INCOME UNDER THE HEAD CAPITAL GAINS

MS. HARMANPREET KAUR

ASSISTANT PROFESSOR

DEPARTMENT OF COMMERCE

CHARGEABILITY

Any profits or Gains arising from the transfer of a Capital Asset during the previous year is Chargeable to Tax under this head of income.

That is to Say:-

- There Should be a Capital Asset
- Capital Assets should be transferred by the Assessee
- Such transfer takes place during the previous year.
- Profit/Gains should have arisen.
- Such Profit/Gains should be liable for tax (Not exempt from tax under sections 54, 54B, 5D, 54EC, 54EE, 54F, 54G, 54GA and 54GB.

CAPITAL ASSET [SECTION 2(14)]
POSITIVE LIST

It includes property of any kind, whether fixed or circulating, movable/immovable, tangible/intangible. Besides, it also includes the following:

1) Property* of any kind held by an assesse (whether or not connected with his business or profession).

2) Any security held by a foreign institutional investor which has invested in such securities in accordance with the regulations made under the sebi act.

*Any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

What are Capital Assets?

NEGATIVE LIST

- Stock in trade, consumable stores/raw materials held for business/profession.
- Personal effects (movable assets including wearing apparel and furniture). But, doesn’t include jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.
- Agricultural Land in a rural area in India.
- Certain Specified Gold Bonds and Special Bearer Bonds
- Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issues under the Gold Monetisation Scheme, 2015.

TYPES OF CAPITAL ASSETS

SHORT-TERM/ LONG-TERM CAPITAL ASSETS

SCTA, if held for **<=12 months** **LTCA**, if held for **> 12 months**	• Security (other than unit) listed in a recognized stock exchange • Unit of equity oriented fund/ Unit of UTI • Zero coupon bond
SCTA, if held for **<=24months** **LTCA**, if held for **> 24 months**	• Unlisted shares • Land or building or both
SCTA, if held for **<= 36 months** **LTCA**, if held for **> 36 months**	• Any other capital assets (not mentioned above)

TRANSFER OF CAPITAL ASSET [SECTION 2(47)]

- The sale, exchange or relinquishment of the asset; or
- The extinguishment of any rights therein; or
- The compulsory acquisition thereof under any law; or
- In a case where the asset is converted by the owner thereof into, or is treated by him, as stock in-trade of a business carried on by him, such conversion or treatment; or
- The maturity or redemption of zero coupon bonds; or
- Any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the transfer of property act, 1882; or
- Any transaction (whether by way of becoming a member of, or acquiring shares in a cooperative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of any immovable property.

TRANSFER WHEN COMPLETE & EFFECTIVE

- Immovable property when documents are registered.
- Immovable property when documents are not registered:

> There should be a contract in writing.

> The transferee has paid consideration or is willing to perform his part of the contract.

> The transferee should have taken possession of the property.

- Movable property: title of a movable property passes at the time when property is delivered pursuant to a contract to sell.

COMPUTATION OF SHORT TERM CAPITAL GAINS

1) Find out full value of consideration
2) Deduct the following :

(a) Expenditure incurred wholly and exclusively in connection with such transfer.

(b) Cost of acquisition

(c) Cost of improvement

3) from the resulting sum deduct the exemption provided by sections 54B, 54D, 54G, AND 54GA

4) the balancing amount is short term capital gains.

Short Term Capital Gains are chargeable to Tax based on SLAB RATES.

COMPUTATION OF LONG TERM CAPITAL GAINS

1) Find out full value of consideration

2) Deduct the following :

(a) Expenditure incurred wholly and exclusively in connection with such transfer

(b) indexed cost of acquisition

(c) indexed cost of improvement

3) from the resulting sum deduct the exemption provided by sections 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA, 54GB.

5) the balancing amount is long term capital gain.

