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DISSOLUTION OR RE-ORGANISATION OF FIRMS/ AOP/ BOI

SECTION 9B

Income on Receipt of Capital Asset or Stock in Trade by Specified Person from Specified Entity

- (1) Where a **specified person** receives during the previous year any **capital asset or stock in trade** or both from a **specified entity** in connection with the **dissolution or reconstitution** of such specified entity, then the specified entity **shall be deemed to have transferred such capital asset or stock in trade or both**, as the case may be, to the specified person in the year in which such capital asset or stock in trade or both are received by the specified person.
- (2) **Any profits and gains** arising from such deemed **transfer of capital asset or stock in trade or both**, as the case may be, by the specified entity shall be—
 - (i) **deemed to be the income of such specified entity** of the previous year in which such capital asset or stock in trade or both were received by the specified person; and
 - (ii) chargeable to income-tax as income of such specified entity under the head "**Profits and gains of business or profession**" or under the head "**Capital gains**", in accordance with the provisions of this Act.
- (3) For the purposes of this section, **fair market value of the capital asset or stock in trade or both on the date of its receipt** by the specified person shall be deemed to be the **full value of the consideration received** or accruing as a result of such deemed transfer of the capital asset or stock in trade or both by the specified entity.
- (4) If any difficulty arises in giving effect to the provisions of this section and sub-section (4) of section 45, the Board may, with the approval of the Central Government, issue guidelines for the purposes of removing the difficulty.
- (5) Every guideline issued by the Board under sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the assessee.

Explanation.—For the purposes of this section,—

- (i) **"reconstitution of the specified entity"** means, where—
 - (a) **one or more of its partners or members**, as the case may be, of such specified entity **ceases to be partners or members**; or
 - (b) **one or more new partners or members, as the case may be, are admitted** in such specified entity in such circumstances that one or more of the persons who were partners or members, as the case may be, of the specified entity, before the change, continue as partner or partners or member or members after the change; or
 - (c) **all the partners** or members, as the case may be, of such specified entity **continue with a change in their respective share** or in the shares of some of them;
- (ii) **"specified entity"** means a firm or other association of persons or body of individuals (not being a company or a co-operative society);
- (iii) **"specified person"** means a person, who is a partner of a firm or member of other association of persons or body of individuals (not being a company or a co-operative society) in any previous year.

SECTION 45(4)

Capital Gains

Notwithstanding anything contained in sub-section (1), where a **specified person receives** during the previous year **any money or capital asset or both from a specified entity** in connection with the **reconstitution of such specified entity**, then any profits or gains arising from such receipt by the specified person shall be chargeable to income-tax **as income of such specified entity under the head "Capital gains"** and shall be deemed to be the **income of such specified entity of the previous year** in which such money or capital asset or both were received by the specified person, and notwithstanding anything to the contrary contained in this Act, such profits or gains shall be determined in accordance with the **following formula**, namely:—

$$\mathbf{A = B + C - D}$$

Where,

- A =** income chargeable to income-tax under this subsection as income of the specified entity under the head **"Capital gains"**;
- B =** value of any money received by the specified person from the specified entity on the date of such receipt;
- C =** the amount of **fair market value** of the capital asset received by the specified person from the specified entity on the date of such receipt; and
- D =** the amount of balance in the **capital account** (represented in any manner) of the specified person in the books of account of the specified entity **at the time of its reconstitution**:

Provided that if the value of "A" in the above formula is negative, its value shall be deemed to be zero:

Provided further that the **balance in the capital account** of the specified person in the books of account of the specified entity **is to be calculated without taking into account the increase in the capital account** of the specified person due to **revaluation of any asset or due to self-generated goodwill or any other self-generated asset.**

Explanation 1.—For the purposes of this sub-section,—

- (i) the expressions "**reconstitution of the specified entity**", "**specified entity**" and "**specified person**" shall have the meanings respectively assigned to them in section 9B;
- (ii) "**self-generated goodwill**" and "**self-generated asset**" mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

Explanation 2.—For the removal of doubts, it is clarified that when a capital asset is received by a specified person from a specified entity in connection with the reconstitution of such specified entity, **the provisions of this sub-section shall operate in addition to the provisions of section 9B and the taxation under the said provisions thereof shall be worked out independently.**

Note 1: Section 9B and section 45(4) shall apply simultaneously if there is reconstitution of a firm/ AOP/ BOI.

