18.1 Introduction

One of the dictionary meanings of the word “restructuring” is “rearrangement”. Thus, business restructuring refers to a rearrangement of the corporate structure. In today’s world, along with increasing focus on globalisation and liberalization, there is free competition amongst businesses. As a result, corporates are trying to identify opportunities so that they can command a presence in the market. They are redefining their strategies, looking at core competency and trying to create a value for the shareholder in a competitive business environment. This has given rise to business restructuring.

18.2 Forms of Business Restructuring

Business restructuring can be done through mergers, acquisitions, strategic alliances, etc. The following are the methods by which businesses are redefining their affairs:

1. Amalgamation/merger
2. Demerger and spin off
3. Conversion of sole proprietary business into a company
4. Conversion of partnership firm into a company
5. Conversion of a private company or an unlisted public company into a Limited Liability Partnership (LLP)
6. Slump sale of business
7. Buy back of shares
8. Capital reduction
9. Redemption of preference shares
10. Conversion of debentures into shares
11. Conversion of an Indian branch of foreign company into an Indian subsidiary company.

These are discussed in the subsequent paragraphs.
18.3 Amalgamation

18.3.1 Definition: In the context of taxation, amalgamation includes not only the merger of one existing company with another existing company but also the merger of two or more existing companies to form a third company.

The Income-tax Act, 1961 defines amalgamation in section 2(1B) as a merger of one or more companies with another company, or the merger of two or more companies to form one company, in such a manner that:

a. all the properties of the amalgamating company or companies immediately before the amalgamation, become the properties of the amalgamated company by virtue of the amalgamation;

b. all the liabilities of the amalgamating company or companies immediately before the amalgamation, become the liabilities of the amalgamated company by virtue of the amalgamation; and

c. shareholders holding not less than 75% in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee, for the amalgamated company or its subsidiary) become shareholders of the amalgamated company.

18.3.2 Effective date: Amalgamation is assumed to take effect on the date on which it is approved by the High Court. Once amalgamation is approved, it should be treated as relating back to the appointed date with reference to which the accounts of both the amalgamating and amalgamated companies are made up.

18.3.3 Exemptions available under the Income-tax Act, 1961:

- **Exemption from capital gains in the hands of the amalgamating companies:** Under section 47(vi), capital gains arising from the transfer of assets by the amalgamating companies to the Indian amalgamated company is exempt from tax.

- **Exemption from capital gains for the shareholders of the amalgamating companies:** Under section 47(vii), capital gains arising from the transfer of shares by a shareholder of the amalgamating companies are exempt from tax, if:

  (a) the transfer is made in consideration of the allotment to him of shares in the amalgamated company except where the shareholder itself is an amalgamated company; and

  (b) the amalgamated company is an Indian company.

The issue of exemption from capital gains is not free from doubt where the transaction is not structured as a share for share exchange and the consideration is paid in other forms. There are two contrary High Court judgments in this regard.

In the case of *CIT vs. Gautam Sarabhai Trust* [1988] 173 ITR 216, the Gujarat High Court held that to qualify for exemption under section 47(vii), the shareholder should receive the entire
consideration in the form of shares of the amalgamated company alone. In other words, if besides the share or shares in the amalgamated company, the shareholders of the amalgamating company is allotted something more, namely, bonds or debentures in consideration of the transfer of his share or shares in the amalgamating company, he cannot get the benefit of section 47(vii).

The other view is based on the judgment in the case of CIT vs. M.Ct.M Corporation Private Ltd. [1996] 221 ITR 524. In this case, the Madras High Court held that in as much as shares and debentures are allotted to the assessee on account of the amalgamation of the two companies and in view of the fact that the identity of the transferor company got lost in the amalgamation, there was no transfer or extinguishment of any right in allotting the shares and debentures in favour of the assessee under the provisions of section 2(47). Even if there was a transfer, the gains arising therefrom, where entitled to exemption under section 47(vii).

