Procedure for Conversion of partnership firm into company and provision of Companies Act, 1956 and the Income Tax Act, 1961

REORGANISATION OF A FIRM INTO A COMPANY:

Corporatisation is the need of the hour. The entire world is gradually drifting towards one global market without any trade barriers between the countries. A small organisation led by few partners cannot think of growth on large scale without corporatising itself. Corporatisation have their own advantages such as Limited Liability, Perpetual Succession, Transferability of shares, Expansion etc.

Conversion of a partnership firm to a company shall be studied under the provisions of the Companies Act, 1956 and the Income Tax Act, 1961.

COMPANIES ACT, 1956:

There would be 2 options available to a partnership firm for continuing the business in the form of a company:

- To dissolve the firm and incorporate a new company under the Companies Act, 1956; or
- Incorporate a company which can legally take over the business of the firm and continue the same business under Part IX of the Companies Act, 1956

The firm may be converted into a company by following the provisions of Part IX of the Companies Act, 1956 since there are many benefits which both the company and the firm stand to enjoy.

Sections 565 to 581 prescribes the law and procedure for Companies authorised to register under Part IX of the Companies Act, 1956.

Section 565 of the Companies Act, 1956 provides that any company formed in pursuance of any Act of Parliament or any other Indian Law other than the Companies Act, 1956; consisting of seven or more members may at any time register itself under this Act, either as an unlimited company or as a company limited by shares or limited by guarantee.

Circular No. 5/99 dated 19-5 -99 and Press Release dated 5/8/99, clarified that, the Registrar of Companies will continue to register Partnership Firms under Part IX of the Companies Act as Joint Stock Companies on satisfying the procedure and conditions. Accordingly, an existing Partnership Firm can be registered under the Companies Act.

Joint Stock Companies has been specifically defined for the purposes of Part IX under section 566 of the Companies Act, 1956.

STEPS FOR INCORPORATION OF COMPANY UNDER PART IX:

Step 1: Hold a meeting of the partners to transact the following:

-Assent of majority of its members as are present in person or where proxies are allowed, by proxy, at a general meeting summoned for the purpose of registering the firm under Part IX of the Companies Act, 1956. The majority required to assent as aforesaid shall consist of not less than 3/4 of the members as are present in person or where proxies are allowed, by proxy.

- To authorize one or more partners to take all steps necessary and to execute all papers, deeds, documents etc. pursuant to registration of the firm as a Company.

- To execute a supplementary Partnership Deed to align it with the requirements as under:

- There must be atleast 7 partners in the partnership firm;
- The firm may be registered with the Registrar of Firms;
- There must be a fixed capital divided into units;

- There must be provision of converting a firm into company;
- There must be an agreement by the partners to convert the partnership to a company. This can be done by a contract in writing to this effect to which the partner's resolution for conversion can be attached as annexure.

- Execute a settlement deed.

Step 2 : Application for Director's Identification Number And Digital Signaturers Certificate

Step 3 : Name approval:

Under the Part IX route, one of the major advantages is that the business can be run under the same name as that of the firm except that in addition to the name of the firm the words 'limited' or 'private limited' has to be added. However, if there is a company already in existence, the name would not be available. In that case, the following steps need to be taken.

Ø An application in *Form No. 1A* needs to be filed with the Registrar of Companies (ROC) with the following details stating the fact that the partnership firm proposed to be converted under part IX of the Companies Act.

- Certified true copy of Partnership Deed.
- Certified true copy of the latest balance sheet of the partnership firm.
- Certified true copy of the latest income tax assessment order/return.
    - Consent of all the partners stating that they have agreed to register the partnership firm as a Company .
    - Certified True Copy of the resolution passed by the firm in this regard .

Ø The application is required to be digitally signed by one of the promoters.