Note 2: On dissolution of firm/ AOP/ BOI, ONLY section 9B shall apply and section 45(4) SHALL NOT APPLY.

SECTION 48

Mode of Computation

The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto;
- (iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in subsection (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is **attributable to the capital asset being transferred** by the specified entity, calculated in the prescribed manner:

CIRCULAR 14/2021

Finance Act, 2021 inserted a **new section 9B** in the Income-tax Act 1961 (hereinafter referred to as "the Act"). This section mandates that whenever a specified person receives **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, then it shall be deemed that the specified entity have transferred such capital asset or stock in trade or both, as the case may be, to the specified person (hereinafter referred to as "deemed transfer"). This deemed transfer would be in the year in which such capital asset or stock in trade or both are received by the specified person. Any profits and gains arising from such deemed transfer is deemed to be the income of such specified entity of the previous year in which such capital asset or stock in trade or both were received by the specified person. Further, it is chargeable to income-tax as income of such specified entity under the head "Profits and gains of business or profession" or under the head "Capital gains", in accordance with the provisions of this Act. It has also been provided that the **fair market value of the capital asset or stock in trade or both, on the date of its receipt by the specified person, shall be deemed to be the full value of the consideration received or accruing as a result of such deemed transfer**. The definitions of terms "reconstitution of the specified entity", "specified entity" and "specified person" are provided in section 9B of the Act.

2. Similarly the Finance Act 2021 substituted **sub-section (4) of section 45** of the Act. This newly substituted sub-section (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 under the head "Capital gains"**. It has been further deemed that this income shall be the income of the specified entity of the previous year in which such money or capital asset or both were received by the specified person. A formula to calculate such profits and gains has also been provided in this sub-section. The definitions of terms "reconstitution of the specified entity", "specified entity" and "specified person" shall be as provided in section 9B of the Act while the terms "self-generated goodwill" and "self-generated asset" have been defined in this sub-section. It has been further clarified that when a capital asset is received by a specified person from a specified entity in connection **with the reconstitution of such specified entity, the provisions of sub-section (4) of section 45 of the Act shall operate in addition to the provisions of section 9B of the Act and the taxation under the said provisions thereof shall be worked out independently**. Both, the new section 9B and substituted sub-section (4) of section 45 are applicable for the assessment year 2021-22 and subsequent assessment years.
3. Sub-section (4) of section 9B of the Act provides that if any difficulty arises in giving effect to the provisions of this section and sub-section (4) of section 45 of the Act, the Board may, with the approval of the Central Government, issue guidelines for the purposes of removing the difficulty. For this purpose, the Central Board of Direct Taxes, with the approval of the Central Government, hereby issues the following guidelines.

Guidelines

4. It is noticed that the **amount taxed under sub-section (4) of section 45 of the Act is required to be attributed to the remaining capital assets of the**

specified entity, so that when such capital assets get transferred in the future, the amount attributed to such capital assets gets reduced from the full value of the consideration and to that extent the specified entity does not pay tax again on the same amount, it is further noticed that this attribution is given in the Act only for the purposes of section 48 of the Act. It may be seen that section 48 of the Act only applies to capital assets which are not forming block of assets. For capital assets forming block of assets there is sub-clause (c) of clause (6) of section 43 of the Act to determine written down value of the block of asset and section 50 of the Act to determine the capital gains arising on transfer of such assets. However, the Act has not yet provided that amount taxed under sub-section (4) of section 45 of the Act can also be attributed to capital assets forming part of block of assets and which are covered by these two provisions. To remove difficulty, **it is clarified that Rule 8AB of the Income-tax Rules, 1962** (hereinafter referred to as "the Rules") notified vide notification no. 76 dated 2-7-2021 **also applies to capital assets forming part of block of assets. Wherever the terms 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 sub-clause (c) of clause (6) of section 43 of the Act and **section 50 of the Act.**

5. 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 sub-clause (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.**
6. For the purposes of understanding and for removing difficulties, if any, the application of section 9B of the Act and sub-section (4) of section 45 of the Act is explained with the help of the following examples:

Example 1:

There are three partners "A", "B" and "C" in a firm "FR", having one third share each. Each partner has a capital balance of ₹ 10 lakh in the firm. There are three pieces of lands "S", "T" and "U" in that firm and there is no other capital asset in that firm. Book value of each of the land is ₹ 10 lakh. All these three lands were acquired by the firm more than two years ago.

