

CAPITAL GAINS

PREVIOUS YEAR IN WHICH CAPITAL GAINS ARE TAXABLE

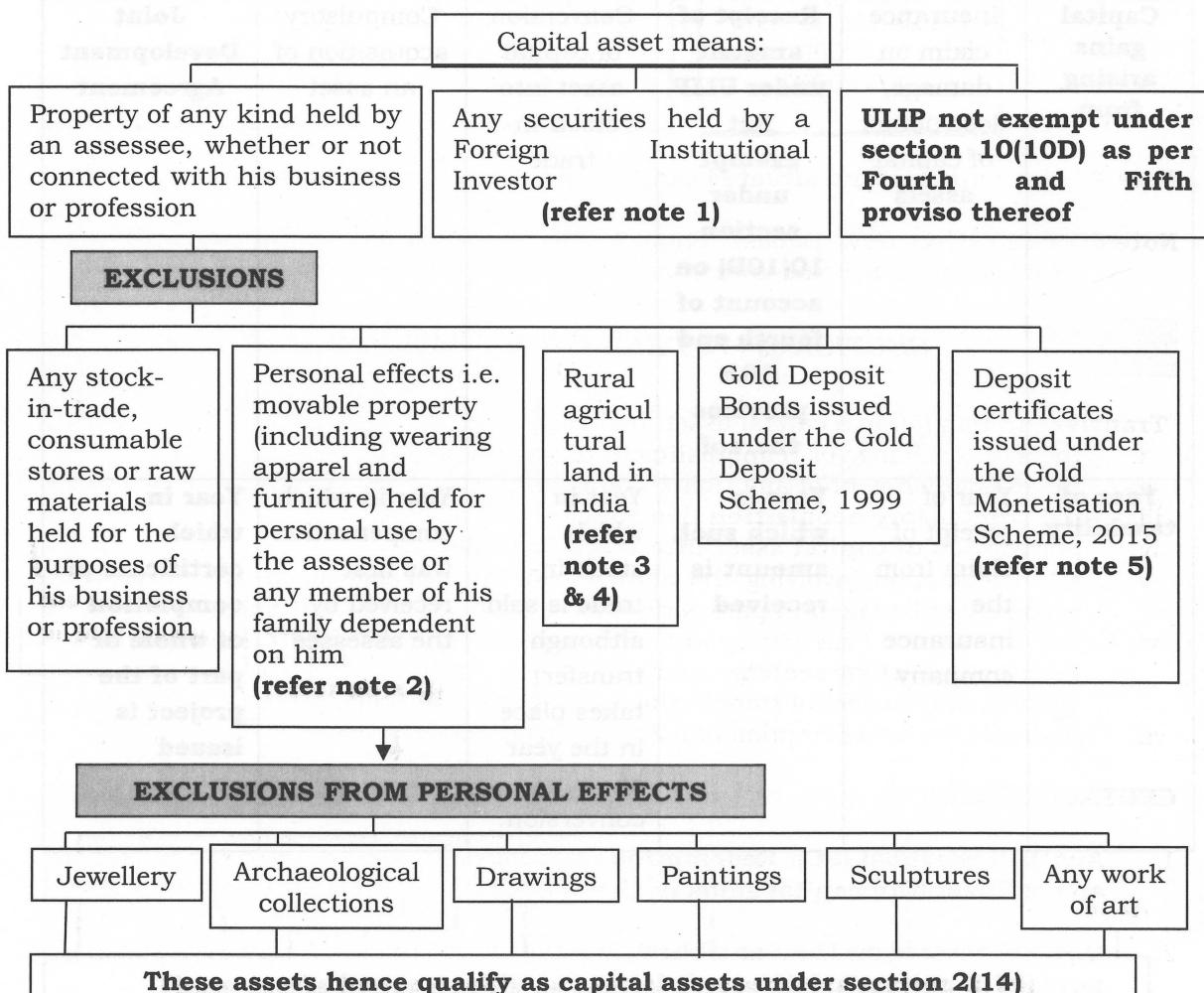
Capital Gains are taxable in the Previous Year in which capital asset is transferred.
Exceptions to this rule are as under:

Section	45(1A)	45(1B)	45(2)	45(5)	45(5A)
Capital gains arising from	Insurance claim on damage/ destruction of capital assets	Receipt of amount under ULIP not exempt under section 10(10D) on account of fourth and fifth provisos thereof	Conversion of capital asset into stock-in-trade	Compulsory acquisition of an asset	Joint Development Agreement
Year of taxability	Year of receipt of claim from the insurance company	Year in which such amount is received	Year in which stock-in-trade is sold although transfer takes place in the year of conversion.	Year in which compensation was first received by the assessee	Year in which certificate of completion of whole or part of the project is issued

SHORT TERM CAPITAL ASSETS

S. No.	Capital Assets	Holding period to qualify as short term capital asset
1.	Shares / Debentures of a company listed on a recognised stock exchange in India/ Zero coupon bond	12 months or less
2.	Units of equity oriented mutual funds / units of UTI	
3.	Shares of Companies not listed on any stock exchange in India (includes shares of a foreign company listed on stock exchange outside India)	24 months or less
4.	Immovable property, being land or building or both (located in India or in foreign country)	
5.	Units of debt oriented mutual funds/ Business Trust	36 months or less
6.	Others	

SECTION 2(14): DEFINITION OF CAPITAL ASSET



Note 1: The Assessing Officer (A.O.) does not have the power to treat the securities held by a Foreign Institutional Investor (FII) as stock in trade. Accordingly, section 111A, section 112 and section 112A shall apply to FII on sale of such securities.

- Note 2:** (i) Silver utensils constitute personal affects and no capital gains will arise on the sale of silver utensils.
(ii) Sale of gold bars, sovereigns, etc. used for puja attracts capital gains since these are not personal effects.
(iii) Gold utensils are not personal effects and are capital assets.

Note 3: "Rural agricultural land" means agricultural land situated in India. However the following agricultural land situated in India are not treated as "Rural Agricultural Land" and shall be a Capital Asset -

- (a) In any area within the jurisdiction of a municipality or a cantonment board and which has a population of more than 10,000; or
(b) In any area measured aerially from the local limits of municipality or cantonment board referred in (a) above falling within 2 kms/ 6kms/ 8kms as given below :

Upto 2km from the municipality whose population is more than 10,000 but upto 1,00,000

Upto 6km from the municipality whose population is more than 1,00,000 but upto 10,00,000

Upto 8km from the municipality whose population is more than 10,00,000

Note 4: Agricultural land situated outside India is always a capital asset.

Note 5: Interest on Gold Deposit Bonds and Deposit certificates issued under Gold Monetisation Scheme is exempt from tax under section 10(15).

SECTION 2(47): DEFINITION OF TRANSFER

"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. conversion of capital asset into stock in trade; or
- v. any transaction involving the allowing of the possession of any immovable property to be taken in part performance of an agreement to sell; or
- vi. any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other AOP or by way of any agreement) which has the effect of transferring, any immovable property; or
- vii. the maturity or redemption of a Zero Coupon bond.

CERTAIN ISSUES:

1. **Anarkali Sarabhai (SC):** Redemption of preference shares amounts to transfer and will result in capital gains in the hands of the preference shareholder.
2. **C.R. Subramanian:** Land and building have to be considered separately for the purpose of computing the period of holding. Therefore, in case of composite sale of land and building, capital gain is to be bifurcated between long-term capital gain

and short-term capital gain, if land is held for more than 24 months and building is held for 24 months or less.

3. **Miss Piroja C. Patel:** Compensation paid for eviction of hutment dwellers from land which is sold would be allowable as cost of improvement.
4. **Orient Trading Co. Ltd. (SC): Exchange of shares of one company with shares of another company amounts to transfer and results in capital gains in the hands of the shareholder. If shares are held as Stock-in-trade, then Business Income shall arise.**
5. Cost incurred on training of animals is treated as cost of improvement and expenditure incurred on animals during their pregnancy will be treated as cost of acquisition of offsprings of animal.

FIRST PROVISO TO SECTION 48: CAPITAL GAINS IN CASE OF NON-RESIDENTS

Method to compute capital gains earned by non-resident assessee (including Foreign Company) arising from transfer of shares/ debentures/ bonds in Indian company, acquired in foreign currency by way of purchase or reinvestment:

Convert:

- (i) Cost of Acquisition of the asset;
 - (ii) Expenditure incurred wholly and exclusively in connection with such transfer; and
 - (iii) Sales Consideration received or accruing as a result of transfer of capital asset
- **into the same foreign currency as was initially utilised in the purchase of such shares or debentures.**
- **The capital gains so computed in the foreign currency shall be reconverted into Indian currency.**

Notes:

- Units of UTI, Mutual Funds and units of business trust and government bonds are not covered by this proviso.
- **First proviso applies to STCG and LTCG.**
- First proviso applies to listed as well as non-listed shares and debentures.
- First proviso is mandatory.
- Second proviso shall not apply where First Proviso applies.
- **As per section 112, tax on LTCG on unlisted securities in case of non-resident shall be 10% without applying the First Proviso and Second Proviso to section 48. If in case of non-resident, in case of unlisted securities, there is a loss after applying the First proviso to section 48, then such loss shall be set-off and carried forward as per the provisions of the Act. But if it results in a profit, then while applying tax rate of 10%, First proviso to section 48 shall not be considered.**

RULE 115A: METHOD OF CONVERSION – TELEGRAPHIC TRANSFER BUYING / SELLING PRICE

(a)	Cost of Acquisition	Average of TTBR and TTSR	on the date of acquisition
(b)	Expenditure on transfer	Average of TTBR and TTSR	on the date of transfer
(c)	Sale Consideration	Average of TTBR and TTSR	on the date of transfer
(d)	CG into Indian Currency	TTBR	on the date of transfer

SECOND PROVISO TO SECTION 48: INDEXATION

While computing long term capital gains:

- (a) "Indexed Cost of Acquisition" shall be taken instead of "Cost of Acquisition" and
 (b) "Indexed Cost of Any Improvement" shall be taken instead of "cost of any improvement".

Note 1: "Indexed Cost of acquisition" means:

Cost of Acquisition X Cost Inflation Index for the year in which asset is transferred

Cost Inflation Index for the first year in which asset was held by the assessee or for the year beginning on 1-4-2001, whichever is later.

Note 2: "Indexed Cost of any Improvement" means:

Cost of Improvement X Cost Inflation Index for the year in which asset is transferred

Cost Inflation Index for the first year in which the Improvement to the asset took place

Note 3: No indexation where First Proviso applies.

THIRD PROVISO TO SECTION 48: FIRST AND SECOND PROVISO TO SECTION 48 NOT TO APPLY IN CASE OF SECTION 112A

First and Second proviso to section 48 are not applicable for computation of Long Term Capital Gains referred to in section 112A.

FOURTH PROVISO TO SECTION 48: NO INDEXATION

Indexation benefit is not available:

- for bonds/ debentures of any company.
- for bonds issued by Government.

However, indexation benefit is **available** in respect of following bonds:

- (i) Capital Indexed bonds issued by Government
- (ii) Sovereign Gold Bonds issued by RBI under Sovereign Gold Bond Scheme, 2015

In terms of section 47, no capital gains will arise where an INDIVIDUAL REDEEMS such Sovereign Gold Bonds.

Gain arising from Sovereign Gold Bonds to:	On Redemption	On transfer before maturity
Individual assessees	No capital gains to arise	Capital gains to arise (indexation benefit available)
Other assessees	Capital gains to arise (indexation benefit available)	

FIFTH PROVISO TO SECTION 48: EXEMPTION OF FOREIGN EXCHANGE FLUCTUATION GAINS ON REDEMPTION OF RDBs

Any gains arising to a non-resident on account of appreciation of rupee against a foreign currency at the time of redemption of RDB of an Indian company **subscribed HELD** by him, shall be ignored for the purposes of computation of full value of consideration.

Exemption is available if:

- Assessee is a non-resident;
- Gains arises on account of appreciation of rupee against foreign currency;
- Gains arise on redemption of RDB;
- **The benefit of Fifth Proviso is available even if non-resident has purchased the RDB from market or has originally subscribed.**

Exemption is **not available if RDB is transferred before maturity.**

Illustration:

Suppose, Indian company issues bonds i.e., RDB of ₹1,00,000 each. Mr. X non-resident applies for bond of ₹70,00,000 on 01-01-2022 and on 01-01-2022, the exchange rate is \$1 = ₹70. Mr. X therefore, remitted \$1,00,000 to India to subscribe to these bonds. The bonds are redeemed on 31-12-2022. Capital gain under various scenarios would be computed in the following manner:

	Where bonds are redeemed at par		Where bonds are redeemed at premium of ₹5,000 i.e. ₹ 1,05,000		
Exchange rate	\$1 = ₹63	\$1 = ₹75¹	\$1 = ₹63	\$1 = ₹75¹	
Sale price	₹70,00,000 i.e. \$1,11,111	₹70,00,000 i.e. \$ 93,333	₹73,50,000 i.e. \$1,16,667	₹73,50,000 i.e. \$98,000	
COA	\$1,00,000	\$1,00,000	\$1,00,000	\$1,00,000	
STCG/ (STCL)	\$11,111	(\$6,667)	\$16,667 comprising of two parts: \$11,112 \$5,555 (i.e. premium of ₹3,50,000)	(\$2,000)	
Treatment	Not taxable as per Fifth proviso	Loss to be set off and carried forward	Not taxable as per Fifth proviso	taxable as short term capital gains in India	Loss to be set off and carried forward

SEVENTH PROVISO TO SECTION 48: STT NOT ALLOWED

STT paid on sale of shares/units shall not be reduced from the sale price and the STT paid on purchase of shares/units shall not be added to the cost of acquisition of shares/units held as capital assets.

¹Assume average of TTBR and TTSR on date of purchase: ₹70 = \$1, Average of TTBR and TTSR on date of redemption: ₹ 75=\$1

SECTION 55: "COST OF IMPROVEMENT"

Capital Asset	Cost of Improvement
Goodwill of Business	NIL
Right to manufacture, produce or process any article or thing	NIL
Right to carry on any business or profession	NIL
Where other capital asset is acquired by the assessee or the previous owner	All capital expenditure incurred on improvement by the assessee and the previous owner on or after 1.4.2001

Note: Cost of improvement incurred before 1.4.2001 is to be ignored in all cases.