Long Term Capital Gains are generally chargeable to Tax on Flat Rate i.e 20%

WHEN THE BENEFIT OF INDEXATION IS NOT AVAILABLE IN THE CASE OF LONG TERM CAPITAL ASSET

1) Bonds or debentures {other than (a) capital indexed bonds issued by the government or (b) sovereign gold bonds issued by RBI under the Sovereign Gold Bond Scheme, 2015}
2) Shares in, or debentures of, any Indian company acquired by utilizing convertible foreign exchange.
3) Equity shares in a company or a unit of equity oriented mutual fund or a unit of a business trust refereed to in section 112 A
4) Depreciable asset (however, in the case of a power generating unit eligible for depreciation on straight line basis, indexation benefit is available).
5) Undertaking/division transferred by way of slump sale as covered by section 50B.
6) Units, GDR, securities purchased in foreign currency as given in sections 115AB, 115AC, 115ACA AND 115AD

FULL VALUE OF CONSIDERATION [SEC. 48]

- Full value of consideration is the consideration received/ receivable by the transferor in respect of capital asset being transferred and which may be received in cash/ kind. However these facts are noteworthy to this effect:
- Adequacy or inadequacy of consideration is not a relevant factor for the purpose of determining the full value of consideration.
- In case of transfer of land or building or both, if stamp duty value is more than 105% (110% from the A.Y. 2021-22) of sale consideration, the stamp duty value is taken as full value of consideration.
- If consideration is not determinable, FMV of the asset shall be taken as the full market value of consideration.

EXPENSES ON TRANSFER

- Incurred wholly and exclusively in connection with transfer of capital asset
- Expenditure which is necessary to effect the transfer
- Examples:
- Brokerage or Commission paid for securing a purchaser
- Cost of stamp
- Registration fees borne by the vendor
- Travelling expenditure incurred in connection with transfer
- Litigation expenses for claiming compensation
- Advertisement expenses

COST OF ACQUISITION (COA)

- Cost of acquisition is the price which the assessee has paid, or the amount which the assessee has incurred, for acquisition of the asset.
- Expenses of capital nature incurred for completing the title are a part of the cost of acquisition.
- Interest on money borrowed for acquiring capital assets will form part of cost of asset.

DEEMED COST OF ACQUISITION

Cost to the previous owner [sec 49 (1)]

- The cost of acquisition of the asset shall be deemed to be the **cost for which the previous owner of the property acquired it**
- Where the capital asset became the property of the assessee—
- (*i*) on any distribution of assets on the total or partial partition of a Hindu undivided family;
- (i*i*) under a gift or will;
- (i*ii*) acquisition of property ------

  (*a*) by succession, inheritance or devolution, or

  (*b*) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or

  (c) on any distribution of assets on the liquidation of a company, or

  (*d*) under a transfer to a revocable or an irrevocable trust, or

DEEMED COST OF ACQUISITION
Cost to the previous owner [sec 49 (1)]

- (iii) acquisition of property ------

  (e) By a wholly owned Indian subsidiary company from its holding company, or

  (f) By an Indian holding company from its wholly owned subsidiary company

  (g) Under a scheme of amalgamation

  (h) Under a scheme of demerger

  (i) Under a scheme of conversion of private company/unlisted company into LLP;

  (j) On any transfer in the case of conversion of firm/sole-proprietary concern into company

- d. acquisition of property by HUF where one of its members has converted his self-acquired property into joint family property after December 31, 1969.

IMPORTANT POINTS

- This rule is always applicable and does not have any exceptions.
- Previous owner means the last previous owner of the capital asset who acquired it through a mode other than discussed in the previous slide.
- Previous owner means the previous owner who actually paid for the asset.
- Period of holding of previous owner shall be taken into consideration to determine whether the capital asset is short term or long term.
- The benefit of indexation will be available from the year in which asset is first held by the previous owner.

COA being the fair market value as on April 1, 2001

- The assesse may take at his option, either actual cost or the fair market value (FMV) of the asset as on April 1, 2001 as cost of acquisition where:
  - The capital asset became the property of the assesse before April 1, 2001; or
  - The capital asset became the property of the assesse by any mode referred to in section 49 (1) and the capital asset became the property of previous owner before April 1, 2001

Actual cost of the asset

or

FMV as on April 1, 2001

Whichever is **higher,** is taken as **Cost of Acquisition**

COA being the fair market value as on April 1, 2001

- NOTES:
  - Adopting FMV on April1, 2001 (in place of actual COA) is optional.
  - The option is not available in case of Depreciable assets.
  - Also option is not available in case of transfer of goodwill of a business; trademark/brand name associated with business; right to manufacture; produce; process any article or thing; right to carry on business/profession; tenancy rights; route permits or loom hours (whether self generated or otherwise).