Partner "A" wishes to exit. The firm revalues its lands based on valuation report from a registered valuer, as defined in rule 11U of the Rules, and as per that valuation report fair market value of lands "S" and "T" is ₹ 70 lakh each, while fair market value of land "U" is ₹ 50 lakh. On the exit of partner "A", the firm decides to give him ₹ 11 lakh of money and land "U" to settle his capital balance.

In accordance with the provisions of section 9B of the Act, it would be deemed that the firm "FR" has transferred land "U" to the partner "A" at its fair market value of ₹ 50 lakh. Let us assume that the indexed cost of acquisition of land "U" is ₹ 15 lakh.

Now on account of the deeming provisions of section 9B of the Act, it is deemed that the firm "FR" has transferred land "U" to partner "A". Thus, an amount of ₹ 50 lakh less ₹ 15 lakh would be charged to tax in the hands of firm "FR" under the head "Capital gains". **For partner "A", the cost of acquisition of this land would be ₹ 50 lakh.** Hence, the amount of ₹ 35 lakh is charged to long term capital gains and let us assume that the tax is ₹ 7 lakh (assume no surcharge or cess just for ease of calculation and illustration purposes).

This, net book profit after tax of ₹ 33 lakh (capital gains of ₹ 40 lakh without indexation less tax of ₹ 7 lakh) is to be credited in the capital account of each of the three partners, i.e. ₹ 11 lakh each. Thus partner "A" capital account would increase to ₹ 21 lakh. **This exercise is required to be carried out since section 9B of the Act mandates that it is to be deemed that the firm "FR" has transferred the land "U" to partner "A" and the long term capital gains of ₹ 35 lakh is chargeable to tax in the hands of the firm "FR".**

As against capital balance of ₹ 21 lakh, partner "A" has received ₹ 61 lakh (₹ 11 lakh of money plus land "U" of fair market value of ₹ 50 lakh). Thus ₹ 40 lakh is required to be charged to tax under sub-section (4) of section 45 of the Act. **This shall be in addition to an amount of ₹ 35 lakh charged to tax under section 9B of the Act.**

On account of clause (iii) of section 48 of the Act. read with rule 8AB of the Rules, this ₹ 40 lakh is to be attributed to the remaining assets of the firm "FR" on the basis of increase in their value due to revaluation based on the valuation report of registered valuer. In this case as per revaluation there are only two capital assets remaining; lands "S" and "T". In both cases the value has increased by ₹ 60 lakh each. Thus, out of ₹ 40 lakh, ₹ 20 lakh shall be attributed to land "S" and ₹ 20 lakh to land "T". **When either of these lands gets sold, this amount attributed to them would be reduced from sales consideration under clause (iii) of section 48 of the Act.**

The amount of ₹ 40 lakh which is charged to tax under sub-section (4) of section 45 of the Act shall be charged **as long term capital gains in view of sub-rule (5) of rule 8AA of the Rules, since the amount of ₹ 40 lakh is attributed to land "S" and land "T" which are both long term capital assets at the time of taxation of ₹ 40 lakh under sub-section (4) of section 45 of the Act.**

Example 2:

There are three partners "A", "B" and "C" in a firm "FR", having one third share each. Each partner has a capital balance of ₹ 10 lakh in the firm. There are three pieces of lands "S", "T" and "U" in that firm and there is no other capital asset in that firm. All these three lands were acquired by the firm more than two years ago.

Book value of each of the land is ₹ 10 lakh. Partner "A" wishes to exit. **The firm sells land "U" for its fair market value of ₹ 50 lakh.** Let us assume that the indexed cost of acquisition of land "U" is ₹ 15 lakh. Thus, an amount of ₹ 50 lakh less ₹ 15 lakh would be charged to tax in the hands of firm "FR" under the head "Capital gains". Hence, the amount of ₹ 35 lakh is charged to long term capital gains and let us assume that the tax is ₹ 7 lakh (assume no surcharge or cess just for ease of calculation and illustration purposes).