SECTION 55: "COST OF ACQUISITION"

(A)

Capital Asset	Cost of Acquisition		
	Acquired	Self-Generated	Acquired by modes referred to in 49(1)(i) to 49(1)(iv)
Goodwill of a business or profession	Purchase price	NIL	Purchase price of previous owner
Trade mark or brand name associated with a business or profession	Purchase price	NIL	Purchase price of previous owner
Tenancy rights	Purchase price	NIL	Purchase price of previous owner
Stage carriage permits (Route Permits)	Purchase price	NIL	Purchase price of previous owner
Loom hours	Purchase price	NIL	Purchase price of previous owner
Right to manufacture, produce or process any article or thing	Purchase price	NIL	Purchase price of previous owner
Right to carry on any business or profession	Purchase price	NIL	Purchase price of previous owner

Note 1: B.C. Srinivasa Setty (SC)

Cost of Acquisition of self-generated assets other than those mentioned in section 55, is indeterminate. Therefore, no capital gains shall arise, e.g., on sale of spontaneously grown trees, etc.

Note 2: The option to take cost of acquisition as FMV as on 01-04-2001 is not available even if above asset was acquired before 01-04-2001.

Note 3: **The depreciation on goodwill of a business or profession if any, obtained by the assessee upto A.Y. 2020-21 shall be reduced from the amount of purchase price. (Not applicable in case of self-generated goodwill) Such reduced amount shall be reduced from the W.D.V of the Block of Intangibles upto the extent of W.D.V of the Block as on 31.03.2021 without giving effect to the depreciation for that year. The same shall be treated as cost of acquisition of such goodwill. Where the goodwill was the only asset in the block the gain/ loss shall have no tax treatment.**

Note 4: No depreciation shall be available on goodwill of a business or profession w.e.f. A.Y. 2021-22 and the same shall be treated as a capital asset.

(B)

Capital Asset	Cost of Acquisition	Period of Holding
Original Shares/securities	Purchase price	From the date of purchase or allotment
Right Shares/securities	Price actually paid under the right issue	From the date of allotment
Renunciation of right to subscribe shares/securities: - in the hands of the person who renounces the right - in the hands of the purchaser of right	NIL Price paid to the person who renounced the right and amount paid to the company to acquire the right shares	From the date of offer (Always short term) From the date of allotment
Bonus shares/ securities	NIL	From the date of allotment

Note: Option to take FMV as on 1-4-2001 as Cost of Acquisition as available.

(C) IN RELATION TO OTHER CAPITAL ASSETS

- (1) Where the capital asset is acquired by the assessee or the previous owner before **1.4.2001**:
 - Cost of acquisition to the assessee or the previous owner, or
 - FMV as on **1.4.2001**
 whichever is higher

However in respect of land or building or both acquired by the assessee or previous owner, before 01.04.2001, the Stump Duty Value as on 01.04.2001, wherever available, shall be taken if FMV is higher than Stamp Duty Value. For example FMV of building as on 01.04.2001 is ₹ 100 lakhs and Stamp Duty Value is ₹ 70 lakhs, then ₹ 70 lakhs shall be taken as cost of acquisition.

- (2) Where the capital asset is acquired by the assessee or the previous owner on or after **1.4.2001**:
 - Cost of acquisition to the assessee or the previous owner.

COST OF ACQUISITION OF ASSETS DECLARED UNDER THE INCOME DECLARATION SCHEME

As per Income Declaration Scheme, 2016 ('IDS'), for the assets which were acquired out of black money, the FMV of the assets as on 1-6-2016 shall be deemed to be the undisclosed income and assessee shall pay 45% of FMV of such asset as tax, cess and penalty.

Cost of acquisition of assets declared under the Income Declaration Scheme, 2016, shall be the FMV of such asset which has been taken into account for purposes of said scheme.

Period of Holding:

Capital Asset declared under IDS	Period of holding to be reckoned from
Immovable property	The date on which such property is registered in name of assessee
Any other asset	1 June, 2016

SECTION 111A: TAX ON SHORT-TERM CAPITAL GAINS IN CERTAIN CASES

Section 111A shall be applicable to all assessees including FIIs and non-residents, if all the following conditions are fulfilled:

- The gains arise from transfer of a short term capital asset;
 - being an **equity share in a company or a unit of an “Equity Oriented Fund” or units of business trust**; and
 - the **transaction of sale is chargeable to STT**.
- **No STT has to be paid in respect of a transaction undertaken on recognized stock exchange located in International Financial Services Centre ('IFSC') where the consideration for such transaction is payable in foreign currency. On such sale, benefit of section 111A shall be available.**
 - **Tax payable on such STCG shall be @ 15%.**
 - Securities such as preference shares, debentures, deep discount bonds, units of debt Mutual Fund etc. are not covered under the purview of section 111A.
 - **Benefit of slab rate** is available on such short term capital gains in case of resident Individual or HUF. i.e., **not available to non-resident**.
 - **No Chapter VI-A deduction is allowed on STCG under section 111A.**
 - **STCG other than referred in section 111A shall be taxable at the normal rates applicable to the assessee.**

SECTION 112: TAX ON LONG TERM CAPITAL GAINS

- Section 112 shall apply to all assessees including non-residents.
- On long term capital gain tax is payable @ 20%.
- Section 112 shall not apply where section 112A applies.

However, in case of a non-resident, LTCG on unlisted securities is taxable @ 10%, without applying the First proviso and Second proviso to section 48.

- **Benefit of slab rate** is available on such long-term capital gains in case of resident Individual or HUF. i.e., **not available to non-resident**.
- Chapter VI-A deduction shall not be allowed on LTCG.

PROVISO TO SECTION 112: TAX ON LTCG FROM LISTED SECURITIES OR ZERO COUPON BOND

APPLIES TO ALL ASSESSEES INCLUDING NON-RESIDENTS

- Any LTCG arising on transfer of

- **listed securities** (shares & debentures) **other than units**; or
- **Zero coupon bond**
- Tax on LTCG payable by the assessee shall be lower of:
 - 20% of LTCG after indexation, if applicable, or
 - 10% of LTCG without indexation

Note 1: If listed equity shares are sold on stock exchange, then LTCG is taxable u/s 112A.

Note 2: Proviso to section 112 applies in following cases:

- (i) Where Listed equity shares are sold other than through recognized stock exchange.
- (ii) Where Listed Debentures/Bonds are sold.

Note 3: In case of a non-resident, for computing capital gains arising on off market sale of listed shares or debentures of an Indian company purchased in foreign currency, the First Proviso to section 48 applies and the Second Proviso to section 48 does not apply. Thus, in terms of Proviso to section 112, **in case of a non-resident, the tax on LTCG arising from off market sale of listed shares or debentures purchased in foreign currency shall be 10% after applying First Proviso to section 48.**

SECTION 112A : TAX ON LONG TERM CAPITAL GAINS IN CERTAIN CASES

- Section 112A is applicable to all assessees including Foreign Institutional Investors and non-residents.
- If section 112A is not applicable (because of non-compliance with the conditions of section 112A), then section 112 shall apply.
- The benefit of first proviso and second proviso 48 shall not apply while computing LTCG under section 112A.
- Section 112A applies on LTCG arising from transfer of:
 - (i) an equity shares in a company; or
 - (ii) a unit of an equity-oriented fund; or
 - (iii) a unit of a business trust
- Section 112A applies to all listed equity shares whether regularly traded or not regularly traded.
- **CONDITION OF PAYMENT OF STT**

EQUITY SHARES: STT should be paid on acquisition as well as sale of equity shares.

UNITS: STT should be paid only on sale of units of equity oriented Mutual Fund and Business Trust.

Note: The benefit of section 112A is available if such sale transaction takes place on a recognised stock exchange located in IFSC provided the consideration is paid or payable in foreign currency. Such sale transaction is not chargeable to Securities Transaction Tax.

- COST OF ACQUISITION IN CASE OF CAPITAL ASSET ACQUIRED BEFORE 1ST FEBRUARY, 2018 [SECTION 55(2)(ac)]**

The cost of acquisition shall be **higher** of (a) and (b) below:

(a) cost of acquisition of the asset; and

(b) the **lower** of:

(i) the fair market value (FMV) of the asset; and

(ii) sales consideration.

Cost of acquisition in (a) above, shall mean the cost of acquisition to the assessee/ previous owner and where the asset was acquired by the assessee/ previous owner before 1-4-2001, then cost of acquisition to the assessee/ previous owner or FMV as on 1-4-2001, whichever is higher.

- COMPUTATION OF FMV**

S. No.	Situation	FMV
1.	Share/unit listed on a recognized stock exchange as on 31st January 2018: (a) asset quoted on such exchange on 31st January, 2018. (b) where there is no trading on 31st January, 2018.	Highest price quoted on 31st January, 2018 Highest price of the asset on the stock exchange on a date immediately preceding 31st January 2018 when such asset was traded on such exchange
2.	Unlisted unit	The Net Asset Value of the unit as on 31st January, 2018
3.	Listed Equity share on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on the 31st day of January, 2018 by way of transaction not regarded as transfer under section 47	Cost of Acquisition X <u>Cost Inflation Index for the financial year 2017-18</u> <u>Cost Inflation Index for the first year in which asset was held by the assessee or for the year beginning on 1.4.2001, whichever is later.</u>
4.	Unlisted Equity share on 31st January, 2018 but listed on the date of transfer	Same as above

- COMPUTATION OF TAX**

(a) The amount of LTCG covered by the section:

(i) Up to ₹1,00,000

Nil

(ii) Exceeding ₹1,00,000

10%

(b) On amount of total income as reduced by Long Term Capital Gains

The amount of tax payable if such reduced total income were the total income of the assessee.

- APPLICABILITY OF SECTION 50CA**

Section 50CA applies to unquoted shares and quoted shares not traded with regularity from time to time. On sale of such shares, the FMV of the shares is deemed to be the sales consideration for the purposes of section 48, if FMV is higher than sales price.

Section 112A applies to all listed equity shares and does not distinguish between shares regularly or not regularly traded. The combined effect of section 50CA and section 112A in respect of such shares which are not traded with regularity but are listed on stock exchange will be as follows:

- Sale consideration to be determined in accordance with section 50CA.
- Cost of acquisition to be determined in accordance with section 55(2)(ac).
- The resultant capital gains to be subject to tax under section 112A.

ILLUSTRATION:

	₹ in lakhs
(a) COA	10
(b) FMV as on 31st January 2018	20
(c) Actual sale consideration	30
(d) Sale consideration as per section 50CA	35
(e) Capital gains taxable under section 112A [(d) - (b)]	15
(f) Capital gains exceeding ₹ 1 lakh [(e) - ₹ 1 lakh]	14
(g) Capital gains tax [10% of (f)]	1.4

- Exemption under section 54EE and/or 54F shall be available in respect of LTCG referred to in section 112A.
- Rebate under section 87A not available on tax on LTCG computed under section 112A.
- Deduction under Chapter VI-A are not available from LTCG computed under section 112A.

- SET-OFF AND CARRY FORWARD OF LOSSES**

- If there is a Loss under section 112A, then such loss shall be set off and carried forward as per section 70 to 80.
- Losses (LT/ST) can be set off against the LTCG referred to in section 112A and balance LTCG shall be taxable @ 10%.

Illustration 1:

Mr. A acquired 1,000 equity shares of Tata Steel on 01.01.2010 for ₹ 500 per share. He is allotted 1,000 Bonus shares on 01.01.2018 of Tata Steel. He sells 2,000 shares of Tata Steel on BSE on 10.01.2023 for ₹ 800 per share. FMV of Tata Steel share on 31.01.2018 is:

Case I: ₹ 700 per share

Case II: ₹ 300 per share

Answer:

Capital Gains on Original Shares

	Case I	Case II
Period of Holding:	01.01.2010 to 09.01.2023 (Long Term)	
Sales Price	8,00,000	8,00,000
Cost of Acquisition [See Note]	7,00,000	5,00,000

Long Term Capital Gains	1,00,000	3,00,000
Tax under section 112A	Nil	20,000

Note:

	Case I	Case II
Computation of Cost of Acquisition as per section 55(2)(ac)		
Higher of:		
(i) Cost of Acquisition and	5,00,000	5,00,000
(ii) Lower of		
(A) FMV of asset	7,00,000	3,00,000
(B) Sale Price	8,00,000	8,00,000
Cost of Acquisition	7,00,000	5,00,000

Capital Gains on Bonus shares

	Case I	Case II
Period of Holding:	01.01.2018 to 09.01.2023 (Long Term)	
Sales Price	8,00,000	8,00,000
Cost of Acquisition [See Note]	7,00,000	3,00,000
Long Term Capital Gains	1,00,000	5,00,000
Tax under section 112A	10,000 ²	50,000*

Note:

	Case I	Case II
Computation of Cost of Acquisition as per section 55(2)(ac)		
Higher of:		
(i) Cost of Acquisition and	NIL	NIL
(ii) Lower of		
(A) FMV of asset	7,00,000	3,00,000
(B) Sale Price	8,00,000	8,00,000
Cost of Acquisition	7,00,000	3,00,000

Illustration 2:

Mr. A acquired 10,000 shares of Gamma Pvt. Ltd. on 01.01.1999 for ₹ 70 per share. FMV of these shares on 01.04.2001 is ₹ 100 per share. Mr. A gifts these shares to Mr. B on 01.01.2017 when FMV of these shares as per Rule 11UA is ₹ 150 per share. The shares are listed on stock exchange on 21.03.2019 when FMV is ₹ 200 per share. Mr. B sells the shares on 30.06.2022 on stock exchange for ₹ 300 per share. Compute the Capital Gains.

Case I : On the assumption that section 56(2)(x) is not applicable as Mr. B is a relative of Mr. A.

Case II : On the assumption that ₹ 15,00,000 was taxable as Income from Other Sources under section 56(2)(x) in hands of Mr. B.

² Exemption of ₹ 1,00,000 on capital gain has already been utilised while computing gain on sale of original shares. It is to be noted that such exemption is available on a yearly basis and not asset wise.

Answer:

Assessment Year 2023-24

Case I: Computation of Capital Gain and Tax under section 112A

Period of Holding: 01.01.1999 to 29.06.2022	(Long Term)
Sales Price	30,00,000
Cost of Acquisition [See Note]	27,20,000
Long Term Capital Gains	2,80,000
Tax under section 112A	18,000

Note:

Computation of Cost of Acquisition as per section 55(2)(ac)	
Higher of:	
(i) Cost of Acquisition and	10,00,000
(ii) Lower of	
(A) FMV of asset $[10,00,000 \times 272/100]$	27,20,000
(B) Sale Price	30,00,000
Cost of Acquisition	27,20,000

Case II: Computation of Capital Gain and Tax under section 112A

Period of Holding: 01.01.2017 to 29.06.2022	(Long Term)
Sales Price	30,00,000
Cost of Acquisition [See Note]	15,45,455
Long Term Capital Gains	14,54,545
Tax under section 112A	1,35,455

Note:

Computation of Cost of Acquisition as per section 55(2)(ac)	
Higher of:	
(i) Cost of Acquisition and	15,00,000
(ii) Lower of	
(A) FMV of asset $[15,00,000 \times 272/264]$	15,45,455
(B) Sale Price	30,00,000
Cost of Acquisition	15,45,455

**CLARIFICATIONS BY CBDT ON ISSUE WHETHER SHARES
ARE CAPITAL ASSETS OR STOCK-IN TRADE**

Listed shares held for more than 12 months

Assessee has the option to treat them as stock-in-trade or capital asset. But the stand once adopted by assessee cannot be changed in future.