COST OF IMPROVEMENT (COI)

- Cost of improvement is the capital expenditure incurred by an assessee for making any addition or improvement in the capital asset.
- It also includes any expenditure incurred in protecting or curing the title.
- In other words, cost of improvement includes all those expenditures, which are incurred to increase the value of the capital asset.
- However, any expenditure which is deductible in computing the income under the heads Income from House Property, Profits and Gains from Business or Profession or Income from Other Sources (Interest on Securities) would not be taken as cost of improvement.
- **Improvement cost incurred before April 1, 2001** – is **never taken into consideration**. This rule does not have exception.

INDEXED COST OF ACQUISITION

$$\frac{\text{Cost of Acquisition}}{\textit{Cost of Inflation (CII)} \text{ for the } \textit{year in which asset was first held by the assessee* or } \text{2001–02}, \textit{ whichever is later}} \times \textit{CII for the year in which the asset is transferred}$$

* Or the previous owner in cases specified under section 49 (1)

INDEXED COST OF IMPROVEMENT

$$\frac{\text{Cost of Improvement}}{\textit{Cost of Inflation (CII)} \text{ for the } \textit{year in which} \text{ improvement took place}} \times \text{CII for the year in which the asset is transferred}$$

CAPITAL GAIN ON TRANFER OF FOLLOWING ASSETS IS CHARGEABLE TO TAX:

(i) goodwill of a business. there will be no capital gain on sale of goodwill of a profession;

(ii) a trade mark or brand name associated with a business or

(iii) a right to manufacture, produce or process any article or thing;

(iv) right to carry on any business or profession,

(v) tenancy rights,

(vi) stage carriage permits or

(vii) loom hours

Cost of Acquisition of
(i) Goodwill of a business or
(ii) a trade mark or brand name associated with a business or
(iii) a right to manufacture, produce or process any article or thing or
(iv) right to carry on any business or profession,
(v) tenancy rights, (vi) stage carriage permits or (vii) loom hours

I. in the case of acquisition of such asset by the assesse under sub-clauses (i) to (iv) to Section 49 (1) – it will be cost to previous owner if the previous owner paid for it , but where it is self generated by the previous owner, it will be taken as Nil; and

II. In case such asset is **purchased** by the assesse- Amount of **Purchase Price**

III. in any other case- shall be taken to be **Nil (as it will be self-generated)** ;

Cost of improvement of

(i) Goodwill of a business or

(ii) A right to manufacture, produce or process any article or thing or

(iii) Right to carry on any business or profession

Shall be taken to be

Nil

Cost of improvement of other fours assets (mentioned in previous slide) shall be taken **as actual capital expenditure incurred** by the assese on the improvement of that asset, whether such asset is purchased or self-generated.

CAPITAL GAIN ON TRANSFER OF DEPRECIABLE ASSETS

SECTION 50

- If a depreciable asset is transferred, capital gain (or loss) will arise only in the following two cases –

1. When on the last day of previous year written down value **(WDV) of the Block of assets is zero.**
2. When the **block of assets is empty** on the last day of previous year.

In no other case, capital gain is chargeable to tax, when a depreciable asset is transferred. This rule is equally applicable whether depreciation is allowed in the current year (or any of the earlier years).

Note: **On transfer of depreciable assets gain (or loss) is always short-term capital gain (or loss).** It can never be treated as long-term capital gain (or loss).

BLOCK OF ASSETS

- Means group of assets falling within the a class of assets comprising-
- Tangible assets (classified into 3 asset classes namely, building, plant and machinery, furniture and fittings)
- Intangibles being know-how, patents, copyrights, trademarks, licenses, franchises, or any business or commercial rights of similar nature

In respect of which same percentage of depreciation is prescribed.