Ø The details to be stated in the said application are as follows :

1. Maximum Six alternative names for the proposed company. (in order of preference)
2. Names , Father's/ Husband's Name, Permanent Residential Addresses, Present Residential Address, Occupation, Name of the Companies in which the Promoter is Director/Promoter , Date of Birth , DIN of the Promoters.
3. Authorised Capital of the proposed Company.
4. Main objects of the proposed company.
5. State of Registered Office of Company

Note:

1. As per the Companies Act, 1956, a Private Company should have a minimum Paid up Capital of Rupees One Lac.
2. As per the Companies Act, 1956 there should be at least two promoters in a Private Limited Company.
3. The Registrar of Companies will ordinarily inform within a period of seven days from the date of submission of the application whether any of the names applied for is available.
4. If the name is not made available, the Registrar of Companies may reject the application and if it happens, new names to be provided for approval.

Step 4 : Registration of Company:

• On obtaining the approval of name , file the following documents with the registrar of Companies within 60 days from the date of name approval:

a. Two sets of Memorandum and Articles of Association of the Company. One set shall be duly stamped. These will be similar in all respects to a normal Memorandum and Articles of Association except that it incorporates therein terms of the settlement deed

b. The Memorandum and Articles of Association is to be stamped as per the Indian Stamp Act.

c. Thereafter these documents are required to be executed by the promoters in their own hand after the date of Stamping of Memorandum & Article of Association in duplicate stating their full name, father's name, residential address, occupation, number of shares subscribed for & Signature etc.

d. However, if any director is foreigner and not present in India, his signature should be attested in Indian Embassy located in his home country.

e. Form No. 1 - This is a declaration to be executed on a non-judicial stamp paper by one of the directors of the proposed company or other specified persons such as Chartered Accountants, Company Secretaries, Advocates, etc. stating that all the requirements of the incorporation have been complied with.

f. Form No. 18 - This is a form to be filed by one of the directors of the company informing the ROC the registered office of the proposed company.

g. Form No. 32 - This is a form stating the fact of appointment of the proposed directors on the board of directors from the date of incorporation of the proposed company and is signed by one of the proposed directors.

h. Power of Attorney signed by all the subscribers to MOA authorizing 2` 1one of the subscribers or any other person to act on their behalf for the purpose of incorporation and accepting the certificate of incorporation.

i. Form No. 37 – This form is an application by an existing Joint Stock Company for registration as a limited / an unlimited company.

j. Declaration by two partners verifying the particulars set forth in the above mentioned documents.

k. Consent letters from Directors

l. Filing fees as may be applicable.

m. Other information to be submitted:

i) A list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than 6 clear days before the date of registration were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number.

ii) If the company is intended to be registered as a limited company, a statement specifying the following particulars :-

a) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists

b) the number of shares taken and the amount paid of each share c) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may be, as the last word / words, in case the company is being registered with limited liability.

Step 5 : On completion of the formalities, the registrar shall register the Company under Part IX of the Act and issue a certificate of incorporation.

Steps for Incorporation of a public limited company:

First Five stages are almost same for incorporation of a public limited company except there should be at least seven subscribers, three directors and the minimum paid up capital of Rs. 5 lacs.

After completion of first three stages a private limited company may commence its business but a public limited company is required to obtain certificate for commencement of business from Registrar of Companies. For obtaining the Certificate for commencement of its business, the Company is required to submit following documents with Registrar of Companies:

- Form 20 to be executed on a non-judicial stamp paper
- Statement in lieu of Prospectus
- Affidavit from each directors stating that the Company has not commenced its Business
- Details of Preliminary expenses
- Board Resolution for approval of preliminary expenses.
- Board resolution for appointment of first Auditors
- Consent letter from the Auditors for acting as Statutory Auditors.

Registrar of Companies thereafter shall process the documents and if all the documents are in order then he will issue a Certificate for commencement of Business.

Steps after incorporation of private company:

- Once the new company is formed, the takeover agreement would be entered between the Partnership Firm and the newly incorporated company.
- Convene a Board Meeting after giving notice to all the directors of the newly incorporated company immediately after incorporation as per section 286 of the Companies Act, 1956 to adopt the agreement entered into by the company and the partner of the firm for the acquisition of business of the firm.
- In such a situation, the entire business of the firm along with all its assets and liabilities is transferred to the company.
- The company may issue shares or other securities to the Partner of the firm.