- **Exemption from capital gains in case of international restructuring**: Under section 47(via), in case of amalgamation of foreign companies, transfer of shares held in Indian company by amalgamating foreign company to amalgamated foreign company is exempt from tax, if the following two conditions are satisfied:
  a. At least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and  
  b. The amalgamation is tax-free in the foreign company.

### 18.3.4 Carry forward and set-off of accumulated loss and unabsorbed depreciation in certain cases of amalgamation [Section 72A]:

Sub-section (1) of section 72A provides that where there is an amalgamation of a company, owning an industrial undertaking or a ship or a hotel with another company or the amalgamation of a banking company with a specified bank, then the accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected and other provisions of the Act shall apply accordingly.

The “specified bank” means the State Bank of India constituted under the State Bank of India Act, 1955 or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

**Conditions**: However, sub-section (2) lays down the following conditions for admissibility of set-off and carry forward in hands of the amalgamated company:

**Conditions to be fulfilled by the amalgamating company**

1. The amalgamating company should have been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years.
2. The amalgamating company has held continuously as on the date of amalgamation at least three-fourths of the book value of the fixed assets held by it, two years prior to the date of amalgamation.
Conditions to be fulfilled by the amalgamated company

(i) the amalgamated company holds continuously for a minimum period of 5 years from the date of amalgamation at least 75% in the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;

(ii) the amalgamated company continues the business of the amalgamating company for a minimum period of 5 years from the date of amalgamation;

(iii) the amalgamated company fulfills such other conditions as may be prescribed to ensure the revival of the business of the amalgamated company or to ensure that the amalgamation is for genuine business interest.

♦ Withdrawal of deduction or allowance: Sub-section (3) provides that where any of the conditions laid down in sub-section (2) are not complied with, the set off or allowance for depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamating company chargeable to tax for the year in which such conditions are not complied with.

♦ Meaning of “Industrial undertaking”: “Industrial undertaking” means any undertaking which is engaged in:

   (i) the manufacture or processing of goods; or
   (ii) the manufacture a computer software; or
   (iii) the business of generation or distribution of electricity or any other form of power; or
   (iv) the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or
   (v) mining; or
   (vi) the construction of ships, aircrafts or rail systems.”

18.3.5 Power of Central Government to prescribe other conditions: Section 72A(2)(iii) empowers the Central Government to prescribe other conditions to ensure that the amalgamation is for “genuine business purpose” or for the purpose of revival of the business of amalgamating company.

Rule 9C prescribes that the amalgamated company should achieve the level of production of at least 50% of the installed capacity of the said undertaking before the end of 4 years from the date of amalgamation and maintain the said minimum level till the end of 5 years from the date of amalgamation. The assessee is required to obtain a report in the prescribed form as given in the Rules.

An issue arises that the above condition prescribed vide the above notification cannot be satisfied in case where the installed capacity is not there. Examples could be software companies, units engaged in assembly/processing activities etc.
18.3.6 Other benefits: Apart from carrying forward unabsorbed business loss and unabsorbed depreciation, the amalgamated company shall also be entitled to carry forward and set off the following unabsorbed expenditures of the amalgamating company:

(a) Capital expenditure on Scientific Research u/s 35;
(b) Expenditure in connection with amalgamation u/s 35DD;
(c) Expenditure for obtaining licence to operate telecommunication services u/s 35ABB;
(d) Preliminary expenses u/s 35D;
(e) Deduction for expenditure on prospecting etc. for minerals u/s 35E.

18.4 Demerger

The concept of demerger was introduced in the context of taxation by Finance Act, 1999. The objective was to enable corporate undertakings to undertake business restructuring in a tax neutral form.

