14 January 2026

EY Tax Alert

Supreme Court rules on taxability of stock-in-trade realized pursuant to amalgamation

EY Alerts cover significant tax news, developments and changes in legislation that affect Indian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor.

Executive summary

This Tax Alert summarizes a Supreme Court (SC) ruling (two-judge bench) dated 9 January 2026[1] , where the core issue under consideration was whether shares received on amalgamation in lieu of shares held in the amalgamating company as stock-in-trade, is taxable.

The SC held that where shares are held as capital assets, amalgamation results in a transfer, but remains exempt due to specific statutory provisions. Whereas, when the shares constitute stock in trade, taxability arises only if the receipt represents real income i.e., the new shares received have definite and ascertainable value and are immediately realizable. Presence of lock in restrictions, lack of marketability etc., make the assets unrealizable and defer its taxability until actual sale. The SC reaffirmed that business profits may be realized in kind, but such consideration in kind needs to be in the form of realizable instruments capable of valuation in money's worth.

[1] [TS-13-SC-2026]

Facts

- The Taxpayers (investment entities of Jindal Group) held shares of the operating entities viz., Jindal Ferro Alloys Ltd (JFAL) and Jindal Strips Limited (JSL) as part of promoter holding, representing controlling interest. The Taxpayer furnished non-disposal undertakings to lenders who had advanced loans to the operating companies. The shares were shown as investment in the books of accounts of the Taxpayers.

- A scheme of amalgamation with an appointed date of 1 April 1995 was filed under which JFAL got amalgamated into JSL. Post approval of the scheme, shareholders of JFAL (including the Taxpayers) were issued 45 shares of JSL in lieu of 100 shares of JFAL.

- The Taxpayer treated the shares as capital assets and claimed statutory exemption from the charge of capital gains on amalgamation. However, in the assessment proceedings, the tax authority rejected the said contention on the ground that the shares were held as stock-in-trade, denied exemption claimed and taxed it as business income. The first appellate authority upheld the tax authority's view.

- The Income Tax Appellate Tribunal (Tribunal), by relying on the decision of CIT v. Rasiklal Maneklal (HUF) and others[2], reversed the tax authority's and first appellate authority's decisions, to hold that the allotment of shares in the amalgamated company on amalgamation does not constitute a transfer and, therefore, does not trigger taxability. The Tribunal held that irrespective of the nature of the holding of asset, no capital gains income or business income may arise to the shareholder upon merger. Aggrieved by the order of the Tribunal, the tax authorities filed an appeal before the Delhi High Court (HC).

- The HC disagreed with the Tribunal's reliance on Rasiklal Maneklal (HUF) and observed that the Tribunal had failed to consider the later and binding decision of CIT v. Grace Collis[3] which held that amalgamation for the purpose of capital gains does constitute transfer. The HC specifically noted that there was no factual determination of whether the shares were held as capital asset or stock-in-trade and, accordingly, the HC examined the issue under both the possible scenarios i.e., when investment is held as stock-in-trade and as capital, and held as under.

    - If shares held by a taxpayer are considered as capital assets, there is transfer but no taxation in view of the specific statutory exemption under the Income Tax Act, 1961 (ITA).

    - If shares held by a taxpayer are considered as stock-in-trade, on amalgamation, the receipt of amalgamated shares represents a realization of trading assets giving rise to taxable business income under Section 28 of the ITA. Reliance was placed on the principles laid down by the SC in Orient Trading Company Ltd. v. CIT[4].

- In the absence of factual determination, the HC remanded the matter to the Tribunal for factual determination of the nature of the holding.

- Being aggrieved by the said order, the Taxpayers preferred further appeal before the SC.

Taxpayer's contentions before the SC

- The receipt of shares of the amalgamated company does not amount to either a "sale" or an "exchange".

- The amalgamating company stands dissolved on amalgamation and, consequently, its shares cease to exist. Therefore, in the absence of subsisting property capable of being exchanged, no taxable business income arises from such a transaction.