This, net book profit after tax of ₹ 33 lakh (capital gains of ₹ 40 lakh without indexation less tax of ₹ 7 lakh) is to be credited in the capital account of each of the three partners, i.e. ₹ 11 lakh each. Thus partner "A" capital account would increase to ₹ 21 lakh.

Partner "A" decides to exit the firm "FR". The firm revalue its lands "S" and "T" based on valuation report from a registered valuer, as defined in rule 11U of the Rules, and as per that valuation report fair market value of lands "S" and "T" is ₹ 70 lakh each. **On the exit of partner "A", the firm decides to give him ₹ 61 lakh of money to settle his capital balance.** Thus, as against capital balance of ₹ 32 lakh, partner "A" has received ₹ 61 lakh of money. Thus ₹ 40 lakh is required to be charged to tax under sub-section (4) of section 45 of the Act. This will be in addition to ₹ 35 lakh already charged to capital gains.

On account of clause (iii) of section 48 of the Act, read with rule 8AB of the Rules, this **₹ 40 lakh is to be attributed to the remaining assets of the firm "FR" on the basis of increase in their value due to revaluation based on the valuation report of registered valuer.** In this case as per revaluation there are only two capital assets remaining; lands "S" and "T". In both cases the value has increased by ₹ 60 lakh each. Thus, out of ₹ 40 lakh, ₹ 20 lakh shall be attributed to land "S" and ₹ 20 Lakh to land "T". When either of these lands gets sold, this amount attributed to them would be reduced from sales consideration under clause (iii) of section 48 of the Act.

The amount of ₹ 40 lakh which is charged to tax under sub-section (4) of section 45 of the Act shall be charged as long term capital gains in view of sub-rule (5) of rule 8AA of the Rules, since the amount of ₹ 40 lakh is attributed to land "S" and land "T" which are both long term capital assets at the time of taxation of ₹ 40 lakh under sub-section (4) of section 45 of the Act.

Note: The final result in both example 1 and 2 is same due to the operation of section 9B of the Act.

Example 3:

There are three partners "A", "B" and "C" in a firm "FR", having one third share each. Each partner has a capital balance of ₹ 100 lakh in the firm. There is a piece of land "S" of book value of ₹ 30 lakh. There is patent "T" of written down value of ₹ 45 lakh. And there is cash of ₹ 225 lakh. The land was acquired by the firm more than two years ago. The patent was acquired/developed/registered one year back.

Partner "A" wishes to exit. The firm revalue its land and patent based on valuation report from a registered valuer, as defined in rule 11U of the Rules, and as per that valuation report fair market value of land "S" is ₹ 45 lakh and fair market value of patent "T" is ₹ 60 lakh. As per the valuation report there is also self-generated goodwill of ₹ 30 lakh. On the exit of partner "A", the firm decides to give him ₹ 75 lakh in money and land "S" to settle his capital balance.

In accordance with the provisions of section 9B of the Act, it would be deemed that the firm "FR" has transferred land "S" to the partner "A" at its fair market value of ₹ 45 lakh. Let us assume that the indexed cost of acquisition of land "S" is ₹ 45 lakh.

Now on account of the deeming provisions of section 9B of the Act, it is deemed that the firm "FR" has transferred land "S" to partner "A". However, since the sale consideration is equal to indexed cost of acquisition, there will not be any capital gains tax. For partner "A", the cost of acquisition of this land would be ₹ 45 lakh.

The net book profit of ₹ 15 lakh (capital gains of ₹ 15 lakh without indexation) is to be credited in the capital account of each of the three partners, i.e. ₹ 5 lakh each. Thus partner "A" capital account would increase to ₹ 105 lakh. This exercise is required to be carried out since section 9B of the Act mandates that it is to be deemed that the firm

"FR" has transferred the land "S" to partner "A". Thus, any gain in the books is to be apportioned to partners' capital accounts.