Listed shares held for 12 months or less

If assessee wants to treat them as stock-in trade, then business income will arise and this will not be questioned. However if assessee wants to treat them as capital asset, then following shall be considered.

- (i) The treatment which assessee has given in books of account, i.e., whether shown as investment or as stock in trade.
- (ii) Quantum of purchase and sales.

- (iii) Ratio between purchase and sale.
- (iv) Holding period.
- (v) If objective is to earn dividend, then it is a capital asset.
- (vi) Method of valuation.
- (vii) Whether such shares have been purchased out of own funds or from loans taken.

Unlisted shares

The income from sale of unlisted shares will always be taxed as capital gains.

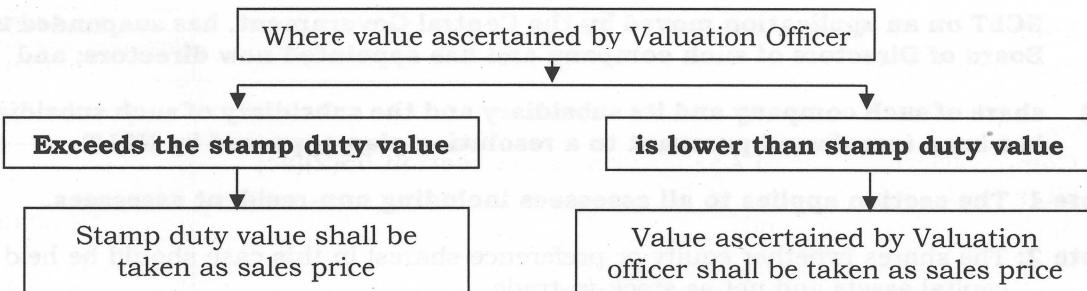
SECTION 50C: SALE OF LAND OR BUILDING OR BOTH

Where on transfer of land or building or both,

Sales consideration received or accruing	Value assessed or assessable by the stamp valuation authority for payment of stamp duty (Stamp Duty Value)
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the value so assessed or assessable shall deemed to be the sales consideration.

- Where assessee claims that value so assessed or assessable exceeds FMV of property; and
- the value so assessed or assessable has not been disputed in any appeal or revision before any authority/ Court,
- **A.O. may refer valuation of the capital asset to Valuation Officer.**



RELAXATION OF SECTION 50C

1. **If Stamp duty value does not exceed 110% of the actual sales price, then SDV shall not be considered and actual sales price shall be taken.**
2. **Where the date of agreement to sell and the date of registration are not the same, the stamp duty value on the date of the agreement to sell shall be taken if:**
 - (i) **full or part consideration has been paid by way of an account payee cheque or banking channels or through prescribed modes of payment;** and
 - (ii) **such consideration has been paid on or before the date of agreement to sell.**

Note: SDV on the date of agreement to sell shall be taken as sales price if it exceeds 110% of actual sales price.

SECTION 155(15): RECTIFICATION

- Where Capital gains are computed as per the provisions of section 50C by taking the value assessed or assessable by stamp valuation authority **and subsequently such value is reduced in any appeal or revision,**
- **the A.O. shall amend the order of assessment** and re-compute the capital gain **by taking reduced value;** and
- provisions of section 154 shall apply, and
- period of 4 years shall be reckoned from the end of the previous year in which the order reducing the value was passed in that appeal or revision.

SECTION 50CA: SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF SHARE OTHER THAN QUOTED SHARE

- Where the **consideration for transfer of UNQUOTED SHARES** of a company is **less than**
- the **FMV** determined as per Rule 11UAA,
- the **FMV shall be deemed to be the sales consideration.**

The provisions of section 50CA shall not apply to transfer of any unquoted shares of a company and its subsidiary and the subsidiary of such subsidiary by an assessee, where,—

- (i) **NCLT on an application moved by the Central Government, has suspended the Board of Directors of such company and has appointed new directors; and**
- (ii) **share of such company and its subsidiary and the subsidiary of such subsidiary has been transferred pursuant to a resolution plan approved by NCLT.**

Note 1: The section applies to all assessees including non-resident assessees.

Note 2: The shares (whether equity or preference shares) in this case should be held as capital assets and not as stock-in-trade.

Note 3: QUOTED SHARES NOT TRADED WITH REGULARITY WILL BE TREATED AS UNQUOTED SHARES.

Note 4: Provisions of section 50CA are not applicable for cases covered under section 47. Therefore section 50CA is not applicable where unquoted share are gifted or transferred by holding company to wholly owned subsidiary company.

Note 5: In case of sale consideration being less than FMV, **the transferor will be taxed under section 50CA** on the ground that he has not declared true consideration. On the other hand, the **transferee will be taxed under section 56(2)(x)**, on the ground that he has understated the purchase consideration. **Hence there is a double taxation.**

- **The section applies irrespective of who the transferee is. Thus, provision applies to transfers between relatives.** Hence, if A transfers shares to B, his son, then unless the transaction is at a prescribed FMV, A would be liable to tax on it as per section 50CA. At the same time, section 56(2)(x) exempts a transaction where purchase is made from relative. Hence, B would not be subjected to tax. In the above case Mr. B being relative shall not be subject to section 56(2)(x). However, Mr. A shall pay capital gains tax on ₹3,50,000.

- **Section 112A shall apply if long term listed shares (not quoted with regularity) are sold on stock exchange.** Both section 50CA and 112A shall apply.

SECTION 50D: FAIR MARKET VALUE DEEMED TO BE FULL VALUE OF CONSIDERATION IN CERTAIN CASES

Where the **consideration** received or accruing as a result of the transfer of a capital asset by an assessee is **not ascertainable or cannot be determined**, then, for the purpose of computing income chargeable to tax as capital gains, **the FMV of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.**

SECTION 55A: REFERENCE TO VALUATION OFFICER

With a view to ascertain the FMV of a capital asset for the purposes of the chapter of capital gains (i.e., sections 45(1A), 45(2), 45(4), 46(2), 50D, 55 and on exchange of assets), the A.O. may refer the valuation of capital asset to a Valuation Officer –

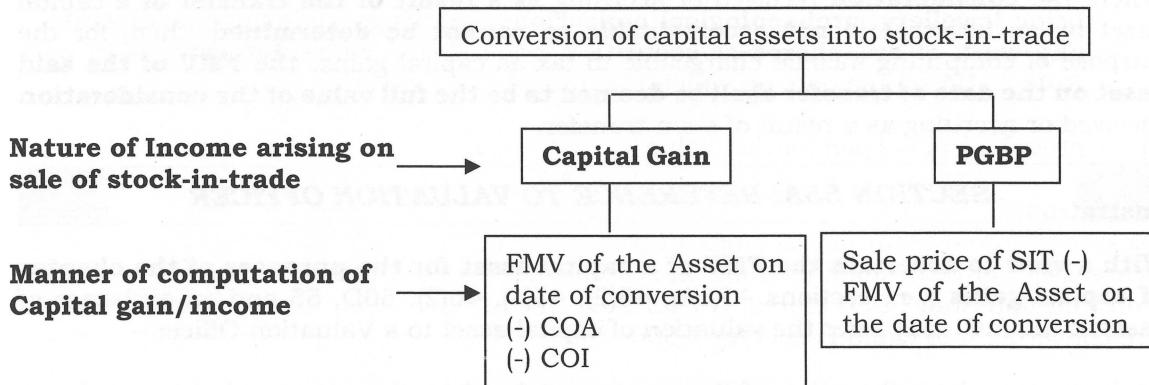
- (a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the A.O. is of **opinion that the value so claimed is at variance with its FMV;**
- (b) in any other case, if the A.O. is of opinion –
 - (i) that the FMV of the asset exceeds the value of the asset as claimed by the assessee by more than 15% of the value of the asset as so claimed **or** by more than ₹25,000, whichever is **less**; or
 - (ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

SECTION 45(1A): CAPITAL GAINS ON INSURANCE CLAIMS FOR DAMAGE OR DESTRUCTION OF CAPITAL ASSETS

- **Where insurance claim is received in respect of capital asset damaged or destroyed, as a result of-**
 - (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or
 - (ii) riot or civil disturbance, or
 - (iii) accidental fire or explosion; or
 - (iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war)**any money or FMV of other assets received from insurance company shall be deemed to be sales consideration for computing capital gains.**
- Capital Gain shall be **taxable in the year of receipt of insurance claim.**
- If **no claim is received on destruction** of capital asset, **no capital gain shall arise.** The cost of the asset destroyed shall be a capital loss i.e. dead loss which has no tax treatment.
- For the purposes of computing the nature of capital gains, **the date of transfer** of the capital asset destroyed should **mean the date of destruction.**

SECTION 45(2): CAPITAL GAINS ON CONVERSION OF CAPITAL ASSETS INTO STOCK-IN-TRADE

- Capital Gains shall arise where an assessee converts or treats the capital asset into stock-in-trade of his business.
- Capital Gain shall be taxable in the year in which such stock-in trade is sold or otherwise transferred.



- The amount recorded in the books of account of the business as the value of stock-in-trade is not relevant. FMV on date of conversion is relevant.
- If entire stock-in-trade is not sold but say only 40% SIT is sold, then only 40% capital gains shall be taxable in the year in which 40% SIT is sold.

CONVERSION OF STOCK-IN-TRADE INTO CAPITAL ASSET

Section 28: Business Income

The fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined as per Rule 11UAB shall be chargeable to tax under the head "Profits & Gains of Business or Profession".

Section 43(1)

Where a capital asset so converted is used for the purposes of business or profession, the actual cost of such asset to the assessee shall be the fair market value which has been taken into account for computing P/G/B/P.

Section 49: Cost of Acquisition

Where the capital gain arises from the transfer of a capital asset so converted, the cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for computing P/G/B/P.

Section 2(42A): Period of Holding

In the case of a capital asset so converted, the period of holding shall be reckoned from the date of its conversion.

RULE 11UAB: DETERMINATION OF FAIR MARKET VALUE OF INVENTORY

The fair market value of the inventory,—

- (i) being an **immovable property**, being land or building or both, shall be the **stamp duty value** on the date of conversion;
- (ii) being **jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities**, shall be the **value determined as per Rule 11UA** on the date on which the inventory is converted;
- (iii) other assets → open market value

Illustration:

Assessee acquired securities as stock-in-trade on 1.1.2012 for ₹ 200 crores. On 1.1.2022 the assessee converts stock-in-trade into capital assets at ₹ 225 crores. Fair market value as on that date was ₹ 250 crores. On 1.1.2023 the assessee sold those securities which were converted into capital asset for ₹ 500 crores.

Answer:

Assessment Year 2022-23

PROFITS AND GAINS OF BUSINESS OR PROFESSION

Business Income = ₹ 250 crores – ₹ 200 crores = ₹ 50 crores

Assessment Year 2023-24

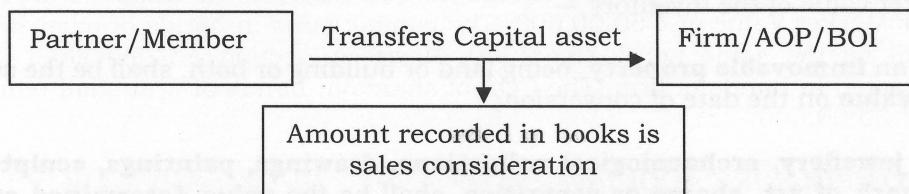
CAPITAL GAINS

Period of holding	: 1.1.2022 to 31.12.2022	(Short term)
Sales Price	: ₹ 500 crores	₹ 500 crores
Less: Cost of Acquisition	: ₹ 250 crores	₹ 250 crores
Long Term Capital Gain		₹ 250 crores

SECTION 45(2A): TRANSFER OF SECURITIES BY DEPOSITORIES

- Capital gains arising from transfer made by the depository (being registered owner of securities)
- shall deemed to be the **income of the beneficial owner** of the previous year in which transfer took place; and
- the cost of acquisition and the period of holding of any securities
- shall be determined on the basis **of the first-in-first-out method (FIFO)**.

SECTION 45(3): CAPITAL GAIN ON TRANSFER OF A CAPITAL ASSET BY A PARTNER/ MEMBER TO FIRM/ AOP/ BOI



Note1: The same provisions will apply where a member of AOP/BOI, transfers a capital asset to AOP/BOI.

Note2: If **immovable property is transferred** by partner/member to firm/AOP/BOI, then **section 50C shall apply** and if stamp duty value is more than the amount recorded in books of account, the stamp duty value shall be taken to be sales price.

Note3: If **unlisted shares are transferred by partner/ member to firm/AOP/BOI**, then **section 50CA shall apply** and if the FMV is more than the amount recorded in books of account, the FMV shall be taken to be sales price.

Note4: Section 56(2)(x) provides for taxability of **difference between the FMV and the transaction value in case of receipt of capital asset (including shares, immovable property, etc.) to be income in the hands of the recipient**. Accordingly, section 56(2)(x) will apply in the hands of firm/ AOP/ BOI if partner/ member transfers the assets referred in section 56(2)(x) at less than FMV.

Illustration:

Mr. A is admitted as a partner in a firm M/s. ABC. He transfers unlisted shares of a company on 1.1.2023 as his capital contribution to the firm. The fair market value of the unlisted shares is ₹ 50,00,000 but the firm records the value of the unlisted shares as ₹30,00,000. The unlisted shares were acquired by Mr. A on 1.1.2013 for ₹ 10,00,000. Discuss the tax implications.

Answer:

**Assessment Year 2023-24
In the hands of Mr. A**

CAPITAL GAINS

Period of holding	:	01.01.2013 to 31.12.2022	(Long term)
Sale Price as per section 45(3) read with section 50CA	:	₹ 50,00,000	
Less: Indexed Cost of Acquisition	:	10,00,000 × 331/200	₹ 16,55,000
Long term Capital Gain			₹ 33,45,000

Note 1: As per section 45(3), the amount recorded in books of firm shall be deemed to be sales consideration. However, as per section 50CA, where the consideration received for unlisted shares is less than the fair market value, then the fair market value shall be deemed to be the sales consideration. Therefore, as per section 45(3) read with section 50CA, the sales consideration in hands of partner Mr. A shall be ₹ 50,00,000.

Note 2: Section 56(2)(x) is attracted since firm has received the shares for a consideration of ₹30,00,000 which is less than the Fair Market Value of the shares. Therefore ₹ 20,00,000 shall be treated as Income from Other Sources in

the hands of the firm. The COA of the shares in the hands of the firm shall be taken to be ₹50,00,000 as per section 49(4).