18.4.1 Definition: Section 2(19AA) defines demerger in relation to companies, as the transfer, pursuant to a scheme of arrangement under section 391 to 394 of the Companies Act, 1956, by the demerged company of one or more of its undertakings to any resulting company in such manner that:

(a) all the property and liabilities of the undertaking which is being transferred by the demerged company become the property and liabilities of the resulting company by virtue of the demerger;

(b) the property and liabilities of the undertakings being transferred by the demerged company are transferred at their book values immediately before the demerger;

(c) in consideration of the demerger, the resulting company issues shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company;

(d) shareholders holding not less than 75% in value of the shares in the demerged company (other than shares already held therein immediately before the demerger by the resulting company or by a nominee of the resulting company or its subsidiary) becomes shareholders of the resulting company by virtue of the demerger;

(e) the transfer of the undertaking is on a going concern basis;

(f) the demerger is in accordance with the conditions, if any, notified by the Central Government under section 72A(5).

For this purpose, the following points need to be noted:

1 Sections 230 to 232 of the Companies Act, 2013
(i) An ‘undertaking’ shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

(ii) ‘Liabilities’ shall mean the following:
   (a) those which arise out of the activities or operations of the undertaking;
   (b) the specific loans or borrowings (including debentures) raised, incurred and utilized solely for the activities or operations of the undertaking;
   (c) so much of the general or multipurpose borrowings of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of the demerged company immediately before the demerger.

(iii) For determining the value of the property, any change in the value of assets consequent to their revaluation shall be ignored.

(iv) Demerged company means the company whose undertaking is transferred pursuant to demerger, to the resulting company.

(v) The splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils the conditions specified by the Central Government.

‘Resulting company’ means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and against which the resulting company issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

18.4.2 Exemption and benefits: A demerger transaction fulfilling the conditions of section 2(19AA) is free from capital gains tax, both with respect to the transfer of assets as well with respect to issue of shares to the shareholders.

Section 2(22) provides that the issue of shares directly to the shareholder pursuant to the demerger of an undertaking will not constitute deemed dividend.

Further, in respect of international demergers, provisions similar to amalgamation of foreign companies have been made. Transfer of shares of an Indian company pursuant to the demerger of a foreign company is exempt provided the following two conditions are satisfied.

♦ At least 75% of the shareholders in the demerged foreign company continue to be shareholders in the resulting company;

♦ Such transfer should not attract capital gains tax in the foreign company.

18.4.3 Accumulated losses and depreciation: Accumulated losses and depreciation relatable to the undertaking being transferred in a scheme of demerger is allowed to be carried forward and set off in the hands of the resulting company.
In case such past losses cannot be directly attributed to the undertaking being transferred, the Act provides for the apportionment of the same between the demerged company and the resulting company in the same proportion in which the value of the assets have been transferred.

**Depreciation in the hands of the resulting company**: The depreciable assets base for tax purposes in the hands of the resulting company would be tax written down value in the hands of the demerged company.

**Reduction from book value of assets in the hands of the demerged company**: The tax depreciable assets base for the demerged company will be reduced by the tax written down value of the assets transferred in the demerger process.

**Cost of acquisition of shares in the resulting company**: In a demerger transaction, the shareholders of the demerged company are allotted shares in the resulting company by virtue of the demerger.

The cost of acquisition of the shares of the demerged company in the hands of the shareholders will be calculated by apportioning the cost of acquisition of the shares of the demerged company in the ratio of net assets transferred (to the resulting company) to the net worth of the demerged company.

### 18.5 Conversion of sole proprietary business into company

Where a sole proprietary concern is converted into a company and as a result of such conversion, the sole proprietary concern transfers any capital asset (whether tangible or intangible) to the company, such transfer will not be charged to capital gains tax if the following conditions are complied with:

(i) all the assets and liabilities of the sole proprietary concern immediately before its succession should become the assets and liabilities of the company;

(ii) the shareholding of the sole proprietor in the company is not less than 50% of the total voting power in the company and his shareholding continues to remain so for a period of 5 years from the date of succession;

(iii) the sole proprietor does not receive any consideration or benefit (whether directly or indirectly) other than the shares allotted to him by the company section 47(xiv).