- The definition of "transfer" under the ITA is relevant only for computing capital gains and has no application to stock-in-trade. Only exploitation or realization of stock-in-trade gives rise to business income to be computed strictly in accordance with the provisions of business income.

- The allotment of shares in the amalgamated company, in substitution for the shares held in the amalgamating company, does not amount to realization of stock-in-trade by way of sale or exchange so as to give rise to taxable business income.

- For business income, creation of *debt in praesenti* in favor of the taxpayer is essential[5] and hypothetical or illusory benefits cannot constitute taxable income[6].

- Even if the fair market value of the shares allotted in the amalgamated company on the date of allotment exceeds the book value of the shares in the amalgamating company, such appreciation is purely notional. Real income would arise only upon the actual sale of the allotted shares, and until such realization, no business income accrues.

[2] [(1989) 177 ITR 198 (SC)]
[3] [(2001) 248 ITR 323 (SC)]
[4] [(1997) 224 ITR 371 (SC)]
[5] E.D. Sassoon & Co. Ltd. v. Commissioner of Income-Tax [(1954) 26 ITR 27 (SC)]
[6] CIT v. Shoorji Vallabhdas & Co. [(1962) 46 ITR 144 (SC)], State Bank of Travancore v. CIT [(1986) 158 ITR 102 (SC)], Godhra Electricity Co. Ltd. v. CIT [(1997) 225 ITR 746 (SC)] and CIT v. Excel Industries Ltd. and another [(2013) 358 ITR 295 (SC)]

- The scheme of the ITA supports taxation of real income. Specific provisions are enacted for taxing notional income and absence applicability thereto, no income can be said to accrue or arise.

- There exists a specific provision in the context of capital gains where the cost of shares of the amalgamated company is deemed to be the same as that of the amalgamating company. For reasons of parity, even for stock-in-trade, the original cost must be preserved and taxed only upon realization.

Tax authority's contentions before the SC

- The charging provision of business income is clear to cover within its ambit profits and gains of business or profession, irrespective of whether they arise by way of sale, exchange or otherwise. Unlike the capital gains provision that requires transfer, it is agnostic to the manner of accrual of income.

- The SC ruling in the case of Orient Trading (*supra*) is directly applicable which, in the context of stock-in-trade, held that realization may occur upon exchange and not merely upon sale. Accordingly, even in the case of amalgamation, receipt of the amalgamated entity's shares or cash (for dissenting shareholders) in lieu of shares of the amalgamating company results in realization of value.

- The SC ruling in the case of E.D. Sassoon & Co. Ltd (*supra*) may also support that accrual of income happens on acquisition of the right to receive, even if the actual receipt is later.

- Real income test, as laid down by the SC in the case of Excel Industries[7], is satisfied in the instant case as, pursuant to sanction of the amalgamation scheme, there exists a corresponding liability on the amalgamated company to issue shares in lieu of shares held by shareholders in the amalgamating company.

- Even on the assumption that "sale" or "exchange" is required, in terms of the SC ruling in the case of Hindustan Lever[8], the scheme of amalgamation itself has *"all the trappings of a sale"*.

SC's ruling

- In the absence of factual determination of the nature of property held by the Taxpayers, the SC went on to examine the tax implications in the hands of shareholders arising on amalgamation where shares of the amalgamating company are held as capital asset or stock-in-trade.

- The SC held that:

  - Where shares of the amalgamating company are treated as capital assets, while the transfer of shares on amalgamation is generally taxable, it would not be taxed due to the specific exemption available under the ITA.

  - Where shares of the amalgamating company are held as stock-in-trade, it may be taxable as business income, provided it is real income which is actually received, commercially realizable and has definite ascertainable value. Where shares of the amalgamated company are not readily available for realization, what takes place is only a statutory vesting and substitution of one form of holding for another.

- Principles governing the scope of the charging provision of business income:

  - The charging provision of business income is comprehensive and contemplates taxing any "profits and gains of any business or profession" carried on by the taxpayer. It does not prescribe any precondition for a precise mode through which profits must arise.