Note 3: In the above case, the partner should have transferred the shares to the firm at Fair Market Value of ₹ 50,00,000. The capital gains in hands of partner Mr. A shall be the same i.e. ₹ 33,45,000. However, section 56(2)(x) shall not be attracted in hands of firm. The COA of shares in hands of firm shall remain to be ₹ 50,00,000.

COMPULSORY ACQUISITION OF ASSET UNDER ANY LAW

SECTION 45(5): CAPITAL GAIN ON TRANSFER BY WAY OF COMPULSORY ACQUISITION OF AN ASSET

- Transfer of capital asset
- by way of compulsory acquisition under any law or
- the transfer is the one for which,
- the consideration is determined or approved by the Central Government or the RBI.

Then

- **capital gains arising from the transfer of the capital asset shall be dealt with as under:**

In respect of:	
Original Compensation	<ul style="list-style-type: none">• Taxable in the year in which it is first received by the assessee. (even part thereof).• Period of holding shall be taken upto the date when asset was compulsorily acquired.
Enhanced Compensation	<ul style="list-style-type: none">• Taxable in the year in which it is received by the assessee.• Nature of capital gain shall be same as the nature of capital gain with reference to the original compensation.• Cost of acquisition shall be taken to the NIL.• If any enhanced compensation is received pursuant to an interim order of Court, Tribunal or other authority, then such enhanced compensation received shall not be taxable in the year of receipt but shall be taxable in the previous year in which the final order is passed by the Court, Tribunal or other authority.
Compensation Reduced by any Court or Authority	<ul style="list-style-type: none">• Rectification is to be made to give effect to the reduced compensation.

Note 1: Legal expenses incurred to obtain the enhanced compensation are deductible from enhanced compensation.

Note 2: Interest on compensation /enhanced compensation shall be taxable **in the year of receipt** under the head “Income from Other Sources”. **50% of such interest shall be allowed as deduction under section 57, from such interest.**

Note 3: Where by reason of the death of the person who made the transfer or for any other reason, the enhanced compensation is received by any other person, then

the amount so received shall be deemed to be the income under the head Capital gains of the person who receives the same.

SECTION 155 (16): RECTIFICATION

In case of compulsorily acquisition under any law, of any capital assets either original compensation or enhanced compensation has been subsequently reduced by any court, Tribunal or other authority, the A.O. shall amend the order of assessment so as to compute the capital gain by taking the compensation as so reduced by the court, Tribunal or any other authority to be sale consideration; and the provisions of section 154 shall apply thereto, and the period of 4 years shall be reckoned from the end of the previous year in which the order reducing the compensation was passed by the court, Tribunal or other authority.

SECTION 10(37): EXEMPTION FROM CAPITAL GAINS IN CASE OF URBAN AGRICULTURAL LAND

Available to	Individual or HUF
Nature of capital gains exempt	Long term as well as short-term capital gains
Capital asset transferred	<ul style="list-style-type: none">• Agricultural land situated in urban area;• Used for agricultural purposes by such HUF or Individual or a parent of the individual
Period for which capital asset is used	2 years immediately preceding the date of transfer
Transfer on account of	<ul style="list-style-type: none">• Compulsory acquisition under any law; or• Transfer for which consideration is determined or approved by the Central Government or RBI
Other condition	Compensation/ consideration for transfer is received by the assessee

Note: Capital Gains computed with reference to original compensation as well as enhanced compensation are exempt.

COMPENSATION RECEIVED UNDER RFCTLARR ACT FOR AGRICULTURAL AND NON-AGRICULTURAL LAND IS EXEMPT FROM TAX

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) in section 96, inter alia provides that income-tax shall not be levied on any award or agreement made under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act, is exempted from the levy of income-tax.

Any compensation received under RFCTLARR ACT shall be exempt from income tax, whether compensation is for agricultural land or non-agricultural land and whether agricultural land is long term or short term.

Note: Section 10(37) has no relevance if acquisition is made under RFCTLARR Act.

SECTION 10(37A): SPECIAL EXEMPTION TO SPECIFIED PEOPLE OF ANDHRA PRADESH

Available to	Individual or HUF
Nature of capital gains exempt	Long term as well as short-term capital gains
Capital asset transferred	<p align="center">Following Capital Assets transferred under the Land Pooling Scheme of Andhra Pradesh Government:</p> <ul style="list-style-type: none"> a) land and/or building owned by the assessee as on 2.6.2014 and transferred under the scheme; or b) land pooling ownership certificate issued under the scheme in respect of land and/or building referred at clause (a) above; or c) reconstituted plot/ land received in lieu of land and/or building referred at clause (a) above in accordance with the scheme, if such plot/ land so received is transferred within 2 years from the end of the FY in which its possession was handed over to the assessee

Notes: Section 49(6) - Cost of Acquisition in case of reconstituted plot/land referred above shall be deemed to be its stamp duty value as on the last day of the second FY after the end of the FY in which its possession was handed over to the assessee.

Illustration:

Mr. Rehman purchased land & building in Andhra Pradesh on 01.01.2010 for ₹ 10 lakhs. Under the Land Pooling Scheme of Andhra Pradesh Government, Mr. Rehman on 01.01.2015 transferred land & Building to Specified Authority when SDV of Land & Building was ₹ 25 lakhs. On 01.01.2015, Mr. Rehman is allotted Land Pooling ownership certificate and as per the certificate, he shall be allotted a Land in Amaravati on 01.01.2020 in lieu of Land Pooling ownership certificate.

CASE I: He sells Land Pooling certificate on 01.01.2019 for ₹ 30 lakh.

CASE II: On 01.01.2020, he is allotted and given possession of a plot in Amaravati in lieu of Land Pooling certificate and SDV of Plot is ₹ 40 lakhs.

Situation I: He sells the residential plot on 01.01.2021 for ₹ 45 lakhs.

Situation II: He sells the residential plot on 01.01.2023 for ₹ 70 lakhs. SDV of plot on 31.03.2022 is ₹ 50 lakhs.

Answer:

Assessment Year 2015-16

As per section 10(37A), the capital gains on transfer of Land & Building in Land Pooling Scheme are exempt.

CASE I:

Assessment Year 2019-20

As per section 10(37A) the capital gains on transfer of Land Pooling certificate are exempt.

CASE II:**Situation 1:****Assessment Year 2021-22**

As per section 10(37A), the capital gains on transfer of residential plot in Amaravati are exempt since the plot has been transferred before 01.04.2022.

Situation 2:**Assessment Year 2023-24**

The capital gains on sale of residential plot in Amaravati are not exempt since sale takes place after 31.03.2022.

Period of Holding	: 01.01.2020 to 31.12.2022 i.e., Long term
Sale Price	: ₹ 70 Lakh
Cost as per section 49(6)	: ₹ 50 Lakh

SECTION 45(5A): CAPITAL GAIN ON LAND & BUILDING UNDER JOINT DEVELOPMENT AGREEMENT (ADDED BY FINANCE ACT, 2017)

- Where capital gains arise to an assessee, being an **individual or HUF** from **transfer of land or building or both under a specified agreement**,
- capital gains shall be taxable as income of the previous year in which the **certificate of completion for the whole or part of the project is issued** by the competent authority; and
- for the purpose of section 48,

Sale consideration = Stamp Duty Value on the date of issue of completion certificate of his share in land/ building in project plus consideration received in cash.

Above provisions shall not apply where assessee transfers his share in the project on or before the date of issue of said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place.

Section 49(7) – Cost of Acquisition of share of project under Joint Development Agreement shall be the **amount which is deemed as full value of consideration** under this sub-section i.e.

COA of share of project = Stamp Duty Value on the date of issue of completion certificate of his share in land/ building in project plus consideration received in cash

Illustration 1:

Mr. X purchased a residential plot on 01.01.1998 for ₹ 50,00,000. FMV of plot as on 01.04.2001 is ₹ 65,00,000. Alpha builder enters into a Development Agreement with Mr. X on 01.05.2022 on the following terms and conditions:

- Mr. X will hand over the possession of plot to Alpha Builders on 01.05.2022.
- Alpha builders will pay a cheque of ₹ 60,00,000 to Mr. X on 01.05.2022.

- (c) Alpha builders will construct 10 residential units on the plot of land and will give 6 units to Mr. X. The 10 units shall be completed by 30.06.2024 and on that date 6 units will be handed over to Mr. X.
- (d) The stamp duty value of plot as on 01.05.2022 is ₹ 2 crores.
- (e) The stamp duty value of each flat as on 30.06.2024 is ₹ 45 Lakhs

The project completion certificate is issued by the competent authority on 30.06.2024. 6 units are handed over to Mr. X on 30.06.2024.

Answer:

- There is a “Transfer” on 01.05.2022 in hands of Mr. X since he has given the possession of residential plot pursuant to Development Agreement.
- However as per section 45(5A), the capital gains shall not be taxable in Previous Year 31.03.2023 but shall be taxable in the Previous Year in which certificate of completion is issued by competent Authority.
- Section 45(5A) is applicable since assessee is an individual.
- The holding period of residential plot shall be taken from 01.01.1998 to 30.04.2022 i.e. long term.
- As per section 55, the COA of plot is ₹ 50,00,000 or FMV as on 01.04.2001, at the option of the assessee. Therefore, COA of plot is ₹ 65,00,000.
- The sale consideration of plot shall be worked out as under as per section 45(5A):

Sale consideration = SDV on the date of issue of completion certificate of his share in land/ building in project plus consideration received in cash.

- **Capital Gains shall be worked out as under:**

In Previous Year 31.03.2025, when completion certificate is issued by Competent Authority, capital gains shall be worked out as under:

Assessment Year 2025-26

Capital Gains:

Period of holding	: 01.01.1998 to 30.04.2022	(Long Term)
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Sales Price

SDV of 6 Flats on 30.06.2023	: $45 \text{ Lakh} \times 6 + ₹ 60,00,000$	₹ 3,30,00,000
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+ Cash received

Cost of Acquisition	: 65,00,000
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Less: Indexed Cost of Acquisition	: $65,00,000 \times 331/100$
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₹ 2,15,15,000

Long Term Capital Gain

₹ 1,14,85,000

**SECTION 47: CERTAIN TRANSACTIONS NOT REGARDED AS
TRANSFER**

The following transactions will not be regarded as transfer for the purposes of section 45 and therefore, no capital gains will arise:

- (i) any distribution of capital assets on the partial or total partition of a HUF.
- (ii) any transfer of a capital asset under a gift, will or an irrevocable trust.
- (iii) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company provided that the amalgamated company is an Indian company.
- (iv) any transfer of a capital asset by a holding company to its subsidiary company provided that the following conditions are satisfied:
 - (a) the holding company or its nominees hold the entire share capital of the subsidiary company and
 - (b) the subsidiary company is an Indian company.

Note: This exemption shall not be available if the capital asset is transferred as stock in trade.

- (v) any transfer of a capital asset by a subsidiary company to its holding company provided that the following conditions are satisfied:
 - (a) the holding company or its nominees hold the entire share capital of the subsidiary company and
 - (b) the holding company is an Indian company.

Note: This exemption shall not be available if the capital asset is transferred as stock in trade.

Section 49(1): Cost of Acquisition & Improvement in above 5 cases

Cost of acquisition of the asset to the transferee shall be deemed to be the cost to the previous owner. The cost of improvements incurred by the previous owner and the transferee after 1.4.2001 shall be taken as cost of improvement by the transferee.

Section 2(42A): Period of Holding in above 5 cases

For determining the nature of capital gains, period of holding of the previous owner shall also be considered.

Indexation of Cost: Manjula J. Shah (Bombay High Court)

The assessee must be treated to have held the asset from the year the asset was first held by the previous owner and accordingly the CII for the year in which the asset was first held by the previous owner would be considered for determining the indexed cost of acquisition.

Section 55: FMV as on 1.4.2001 in above 5 cases

If the previous owner, has acquired the asset before 1.4.2001, the cost to the transferee shall be the cost to the previous owner **or** FMV as on 1.4.2001, whichever is higher. **In case of land or building or both, the stamp duty value as on 01.04.2001 or cost to previous owner, whichever is higher shall be taken.**

Section 47A: Withdrawal of Exemption under case (iv) or (v)

Where at any time before the expiry of 8 years from the date of transfer of a capital asset referred to in clause (iv) or (v) of section 47 (i.e. Holding company to subsidiary company or subsidiary company to holding company) –

- (a) such capital asset is converted into stock in trade by the transferee company, OR
- (b) the holding company or its nominees cease to hold the whole of the share capital of the subsidiary company,

then, exemption under section 47 shall be withdrawn. The capital gains not charged to tax earlier shall be taxed as income of the transferor company in the previous year in which transfer took place.

Section 155: Rectification

- Where section 47A is attracted,
- the assessment of the transferor company will be rectified under section 154.
- For the purposes of section 154,
- four years shall be counted from the end of the previous year
- in which the capital asset was converted into Stock-in-trade or
- in which the holding company or its nominees ceased to hold the whole of the share capital of subsidiary company.

Section 49(3): Cost of Acquisition in the hands of Transferee Company

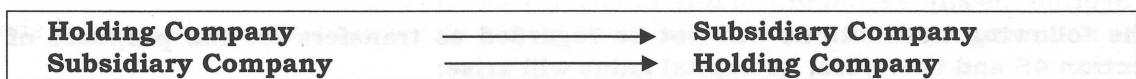
- If exemption is withdrawn under section 47A
- then, for calculating capital gains
- in the hands of transferee
- cost of acquisition shall be the price at which
- the asset is transferred by the transferor company.

SECTION 43C: SPECIAL PROVISION FOR COMPUTATION OF COST OF ACQUISITION IN CERTAIN CASES

If under an amalgamation, partition of HUF, gift, will or irrevocable trust, a capital asset is transferred as stock in trade, then, the cost of acquisition of such stock-in-trade shall be

- the actual cost of the capital asset in the hands of transferor
- as increased by cost of improvements incurred by transferor and transferee,
- as increased by expenditure on transfer incurred by the transferor.

SUMMARY OF CHAIN OF SECTIONS



Case I CAPITAL ASSET IS TRANSFERRED AS CAPITAL ASSET

Section 47 + Section 49(1) + Section 2(42A) + Section 55 + Section 47A+Section 45(2) + Section 155 + Section 49(3)

Case II CAPITAL ASSET IS TRANSFERRED AS STOCK-IN-TRADE

Section 47 exemption is not available. Therefore, the entire chain of sections is not applicable. It is a normal transfer under section 45(1).