As against capital balance of ₹ 105 lakh, partner "A" has received ₹ 120 lakh (money of ₹ 75 Lakh plus land "S" of fair market value of ₹ 45 lakh). Thus ₹ 15 Lakh is required to be charged to tax under sub-section (4) of section 45 of the Act.

On account of clause (iii) of section 48 of the Act, read with rule 8AB of the Rules and this guidance note, this ₹ 15 lakh is to be attributed to the remaining capital assets of the firm "FR" on the basis of increase in the value due to revaluation of existing capital assets, or due to recognition of the value of self-generated goodwill, based on the valuation report of registered valuer. In this case as per this report the value of patent "T" has increased by ₹ 15 lakh and the self-generated goodwill value has been recognised at ₹ 30 lakh. Thus one third of ₹ 15 lakh (i.e. ₹ 5 lakh) would be attributed to patent "T", while two third of ₹ 15 lakh (i.e. ₹ 10 lakh) would be attributed to self-generated goodwill. ₹ 5 lakh attributed to patent "T" shall not be added to the block of the assets and no depreciation shall be available on the same. When patent "T" gets transferred subsequently, this ₹ 5 Lakh attributed shall be reduced from the full value of the consideration received or accruing as a result of transfer of patent "T" by the firm "FR", and the net value shall be considered for reduction from the written down value of the intangible block under sub-clause (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. (Refer guidance in paragraph 5 of this circular). Let us say that Patent T is sold for ₹ 25 lakh. ₹ 5 lakh shall be reduced from ₹ 25 lakh and only net amount of ₹ 20 lakh shall be considered for reduction from the written down value of the intangible block under sub-clause (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. Similarly when goodwill gets sold subsequently, ₹ 10 lakh would be reduced from its sales consideration under clause (iii) of section 48.

The amount of ₹ 15 lakh which is charged to tax under sub-section (4) of section 45 of the Act shall be charged as short term capital gains, as ₹ 5 lakh is attributed to the Patent "T" which is part of block of assets and ₹ 10 lakh is attributed to self-generated goodwill. In accordance with sub-rule (5) of Rule 8AA of the Rules, both of these are to be characterised as short term capital gains.

Note: For the purpose of calculation of depreciation under section 32 of the Act, the written down value of the block of asset "intangible" of which Patent "T" is part, would remain ₹ 45 lakh and would not be increased to ₹ 60 lakh due to revaluation during the year. In this regard it may be highlighted that the following provisions are relevant in determining the amount on which depreciation is allowable under the Act:

- Explanation 2 of sub-section (1) of section 32 of the Act provides that the term "written down value of the block of assets" shall have the same meaning as in clause (c) of sub-section (6) of section 43 of the Act.
- Clause (c) of sub-section (6) of section 43 of the Act, with respect to block of assets, inter-alia, provides that the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year is to be increased by the actual cost of any asset falling within that block, acquired during the previous year. This clause does not allow any increase on account of revaluation.

- Sub-section (1) of section 43 of the Act which defines "Actual cost" as actual cost of the assets to the assessee. In revaluation, there is no actual cost to the assessee

Further, section 32 of the Act does not allow depreciation on goodwill. If in the given example "self-generated goodwill" is replaced by "self-generated asset", even then the depreciation will not be admissible on the amount of ₹ 30 lakh recognised in valuation. In this regard it may be highlighted that the above mentioned provisions, in the immediate preceding paragraph, are also applicable to "self-generated asset" and since there is no actual cost to assessee in case of "self-generated asset", depreciation is not allowable under section 32 of the Act on an asset whose actual cost is nil.

RULE 8AA

Method of Determination of Period of Holding of Capital Assets in Certain Cases

- (1) The period for which any capital asset, other than the capital assets mentioned in clause (i) of the Explanation 1 to clause (42A) of section 2 of the Act, is held by an assessee, shall be determined in accordance with the provisions of this rule.
- (2)
- (3)
- (4)
- (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.**

¹Form No. 5C (See rule 8AB)

Details of amount attributed to capital asset remaining with the specified entity

1. Name of the specified entity
2. Permanent Account number
3. Assessment Year
4. Amount taxable under sub-section (4) of section 45
5. Attribution of amount taxable under sub-section (4) of section 45 to capital assets remaining

Sr. No.	Capital Asset		Book Value	Revalued amount/valued amount for self-generated asset	Amount attributed	Short term/longterm
	name	Whether self-generated yes/no				
	Total					

6. Name and registration number of the values based on whose valuation report information at serial no 5 is provided.

VERIFICATION

I, _____ son/ daughter of _____ solemnly declare that to the best of my knowledge and belief, the information given in the form is correct and complete and is in accordance with the provisions of the Income-tax Act, 1961. I further declare that I am furnishing the form in my capacity as _____ (drop down to be provided in e-filing utility) and I am also competent to furnish this form and verify it. I am holding permanent account number _____.

