Capital Gain : Vodafone Case

S 14 → Sal ✗
- IHP —
- PGBP —
- CG — 4th Head.
- IOS —

CG → S 45 → Any profit/Gain arising from transferg a CA is chargeable to tax u/head CG in d same PY in which transfer takes place

Capital Asset [2(14)] —AND→ Transferred [2(47)]

Profit/Gain
⇓
CG
⇓
PY — transfer takes place

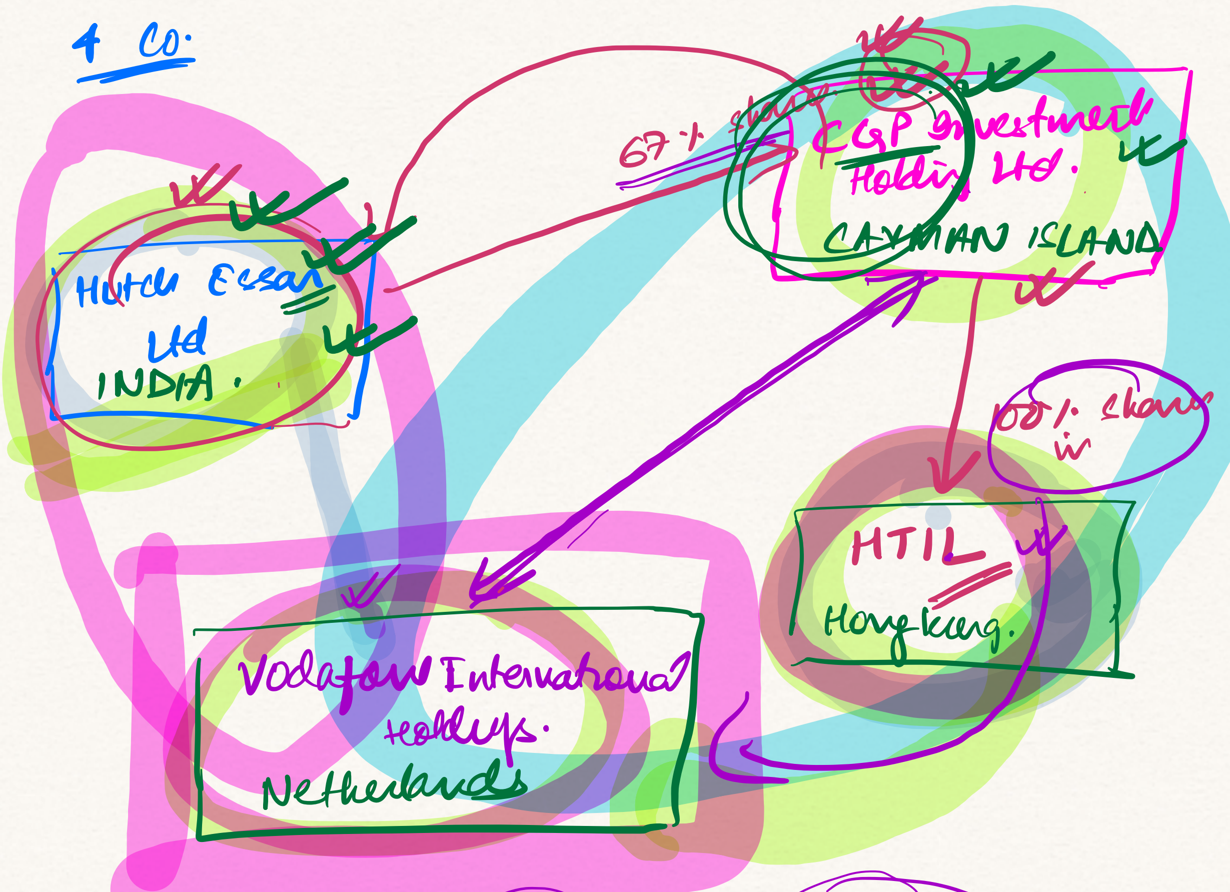
S 47 →
1) Sale / Exchange.
extinguishment of rt in a CA.
3) Conversion of CA to stock in trade.

Assets — excluded
⇓
stock in trade
Personal effect

VODAFONE CASE.

The Tax Dispute b/w
- Indian Tax Auth.
- Vodafone.
- in connection with taxability of the 11.2 billion$ Hutch – Vodafone Deal.
- Tax demanded – Rs 11,000 crore plus

4 Co:



For Co: HTIL → Sold For Co – CGP → To For Co. VIH

↓

Transaction also took place

There is

No Territorial Nexus ← O/s India ↓ in For. currency

IT Dept:

Offshore share transfer

↓

Resulted in transfer of shares in HEL from HTIL to VIH

↓

"Indirect transfer" of "CA" situated in India.

S 9(1)(i) → Deemed income "Accrued or Arisen" → II

S 5 → NR → Source ⇒ Deemed A/A — II

India

income A/A, directly/indirectly through

Transfer of CA situated in India = Deemed
2 AAA in India.

controlling interest in HEL = is CA situated
in India as S 2(14).

⇓

On a/c of transfer of shares in CGP
by HTIL to VIH.

⇓

controlling interest of HTIL in HEL
gets extinguished.

⇓

Extinguishment of Rt = Transfer - 2(47)

⇓

II

↓

$ 5 — NR - II — Taxable in India.

↓

$ 195 → Attracts the Oblign upon

"VIH" →

→ IT Dept. — issued a SCN — to VIH.
u/s 201

→ Assessee → Filed a writ petn Bom HC.

- legal validity of SCN
- transaction — CGP → cayman
- CA — shares of → — Asset situated o/s Ind.
- No inc. had accrued or arise in India.

Bom HC — IT Dept → Dominant intent
↓
transfer of ctrlly int. in HEL → VIH

SC → SC — Vodafone

- Trans — 2 NR entities.
- ct — executed o/s Indi.
- consid. — passed o/s Indi.

→ Not cover indirect transfer or off shore share transaction.

→ Don't follow "Look through" approach
– " "Look at" approach

Tax Planning →

Tax evasion – Not allowed – Explicit

Tax Avoidance – permissible

Retrospective effect

FA, 2012 → ITA, 1961 → 1961

Amendments.

1. 2(14) – CA – exp.
2. 2(47) – transfer – exp 2.
3. 9(1)(i) – Deemed 2 A/A in India – expl 4, expl 5 – by means of, or causing, or by reason of.
4. 195(1) → other sum p – expl 2.

CA → controlling interest → "Property" includes any int in or in rel to an Ind. co, including the rts of mgmt or control or any other rts whatsoever.

Not a distinct CA

transfer – "interest" →

NR – NR → s 195 Not appl.

NR – NR → Applicable.

2014 → India – Netherland – Investment treaty.

clause 9

Arbitration.

2020 → Ruled agst India

Tax → damages

17 cases → Tax demand

4 cases → Arbitration.

2 Cases → Cairn Energy Case

agst India

– Tax Uncertainty → 1st → 5

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