Amalgamating Company	→	Amalgamated Company
Partition of HUF	→	Members of HUF
Gift, Will, Irrevocable Trust	→	

Case I CAPITAL ASSET IS TRANSFERRED AS CAPITAL ASSET

Section 47 + Section 49(1) + Section 2(42A) + Section 55

Case II CAPITAL ASSET IS TRANSFERRED AS STOCK-IN-TRADE

Section 47 + Section 43C

FROM THE JUDICIARY

1. RM. Arunachalam v. CIT (Supreme Court)

Where the legal heir inherits the mortgaged property and pays the mortgage debts, then the cost of acquisition to the legal heir is the cost of acquisition in the hands of the deceased as increased by the amount paid to clear the mortgage debt. Amount paid to clear the mortgaged debt shall be treated as COI.

2. V.S.M.R. Jagadishchandran v. CIT (Supreme Court)

Where the mortgage was created by the assessee himself, there will be no tax treatment of discharge of mortgage debt and the same cannot be said to be cost of acquisition or cost of improvement of the property.

3. Can the amount incurred by the assessee towards perfecting title of property acquired through will, for making further sale, be included in the cost of acquisition for computing capital gains?

ADITYA KUMAR JAJODIA [2018] (CAL)

The High Court held that, the assessee is entitled to deduction of amount incurred towards perfecting title of property acquired under will and the amount incurred towards making payments to the trust and the third party in whose favour rights were created, as cost of acquisition under section 55.

SECTION 47: CERTAIN TRANSACTIONS NOT REGARDED AS TRANSFER

The following transactions will not be regarded as transfers for the purposes of section 45 and therefore, no capital gains will arise:

(vi) any transfer in a scheme of amalgamation, of **shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company** if the following 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) such transfer does not attract tax on capital gains in the country, in which the **amalgamating company is incorporated**.

Note: If such transfer attracts tax on capital gains in the country in which the amalgamating company is incorporated then, the transfer is NOT

EXEMPT under section 47 of Income-tax Act, 1961. The capital gains shall be taxable as per the relevant DTAA.

Illustration:

A foreign company Lipton Inc. incorporated in Germany is holding shares in an Indian company Lipton India Ltd. These shares were acquired by Lipton Inc. on 01.01.2013 at ₹10 per share [10 lakh shares]. The company Lipton Inc. amalgamates with another foreign company Unilever Plc. on 01.01.2023 and the shares of Lipton India Ltd. are transferred to Unilever Plc. by Lipton Inc. under the Scheme of amalgamation. Under the scheme of amalgamation, the Shares of Lipton India Ltd. were valued at ₹ 300 per share. The Assessing Officer wants to tax the capital gains of ₹ 2,900 lakhs arising in the hands of Lipton Inc. on account of transfer of Shares of Lipton India Ltd. The company Unilever Plc. is incorporated in United Kingdom. Advise.

Answer:

There will be no capital gains in hands of Lipton Inc. as per section 47, if:

- (a) at least 25% of shareholders of Lipton Inc. continue to be shareholders of Unilever Plc., and
- (b) such transfer is not taxable as per the tax laws of Germany.

(vii) any transfer in a demerger, of shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if—

- (a) the shareholders holding not less than 75% in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and
- (b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated.

Illustration:

A foreign company IBM Inc. incorporated in U.S.A. is holding shares of Indian Company IBM India Ltd. These shares were acquired by IBM Inc. U.S.A. on 1-1-2013 at ₹ 10 per share (10 lakh shares). IBM Inc. U.S.A. is engaged in hardware and software business. IBM India Ltd is engaged in software business.

IBM Inc. U.S.A. demerges its software business to a company Zigma Plc. in London on 1-1-2023. In the scheme of demerger, the shares of IBM India Ltd are transferred at ₹ 300 per share to Zigma Plc. The Assessing officer wants to tax the Capital Gains of ₹ 2,900 lakhs in hands of IBM Inc. U.S.A. Advise:

Answer:

There will be no Capital Gains in hands of IBM Inc. U.S.A transfer of shares of IBM India Ltd by virtue of section 47, if—

- (a) shareholders holding 75% or more of the value of shares of IBM Inc. U.S.A. continue to be the shareholders of Zigma Plc. U.K and
- (b) such transfer does not attract Capital Gains in U.S.A.

(viii) any transfer of a capital asset in a scheme of amalgamation of banking company with a banking company sanctioned and brought into force by the Central Government under Banking Regulation Act.

Section 49(1): Cost of acquisition in cases (vi), (vic) and (vii) above

Cost of acquisition of the assets in the hands of transferee shall be the cost of acquisition to the previous owner i.e., the transferor.

Section 2(42A): Period of holding in cases (vi), (vic) and (vii) above

In determining the nature of capital gains in the hands of the transferee, the period of holding of the asset of the transferor shall also be considered.

(viiia) Any transfer of **bonds or Global Depository Receipts** referred to in section 115AC, **made outside India** by a **NON-RESIDENT** to another **NON-RESIDENT**. The exemption is available only if Bonds and GDRs have been **issued by a company listed on a recognised stock exchange** in India.

(viiiaa) Any transfer, made outside India, of Rupee Denominated Bond of an Indian company issued outside India, by a non-resident to another non-resident.

(viiab) any transfer of a capital asset, being—

- (a) bond or Global Depository Receipt referred to in section 115AC; or
- (b) rupee denominated bond of an Indian company; or
- (c) derivative; or
- (d) unit of Mutual Fund; or
- (e) unit of Business Trust; or
- (f) foreign currency denominated bond; or
- (g) foreign currency denominated equity share of a company; or
- (h) unit of Alternative Investment Fund.
- (i) **BULLION DEPOSITORY RECEIPT WITH UNDERLYING BULLION**

(Finance Act, 2022)

made by a non-resident on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

(viiib) any transfer of a **Government Security** carrying a periodic payment of interest, made **outside India** through an intermediary dealing in settlement of securities, **by a non-resident to another non-resident**.

(viii) any transfer of **Sovereign Gold Bond** issued by RBI under the Sovereign Gold Bond Scheme, 2015, by **way of redemption**, by an assessee being an **individual**.

♦ ANALYSIS OF CLAUSE (viii) OF SECTION 47 ♦

1. Exemption is available only to an individual.
2. Exemption is available only when such bonds are redeemed.
3. **Exemption is not available if such bonds are transferred before maturity.**
4. Exemption is not restricted to the original subscriber of the Bonds. Even if such bonds are purchased from market and are redeemed, then also exemption shall be available.

(ix) Any transfer of a capital asset, being any work of art, archaeological, scientific, or art collection, book, manuscript, drawing, painting, photograph or print, to the Government, University, National Museum, National Art Gallery, National Archives or any notified public museum or institution.

(x) Any transfer by way of **conversion of bonds, or debentures** or debenture stock or deposit certificates of a company **into the shares or debentures of that company**. [Conversion of FCCB into shares is also covered here]

Note 1: **Section 49(2A): Cost of acquisition** of the share or debenture so received on conversion shall be **cost of that part of the debenture, bond, debenture stock or deposit certificate, which is so converted.**

Note 2: For computing period of holding of the share or debenture so received on conversion, there shall be **included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to conversion.**

- (xa) any transfer by way of conversion of bonds referred to in section 115AC [FCEB] into shares or debentures of any company.

Note 1: **Section 49(2A): Cost of acquisition** of the share or debenture so received on conversion shall be **cost of that part of the Bonds which is so converted.**

Note 2: The **period of holding of Bonds so converted, shall not be taken** into account for the purposes of determining the nature of capital gains on the sale of the share/debenture so received on conversion.

- (xb) **Any transfer by way of conversion of preference shares of a company into equity shares of that company.**

Note 1: **Section 49(2AE): Cost of acquisition** of the equity shares shall be deemed to be that part of the **cost of preference share which is so converted.**

Note 2: **Section 2(42A)(hf):** For the purpose of calculating **period of holding** of the equity shares so converted, **period for which the preference shares were held by the assessee shall be included.**

- (xi) Any transfer by a Shareholder, in a scheme of amalgamation, of the **shares held by him in the amalgamating company**, provided that the following conditions are satisfied:

- (a) The transfer is made in consideration of **allotment to him of the shares in the amalgamated company** except where the shareholder itself is the amalgamated company; and
(b) The amalgamated company is an Indian company.

Note 1: **Section 49(2):** The **Cost of acquisition** of the shares in the amalgamated company shall be the **cost of acquisition of the shares of the amalgamating company.**

Note 2: **Section 2(42A):** For computing the nature of capital gains arising from the sale of the shares of the amalgamated company, **the period of holding of the shares in the amalgamating company** shall also be considered.

Note 3: **Gautam Sarabhai Trust:** If the consideration for transfer of Shares in amalgamating company consists of something more than the shares in the amalgamated company, then **exemption under section 47 will not be available.** This is because composite consideration is not contemplated by the section.

(xii) Any transfer of a capital asset, being **land** of a sick industrial company provided the following conditions are satisfied:

- the land is transferred during the period beginning from the previous year in which the said company has become a sick industrial company and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
- the sick industrial company is **managed by its workers' co-operative**
- the land is transferred under a scheme prepared and sanctioned by BIFR.

CONVERSION OF PARTNERSHIP FIRM OR PROPRIETORY CONCERN INTO A COMPANY

(xiii) **where a firm is succeeded by a company in the business carried on by it** as a result of which the firm transfers any capital asset or intangible asset to the company, provided the following conditions are satisfied:

- (a) **all the assets and liabilities of the firm** relating to the business immediately before the succession **become the assets and liabilities of the company**;
- (b) **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; 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
- (c) **the aggregate of the shareholding in the company of the partners** of the firm is **not less than 50% of the total voting power** in the company and their shareholding continues to be **as such for 5 years from the date of the succession**.

(xiv) **where a sole proprietary concern is succeeded by a company in the business carried on by it** as a result of which the sole proprietary concern transfers any capital asset or intangible asset to the company, provided following conditions are satisfied:

- (a) **all the assets and liabilities of the sole proprietary concern** relating to the business immediately before the succession **becomes the assets and liabilities of the company**;
- (b) **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 so remain **as such for 5 years from the date of the succession**; and
- (c) **sole proprietor does 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**;

Note 1: Section 49(1): Cost of Acquisition & Improvement in cases (xiii) and (xiv) above

Cost of acquisition of the asset to the transferee shall be deemed to be the **cost to the previous owner**. The cost of improvements incurred by the previous owner shall also be considered.

Note 2: Section 2(42A): Period of Holding in cases (xiii) and (xiv) above
For determining the nature of capital gains period of holding of the previous owner shall also be considered.

Note 3: Section 47A: Withdrawal of exemption in cases (xiii) and (xiv) above
If partners/ proprietor ceases to hold 50% of total voting power of the company within a period of 5 years from the date of succession, then the capital gains exempted earlier shall be taxable in hands of the company in the year in which partners / proprietor cease to hold 50% of total voting power.

Note 4: Section 72A: Set-Off and Carry Forward of Losses in cases (xiii) and (xiv) above

Bought forward business losses (except speculation business) and unabsorbed depreciation of the predecessor firm/ proprietor shall deemed to be the current year loss/ depreciation of the successor company of the previous year in which succession take place. However, if the partners/ proprietor ceases to hold 50% of total voting power of the company within period of 5 years from the date of succession, losses and depreciation of the predecessor which were set-off by the successor company shall deemed to be the income of the successor company in the previous year in which shareholding becomes below 50%.

CONVERSION OF STOCK EXCHANGE INTO A COMPANY

(xiii) any transfer of a capital asset to a company in the course of demutualization or corporatisation of a recognised stock exchange if stock exchange is an AOP/ BOI and it is converted into a company, provided the following conditions are satisfied:

- all the assets and liabilities of the AOP/ BOI relating to the business immediately before the succession become the assets and liabilities of the company;
- corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme approved by SEBI.

Note: The cost of acquisition of assets in hands of company shall be cost of such assets in hands of AOP/ BOI being the stock exchange.

(xiiia) any transfer of membership ticket held by a member of a recognized stock in exchange for acquisition of shares and trading or clearing rights acquired by such member in the company so formed.

	Cost of Acquisition Section 55	Period of Holding Section 2(42A)
Equity share or shares allotted to the member of a recognised stock exchange in India	Cost of acquisition of his original membership of the exchange	The period from which the person was a member of the recognized stock exchange in India immediately prior to such demutualisation or corporatisation shall also be considered.
Trading or clearing rights of the recognized stock exchange acquired by a member	NIL	

CONVERSION OF COMPANY INTO LIMITED LIABILITY PARTNERSHIP (LLP)

SECTION 47(xiiib)

- Any transfer of a capital asset or intangible asset
- by an **unlisted public company or a private company**
- **to a LLP or**
- any transfer of **shares held in the company by a shareholder** as a result of conversion of the company into a LLP
- shall not be regarded as transfer and therefore, no capital gain shall arise on it.

CONDITIONS TO BE SATISFIED:

- (a) all **the assets and liabilities** of the company immediately before the conversion **become the assets and liabilities of the LLP**;
- (b) all **the shareholders of the company** immediately before the conversion **become the partners of LLP** and their **capital contribution and profit sharing ratio in LLP are in the same proportion** as their shareholding in the company on the date of conversion;
- (c) **shareholders** of the company **do not receive any consideration** or benefit, directly or indirectly, in any form or manner, **other than by way of share in profit and capital contribution in the LLP**;
- (d) **aggregate of the profit sharing ratio of the shareholders** of the company in LLP shall not be **less than 50%** at **any time** during the period of **5 years from the date of conversion**;
- (e) the **total sales**, turnover or gross receipts in business of the company in any of **3 previous years** preceding the previous year in which the conversion takes place does **not exceed ₹ 60 lakhs**; and
- (ea) **total value of the assets** as appearing in the books of account of the company in **any of 3 previous years** preceding the previous year in which the conversion takes place does not **exceed ₹ 5 crore**; and
- (f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for 3 years from the date of conversion.

Notes:

1. Section 49(1): Cost of Acquisition & Improvement

Cost of acquisition of the asset to the LLP shall be deemed to be the cost to the company acquired it as increased by the cost of improvements incurred by the company and LLP.

2. Section 2(42A): Period of Holding

For determining the nature of capital gains period of holding of the previous owner shall also be considered.

3. Section 47A: Withdrawal of exemption

Where conditions at (d) and (f) above, are not complied with, the profits which was exempted on conversion, shall be deemed to be the profits and gains taxable in the hand of LLP or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements are not complied with.

4. Section 115JAA: MAT Credit

The MAT credit available in hands of company shall not be allowed to the LLP.

5. **Section 72A: Set-Off and Carry Forward of Losses**

Bought forward business losses (except speculation business) and unabsorbed depreciation of the predecessor company shall be deemed to be the current year loss/depreciation of the LLP of the previous year in which succession takes place. However, if the shareholders of the company cease to hold 50% of total PSR in LLP within 5 years from the date of succession, losses and depreciation of the predecessor company which were set-off by the LLP shall be deemed to be the income of the LLP in the previous year in which PSR becomes below 50%. The same will apply if accumulated profits are distributed before three years as referred in clause (f).

