Guidelines for Section 9B and substituted Section 45(4) issued; New Rule 8AA(5) & new Rule 8AB for attribution of income for assets remaining with specified entity u/s 45(4) notified

CBDT inserted new Rule 8AA(5) and 8AB in the Income-tax Rules, 1962 to provide for manner of computation of income taxable under section 45(4) to the capital assets remaining with the specified entity for the purpose of Section 48(ii). Further guidelines and clarification was provided with respect to interpretation of new Sections 9B and substituted section 45(4) along with examples.

New section 9B inserted vide Finance Act 2021 provides for taxability on receipt of capital asset or stock in trade by specified person from specified entity. The section mandates receipt of any capital asset or stock in trade or both from a specified entity, during the previous year, in connection with the dissolution or reconstitution of such specified entity, to be deemed as transfer to the specified person in the year in which received by such person, chargeable to tax in the hands of the specified entity as PBGP income or Capital Gains.

Furthermore, section 45(4) now provides that where a specified person receives any money or capital asset or both from a specified entity, during the previous year, in connection with the reconstitution of such specified entity, then any profits or gains arising from receipt of such receipt by the specified person shall be chargeable to income-tax as income of the specified entity as Capital Gains.

The following clarification was provided to cater to difficulties in interpretation of provisions of the two sections:

Whether amount taxed u/s 45(4) can also be attributed to capital assets forming part of block of assets and which are covered by Section 48 and Section 43(6)(c)?

It is clarified that rule 8AB of the Income Tax Rules, 1962 also applies to capital assets forming part of block of assets. Wherever the term s capital asset is appearing in the rule 8AB of the Rules, it refers to capital asset whose capital gains is computed under section 48 of the Act as well as capital asset forming part of block of assets.

Further, wherever reference is made for the purposes of section 48 of the Act, such reference may be deemed to include reference for the purposes of

subclause (c) of clause (6) of section 43 of the Act and section 50 of the Act.

Reduction of consideration received from WDV while calculating capital gains u/s 50

For the removal of doubt it is further clarified that in case the capital asset remaining with the specified entity is forming part of a block of asset, the amount attributed to such capital asset under rule 8AB of the Rules shall be reduced from the full value of the consideration received or accruing as a result of subsequent transfer of such asset by the specified entity, and the net value of such consideration shall be considered for reduction from the written down value of such block under subclause (c) of clause (6) of section 43 of the Act or for calculation of capital gains, as the case may be, under section 50 of the Act.

New Rule 8AA(5)

In case of the amount which is chargeable to income-tax as income of specified entity under sub-section (4) of section 45 under the head - "Capital gains":

i. the amount or a part of it shall be deemed to be from transfer of short term capital asset, if it is attributed to:
   a. capital asset which is short term capital asset at the time of taxation of amount under sub-section (4) of section 45; or
   b. capital asset forming part of block of asset; or
   c. capital asset being self-generated asset and self-generated goodwill as defined in clause (ii) of Explanation 1 to sub-section (4) of section 45; and

ii. the amount or a part of it shall be deemed to be from transfer of long term capital asset or assets, if it is attributed to capital asset which is not covered by clause (i) and is long term capital asset at the time of taxation of amount under sub-section (4) of section 45.

New Rule 8AB

(1) For the purposes of clause (iii) of section 48, where the amount is chargeable to income-tax as income of specified entity under sub-section (4) of section 45, the specified entity shall attribute such amount to capital asset remaining with the specified entity in a manner provided in this rule.

(2) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, chargeable to tax under sub-section (4) of section 45, relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount attributable to the capital asset remaining with the specified entity for purpose of clause (iii) of section 48 shall be the amount which bears to the amount charged under sub-section (4) of section 45 the same proportion as the increase in, or recognition of, value of that asset because of revaluation or valuation bears to the aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation.

(3) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 does not relate to revaluation of any capital asset or valuation of self_generated asset or self-generated goodwill, of the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be

attributed to any capital asset for the purposes of clause (iii) of section 48.

(4) Notwithstanding anything contained in sub-rules (2) or (3), where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 relate only to the capital asset received by the specified person from the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

(5) The specified entity shall furnish the details of amount attributed to capital asset remaining with the specified entity in Form No. 5C.

(6) Form No. 5C shall be furnished electronically either under digital signature or through electronic verification code and shall be verified by the person who is authorised to verify the return of income of the specified entity under section 140.

(7) Form No. 5C shall be furnished on or before the due date referred to in the Explanation 2 below sub-section (1) of section 139 for the assessment year in which the amount is chargeable to tax under sub-section (4) of section 45.

(8) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall –

i. specify the procedure for filing of Form No. 5C;

ii. specify the procedure, format, data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (6), for verification of the person furnishing the said Form; and

iii. be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to the Form No 5C so furnished.

Explanation 1: For the purposes of this rule, the amount chargeable to tax under sub-section (4) of section 45 shall relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, if the revaluation is based on a valuation report obtained from a registered valuer as defined in clause (g) of rule 11U.

Explanation 2: For the removal of doubt it is clarified that revaluation of an asset or valuation of self_generated asset or self-generated goodwill does not entitle the specified entity for the depreciation on the increase in value of that asset on account of its revaluation or recognition of the value of self-generated asset or self-generated goodwill due to its valuation.

Explanation 3: For the purposes of this rule, the expressions "self-generated asset" and "self-generated goodwill" shall have the same meaning as assigned to them in clause (ii) of Explanation 1 to sub-section (4) of section 45.]

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