  - The charging provision is to be construed strictly and cannot be read in an unduly narrow manner. The statutory language should receive full amplitude and cannot be artificially restricted.[9]

  - The SC noted its earlier ruling which clarified that "strict interpretation" does not connote a literal or pedantic reading. Instead, it means interpreting statutes by combining legislative intent with the statutory language, avoiding overly narrow or broad reading[10].

  - The business profits may accrue or be realized in diverse circumstances, even in the absence of a conventional sale, transfer, or exchange in the strict legal sense. Judicially, waiver of trading liability[11], cash assistance[12] and foreign exchange fluctuations scenarios[13] are held to be business income.

  - It is settled law that income yielding business profits may be realized even in kind. Receipt of shares of the amalgamated company is receipt of consideration in kind.

[7] [(2013) 358 ITR 295 (SC)]
[8] [(2004) 9 SCC 438]
[9] Mazagaon Dock Ltd v. CIT and Excess Profits Tax [AIR 1958 SC 861]; Ujagar Prints etc. V. Union of India and other etc. [(1989) 3 SCC 488]
[10] Commissioner of Customs (Import) v. Dilip Kumar and Company and others [(2018) 9 SCC 1 (5-Judge Bench)]
[11] CIT v. T.V. Sundaram Iyengar & Sons Ltd. [(1996) 222 ITR 344 (SC)]
[12] CIT v. Meghalaya Steels Ltd. [(2016) 383 ITR 217 (SC)]
[13] CIT v. Woodward Governor India P. Ltd. [(2009) 312 ITR 254 (SC)]

- *Concept, legal character and evaluation of accrual of income upon amalgamation:*

  - Amalgamation in corporate law signifies statutory blending of two or more undertakings and is distinct from winding up.

  - As held in Saraswati Industrial Syndicate Ltd. v. Commissioner of Income Tax[14], the transferor company ceases to exist, and the transferee emerges with a blended corporate personality, inheriting all rights and liabilities.

  - The SC, in the case of Hindustan Lever v. State of Maharashtra[15], not in context of taxation, held that amalgamation has all the trappings of sale. The SC, in the case of CIT v. Grace Collis [(2001) 248 ITR 323], held that on amalgamation, the shareholder extinguishes shares in the amalgamating company and is, thereby, covered within the meaning of "transfer". Though Grace Collis (*supra*) was in the context of capital gains, even for business chapter, the ratio laid down cannot be ignored.

  - On amalgamation, shareholders' interest in the amalgamating company is replaced by a corresponding interest in the amalgamated company.

  - On receipt of shares of the amalgamated company, there is receipt of consideration in kind.

- Consideration must be commercially realizable:

  - The recipient of income must have control over the income received, emphasizing that mere receipt in kind is not enough.[16]

  - Cumulative conditions for testing realization of assets in the commercial sense for taxing under business head are:

    (a) The old stock-in-trade has ceased to exist in the taxpayer's books.

    (b) The shares received in the amalgamated company possess a definite and ascertainable value.

    (c) The taxpayer immediately upon allotment, is in a position to dispose of such shares and realize money.

  - Illustrative situations where, due to absent immediate monetization allotment of shares, may not be equated to commercial realization:

    (a) The shares received on amalgamation are subject to a statutory lock-in period during which they cannot be sold in the market.

    (b) The amalgamated company is closely held and its shares are not quoted on any recognized stock exchange.

  - It must be demonstrated that the transaction exhibits the characteristics of a commercial realization – one that provides a real and immediately disposable advantage. If this condition is met, taxability may arise at the point of substitution. If not, the accrual or receipt of income is postponed until the shares are actually sold.

  - Reliance was placed on the realization principles elaborated in Orient Trading and Californian Copper Syndicate Ltd. v. Inland Revenue[17] to conclude that even the exercise of an option, such as the choice to accept shares of the amalgamated company in lieu of the old holding, may amount to a realization of the old asset, subject to the other conditions such as commercial realizability.

  - In terms of the real income theory, profits in a commercial sense crystalize only when the old position is closed and a new position is determined in terms of money's worth. Accordingly, to tax income, shares received on amalgamation must not only be realizable, but there must be quantification.