Buildings	**3 blocks (5%, 10%, 40%)**
Furniture and fittings	**1 block (10%)**
Plant and machinery	**5 blocks (15%,20%, 30%, 40% and 45%)**
Intangibles	**1 block (25%)**

Opening WDV (i)

- Find out WDV of block of assets at the beginning of the previous year

Add: Cost of acquisition (ii)

Add: Actual cost of any asset(s) acquired during the previous year in the respective block to which new asset belongs

Less: Money received on asset sold/ scrapped etc. (iii)

- Money received/receivable (together with scrap value) in respect of the assets of same block, which are sold/discarded/destroyed during the P.Y.

Closing WDV = (i)+ (ii) – (iii)

- WDV of block of assets as on the last day or P.Y.

On closing WDV, compute the depreciation at the rates prescribed for each block.

COST OF ACQUISITION OF DEPRECIABLE ASSETS FOR CAPITAL GAINS

STEP1 : FIND OUT WDV OF BLOCK OF ASSETS AT THE BEGINNING OF THE P.Y.

STEP 2: ADD: ACTUAL COST OF ANY ASSETS FALLING IN THE BLOCK OF ASSET ACQUISED BY THE ASSESSEE DURING THE P.Y. (WHETHER PUT TO USE OR NOT)

CAPITAL GAIN ON CONVERSION OF CAPITAL ASSET INTO STOCK-IN-TRADE [SECTION 45(2)]

- It is treated as transfer.
- **Full Value of consideration** = Fair Market Value (FMV) as on date of conversion,
- **Year of transfer** = Previous Year in which capital asset is converted into stock-in-trade
- **Year in which capital gain is taxable** = Year in which converted stock is actually sold
- Also **liable for tax** under Profits and Gains from Business and Profession **(PGBP)** for amount = **Actual Sale Price (minus -) FMV on date of conversion**

QUESTIONS

X converts his capital asset (acquired on June 10, 2002 for ₹ 70000) in to stock-in trade on May 10, 2007 (FMV: ₹ 4,80,000) and subsequently sells the stock-in trade so converted for ₹ 18,00,000 on July 20,2019. Determine the amount of assessable profits.

CAPITAL GAIN ON TRANSFER BY WAY OF COMPULSORY ACQUISITION OF A CAPITAL ASSET [SECTION 45 (5)

- The special rules given below are applicable where the capital asset (other than urban agricultural land) has been **compulsorily acquired under any law** or a transfer, the **consideratio**n for which was **determined or approved by the Central Government or the Reserve Bank of India.**

1. **Initial Compensation –**
   - It is taken as full value of consideration.
   - Capital Gain is chargeable to tax in the year in which initial compensation (or part thereof) is first received.
   - Year of transfer = Previous Year in which capital asset is compulsorily acquired
   - Indexation if required will be done till the year of compulsory acquisition
   - In the case, there is transfer of capital asset, the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, it will be treated as transfer of the P.Y. in which consideration is determined but CG will be taxable in the P.Y. in which such consideration is received.

CAPITAL GAIN ON TRANSFER BY WAY OF COMPULSORY ACQUISITION OF A CAPITAL ASSET [SECTION 45 (5)

2. Enhanced Compensation –

- If on appeal the compensation is enhanced by a Court/ Tribunal/ authority, the additional compensation or further enhanced compensation will be **taxable in the year in which such enhanced compensation is received.**
- For this purpose COA and COI are taken as Nil.
- However, litigation expenses or incidental expenses for obtaining additional compensation is deductible.

IMPORTANT POINTS

- If any enhanced compensation is received by any other person (because of death of transferor or for any other reason), it will be taxable as income of that recipient.
- Amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall deemed to be income chargeable under the head CG in the '**previous year in which the final order of such court, Tribunal or other authority is made**'.
- Where amount of compensation is subsequently reduced by any court, Tribunal or other authority , the CG of that year in which the compensation received was taxed, shall be recomputed by the Assessing officer accordingly.
- The Cg will be taxable even if the compensation amount is in dispute as the assesse shall be entitled to get the assessment amended if compensation is later on reduced.

