



Taxability of Shares received on Amalgamation

Supreme Court Ruling in the case of :

Nalwa Investment Ltd Civil

Appeal No. 152 Of 2026

New Delhi, January 2026

- The core issue is whether receiving shares in an amalgamated company (New Co) in exchange for shares of an amalgamating company (Old Co), held as stock-in-trade, constitutes a taxable event under Section 28.
- Section 28 addresses business profits, while Section 45 pertains to capital gains. Amalgamations typically exempt capital assets from immediate taxation under Section 47(vii), but no similar exemption exists for trading stock.
- The Supreme Court in Nalwa Sons emphasized that Section 28 is broad and captures all profits from business activities, including those realized in kind, without statutory deferral for amalgamations of trading stock.

Realization of Stock-in-Trade

- The Supreme Court established that taxability under Section 28 depends on whether the amalgamation results in a commercial realization of the old stock-in-trade.
- The Court's ruling highlighted that the substance of the transaction, rather than its legal form, determines tax implications. The focus is on whether the business has effectively realized profits from the transaction.
- The Court distilled prior jurisprudence into three criteria for determining if a share-for-share exchange constitutes a realization of trading stock:
 - **Extinguishment of Old Stock:** The Old Co shares must cease to exist in the trading portfolio.
 - **Definite Value of New Asset:** The New Co shares must have a definite and ascertainable market value.
 - **Free Convertibility to Cash:** The new shares must be freely tradable, allowing immediate cash realization.

Illustrations of Non-Taxable Events

- The Court provided examples where amalgamation would not trigger immediate business income:
 - **Statutory Lock-In:** If New Co shares are subject to a lock-in period, they cannot be sold, and thus no commercial realization occurs.
 - **Unquoted/Illiquid Shares:** If the amalgamated company is unlisted or closely held, the shares lack a ready market, preventing the attribution of a reliable disposal value.

Real Income Doctrine

- The Supreme Court reaffirmed the principle that taxation should only apply to real income, not notional profits. Income must correspond to actual accrual or receipt.
- The Court distinguished between realizable profits and merely notional increases in value, emphasizing that tax cannot be levied on hypothetical gains.

Accounting and Commercial Principles

- The ruling aligns tax law with sound accounting practices, emphasizing substance over form in determining taxability.
- The Court noted that business profits are typically measured periodically, and profits should only be recognized when they can be realized through sale.
- The principle of "money's worth" was highlighted, indicating that assets received in exchange must have a definite value to be considered for profit computation.

Supreme Court's Holding in Nalwa Sons

- The Court affirmed that the receipt of amalgamation shares can give rise to taxable business profits under Section 28 if the new shares have a realizable market value.
- Taxation occurs at the point of allotment of new shares, not merely at the appointed date of amalgamation or court sanction.

Practical Implications for Businesses

- Taxpayers must recognize that corporate actions like mergers can trigger taxable events even without cash sales.
- Businesses should determine the fair market value of new shares upon allotment to compute trading profit accurately.
- Proper classification of shareholdings as stock-in-trade or investments is crucial, as it affects tax timing and implications.
- Taxpayers should maintain consistency in their tax positions and ensure compliance with disclosure requirements regarding amalgamation transactions.

Conclusion The Supreme Court's ruling clarifies that the receipt of New Company's shares in exchange for Old Company's stock-in-trade can constitute a taxable event under Section 28, provided the transaction yields a real, monetizable gain.