### 18.6 Conversion of Partnership Firm into Company

Where a firm is converted into a company and as a result of such conversion, the firm transfers any capital asset (whether tangible or intangible) to the company, such transfer will not be charged to capital gains tax if the following conditions are complied with:

(i) all the assets and liabilities of the firm immediately before its succession should become the assets and liabilities of the company;

(ii) all the partners of the firm immediately before its succession become the shareholders of the company in the same proportion in which their capital accounts stood before such succession;
(iii) the partners of the firm do not receive any consideration or benefit (whether direct or indirect) other than the shares allotted to them by the company;

(iv) the partners’ aggregate shareholding in the company is not less than 50% of the total voting power in the company and their shareholding should continue to remain so for a period of 5 years from the date of succession [Section 47(xiii)].

Carry forward of loss and unabsorbed depreciation in case of re-organisation of business: If a firm or a proprietary concern is succeeded by a company fulfilling the conditions laid down in sections 47(xiii) and 47(xiv), then the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern shall be allowed to be carried forward and set off by the successor company.

If any of the conditions laid down in clause (xiii) or clause (xiv) are not complied with in any subsequent year, the set-off of loss or allowance for depreciation made in any previous year in the hands of the successor company shall be deemed to be the income of the company chargeable to tax in the year in which such conditions are not complied with.

Will the firm be liable to pay tax on depreciable assets?

If the transfer is on a going concern basis, even though no specific exemption is spelt out, the firm shall not be taxable since there can be no inference of a sale of any specific item comprised therein.

18.7 Conversion of a private company or an unlisted public company into a Limited Liability Partnership (LLP)

(i) Consequent to the Limited Liability Partnership Act, 2008 coming into effect in 2009 and notification of the Limited Liability Partnership Rules w.e.f. 1st April, 2009, the Finance (No.2) Act, 2009 had incorporated the taxation scheme of LLPs in the Income-tax Act, 1961, on the same lines as applicable for general partnerships, i.e. tax liability would be attracted in the hands of the LLP and tax exemption would be available to the partners. Therefore, the same tax treatment would be applicable for both general partnerships and LLPs.

(ii) Under section 56 and section 57 of the Limited Liability Partnership Act, 2008, conversion of a private company or an unlisted public company into an LLP is permitted. However, under the Income-tax Act, 1961, no exemption is available on conversion of a company into an LLP. As a result, transfer of assets on conversion would attract capital gains tax. Further, there is no specific provision enabling the LLP to carry forward the unabsorbed losses and unabsorbed depreciation of the predecessor company.

(iii) Therefore, section 47(xiiiib) provides that -

(1) any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP; or

(2) any transfer of a share or shares held in a company by a shareholder on conversion of a company into a LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45, subject to fulfillment of certain
conditions. This section facilitates conversion of small private and unlisted public
companies into LLPs. These conditions are as follows:

1. the total sales, turnover or gross receipts in business of the company should not exceed ₹ 60 lakh in any of the three preceding previous years;
2. the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;
3. no consideration other than share in profit and capital contribution in the LLP arises to the shareholders;
4. the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion;
5. all assets and liabilities of the company become the assets and liabilities of the LLP; and
6. no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

(iv) However, if subsequent to the transfer, any of the above conditions are not complied with, the capital gains not charged under section 45 would be deemed to be chargeable to tax in the previous year in which the conditions are not complied with, in the hands of the LLP or the shareholder of the predecessor company, as the case may be [Section 47A(4)].

(v) Further, the successor LLP would be allowed to carry forward and set-off the business loss and unabsorbed depreciation of the predecessor company [Sub-section (6A) of section 72A].

(vi) However, if the entity fails to fulfill any of the conditions mentioned in (iii) above, the benefit of set-off of business loss/unabsorbed depreciation availed by the LLP would be deemed to be the profits and gains of the LLP chargeable to tax in the previous year in which the LLP fails to fulfill any of the conditions listed above.