CAPITAL GAINS IN CASE OF LAND OR BUILDING OR BOTH (SEC. 50C)

- Applicable in case of transfer of land or building or both, whether long-term or short-term asset. It may be depreciable or non-depreciable asset
- Uses value adopted by the Stamp Valuation Authority (SVA) for the purpose of levying stamp duty on registration of properties, as guidance value to determine undervaluation of land or building if any in the sale agreement.
- If Stamp duty value > 105% of sale consideration then; Full value of consideration= Stamp duty value
- If Stamp duty value <= 105 % of sale consideration then; Full value of consideration = Actual sale consideration

CAPITAL GAINS IN CASE OF LAND OR BUILDING OR BOTH (SEC. 50C)

If stamp duty value on date of agreement and on date of registration is different:

- In such a case **stamp duty on date of agreement** may be taken (and not on date of registration).
- However, this rule shall apply only in those cases where amount of consideration (or part thereof) has been received by way of account payee cheque/draft or by use of electronic clearing system through a bank account or such other electronic mode prescribed **on or before the date of agreement** for transfer.

CAPITAL GAINS IN CASE OF LAND OR BUILDING OR BOTH (SEC. 50C)

When assesse disputes value adopted by stamp value authority: Stamp duty value may be determined as follows:

DIFFERENT SITUATIONS	STAMP DUTY VALUE
Where the assesse **accepts** the value adopted by Stamp duty value authority	Value adopted by Stamp duty authority
Where the assesse has **disputed** the value adopted by Stamp duty value authority under the Stamp Act (i.e. Stamp duty proceedings)	The stamp duty valuation as finally accepted for stamp duty purpose
Where assesse claims before I-T authorities that **value adopted by Stamp duty authority is more than FMV** (but he **has not disputed** such valuation in stamp duty proceedings)	The Assessing officer will have to refer the matter to the Valuation officer and the **FMV determined by him will be substituted for stamp duty value(** if value so determined is more than original stamp duty value, the original stamp duty value will be taken)

QUESTIONS

Q1. X transfers a house property on February 15, 2020 (sale consideration given below in different situations). Indexed cost of acquisition is ₹ 8,00,000 (in all situations). Find out long-term capital gain chargeable to tax for the assessment year 2020-21.

Different situations	Stamp duty value at the time of transfer	Sale consideration as per agreement
1	65,00,000	60,00,000
2	63,00,000	60,00,000
3	61,00,000	60,00,000
4	83,50,000	80,00,000
5	83,90,000	80,00,000
6	84,00,100	80,00,000

QUESTIONS

Q2. On April 6, 2019, X enters into an agreement to transfer a commercial plot for an agreed consideration of ₹ 65,00,000 (advance payment of ₹ 1,00,000 is received by an account payee cheque on same day). Stamp duty value on April 6, 2019 is ₹ 68,00,000. Sale deed is registered on December 27, 2019 (stamp duty value on date of registration is ₹ 71,00,000). Indexed cost of acquisition of the commercial plot is ₹ 34,00,000. Find out the amount of LTCG chargeable to tax for the A.Y. 2020-21.

QUESTIONS

Q3. X owns a piece of land situated in Noida (date of acquisition: March 1, 2004, cost of acquisition : ₹ 73,382, value adopted by stamp duty authority at the time of purchase: ₹ 85,000. On March 30,2020, the piece of land is transferred for ₹ 4 lakh. Find out the capital gains chargeable to tax in the following situations-

1. The value adopted by Stamp duty authority is ₹ 5.5 lakh. X does not dispute it.
2. The value adopted by Stamp duty authority is ₹ 5.75 lakh. X files an appeal under the Stamp Act and Stamp duty valuation has been reduced to ₹ 4.90 lakh by Allahabad high Court.
3. The value adopted by Stamp duty authority is ₹ 5.60 lakh. X does not challenge it under Stamp Act. However, he claims before A.O. that ₹ 5.60 lakh is more than FMV of the land. The A.O. refers it to the Valuation officer who determines ₹ 5.25 lakh as FMV.
4. In Situation (3), suppose the value adopted by the valuation officer is ₹ 6.10 lakh.

