

## Business profits arise when a disguised transaction of sale of shares is opted to transfer a business

**Summary – The Punjab and Haryana of High Court in a recent case of Sumeet Taneja, (the Assessee) held that transfer of shares with all pervasive control over business being entrusted to purchaser and to complete exclusion of assessee with a non-compete clause fell within realm of section 28(va).**

### Facts

- The assessee filed his return of income disclosing income from short term capital gain and long term capital gain on account of sale of shares *vide* a share purchase agreement.
- The Assessing Officer, after perusal of the agreement recorded a finding of fact that the agreement though classified as an agreement for purchase of shares, envisaged purchase of business or rather purchase of business assets. The Assessing Officer had referred to various clauses of the agreement and concluded that said transfer amounted to transfer of all pervasive control of business from the assessee to the purchaser to the complete and absolute exclusion of the assessee and in view of a non-compete clause in agreement, he held that said income should be treated as business income of assessee under section 28(va).
- The findings so recorded had been affirmed by the Commissioner (Appeals) as well as by the Tribunal.
- On further appeal:

### Held

- A perusal of sections 2(14) and 28(va) including the Explanation to section 2(14) relied by the assessee does not enable one to record an opinion contrary to the opinion recorded by the Assessing Officer, affirmed by the Commissioner (Appeals) and the Tribunal.
- A perusal of the agreement between the assessee and the purchaser leads to a singular conclusion that the agreement was not an innocent transfer of shareholdings that would place it within section 2(14) read with the *Explanation* but a transfer of business with all pervasive control being entrusted to purchaser to the complete and absolute exclusion of the seller whether as a shareholder or for its management and control. The findings recorded by authorities under the Act that transfer of shares, evidences a transfer of business, are based upon a correct factual interpretation of the clauses of the agreement.
- The impugned orders do not suffer from any error of law and would not require any interference.