Steps after incorporation of public company:

- Once the new company is formed, the takeover agreement would be entered between the Partnership firm and the newly incorporated company
- Convene a Board Meeting after giving notice to all the directors of the newly incorporated company immediately after incorporation as per section 286 of the Companies Act, 1956 to adopt the agreement entered into by the company.
- In the above Board Meeting also fix up the date, time , place and agenda for calling a General Meeting to pass a Special Resolution under section 81(1A) of the Companies Act, 1956 giving powers to the Board of Directors to issue and allot equity shares to Partners of the firm.

Effect of Registration under part IX:

- Vesting of Property : All property, movable as well as immovable, including actionable claims belonging to or vested in the firm at the time of registration shall, on such registration pass to and vest in the company as incorporated under Part IX. [Section 575].
- The registration of a company under Part IX shall not in any manner affect its rights or liabilities in respect of any debt or obligation incurred or any contract entered into, by, to, with or on behalf of the firm before registration. [Section 576].
- All suits and other legal proceedings taken by or against the company or any public officer or member thereof which where pending at the time of registration may be continued in the same manner as if registration had not taken place. However, no execution can be done against the property or person of any individual member of the company on any decree or order obtained in such suit or proceeding. If the property of the company is inadequate to

satisfy the decree or order, an order for winding up the company may be obtained. [Section 577].

- All provisions of any Indian law or other instrument constituting or regulating the company shall apply to the registered company in the same manner as if the company had been formed under the Companies Act, 1956 and those conditions were required to be contained and were contained in its Memorandum and Articles of Association. [Section 578].
- As per section 383A of the Companies Act, if the paid up capital of the Company is Rs. 200 lacs or more than the company is required to appoint a full time Company Secretary.
- As per section 269 of the Companies Act, 1956 if the paid up capital of the company is Rs. 500 lacs or more than the Company is required to appoint either Managing Director or Whole Time Director or Manager.
- Debts and liabilities are not automatically transferred to the new company and therefore a novation agreement will have to be entered into by the company with its debtors and creditors.
- It is advisable for the firm to obtain an indemnity from the company to the partnership firm for all acts, deeds and things done after the registration under Part IX and also vice versa. This is required as the liability of the firm is unlimited and extends to the personal assets of the partners.
- It is also to be noted that the rights, liabilities, debts and obligations or any contracts entered into by the firm shall remain unaffected as it existed prior to the registration of the company under Part IX of the Companies Act, 1956.
- Comply with all the relevant provisions of the Companies Act, 1956 i.e. call requisite meetings, register charges, comply with section 5 8A if necessary, etc

INCOME TAX ACT 1961:

Chapter IV E of the Act contains provisions relating to “Capital Gains”. Under section 45(1) of the Act, profits and gains arising from the transfer of a capital asset effected in the previous year is chargeable to tax under the head “Capital gains”. The terms “transfer” and “capital asset” have been defined in section 2(47) and section 2(14) respectively.

Section 2(47) of the Act, defines the term “transfer” as follows.

“transfer, in relation to a capital asset, includes,—

(i) the sale, exchange or relinquishment of the asset ; or

(ii) the extinguishment of any rights therein ; or

(iii) the compulsory acquisition thereof under any law ; or

(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ; or

(iva) the maturity or redemption of a zero coupon bond; or

(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation.—For the purposes of sub-clauses (v) and (vi), “immovable property” shall have the same meaning as in clause (d) of section 269UA;”

Under section 2(14) of the Act, the term “Capital asset” is defined as follows:

“ *“capital asset” means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include ……”*

As per section 45(1), profits and gains arising from the transfer of a capital asset **effected** in the previous year is chargeable to tax. The term “effected” as used in section 45(1) has a special meaning. Existence of the party (transferor) and the Counter party (transferee) is necessary for the applicability of section 45(1).