ADVANCE MONEY FORFEITED (SEC. 51)

- In the course of negotiations for transfer of a capital asset the assessee (i.e, transferor) received advance money. Later on the prospective purchaser could not pay the balance consideration and the advance money is retained or forfeited by the assessee or advance money is forfeited by the assessee because of some other reason. The tax treatment of advance money so forfeited or retained by the assessee is as follows –

1. If advance money is forfeited during the previous year 2013-14 (or any earlier previous year) - It is not taxable in the hands of recipient till the capital asset (in respect of which advance money was received and forfeited) is transferred. If capital asset is not transferred during his lifetime, advance money forfeited by him will not be chargeable to tax Conversely, if the capital asset is transferred during his lifetime, the advance money will be deducted from the cost for which the asset was acquired or the written down value or the fair market value as the case may be in computing the cost of acquisition

2. **If advance money is forfeited during the previous year 2014-15 (or any subsequent previous year) - It is taxable in the hands of recipient under section 56(2)(x) under the head "Income from other sources" in the year in which advance money is forfeited. Consequently, it will not be deducted from cost of acquisition when the capital asset is ultimately transferred.**

QUESTIONS

Q1. R purchased a house in Delhi on 16.12.2012 for ₹ 12,00,000. In March, 2019, he entered into an agreement to sell property to X for a consideration of ₹ 20,00,000 and received earnest money of ₹ 2,00,000. As per the terms of the agreement, the balance payment was to be made within 90 days of the agreement. If the intending purchaser does not make the payment within 90 days, the earnest money would be forfeited. As X could not make the payment within the stipulated time the amount of ₹ 2,00,000 was forfeited by R. Subsequently R sold the house on 15.9.2019 and ₹ 2,00,000 was forfeited during the previous year 2019-20 ?

QUESTIONS

Q2. X purchased a house property on September 18, 2002 for ₹1,00,000. On April 4, 2003, he entered into an agreement to sell the house to A for ₹ 6,50,000 (after receiving an advance of ₹ 10,000). On A's failure to pay the within the stipulated period of 45 days, X forfeited the advance money. X died on October 12, 2003 and Mrs. X (as per his will) get the property.

Mrs. X enters into an agreement on January 13, 2004 to sell the property to B after receiving advance ₹ 80,000 and on B's failure to pay the balance within 2 months, as per the agreement, the advance money is forfeited by Mrs. X. Further Mrs. enters into an agreement on April 6, 2019 to transfer the property to C after receiving advance of ₹ 1,00,000. C could not pay the balance consideration within the stipulated period of 45 days and Mrs. X forfeits the advance money.

Mrs. X ultimately sells the property to Y on June 26, 2019 for ₹ 42,90,000, find out the tax consequences in the hands of Mr. X and Mrs. X for different assessment years. Also calculate net income of Mrs. for the assessment year 2020-21, on the assumption that she is a businesswoman and her income from business is ₹ 20,00,000.

CAPITAL GAIN ON TRANSFER OF BONUS SHARES

(A) If bonus shares were allotted **before 1.4.2001, cost of acquisition can be taken as the FMV on April 1, 2001,** although cost of such bonus shares is nil**.**

(B) If bonus shares are allotted **after 1.4.2001, cost of acquisition is taken as zero.** Thus, entire sale consideration received on the transfer of bonus shares shall be treated as capital gains.

CAPITAL GAIN IN CASE OF RIGHT SHARES

(a) **If right shares have been subscribed**: Cost of acquisition is the actual price at which the right shares have been subscribed.

