amount to the transfer of the capital asset. The Supreme Court has made it clear that the goodwill generated in a newly commenced business cannot be described as an "asset" within the meaning of the terms of Section 45 and therefore its transfer is not subject to income tax under the head "capital gains". If the goodwill generated in a new business is regarded as acquired at a cost and subsequently passes to an assessee in any of the modes specified in Section 49(1) it will become necessary to determine the cost of acquisition to the previous owner.

In a case where no amount was paid by the operator for acquiring a route permit and it was only over a number of years that it acquired some value because of various factors, development of roads passenger traffic frequency

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of the mines, the value of the permit, the Supreme Court held that the value of the permit could not be evaluated as on the date of acquisition and in such a case the consideration in terms of money realised on its transfer could not be brought to tax as capital gains.

Capital assets may be divided into two categories: - (i) Short term capital asset and (ii) Long term asset.

"Short-term capital asset" means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer.

Long-term Capital asset: Long term capital assets means an asset which is not a short term capital asset [Section 2(29-A)]