A recent decision of the Bombay High Court in *CIT v Texspin Engineering and Manufacturing Co. (2003) 263 ITR 345 (Bom)* has held that such conversion of firm into company by following the route under Part-IX of the Companies Act, 1956, does not occasion capital gains, since there is no transfer involved in such a case. The High Court after considering the provisions of Companies Act, provisions of income tax relating to capital gains and relying on the ratio of *Malbar Fisheries Company v CIT (1979) 120 ITR 49 (SC), CIT Vs. George Henderson & Co Ltd (1967) 66 ITR 622 (SC), CIT Vs. Gillanders Arbuthnot & Co (1973) 87 ITR 407 (SC),* held that, when a firm is registered as a company, as per the procedure prescribed under Part IX of the Companies Act, no capital gains arise to the firm. When a partnership firm is treated as limited company, under Part IX of the Companies Act, the properties of the erstwhile firm vests in the limited company as they exist. There is no dissolution of the firm. Hence section 45 (1) of the Income Tax Act is not applicable. When shares of the Company are allotted to partners in consideration of capital standing in their accounts in the firm, there is no transfer of capital assets as contemplated under section 2(47)(iii) of the Income Tax Act (i.e. compulsory acquisition, thereof under any law), as partners are getting their own right to share Capital.

In *Well Pack Packaging Vs. Dy. CIT (2003) 78 TTJ (Ahd.) 448,* also the same view was taken that, corporatisation of the firm under the part IX route did not attract liability to Capital Gains in the hands of the firm.

In *Vali Pattabhiram Roa v Shri Ramanuja Ginnning &Rice Factory (P) Ltd. (1986) 60 Comp cas 568 (AP),* the Court has held that there is no transfer under general law if the constitution of the firm is changed to that of a company by registering it under Part IX of the Companies Act, as there shall be statutory vesting of title of all the properties of the firm in the newly incorporated company without any need for a separate conveyance.

A partnership firm consisting of at least seven partners may be registered as an unlimited Company or as a company limited by shares or as a company limited by guarantee under Part IX of the companies Act. On conversion and registration of the partnership firm into a Company under Part IX, all the properties movable and immovable (including actionable claim), of the partnership firm would pass to and vest in the company as incorporated under the provisions of the Companies Act, 1956. The registration of the partnership firm as a company under the provisions of Part IX of the Companies Act would be an unilateral act of the firm de hors the existence of the other person. On such registration, the partnership firm existed before such registration would now be considered as a Company. The erstwhile entity would shed its garb of a firm and assume the mantle of a company. All the property hitherto owned by the partnership firm would be statutorily vested in the company on such registration without the act of any agency. Thus, the requirement of a transfer being effected would not be satisfied. As a consequence, conversion into and registration of the partnership firm as a Company under Part IX would not be considered as a transfer under section 45(1) of the Income Tax Act, 1961.

For the sake of argument if it is considered that the Part IX conversion of the firm into a Company should be regarded as a transfer under section 45(1), even then there would be no liability to tax under the head “Capital gains”. This is because, the existence of “full value of the consideration” is indispensable for the computation of capital gains. There would no full value of consideration when the partnership firm gets converted and registered as a Company under Part IX of the Act. As stated earlier, the market value of the assets vested in the Company cannot be considered as the full value of the consideration. The value at which the shares are allotted to the partners who become shareholders on conversion, also cannot be construed as the full value of the consideration. Such allotment of shares would not be in connection with the vesting of the property. The allotment of shares would be in pursuance of the requirement of the provisions of Part IX of the Act. Thus, even if it is considered that the conversion of the firm under Part IX amounts to a transfer, in the absence of

the full value of the consideration, the method of computation of capital gains as provided in section 48 cannot be given effect as a result, no income would be chargeable to tax in the hands of the Partnership firm under the head “Capital Gains”.

The next question for our consideration is whether conversion of a partnership firm into a Company under Part IX of the Companies Act, 1956 attracts section 45(4) of the Income Tax Act, 1961?

Section 45(4) is as follows:

“The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.”

On conversion of the firm into a Company under Part IX, all the property of the firm would vest in the Company. The vesting would be buy operation of the law. There would be no distribution of the assets. There would be no choice for the erstwhile firm not to vest the property into the Company. The vesting of the property would not be at the sweet will of the Partnership firm. Thus, there would be no distribution of the capital assets by the firm in Part IX conversion of the firm.