18.8 Slump Sale
18.8.1 Definition: ‘Slump sale’ means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. If value of an asset or liability is determined for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees, that should not be regarded as assignment of values to individual assets and liabilities.

One question that arises in this context is whether in a situation where an undertaking is transferred against the allotment of shares in the acquiring company, the transaction would qualify as “slump sale” under the Income-tax Act, 1961. One view in this regard is that the transfer must necessarily be effected against a monetary consideration and a transfer against allotment of share is merely an “exchange” which will not qualify as a “sale”. However, a more reasonable view seems to be that the allotment of shares is merely a manner of discharge of consideration and the transaction would still qualify as a slump sale if other conditions are satisfied.
18.8.2 Chargeability: Any profits arising from the slump sale effected in the previous year shall be chargeable to tax as capital gains and shall be deemed to be the income of the previous year which the transfer took place. In relation to a capital asset being an undertaking or division transferred by way of such sale, the ‘net worth’ of the undertaking or the division shall be deemed to be the cost of acquisition and cost of improvement for the purposes of sections 48 and 49. The benefit of indexation shall not be allowed. If the undertaking is owned and held by the assessee for not more than 36 months, it shall be taken as short-term capital asset.

♦ The Supreme Court in the case of R.C. Cooper vs. UOI: AIR 1970 SC 564 (610) held that the undertaking is distinct from the various assets which comprise the undertaking. The aforesaid principle has now been statutorily recognised.

♦ “Undertaking” is defined to include any part of an undertaking or a unit or division of an undertaking or a business activity as a whole, but does not include individual assets or liabilities or any combination thereof not constituting business activity [Section 2(42C)].

In case of a slump sale, every assessee shall furnish in the prescribed form along with the return of income, a report of a Chartered Accountant indicating the computation of net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division has been correctly arrived at in accordance with the provisions of this section.

‘Net worth’ shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account. Change in value of assets on account of revaluation shall be ignored. The value of depreciable assets shall be the written down value of block of assets determined in accordance with section 43(6)(c). The value of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD would be Nil. The value of all other assets would be the book value.

The auditor of the company is required to give a certificate in Form No.3CEA (Rule 6H) relating to the computation of capital gains in case of slump sale. This certificate should be filed along with the return of income duly accompanied by copies of the profit and loss account and Balance Sheet in accordance with the provisions of section 139.

18.9 Buy Back of Shares

Section 77A of the Companies Act, 1956\(^2\) allows a company to purchase its own shares subject to certain conditions. Section 2(22) of the Income-tax Act, 1961 provides that dividend does not include any payment made by a company on purchase of its own shares in accordance with the provisions of the Companies Act, 1956. Further, section 46A provides that the difference between any consideration received by a shareholder or a holder of other specified securities

\(^2\) Section 68 of the Companies Act, 2013
from any company on purchase of its own shares or other specified securities and the cost of the shares/securities shall be deemed to be capital gains arising to such shareholder or the holder of other specified securities in the year in which such shares or other specified securities were purchased by the company.

**Buyback of unlisted shares by domestic companies**

In order to discourage the practice of domestic companies resorting to buy back of unlisted shares instead of payment of dividends in order to avoid payment of tax by way of DDT, especially if the capital gains arising to the shareholders are either not chargeable to tax or are taxable at a lower rate, a new Chapter XII-DA, comprising of sections 115QA, 115QB and 115QC, has been inserted with effect from 1st June, 2013 to levy additional income-tax on buy back of such shares by domestic companies. The income arising to the shareholders in respect of such buy back of unlisted shares by the domestic company would be exempt under section 10(34A) w.e.f. A.Y.2014-15, where the company is liable to pay the additional income-tax on the buy-back of shares.