OTHER TRANSFERS EXEMPT UNDER SECTION 47

- (xv) any transfer in a scheme for **lending of any securities** under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the SEBI or the RBI.
- (xvi) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.

Note 1: **Section 10(43):** Any amount received by an individual as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage is exempt from tax under section 10(43).

Note 2: If legal heir discharges the mortgage loan created in reverse mortgage, then case of **R.M. Arunachalam** will apply.

- (xvii) any transfer by a shareholder of SPV of shares in SPV to the business trust in exchange of units of a business trust

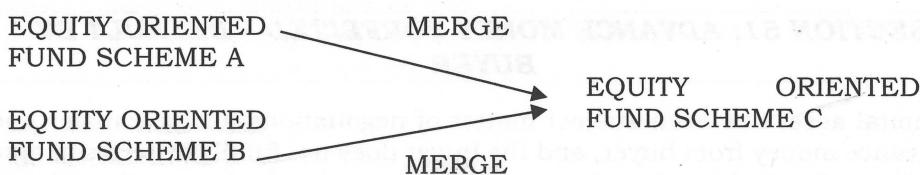
Note 1: **Cost of acquisition** of units of business trust in hands of shareholder of SPV shall be cost at which shares are acquired by them in SPV.

Note 2: In computing the period of holding of units of business trust in the hands of shareholders of SPV, the period for which shares were held by shareholders in SPV shall also be considered.

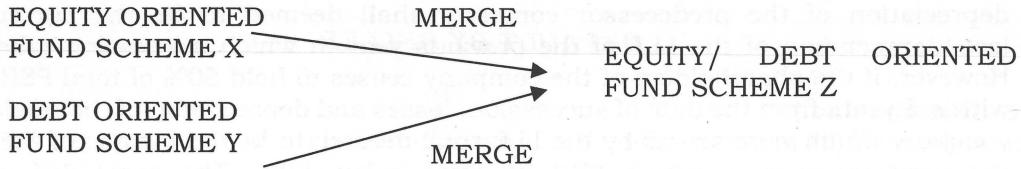
- (xviii) Any transfer, by a mutual fund unitholder, of **units, held by him in the consolidating scheme** of a mutual fund, made in consideration of the allotment to him of **units, in the consolidated scheme of the mutual fund**.

However, the consolidation **should be of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.**

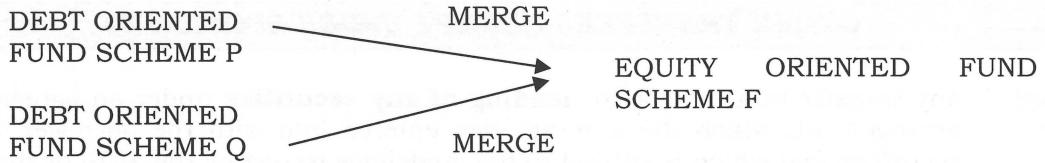
This exemption is applicable where one scheme of mutual fund merges with another scheme of that mutual fund. **For example:**



Exemption is available to Unit Holder.



Exemption is not available.



Exemption is not available.

Section 49(2AD): Cost of acquisition of the units in this case shall be deemed to be the cost of acquisition to him of the units in the consolidating scheme of the mutual fund.

Section 2(42A): For computing period of holding in this case, period for which the units in the consolidating scheme of the mutual fund were held by the assessee shall be included.

- (xix) any transfer, by a mutual fund unit holder of units, held by him in the **consolidating plan of a mutual fund scheme**, made in consideration of the allotment to him of units, in the **consolidated plan of that scheme** of the mutual fund.

Note 1: This exemption is applicable when within a scheme of Mutual Fund, there are different plans. One Plan of the scheme merges with another plan of the same scheme. For example, mutual fund scheme has various plans like

1. Dividend Distribution Plan
2. Capital Appreciation Plan
3. Dividend & Capital Appreciation Plan
4. And so on

NOW WITHIN A SCHEME, THE PLANS CAN BE MERGED.

Note 2: **Section 49(2AF):** The **Cost of acquisition** of the unit or units in a consolidated plan of a mutual fund scheme shall be deemed to be the **cost of acquisition** to the assessee in the **consolidating plan of the scheme** of the mutual fund.

Note 3: **Section 2(42A)(hg):** For calculating the **period of holding** of the capital asset, period for which the unit or units in a consolidated plan of a mutual fund scheme held by the assessee shall be included.

SECTION 51: ADVANCE MONEY FORFEITED – DEFAULT BY BUYER

Where a capital asset has been subject matter of negotiations for its transfer and seller receives advance money from buyer, and the buyer does not fulfill the terms of agreement to sell and the seller forfeits the advance money given by the buyer, then the advance money forfeited shall not be deducted from cost of acquisition of the underlying Capital

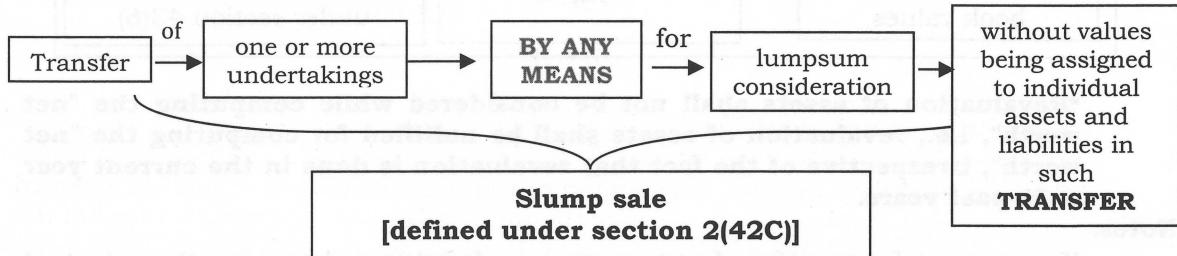
Asset. The advance money forfeited shall be treated as Income from other sources in the hands of seller in the previous year in which advance money was forfeited.

DEFAULT BY SELLER

K.R. Srinath (Mad.)

If the seller defaults in performing the sale agreement and the buyer receive compensation from the seller then it will be said that the buyer has relinquished his right for specific performance and the amount received by the buyer is assessable as capital gains. The amount paid by him as advance money will be regarded as the cost of acquisition.

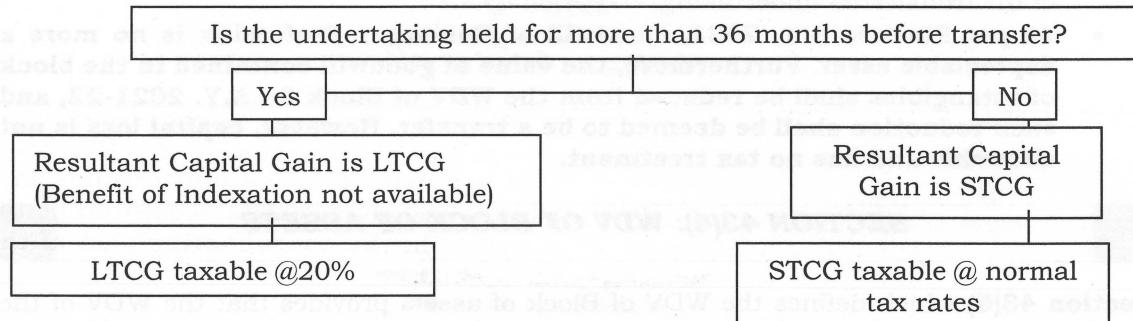
SLUMP SALE



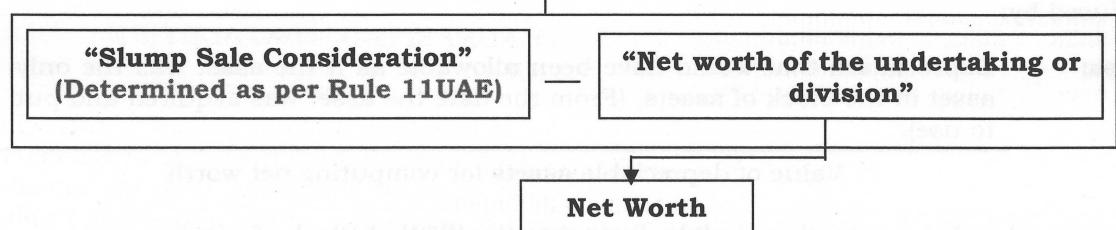
As per Finance Act, 2021, slump sale of an undertaking includes:

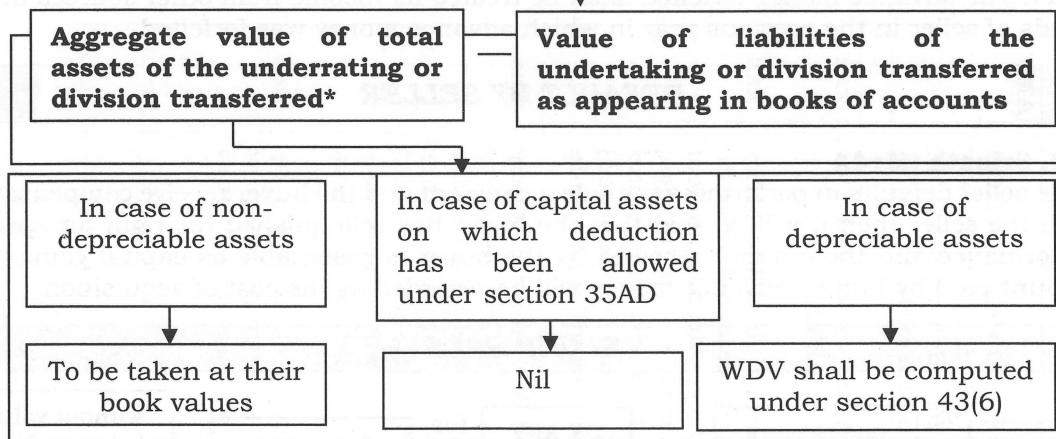
- Transfer of undertaking for monetary consideration.**
- Transfer of undertaking for non-monetary consideration e.g., assets or undertaking received on transfer of undertaking.**
- Transfer of undertaking for monetary and non-monetary consideration e.g., assets/undertaking and money received on Transfer of undertaking.**

SECTION 50B: SPECIAL PROVISION FOR COMPUTATION OF CAPITAL GAINS IN CASE OF SLUMP SALE



Computation of capital gains (LTCG/ STCG) on slump sale





***Revaluation of assets shall not be considered while computing the "net worth", i.e., revaluation of assets shall be nullified for computing the "net worth", irrespective of the fact that revaluation is done in the current year or in past years.**

Notes:

- If agreement for transfer of one or more undertakings determine the values of some assets (say for example an immovable property) or liabilities, and the agreement provides that the values are determined for the sole purposes of payment of stamp duty, registration fees or such similar taxes, then this will not amount to assignment of values to individual assets and liabilities.
- For constituting an undertaking, it is essential that part of undertaking; or unit of undertaking; or division of undertaking should constitute a business activity as a whole.
- Capital gains shall be taxable in the previous year in which the slump sale is effected
- No profits under the head P/G/B/P shall arise in case of a slump sale even if stock is transferred in slump sale.
- Transferor can carry forward the unabsorbed losses and unabsorbed depreciation of the transferred undertaking.
- As per Finance Act, 2021, Goodwill of Business/ Profession is no more a depreciable asset. Furthermore, the value of goodwill contained in the block of intangibles shall be reduced from the WDV of Block for A.Y. 2021-22, and such reduction shall be deemed to be a transfer. However, capital loss is not allowable and has no tax treatment.**

SECTION 43(6): WDV OF BLOCK OF ASSETS

Section 43(6) which defines the WDV of Block of assets provides that the WDV of the transferor in case of slump sale shall be reduced by the following:

Actual cost of the assets falling within that block transferred by way of slump sale as reduced by:

Less: Depreciation that would have been allowable as if the asset was the only asset in the block of assets. (From the date the asset was acquired and put to use).

Value of depreciable assets for computing net worth

However, the above reduction shall be limited to the WDV of Block of assets.

Rule 11 UAE provides that sale consideration on transfer of undertaking shall be higher of FMV₁ or FMV₂ on given below:

FMV ₁	AMT.	FMV ₂	AMT.
FAIR MARKET VALUE OF CAPITAL ASSETS SO TRANSFERRED which shall be determined in accordance with the following formula:		FAIR MARKET VALUE OF CONSIDERATION RECEIVED OR ACCRUING AS A RESULT OF TRANSFER which shall be determined in accordance with the following formula:	
A + B + C + D - L where,		E + F + G + H, where,	
A = Book value of all assets (other than B, C, D) AS REDUCED BY following amount, which relate to such undertaking or division –	xxx	E = Monetary consideration received or accruing as a result of transfer;	xxx
(i) Income-tax paid less the amount of income-tax refund claimed (IF ANY)	(xxx)	F = F.M.V. of non-monetary consideration represented by property referred in Rule 11UA(1) i.e., Jewellery, archaeological collections, drawings, paintings, sculptures or any work of art, shares and securities (Quoted or Unquoted) determined in manner provided in Rule 11UA(1)	xxx
(ii) Any amount shown as asset (including unamortised amount of deferred expenditure) which does not represent value of any asset.	(xxx)	G = The price which the non-monetary consideration represented by property [not covered in E above, or H below, such as machinery, furniture or any other depreciable/ non-depreciable asset.] would fetch if sold in open market on basis of valuation report obtained from registered valuer	xxx
B = Price which “Jewellery and artistic work” would fetch if sold in open market on basis of valuation report obtained from registered valuer	xxx	H = Value adopted/ assessed/ assessable by any Government Authority for purposes of payment of stamp duty value in respect of the immovable property.	xxx
C = F.M.V. of shares and securities as determined in manner provided in Rule 11UA(1).	xxx		
D = Value adopted/ assessed/ assessable by any Government Authority for purposes of payment of stamp duty value in respect of the immovable property	xxx		
L = Book value of all liabilities but not including following amounts, which relate to such undertaking or division –	xxx		
(i) Paid-up capital in respect of Equity Shares			

(ii)	Amount set apart for payment of dividends on Preference/Equity shares WHERE such dividends are not declared before the date of transfer at a General Meeting of the company		
(iii)	Reserves & surplus (by whatever name called) even if resulting figure is negative BUT NOT BEING THOSE set apart towards depreciation		
(iv)	Provision for taxation (other than amount of income-tax PAID less the amount of income-tax refund CLAIMED to the extent of excess over the tax payable with reference to book profits.		
(v)	Provision for unascertained liabilities		
(vi)	Contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.		