The Bombay High Court in *CIT v Texspin Engineering and Manufacturing Co. (supra)* pointed out that for the deeming provision of section 45(4) to be attracted treating gains on transfer of dissolution to be capital gains, two conditions are to satisfied. There has to be transfer by way of distribution of capital assets. Secondly, such transfer should be on dissolution of the firm or otherwise. If these conditions are complied with, the market value of such assets on the date of transfer is deemed to be the full value of consideration for the transfer. The Court held that these conditions were not attracted. The assets merely vested in the company without there being any distribution at all, as legally understood. The Court pointed out that vesting of property in the company is different from distribution which was necessary to attract section 45(4). Distribution is something totally different. Since the first condition itself was not attracted, section 45(4) was not applicable.

The Court also negated another argument. It was contended that there was extinguishment of right, title and interest in the capital asset qua the firm and hence this was a transfer since the definition of transfer included such extinguishment. The Court held that for a transfer, there had to be two parties. Also, there had to be consideration flowing to the transferor. The Court stated that there was no transfer at all from one party to other. To quote the Honourable Court, *“There is a difference between vesting of the property, in this case, in the limited company and distribution of the property. On vesting in the limited company under Part IX of the Companies Act, the properties vest in the company as they exist. On the other hand, distribution on dissolution presupposes division, realization, encashment of assets and appropriation of the realized amount as per the priority like payment of taxes to the government, BMC, etc., payment to unsecured creditors, etc. This difference is very important. In the present case, therefore, section 45(4) is not attracted as the very first condition of transfer by way of distribution of capital assets is not satisfied. In the circumstances, the later part of section 45(4), which refers to computation of capital gains under section 48 by treating fair market value of the asset on the date of transfer, does not arise”*

In the present case, when the partnership firm gets converted into and registered as a Company under Part IX of the Act, all the property of the firm would statutorily vest in the Company. The entity hitherto known as “Partnership firm” would now become a “Company”. There would be no distribution of capital assets to the partners or any other person on registration of a firm as a Company under Part IX of the Act. Thus, section 45(4) would not be applicable in such circumstances.

In the following cases, it has been held that Conversion of a firm into a Company under Part IX of the Companies Act, 1956 does not attract section 45(1) / 45(4) and fall outside the scope of section 45 of the Act.

- *CIT v. Texspin Engineering & Manufacturing Works (2003) 263 ITR 345 (Bom);*
- *Well Pack Packaging v. Dy. CIT (2003) 078 TTJ (AHD-) 0448;*

- *Krishna Electrical Industries v. Dy. CIT (2004) 082 TTJ (DEL) 0575;*
- *Sachdeva & Sons (E. O. U) v. Dy. CIT (2004) 082 TTJ (ASR) 0847;*
- *Chetak Enterprises (P) Ltd v. Asstt. CIT (2005) 092 TTJ (JOD) 0611;*
- *Tech Books Electronics Services (P) Ltd. v. Additional Commissioner of Income-tax (2006) 100 ITD 0125 (DEL);*
- *ACIT vs Unity Care and Health Services (2007) 106 TTJ (BANGALORE) 1086.*

EXEMPTION UNDER SECTION 47(xiii):

The Expert group, in the draft Income Tax Bill, has recognised the need to encourage business reorganisation when they are in consonance with the objective of economic development and are not merely devices to secure tax advantage. The Bill proposed to allow tax benefits in case of business reorganisations.

To give effect to the above the Finance (No 2) Act, 1998, inserted section 47(xiii) with effect from assessment year 1999-2000.

Clause (xiii) of section 47 provides that section 45 of the Income Tax Act would not apply to transfer of any building, machinery, plant, furniture or intangible asset (ie capital assets) to the company where a firm is succeeded by the company in the business carried on by it subject to certain conditions. These conditions are:

(i) that the transfer should be of business as a going concern with all assets and liabilities,

(ii) that the consideration for the transfer should be solely by issue of shares to the extent of partners' capital in the firm,

(iii) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company and

(iv) the interest of the partners in the paid-up capital of the company should continue and be retained at least to a minimum extent of 50 percent for the next five years.