    - Whether shares received pursuant to amalgamation result in real and presently realizable commercial benefit must be determined based on the facts of each case and the burden lies on the Revenue to establish the same.

- *Timing of taxability:*

  - Amalgamation involves three stages viz., appointed date, sanction of scheme and allotment of shares.

  - Upon sanction of the scheme, there is only a statutory substitution of rights; no asset then exists in the hands of the taxpayer that is capable of commercial realization.

  - Allotment of shares alone crystalizes the benefit in the shareholders' hands and only at that stage when the old stock-in-trade ceases and is replaced by new shares. Even where the scheme provides for identification of shares in certain ratio, until allotment, there is no identifiable scrip or tradable asset in existence in the hands of the taxpayer. Accordingly, no charge is attracted on mere sanction of the scheme.

[14] [1990 Supp SCC 675]
[15] [(2004) 9 SCC 438]
[16] Kanchanganga Sea Foods Ltd. v. Commissioner of Income Tax [(2010) 11 SCC 144]
[17] [5 TC 159]

- *Distinction between capital and business assets:*

  - For shareholders holding shares as investments, the underlying object is to remain invested in the corporate venture, and amalgamation, generally, does not change the object. While the possibility of tax avoidance in the investment field cannot be ruled out altogether, the legislative judgment reflects that the risk is relatively low and, hence, the statutory exemption is founded on the recognition that amalgamation in the capital field is essentially corporate restructuring and not a true realization of profit.

  - By contrast, Section 28 which governs profits of business, contains no such carve-out, nor could it be otherwise. The nature of stock-in-trade is wholly different from that of an investment. Stock-in-trade represents circulating capital: it is held not for preservation or appreciation, but for conversion into money in the ordinary course of business.

  - The statute does not provide for any exemption because stock-in-trade is fundamentally different from investment – it is held for sale and conversion into money, not for long-term appreciation. Therefore, when shares held as stock-in-trade are replaced with new shares on amalgamation, it amounts to a commercial realization in kind. The new shares are distinct assets with an immediately realizable market value, making the substitution a taxable business event.

  - Exempting amalgamations involving stock-in-trade may open a ready avenue for tax evasion, enabling traders to convert trading assets into new shares without taxation and, thereby, undermining the integrity of the tax base.

Comments

The ruling is of significant relevance for taxpayers holding shares as stock-in-trade, and the investee entity becomes a party to corporate reorganization such as amalgamation. The ruling makes it clear that tax implications on corporate restructuring differ for taxpayers, based on the nature of their holding i.e., capital asset or stock-in-trade. While statutory exemption applies to shares held in the amalgamating company as capital assets, no such exemption is available for shares held as stock-in-trade. Hence, stock-in-trade may be taxed as business income if shares received upon amalgamation are commercially realizable.

The ruling affirms that business income may accrue or be received in kind, but the taxability is at the stage where income is realizable and possesses a definite and ascertainable value. The SC held that these conditions may fail, illustratively, for shares which are subject to statutory lock-in or shares which are not quoted on recognized stock exchanges. The SC also held that consideration can be regarded as received only upon actual allotment and not at an anterior date of determination of swap ratio or approval of the scheme.

The ruling also provides useful guidance on principles which govern taxation of business income. Incidentally, in its earlier rulings, in the context of capital gains, the SC, in the cases of Miss Dhun Dadabhoy Kapadia v. CIT[18] and Sunil Siddharthbhai v CIT[19], held that commercial principles govern capital gains taxation.