WHICHEVER IS HIGHER

KEY NOTES:

1. The fair market value of the capital assets under FMV_1 and FMV_2 shall be determined on the date of slump sale.
2. It is to be noted that a balance sheet shall be drawn up and audited by the auditor of the company as on the date of the slump sale for the purposes of determining FMV_1 .
3. Provision for taxation, advance tax paid, self-assessment tax paid, TDS, etc. unless otherwise specifically provided shall be apportioned on a reasonable basis such as profits of the undertaking or as otherwise mentioned in the question.
4. Dividends payable/ proposed dividend unless otherwise specifically apportioned shall be apportioned on reasonable basis such as profits of the undertaking or as otherwise mentioned in the question.

Illustration:

The Balance Sheet of Air Pvt. Ltd. as on March 31, 2022 is as under:

Balance Sheet of Air Pvt. Ltd. As at 31.03.2022			
Liabilities	₹ in 000'	Assets	₹ in 000'
SHARE CAPITAL		FIXED ASSETS	
Equity Share Capital	1,00,000	Immovable property (Land):	
Preference Share Capital (Issued for Division A only)	1,900	Division A (S.D.V ₹ 52,500)	48,000
RESERVES & SURPLUS		Division B (S.D.V ₹ 27,500)	21,500
Workmen Compensation Reserve (relating to Division A only)	2,500	Machinery (Depreciable)	
Depreciation Reserve (Division A)	600	Division A	1,500
LOANS		Division B	1,500
Unsecured Loan (Division A)	3,000	PURCHASED GOODWILL	
Secured Loan (Division B)	400	Division A	5,000
CURRENT LIABILITIES & PROVISIONS		Division B	NIL
Provision on Taxation	2,400	SELF-ACQUIRED GOODWILL	
Provision for unascertained liabilities:		Division A	1,500
Division A	800	Division B	1,500
Division B	400	INVESTMENTS	
Current liabilities:		Jewellery (Division A) (FMV ₹ 600)	500
Division A	900	Shares of subsidiary company (Value as per Rule 11UA ₹ 2,000)	2,500
Division B	100	Quoted shares:	
Dividend Payable	1,200	Division A (FMV ₹ 20,000)	15,000
		Division B (FMV ₹ 8,000)	5,000
		CURRENT ASSETS, LOAN & ADVANCES	
		Current Assets:	
		Division A (FMV ₹ 5,500)	5,000
		Division B (FMV ₹ 2,100)	2,000
		Advance Tax:	1,500
		Tax deducted at source:	900
		MISCELLANEOUS EXPENDITURE	
		P & L A/c. (Dr. Balance):	700
		Deferred Expenditure:	600
TOTAL	1,14,200	TOTAL	1,14,200

Additional Information:

1. Dividend payable of ₹ 9,00,000 was declared at AGM held on 30.06.2022.
2. Machinery transferred in slump sale belongs to Block of Assets of Plant & Machinery on which depreciation rate is 15%. The WDV of the Block as on 01.04.2022 was ₹ 80,00,000. The company acquired a new machinery 'X' on 31.07.2022 for ₹ 8,00,000 and sold a machinery 'Y' on 31.01.2022 for ₹ 7,50,000. From the records maintained under the Co. Act, 2013, the company ascertains

that the machinery transferred in slump sale was acquired @ actual cost of ₹ 70,00,000 on 31.12.2017.

3. Division A and B were set up on 31.01.2017.

Division A is sold on 01.04.2022 as an undertaking and company receives following:

1. Cheque of ₹ 2 crores
2. Land

Price recorded as Sales Price in books of purchaser of Division A	SDV
₹ 480 lakhs	₹ 460 lakhs

3. Quoted shares to be transferred not through stock exchange

Price recorded as Sales Price in books of purchaser of Division A	Price on Stock Exchange
₹ 1,25,00,000	₹ 1,10,00,000

4. Machinery (Depreciable Asset)

Price recorded as Sales Price in books of purchaser of Division A	WDV	FMV on basis of report from Reg. Valuer
₹ 1,00,00,000	₹ 1,30,00,000	₹ 85,00,000

5. Unquoted shares price recorded as Sales Price in books of purchaser of Division A for ₹ 1,00,00,000 (Value as per Rule 11UA ₹ 80,00,000)

Ascertain the tax liability which would arise from the above slump sale.

Answer:

- There is a transfer of an undertaking being the Division A which constitutes business activity as a whole. The sale is for lumpsum consideration and therefore, it is a slump sale to which section 50B applies.
- Division A was established on 31.01.2017 and is transferred on 01.04.2022. Capital Gains shall be Long Term Capital Gains and taxable in Assessment Year 2023-24.

LONG TERM CAPITAL GAINS ON SLUMP SALE
ASSESSMENT YEAR 2023-24

Capital Gains as per Section 50B:

Period of holding	: 31.01.2017 to 31.03.2022	Long Term
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Sales Price	: Slump Sale Consideration [See Note 4]	₹ 9,35,00,000
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Less: NET WORTH of undertaking transferred	₹ 8,15,79,990*
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Long Term Capital Gain	₹ 1,19,20,010
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* NET WORTH	=	Book value of Non-Depreciable assets transferred
	+	WDV of Depreciable assets transferred as per section 43(6)(c)(i)(C)
	-	Book value of Liabilities transferred
	=	₹ 7,35,00,000
		(See Note 2)
	+	₹ 33,79,990**
		(See Note 1)
	-	₹ 47,00,000
		(See Note 3)
	=	₹ 8,15,79,990

Note 1: COMPUTATION OF WDV OF BLOCK OF ASSETS OF X LTD. FOR ASSESSMENT YEAR 2023-24

Opening WDV of Block of Assets as on 01.04.2022	₹ 80,00,000
Add: Actual cost of Machinery 'A' acquired during the previous year	₹ 8,00,000
Less: Sales Price of Machinery 'B' sold during the previous year	₹ 7,50,000
	₹ 80,50,000
Less: Reduction as per Section 43(6)(c)(i)(C)	
Actual cost of Machinery transferred in slump-sale	₹ 70,00,000
Less: Depreciation for A/Y 2018-19 @ 7.5%	₹ 5,25,000
Less: Depreciation for A/Y 2019-20 @ 15%	₹ 9,71,250
Less: Depreciation for A/Y 2020-21 @ 15%	₹ 8,25,563
Less: Depreciation for A/Y 2021-22 @ 15%	₹ 7,01,728
Less: Depreciation for A/Y 2022-23 @ 15%	₹ 5,96,469 ₹ 33,79,990**
WDV for Assessment Year 2022-23 of X Ltd.	₹ 46,70,010

Therefore, WDV of assets transferred in slump sale as per section 43(6)(c)(i)(C) is ₹33,79,990.

Note 2: Book value of Non-Depreciable Assets transferred in slump-sale is as under:

	₹
Land	4,80,00,000
Jewellery	5,00,000
Quoted shares	1,50,00,000
Purchased goodwill	50,00,000
Current assets	50,00,000
	7,35,00,000

Note 3: Value of liabilities transferred in slump sale

	₹
Unsecured loan	30,00,000
Provision on unascertained liabilities	8,00,000
Current liabilities	9,00,000
	47,00,000

Note 4: Calculation of full value of consideration as per Rule 11 UAE. Higher of 1 and 2:

- Rule 11 UAE(2) : $FMV_1 = A + B + C + D - L$

A = Book value of all assets except B, C and D:

	₹
Machinery	15,00,000
Current assets	50,00,000
Purchased goodwill	50,00,000
	1,15,00,000

B = FMV of Jewellery
= ₹ 6,00,000

C = FMV of Quoted shares
= ₹ 2,00,00,000

D = Stamp Duty value of immovable property
= ₹ 5,25,00,000

L = Preference shares capital + Depreciation reserve + Unsecured loan + current liabilities
= ₹ 19,00,000 + ₹ 6,00,000 + ₹ 30,00,000 + ₹ 9,00,000
= ₹ 64,00,000

$$\mathbf{FMV}_1 = \text{₹ } 1,15,00,000 + \text{₹ } 6,00,000 + \text{₹ } 2,00,00,000 + \text{₹ } 5,25,00,000 - \text{₹ } 64,00,000 \\ = \text{₹ } 7,82,00,000$$

2. Rule 11UAE(3) : $\mathbf{FMV}_2 = \mathbf{E} + \mathbf{F} + \mathbf{G} + \mathbf{H}$

E = Monetary Consideration
= ₹ 2,00,00,000

F = Non-monetary consideration of property referred to in Rule 11UA
= Quoted shares + Unquoted shares
= ₹ 1,10,00,000 + ₹ 80,00,000
= ₹ 1,90,00,000

G = Non-monetary consideration of property not referred in Rule 11UA and not immovable property
= Machinery (Depreciable asset)
= ₹ 85,00,000

H = Immovable property
= Land
= 4,60,00,000

$$\mathbf{FMV}_2 = \text{₹ } 2,00,00,000 + \text{₹ } 1,90,00,000 + \text{₹ } 85,00,000 + \text{₹ } 4,60,00,000 \\ = \text{₹ } 9,35,00,000$$

∴ Full value of consideration = ₹ 9,35,00,000 being higher of 1 and 2.

SEGREGATED PORTFOLIO SCHEME (Finance Act, 2020)

In December, 2018, considering various **defaults by the issuer companies on debt instruments held by Mutual Funds**, the Securities and Exchange Board of India (SEBI) introduced the concept of '**side-pocketing**' or '**segregated portfolio creation**'. Under it, **such downgraded instruments are drawn off into a separate portfolio i.e., side**

pocket and the unitholder in the scheme is allotted units of the side-pocket i.e., segregated portfolio, and number of units issued are equivalent to number of units held in the main portfolio. This helps in enabling debt schemes of a Mutual Fund to allow unitholders to exit a debt scheme which is in distress or redeem the units of segregated portfolio, once the money is recovered from the bad-debt. This helps the investor as price of main portfolio will not fall as the debt instruments of defaulting companies have been transferred to segregated portfolio. Now he can sell the units of main portfolio at reasonable market price.

To provide certainty to the cost of acquisition of the units of segregated portfolio and main portfolio and their period of holding, Finance Act, 2020 has introduced Section 49(2AG), Section 49(2AH) and Section 2(42A)(hh).

Accordingly, as per Section 49(2AG), the cost of acquisition of units in the segregated portfolio shall be equal to:

$$\frac{\text{Cost of Acquisition of a unit/units held by the assessee in the portfolio prior to such segregation}}{\text{Net Asset Value of the assets transferred to the Segregated Portfolio}} \times \frac{\text{Net Asset Value of the Total Portfolio immediately prior to such segregation}}$$

Further, Section 49(2AH) provides that the original cost of acquisition of the units held in total portfolio shall be reduced by the cost of unit/units allotted in segregated portfolio as determined above.

Also, as per Section 2(42A)(hh), the period of holding of unit/units in the segregated portfolio shall be deemed to include the period of holding of unit/units in the total portfolio immediately before such segregation.

KEY NOTES:

1. The term 'segregated portfolio' shall mean a portfolio, comprising of debt or money market instrument affected by a credit event, that has been segregated in a mutual fund scheme. In simple words, the concept of side pocketing is applicable to debt oriented schemes of mutual funds.
2. On creation of a segregated portfolio, a unitholder is allotted a same number of units as he holds in the total portfolio existing before such segregation.
3. No capital gains shall arise to a unitholder on segregation of portfolio as there is no sale, exchange, etc. of the units of total portfolio before segregation.

To illustrate, let's say Mr. A holds 1,000 units in Franklin Templeton Mutual Fund (FTMF). He had bought these units on 01.01.2018 @ ₹ 100 each. On 01.05.2020, FTMF segregates the portfolio as one of the investee company, Vodafone-Idea is downgraded by a credit rating agency and has turned into a bad-debt. By virtue of segregation, Mr. A is allotted 1,000 units of segregated portfolio. On date of segregation, NAV of segregated portfolio is ₹ 400 crores and reduced NAV of main portfolio is ₹ 1,600 crores (Total NAV was ₹ 2,000 crores). Mr. A sells all 2,000 units on 01.02.2023. Now,

- **Cost of Acquisition**

- Of 1,000 units of segregated portfolio shall be ₹ 20 each i.e., ₹ 100 × $\frac{400}{2,000}$.

- Of 1,000 original units of main portfolio shall be 80 each i.e., ₹ 100 – ₹ 20 per unit.
- **Period of holding**

Of all the units of segregated portfolio as well as main portfolio shall be reckoned from 01.01.2018 and hence, long-term capital gains shall arise on sale of all units.

KEY TAKEAWAYS FOR SECTION 54

1. **The residential house property sold can be in India or outside India. But the residential house property purchased or constructed should be in India.**
2. **Assessee can purchase or construct ONLY ONE RESIDENTIAL HOUSE IN INDIA. However, as per Finance Act, 2019, an assessee shall have the option to purchase or construct 2 residential houses instead of 1 provided that the amount of capital gains before such exemption do not exceed ₹ 2 crores. However, such option is available once in a lifetime.**
3. **CIT v. Kamal Wahal (Delhi)**

The assessee sold a capital asset and invested the sale proceeds in purchase of a new house in the name of his wife.

The Delhi High Court held that the assessee is entitled to claim deduction under section 54 in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.

4. **CIT v. T.N. Aravinda Reddy (SC)**

Where a property is owned by more than one person and the other co-owner or co-owners release his or their respective share or interest in the property in favour of one of the co-owners, it can be said that the property has been purchased by the releasee. Such release also fulfils the condition of section 54 as to purchase so far as releasee assessee is concerned.

5. **C ARYAMA SUNDARAM [2018] (MAD)**

Assessee sold residential house on 01.01.2022 for ₹ 20 crores and earned long term capital gains of ₹ 12 crores. Assessee purchased a land on 01.01.2018 for ₹ 5 crores and started construction on 01.01.2018. Till 31.12.2021, he incurred construction cost of ₹ 4 crores. From 01.01.2022 to 30.06.2022 he incurred construction cost of ₹ 3 crores and construction is completed on 30.06.2022. He claims entire capital gains of 12 crores to be exempt under section 54.

High Court held that section 54 does not lay down that construction could not have commenced prior to the date of transfer of the asset that resulted in capital gains. Also, section 54 does not contemplate that the same money received from the sale of a residential house should be used in the acquisition of new residential house.

The High Court, accordingly, held that, in this case, the cost of land and cost of construction incurred thereon prior to transfer of residential house property also have to be considered for all purpose of capital gains exemption under section 54. The entire capital gains are therefore exempt.

6. According to Circular No. 667, the cost of land is an integral part of the cost of the residential house, whether purchased or built. Accordingly, if the amount of capital gains for the purposes of section 54 is appropriated towards purchase of a plot and also towards construction of a residential house thereon, the aggregate cost should be considered for determining the quantum of deduction under section 54 provided that the acquisition of plot and also the construction thereon, are completed within the specified period.