Section 47(xiii) confers an exemption to encourage business reorganisation and, therefore, should be interpreted in a manner that promotes the objective to be achieved and not frustrated. *(Bajaj Tempo Ltd. v CIT, 196 ITR 188).*

Even prior to the conditional relief under section. 47(xiii) of the Act, as detailed above, it has been considered possible to avoid capital gains by registering the firm itself as a company. Since the firm in law is treated as an unincorporated company entitled to registration, it has been considered possible to register the same under section 565 of the Companies Act by bringing the firm's constitution in line with the basic principles of company law by having fixed capital and proportionate interest with reference to such capital. It is also possible to register the firm without meeting such requirement, but as a company with unlimited liability and thereafter convert itself into a company with limited liability by following the procedure under section 32 of the Companies Act, 1956. In either case, it has been considered that there is no transfer because Sec. 575 of the Companies Act provides that all properties, movable and immovable (including actionable claims), belonging to the firm at the time of registration will be vested in the company. It was in this context, even with reference to the provisions under the Transfer of Property Act, it has been held that such conversion does not amount to a conveyance when the assets of the firm are recognised by operation of law as the assets of the company as held in *Ramasundari Ray v Syamendra Lal Ray 1 LR (1974) 2 Cal 1* and in *Vali Pattabirama Rao v Sri Ramanuja Ginning and Rice Factory (1966) 60 Comp.Cas. 568 (AP).*

The decision of the Bombay High Court, regarding conversion of a firm to a company through the Part IX route, rendered in favour of the assessee was prior to the insertion of the exemption under section 47(xiii). This means that even after the introduction of clause (xiii), there would be no liability as regards capital gains even if the conditions specified in the above mentioned clause are not adhered to. It is, therefore, advisable that Part IX route is followed, wherever feasible, while taking care to adhere to the conditions under section 47(xiii) of the Income-tax Act, as a matter of abundant caution

and additional shelter. Section 47 (xiii) provides for exemption for capital gains tax on transfer of capital assets from the firm to the company subject to the conditions listed in the proviso. But the threshold condition is that, the transfer should have arisen as a result of succession of the firm by a company.

Succession ordinarily means, that the business passes as a going concern. It, however, does not mean that all the assets of the firm should be transferred, because it is possible, that succession of the firm is in respect of business alone and where there is more than one business in respect of any one of the businesses.

Section 47A: Withdrawal of Exemption:

The conditions to be satisfied to claim exemption from capital gains is laid down in the proviso to clause (xiii) of section 47. The conditions inter alia are:

1. all the assets and liabilities of the firm relating to the business immediately before the succession become the assets and liabilities of the company;
2. all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession;
3. the partners of the firm did not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and
4. the aggregate of the shareholding in the company of the partners of the firm is not less than fifty percent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of succession.

Where any of the conditions laid down in the aforesaid proviso are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset not charged under section 45 shall be deemed to be the profits and gains chargeable to tax of the successor company for the year in which infringement takes place. The benefit availed by the firm shall be taxed in the hands of the successor company.

Section 72A(6): Set Off and Carry Forward:

Where there has been reorganisation of business and a firm is succeeded to by a company fulfilling the conditions laid down in the proviso to clause (xiii) of section 47, then, the accumulated loss and the unabsorbed depreciation of the predecessor firm, shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose of previous year in which business reorganisation was effected.

If any of the conditions laid down in the proviso to clause (xiii) to section 47 are not complied with, the set-off of loss or allowance of 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.

Conclusion :

There are various ways of converting a firm to a company, viz; slump sale, itemized sale, admitting the company as a partner, dissolution thereof and on dissolution, business being taken over by the company etc.,. Being a topic with a very vast ambit an attempt has been made hereinabove to briefly discuss two alternatives. In view of the choices available. Conversion should be made in a manner appropriate to a particular situation and in a way which is most beneficial.