[18] [(1967) (63 ITR 651) (SC)]
[19] [(1985) 156 ITR 509 (SC)]

Our offices

Ahmedabad

22nd Floor, B Wing, Privilon
Ambli BRT Road, Behind Iskcon Temple
Off SG Highway
Ahmedabad - 380 059
Tel: + 91 79 6608 3800

8th Floor, Building No. 14A
Block 14, Zone 1
Brigade International Financial Centre
GIFT City SEZ
Gandhinagar - 382355, Gujarat
Tel +91 79 6608 3800

Bengaluru

12th & 13th Floor
"UB City", Canberra Block
No.24 Vittal Mallya Road
Bengaluru - 560 001
Tel: + 91 80 6727 5000

Ground & 1st Floor
11, 'A' wing
Divyasree Chambers
Langford Town
Bengaluru - 560 025
Tel: + 91 80 6727 5000

3rd & 4th Floor
MARKSQUARE
#61, St. Mark's Road
Shantala Nagar
Bengaluru - 560 001
Tel: + 91 80 6727 5000

1st & 8th Floor, Tower A
Prestige Shantiniketan
Mahadevapura Post
Whitefield,
Bengaluru - 560 048
Tel: + 91 80 6727 5000

Bhubaneswar

8th Floor, O-Hub, Tower A
Chandaka SEZ, Bhubaneswar
Odisha – 751024
Tel: + 91 674 274 4490

Chandigarh

Elante offices, Unit No. B-613 & 614
6th Floor, Plot No- 178-178A
Industrial & Business Park, Phase-I
Chandigarh - 160 002
Tel: + 91 172 6717800

Chennai

6th & 7th Floor, A Block,
Tidel Park, No.4, Rajiv Gandhi Salai
Taramani, Chennai - 600 113
Tel: + 91 44 6654 8100

Delhi NCR

Aikyam
Ground Floor
67, Institutional Area
Sector 44, Gurugram - 122 003
Haryana
Tel: +91 124 443 4000

3rd & 6th Floor, Worldmark-1
IGI Airport Hospitality District
Aerocity, New Delhi - 110 037
Tel: + 91 11 4731 8000

4th & 5th Floor, Plot No 2B
Tower 2, Sector 126
Gautam Budh Nagar, U.P.
Noida - 201 304
Tel: + 91 120 671 7000

Hyderabad

THE SKYVIEW 10
18th Floor, "SOUTH LOBBY"
Survey No 83/1, Raidurgam
Hyderabad - 500 032
Tel: + 91 40 6736 2000

Jaipur

9th floor, Jewel of India
Horizon Tower, JLN Marg
Opp Jaipur Stock Exchange
Jaipur, Rajasthan – 302018

Kochi

9th Floor, ABAD Nucleus
NH-49, Maradu PO
Kochi - 682 304
Tel: + 91 484 433 4000

Kolkata

22 Camac Street
3rd Floor, Block 'C'
Kolkata - 700 016
Tel: + 91 33 6615 3400

Mumbai

14th Floor, The Ruby
29 Senapati Bapat Marg
Dadar (W), Mumbai - 400 028
Tel: + 91 22 6192 0000

5th Floor, Block B-2
Nirlon Knowledge Park
Off. Western Express Highway
Goregaon (E)
Mumbai - 400 063
Tel: + 91 22 6192 0000

3rd Floor, Unit No 301
Building No. 1
Mindspace Airoli West (Gigaplex)
Located at Plot No. IT-5
MIDC Knowledge Corridor
Airoli (West)
Navi Mumbai – 400708
Tel: + 91 22 6192 0003

Altimus, 18th Floor
Pandurang Budhkar Marg
Worli, Mumbai - 400 018
Tel: +91 22 6192 0503

Pune

C-401, 4th Floor
Panchshil Tech Park, Yerwada
(Near Don Bosco School)
Pune - 411 006
Tel: + 91 20 4912 6000

10th Floor, Smartworks
M-Agile, Pan Card Club Road
Baner, Taluka Haveli
Pune - 411 045
Tel: + 91 20 4912 6800

Download the EY India Tax Insights App

Ernst & Young LLP

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EYG member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

Ernst & Young LLP is one of the Indian client serving member firms of EYGM Limited. For more information about our organization, please visit www.ey.com/en_in.

Ernst & Young LLP is a Limited Liability Partnership, registered under the Limited Liability Partnership Act, 2008 in India, having its registered office at Ground Floor, Plot No. 67, Institutional Area, Sector - 44, Gurugram - 122 003, Haryana, India.

ED None.

ey.com/en_in