(b) **If right shares have not been subscribed:** In this case the right is normally renounced (transferred) in favor of any other person. The **transfer of right is subject to short term capital gains.** In this case **cost of acquisition is nil.**

(c) **Cost of acquisition for renouncee** (transferee) is aggregate of amount paid to the company for right shares and amount paid to renouncer for transferring the right

EXAMPLES

- Example 1. R holds 100 shares of ABC Lid. a listed company which were acquired by him in 1997 for ₹10 per share. The market value of the shares as on 1.6.2019 is ₹ 250 per share. The company offers him a right to subscribe additional shares at the rate of ₹160 per share. If he subscribe to the shares then his cost of acquisition will be as under

(a) for the original 100 shares @ ₹ 10 per share

(b) for the additional 100 right shares @ ₹ 160 per share

- In the above example, if R does not subscribe to the additional shares but renounces the right in favor of Y at the rate of 50 per share, then the entire amount of ₹ 5,000 received by him would be treated as capital gains, as the cost of acquisition of the right is nil.
- If Y, in favor of whom the right was renounced, subscribes to the 100 shares then his cost of acquisition will be as under:

Particulars	Amount
(a) amount paid to the company	16,000
(b) amount paid to X for acquiring the right to subscribe to the shares	5,000
Total	21,000

EXAMPLES

Example 2: X holds 500 equity shares in A Ltd. since 1986, On June 20, 2019, A Ltd offers 100 right shares of ₹10 each at premium of ₹ 30. X renounces 100 shares in favor of Y by transferring the right entitlement for a consideration of ₹ 10,000. ₹ 10,000 will become full value of consideration for transferor of right entitlement. Cost of acquisition deemed as zero. Consequently, ₹ 10,000 will become short-term capital gain chargeable to tax in the hands of X for the previous year 2019-20.

CAPITAL GAINS IN CASE OF ZERO COUPON BONDS

Meaning Sec.2(48): Zero Coupon Bonds are the bonds issued by infrastructure capital fund, infrastructure capital company or public sector company or scheduled bank in respect of which **no amount is received or receivable before maturity or redemption of such bonds** in respect of which Central Govt. has issued notification in Official Gazette.

As per section 2(47) maturity or redemption of zero coupon bonds shall be treated as transfer and subject to capital gains.

As per section 2(42A) the nature of zero coupon bonds shall be decided by the criteria of **holding period of one year** i.e. if they are transferred within one year then the nature is short term otherwise long term.

The long term capital gains on transfer of zero coupon bonds is taxable at **10% of LTCG without the benefit of Indexation** of cost of such bonds.

CAPITAL GAIN ON CONVERSION OF DEBENTURES/BONDS INTO SHARES

- **Conversion of debentures into shares is not treated "transfer".** Consequently, **at the time of conversion of debentures/bonds into shares nothing is chargeable to tax.**
- When the shares so converted are transferred the following special rules are applicable –

1. Cost of acquisition of debentures/bonds will become cost of acquisition of shares.
2. To find out whether shares are short-term or long-term capital asset, the period of holding shall be counted from the date of allotment of debentures.
3. The benefit of indexation is available from the date of allotment of debentures.

EXAMPLES

R acquired 200 listed debentures of ₹100 each on 15.5.2008. 50% value of the debentures was converted into 4 listed equity shares of the face value of ₹ 10 each on 20.8.2015. R therefore received 800 shares of face value of ₹ 10 each and left with 200 debentures of ₹ 50 each. The shares were sold on 28.3.2020 @ ₹100 per share through recognized stock exchange and R paid ₹ 80 as securities transaction tax (STT). Compute the capital gain chargeable for the assessment year 2020-21 by assuming the fair market value of the shares as on 31.1.2018 was ₹ 70 per share.

Sol:

Consideration Price (800*100)	80,000
Less: COA (₹ 70 *800)	56,000
Long term capital gain	**24000**

Determination of COA: Higher of the following:

(i) Cost of Acquisition i.e. ₹ 12.50 per share

OR

(ii)Lower of the following: (a) FMV as on 31.1.2018 i.e. ₹ 70 or (b) Sale price of the share i.e. ₹ 100

CONVERSION OF PREFERENCE SHARES INTO EQUITY SHARES

- As per section 47(xb), the **conversion** of preference share of a company into its equity share shall **not be regarded as transfer,** hence **no capital gain is chargeable.**
- However, when these shares are thereafter, **actually transferred,** capital gain shall arise and be **chargeable in the previous year in which the shares are transferred**.
- The cost of acquisition of such shares shall be deemed to be that part of the cost of the preference share in relation to which such asset is acquired by the assessee.
- Further for the purpose of computing the **period of holding of such shares the period for which the preference shares** were held by the assessee shall **also be included**.