KEY TAKEAWAYS FOR SECTION 54B

1. The deduction under section 54B is available to Individual and HUF.
2. Agricultural land situated in Rural area is not a capital asset. Therefore, no capital gains shall arise on sale of agricultural land situated in rural areas and therefore there is no question of deduction under section 54B.
3. **Where such land is compulsorily acquired under any law or where the consideration for transfer is determined or approved by the Central Government or RBI, then the capital gains are exempt under section 10(37). The question of claiming deduction under section 54B shall not arise.**
4. Deduction under section 54B can be for short term capital gains also. The condition is that land should be used by assessee or his parents for 2 years prior to the date of transfer.
5. The question of availing deduction under section 54B shall arise only if agricultural land situated in Urban area is sold.
6. For claiming deduction under section 54B, the assessee has to purchase a agricultural land within two years from the date of transfer. The agricultural land to be purchased for claiming deduction under section 54B may be located in urban area or rural area.
7. As per section 54B, the new agricultural land so purchased must be retained of a period of three years from the date of its purchase. If it is sold before three years, then for the purposes of computing capital gains on sale of new agricultural land, its cost of acquisition shall be reduced by the amount of capital gains exempted under section 54B. However, this shall not apply if the new agricultural land so purchased is in rural area. This is because agricultural land in rural area is not a capital asset and no capital gains shall arise on its transfer.

KEY TAKEAWAYS FOR SECTION 54EC

1. **Section 54EC was applicable to Long Term Capital Gains arising from any capital asset. Finance Act, 2018 restricts the deduction under section 54EC only for Long Term Capital Gains arising from transfer of LAND OR BUILDING OR BOTH.**
2. **Section 54EC provided that the bonds purchased should not be transferred within 3 years from the date of their acquisition. Finance Act, 2018 has extended this time to 5 years.**

3. “**Long-term specified asset**” for making any investment under this section means any bond, redeemable after **five years** and issued by the National Highways Authority of India or by the Rural Electrification Corporation Limited or **any other bond notified by central government.**
4. Deduction under section 54EC is available to all assessees.
5. If the assessee takes any loan or advance on the security of such long-term specified asset, he shall be deemed to have converted (otherwise than by transfer) such long-term specified asset into money on the date on which such loan or advance is taken.
6. **Hindustan Unilever Ltd. v. DCIT (2010)(Bom.)**

In this case, the Bombay High Court observed that in order to avail the deduction under section 54EC, the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer. Where the assessee has made the payment within the six month period, and the same is reflected in the bank account and a receipt has been issued as on that date, the deduction under section 54EC cannot be denied merely because the bond was issued after the expiry of the six month period or the date of allotment specified therein was after the expiry of the six month period.

7. Section 54EC provides that if assessee invests the long term capital gains within a period of 6 months from the date of transfer in specified assets like National Highway Authority Bonds, then the amount of long term capital gains so invested shall be exempt. Section also provides that investment in the specified assets should not exceed ₹ 50 lakhs in a financial year. Prior to amendment, if capital gains arose let's say in 1st Jan., 2022, then assessees were investing ₹ 50 Lakhs in financial year 31-3-2022 and ₹ 50 lakhs during the period 1-4-2022 to 30-6-2022 i.e., Financial Year ended 31-3-2023. Thus, assessee were claiming exemption of ₹ 1 crore prior to amendment.

Amendment provides that the **total investments made in the financial year in which asset is transferred and subsequent Financial Year shall not exceed ₹ 50 lakhs.** Therefore, now as per the amendment, the total exemption under section 54EC shall be ₹ 50 lakhs in the above case.

KEY TAKEAWAYS FOR SECTION 54EE

Section 54EE is exactly same as section 54EC with following differences:

1. Section 54EE is applicable for Long Term Capital Gains arising from transfer of **any capital asset.**
2. Under section 54EE, assessee has to purchase units of Startup Mutual Funds notified by Central Government for section 54EE within 6 months from the date of transfer.
3. Long Term Capital Gains are exempt to the extent of investment in units of Startup Mutual Fund. However, the investment cannot exceed ₹50,00,000.
4. The units purchased cannot be sold or converted into money within the period of 3 years from the date of their acquisition.
5. It is possible for an assessee to simultaneously claim deductions under section 54EC and 54EE and section 54.

KEY TAKEAWAYS FOR SECTION 54F

Section 54F is developed on the same lines as of Section 54 with following modifications:

- Exemption is available on transfer of any long term capital asset except house property.
- Exemption is available in the same proportion as the Cost New Asset bears to the Net Consideration received/accrued as a result of transfer of Capital Asset
$$\left(\text{LTCG} \times \frac{\text{Cost of New Asset}}{\text{Net Consideration}} \right)$$
 subject to a maximum of LTCG.

Deduction is not available if

- (a) Assessee owns more than 2 residential houses (including the new house) on the date of transfer of original asset. Assessee can own the new house so purchased and one more residential house on the date of transfer to avail the exemption.
- (b) Assessee purchases within 2 years or constructs within 3 years any residential house other than the new house.

CONSEQUENCES OF VIOLATION

Unlike, reduction of cost of new asset as per Section 54, where:

- (i) Condition (b) above is violated or
- (ii) New asset is transferred before 3 years
- (iii) Deposit under Capital Gains Deposit Account Scheme is not utilised, the proportion of Capital Gains exempted earlier shall be taxable in
 - (i) the previous year of such purchase or construction
 - (ii) the previous year in which such asset is transferred
 - (iii) the previous year in which period of 3 years from date of transfer of original asset expires

respectively.

Note: The proportion of capital gain taxable under point (iii) above shall be as under:

$$\text{LTCG} \times \frac{\text{Unutilised amount in CGAS in respect of which deduction was claimed}}{\text{Net Consideration}}$$

To, illustrate, let's say capital gains of ₹ 8 lakhs arose on sale of plot for ₹ 20 lakhs. ₹ 15 lakhs were utilised for purpose of new house and ₹ 5 lakhs were deposited in CGAS. ₹ 8 lakhs shall be exempt in the year of transfer $\left[8,00,000 \times \frac{(15,00,000 + 5,00,000)}{20,00,000} \right]$.

Lets say ₹ 5 lakhs were not utilised upto 3 years. Now ₹ 2 lakhs $\left[8,00,000 \times \frac{5,00,000}{20,00,000} \right]$ shall be charged as capital gains in the year in which such 3 years expire.

Note: If land is sold for ₹ 50 lakhs and the Stamp Duty Value is ₹ 90 lakhs and capital gains have been computed w.r.t. ₹ 90 lakhs, the whole of the capital gains shall be exempt if assessee invests ₹ 90 lakhs in a residential house. It is immaterial whether assessee has taken to loan to purchase the house.

KEY TAKEAWAYS FOR SECTION 54G

1. Under section 54G both Long Term as well as Short Term Capital Gains are exempt.
2. Deduction under section 54G is available to all assessees.
3. Capital gains on transfer of depreciable assets will be always short term.
4. Capital gains on transfer of non-depreciable assets may be long term or short term depending on the period of holding.
5. Deduction under section 54G is not available on transfer of furniture and is not available on purchase of furniture.

FROM THE JUDICIARY

Fibre Boards (P.) Ltd. v. Commissioner of Income-tax (Supreme Court)

Advances paid for purpose of purchase and/or acquisition of plant/machinery, and land/building amount to utilization by assessee of capital gains under section 54G.

As the assessee intended to shift its industrial undertaking from an urban area to a non-urban area, out of the capital gain so earned, the assessee paid by way of advances various amounts to different persons for purchase of land, plant and machinery, construction of factory building etc. Assessee claimed exemption under section 54G on entire capital gain since the advances made were more than capital gains earned.

The advances so paid for purpose of purchase and/or acquisition of plant/machinery and land/building, by the due date under section 139(1), would amount to utilization by assessee of capital gains made by him for purpose of purchasing and/or acquiring aforesaid assets. The assessee is not required to deposit the capital gains in Capital Gain Account Scheme by the due date in case he has given advances to suppliers by the due date.

KEY TAKEAWAYS FOR SECTION 54GB

1. Section applies to an Individual or HUF (Resident as well as Non-Resident)
2. LTCG arising from transfer of a **residential property** (a house or a plot of land) owned by the assessee (House or plot of land may be in India or outside India) are exempted.
3. The assessee has **before the due date of furnishing** the return of income under section 139(1) **utilised the net consideration for subscription in EQUITY Shares** of an eligible company (Preference share cannot be subscribed).
4. Eligible company means a company which fulfils all the following conditions:
 - (i) It should be **incorporated** in India during the period commencing from **1st April of the previous year** in which the capital gain arises and **ending on the due date of furnishing of return** under section 139(1) by the assessee.
 - (ii) It is engaged in business of manufacture of an article or thing or in an eligible business.

- (iii) It is a company in which assessee has **more than 25% share capital** or more than 25% voting rights **after subscription** in shares by the assessee.

(Finance Act, 2019)

- (iv) **The company qualifies to be an eligible start up.**

5. What Eligible Company has to do

- The company has to utilise the amount subscribed by the assessee by way of equity shares for **purchase of new asset, within 1 year for the date of subscription in equity shares** by the assessee.
- The amount received by the company for issue of shares from the assessee to the extent it is **not utilised by the company for purchase of new asset before the due date of filing of return** by the an assessee under section 139, shall be deposited by the company, before the said due date in bank account opened under the **Capital Gains Account Scheme (CGAS)** and the return furnished by the assessee should be accompanied by proof of deposit in CGAS.

- 6. Cost of new Asset:** The amount utilised by the company for purchase of the new asset upto the due date of filing of return together with the amount deposited in CGAS shall be deemed to be cost of new asset.

7. Amount of capital gain exempt under section 54GB

- (i) If net consideration > Cost of new asset
then,

$$\text{LTCG} \times \frac{\text{Cost of new asset}}{\text{Net consideration}}$$

shall be exempt under section 54GB.

- (ii) If net consideration < Cost of new asset,
then entire LTCG shall be exempt.

- 8. "New asset"** means new plant and machinery but does not include certain plant & machinery which are not eligible for additional depreciation.

Provided that in the case of an eligible start-up, being a technology driven start-up, the new asset shall include computers or computer software.

- 9. Amount deposited in CGAS to be utilised:** The amount deposited in CGAS is to be utilised by the company for purchase of new assets within one year from the date of subscription in equity shares by the assessee. If company does not utilise, wholly or partly, the amount so deposited in CGAS for purchase of new asset, within the above said period of one year then:

Capital gain exempted **minus** Capital gains that would have been exempted under section 54 GB
had the amount actually utilised for purchase of new asset within the said one year been the cost of new assets.

shall be charged to tax as LTCG of the assessee for the Previous Year in which the period of one year from the date of subscription in equity shares by the assessee expires, and the company shall be entitled to withdraw the money form CGAS.

10. Lock in period of 5 years for equity shares and new asset

- If the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred
- within a period of 5 years from the date of their acquisition,
- the amount of capital gain exempted under section 54GB
- shall be deemed to be the income of the assessee
- chargeable under the head "Capital gains"
- of the previous year in which such equity shares or such new asset are sold or otherwise transferred,
- in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.

AS PER FINANCE ACT, 2019, THE LOCK-IN-PERIOD FOR COMPUTERS AND COMPUTER SOFTWARE IS 3 YEARS INSTEAD OF 5 YEARS.

Illustration:

Mr. X purchased a residential plot of land on 1.1.2009 and the indexed cost of land is ₹ 12,55,000 in previous year 31.3.2021. He sold the plot of land on 30.6.2020 for ₹ 40,00,000. The due date of filing of return for Mr. X is 31st July, 2021. Mr. X formed a Company X Pvt. Ltd. on 1.4.2020 in which he and his wife subscribed to equity share capital of ₹ 1 lakh each.

- Long term capital gain on sale of plot of land in Assessment Year 2021-22:

Sale price	₹ 40,00,000
Less: Indexed cost	₹ 12,55,000
LTCG	<u>₹ 27,45,000</u>

- X Pvt. Ltd. is eligible company since it is incorporated in India during the period 1.4.2020 to 31.7.2021 assuming that the company is an eligible start up.
- Let's say, Mr. X subscribes to Equity shares of ₹ 30,00,000 in X Pvt. Ltd. on 30.6.2021. As per section 54GB Mr. X can subscribe to the equity shares of X Pvt. Ltd. upto 31.7.2021.
- Also, Company X Pvt. Ltd. purchases new plant and machinery of ₹ 10,00,000 on 15.7.2021 and deposits ₹ 18,00,000 in CGAS on 31.7.2021.

Now for Assessment Year 2021-22, capital gains exempt in hands of Mr. X shall be as under:

$$\text{Cost of new asset} = ₹ 10,00,000 + ₹ 18,00,000$$

$$= ₹ 28,00,000$$

$$\text{Net Consideration} = ₹ 40,00,000$$

$$\text{Capital Gain exempt under section 54GB} = 27,45,000 \times \frac{28,00,000}{40,00,000}$$

$$= ₹ 19,21,500$$

- Now, ₹ 18,00,000 must be utilised by the Company for purchase of new machinery within one year from the date of subscription of equity shares i.e. 29.6.2022.

- Suppose, Company utilises only ₹ 16,00,000 for purchase of new plant & machinery upto 29.6.2022, then following LTCG shall be taxable in previous year 31.3.2023 in hands of Mr. X. (Machinery purchased for ₹ 12 lakhs on 1.6.2022 and ₹ 4 lakh on 29.6.2022).

$$\left(27,45,000 \times \frac{28,00,000}{40,00,000} \right) - \left(27,45,000 \times \frac{26,00,000}{40,00,000} \right) = 1,37,250$$

- Equity shares should not be sold by Mr. X upto 29.6.2026
- Assets should not be sold by M/s X Pvt. Ltd. upto:
 - Assets of ₹ 10 lakh 14.7.2026
 - Assets of ₹ 12 lakh 31.5.2027
 - Assets of ₹ 4 lakh 28.6.2027

If asset of ₹ 10 lakhs is sold on 31.3.2023 for ₹ 13 lakhs, then the entire capital gains exempted under section 54GB (₹ 19,21,500 – ₹ 1,37,250) shall be taxable in hands of Mr. X in previous year 31.3.2023. Capital gains of ₹ 3,00,000 (₹ 13,00,000 – ₹ 10,00,000) shall also be taxable in the hands of the Company.

CIRCULAR NO. 743: SECTION 54, 54B, 54D, 54F and 54G

Capital gains – Profits on sale of property used for residence – Taxability of unutilized deposit under the Capital Gains Account Scheme, 1988 in the hands of the legal heirs of the assessee.

1. A question has been raised regarding the taxability of the unutilised deposit amount in the case of an individual who dies before the expiry of the stipulated period.
2. **The matter has been considered by the Board and it is clarified that in such cases the said amount cannot be taxed in the hands of the deceased. This amount is not taxable in the hands of legal heirs also as the unutilised portion of the deposit does not partake the character of income in their hands but is only a part of the estate devolving upon them.**