Section 115QA provides that the distributed income (i.e., consideration paid by the company for buyback of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares) would be subject to additional income-tax@20% (plus surcharge@10% and education cess@2% and secondary and higher education cess@1%) in the hands of the domestic company. The company is liable to pay such additional income-tax even though no income-tax may be payable by it in respect of its total income computed under the provisions of the Act.

**18.10 Capital Reduction**

Sale of a capital asset is not a pre-condition for capital gains. As a result of reduction in the face value of the shares, the share capital balance is reduced. It also extinguishes the right of the preference shareholder to receive dividend on the shares held and the right to share in the distribution of the net assets on liquidation in proportion to the extent of reduction in the capital. Such reduction in shareholder’s right would amount to a transfer within the meaning of section 2(47) of the Act [Kartikeya V. Sarabhai vs. CIT (1997) 228 ITR 163 (SC)].

**18.11 Redemption of Preference Shares**

When a preference share is redeemed by a company, what the shareholder does in effect is to sell the share to the company. The company redeems its preference shares only by paying the preference shareholders the value of the shares and taking back the preference shares. In effect, the company buys back the preference shares from the shareholders. The redemption of preference shares by the company, therefore, is a sale and squarely comes within the phrase ‘sale, exchange or relinquishment’ of an asset [Anarkali Sarabhai vs. CIT (1997) 224 ITR 422].

Acquisition of irredeemable preference shares of a company in exchange of equity shares consequent to capital restructuring scheme of the company cannot be exchange of one kind of shares against another kind of shares having different rights and liabilities. Where the assessee sells the preference shares within 6 months of their acquisition, the capital gain/loss shall be short-term in nature [CIT vs. Santosh L. Chowgule (1998) 234 ITR 787 (Bombay)].
18.12 Conversion of Debentures into Shares

Any transfer by way of conversion of bonds or debentures, debenture stock or deposit certificates in any form, of a company into shares or debentures of that company is not regarded as transfer under section 47(x). Hence, if any amount is paid in cash etc., the entire transaction will attract capital gains tax.

Section 49(2A) states that where the capital asset, being a share or debenture in a company became the property of the assessee in consideration of a transfer referred to in section 47(x), the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee.

18.13 Conversion of an Indian branch of foreign company into an Indian subsidiary company [Chapter XII-BB - Section 115JG]

(i) The provisions of this section apply to a foreign company engaged in banking business in India through its branch situated in India, which is converted into an Indian subsidiary company in accordance with the scheme framed by RBI.

(ii) If the conditions notified by the Central Government in this behalf are satisfied, then capital gains arising from such conversion would not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place.

(iii) Also, the provisions of the Act relating to computation of income of foreign company and Indian subsidiary company would apply with such exceptions, modifications and adaptations as specified in the notification.

(iv) Further, the benefit of set-off of unabsorbed depreciation, set-off and carry forward of losses, tax credit in respect of tax paid on deemed income relating to certain companies available under the Act shall apply with such exceptions, modifications and adaptations as specified in the notification.

(v) If the conditions specified in the scheme of RBI or notification issued by the Central Government are not complied with, then, all the provisions of the Act would apply to the foreign company and Indian subsidiary company without any benefit, exemption or relief under this section.

(vi) If the benefit, exemption or relief has been granted to the foreign company or Indian subsidiary company in any previous year and thereafter, there is a failure to comply with any of the conditions specified in the scheme or notification, then, such benefit, exemption or relief shall be deemed to have been wrongly allowed.

(vii) In such a case, the Assessing Officer is empowered to re-compute the total income of the assessee for the said previous year and make the necessary amendment. This power is notwithstanding anything contained in the Income-tax Act, 1961.

(viii) The provisions of rectification under section 154, would, accordingly, apply and the four year period within which such rectification should be made has to be reckoned from the end of the previous year in which the failure to comply with such conditions has taken place.

(ix) Every notification under issued under this section shall be laid before each House of Parliament.