Place:

Date:

Signature _____

¹ Inserted by the Income-tax (Eighteenth Amendment), Rules, 2021, w.e.f. **2-7-2021**.

RULE 8AB

Attribution of Income Taxable under Sub-Section (4) of Section 45 to the Capital Assets Remaining With the Specified Entity, Under Section 48

- (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.

Illustration:

Firm ABC has partners A, B and C sharing profits and losses equally. A retires on 01.01.2022 and on that date balance sheet of Firm ABC is as under:

Capital Account		₹	
A	21 lakhs	Land S	10 lakhs (LT)
B	27 lakhs	Land T	10 lakhs (ST)
C	21 lakhs	Land U	10 lakhs (LT)
		Self-generated goodwill	15 lakhs
		SIT	12 lakhs
		WDV of Block of assets	6 lakhs
			63 lakhs

On 01.01.2022, the Fair Market value of assets is as under:

	₹
Land S	70 lakhs
Land T	70 lakhs
Land U	50 lakhs
Depreciable assets	12 lakhs
SIT	25 lakhs

Assume indexed COI of Land U is ₹ 15 lakhs. Partner A retires from firm and Land U is given to him and cash of ₹ 11 lakhs is given to him and also SIT is given to him.

IN HANDS OF FIRM A.Y. 2022-23

SECTION 9B

LONG TERM CAPITAL GAINS (Sale of Land U)		₹
Deemed sales consideration		50 lakhs
Indexed COA		15 lakhs
LTCG		<u>35 lakhs</u>
P/G/B/P (Sale of SIT)		
Deemed sales consideration		25 lakhs
COA as per books		12 lakhs
P/G/B/P		<u>13 lakhs</u>
Tax on 35 lakhs @ 20%		7,00,000
Tax on 13 lakhs @ 30%		3,90,000
		<u>10,90,000</u>
4% cess		43,600
		<u>11,33,600</u>

As per CBDT circular, book profits of Firm will increase as under:

	₹
Profit on sale of Land (without indexation)	+ 40,00,000
Profit on sale of SIT	+ 13,00,000
Tax on above	<u>- 11,33,600</u>
	<u>41,66,400</u>

Amount to be credited to each partners A/c 13,88,800

As per section 45(4)

B = ₹ 11,00,000
 C = ₹ 50,00,000
 D = ₹ 21,00,000 + ₹ 13,88,800 - ₹ 5,00,000 (self-generated goodwill)
 = ₹ 29,88,800

A = B + C - D
 = ₹ 11,00,000 + ₹ 50,00,000 - ₹ 29,88,800
 = ₹ 31,11,200

This shall be taxed in hands of firm. There is double taxation. ₹ 13,23,915 is LTCG and ₹ 17,87,285 is STCG. This ₹ 31,11,200 shall be added as under to COA of various assets.

		Book value	FMV	Increase	Attribution	
LT	Land S	10 lakhs	70 lakhs	60	31,11,200 × 60/141	13,23,915
ST	Land T	10 lakhs	70 lakhs	60	31,11,200 × 60/141	13,23,915
ST	Goodwill	15 lakhs		15	31,11,200 × 15/141	3,30,979
ST	Depreciable assets	6 lakhs	12 lakhs	6	31,11,200 × 6/141	1,32,391
				141		31,11,200

Note 1: On Goodwill, no depreciation. ₹ 3,30,979 shall be deducted as COA on sale of Goodwill.

Note 2: On Depreciable assets, depreciation shall be allowed only on ₹ 6 lakhs. When sale takes place then, ₹ 1,32,391 shall be reduced from Sale consideration of the assets.