EXAMPLES

- R acquired 2000 preference shares of ₹10 each on 15.6.2010. 50% of the preference shares were converted into 400 listed equity share of the face value of ₹ 10 each on 20.12 2018 when the market value of such equity share was ₹ 80 each. 50% of the equity shares were sold on 15.12.2019 @ ₹ 100 each through recognized stock exchange and R paid ₹ 120 as securities transaction tax. The FMV of such shares on 31.1.2018 was ₹ 150 each. Compute the capital gain chargeable for the assessment year 2020-21.

Particulars	Amount (₹)
Consideration price (200*100)	20,000
Less: COA (200*100) (W.N.)	20,000
Long term capital gain	Nil

EXAMPLES

- Notes:
- The date of acquisition of the equity shares shall be the date on which preference shares were acquired by R. In this case se preference shares were acquired on 15.6.2010 and an equity shares were sold 15.12.2019, hence, there will be long-term capital gain as per section 112A.
- Cost of the acquisition shall be higher of the following :

1. Cost of acquisition of equity share shall be cost of preference share i.e. ₹ 25 per share (₹ 10,000/400).
   OR
2. Lower of the following:(a) FMV on 31.1.2018 i.e. ₹ 150 per share (b) Sale price of the share i.e. ₹ 100 per share

CAPITAL GAIN IN CASE OF INSURANCE COMPENSATION

- If a person gets insurance claim on account of destruction of a capital asset, it **is taxable in the year in which such compensation (any money or other assets) is received.**
- The **amount of compensation will be taken as "full value of consideration".**
- However, this rule is **applicable only when insurance compensation is received because of damage to, or destruction of any capital asset because of –**
  1. flood typhoon, hurricane, cyclone, earthquake or other convulsion of nature:
  2. riot or civil disturbance
  3. Accidental fire or explosion, or
  4. action by an enemy or action taken in combating an enemy
  5. If an insurance compensation is received in respect of a capital asset because of any other reason, it is not chargeable to tax.

EXAMPLES

- X is a teacher by profession. He purchased a residential property on March 1, 2017 for ₹ 23,00,000. It was destroyed by fire on February 15, 2019. He gets insurance compensation of ₹ 24,00,000 on April 20, 2019 ₹ 24,00,000 will be taken as "full value of consideration. Capital gain will be chargeable to tax in the year of receipt previous year 2019-20 for assessment year 2020-21). The period of holding of the residential property is less than months (i.e. from March 1, 2017 to February 15, 2019). Consequently, the surplus of ₹ 1,00,000 will be taxable as short-term capital gain.
- X is a trader. His stock-in-trade is destroyed by fire and he gets insurance compensation of ₹ 25,00,000. Stock-in-trade is not a capital asset. Consequently, ₹ 25,00,000 will be taken as business receipt and profit (if any) will be taxable as business income.
- A road accident takes place in which a few capital assets (i.e. vehicles and machinery or furniture) being carried are destroyed. A ship, being overweight, sinks and assets are lost. These are all capital assets. The receipt of insurance compensation in such circumstances is not chargeable to tax. The reasons for destruction being other than those mentioned above.

EXEMPTION OF CAPITAL GAINS

- Certain assets are not ‘Capital assets’ for purposes of capital gain and hence there is no gain on transfer of such assets.
- Similarly, there are certain transactions which are not regarded as 'transfer’ for capital gain purposes, and hence there is no capital gain on such transactions.
- There are certain cases where although there is a transfer and such transfer is of capital asset but still the capital gain arising on account of such transaction is exempt from income tax.
- These exemptions are of two types:

(A) Exemption of capital gains under various sub-clauses of section 10 i.e. 10(37).

(B) Exemption of capital gains under sections 54, 54B, 54D, 54EC, 54EE, 54F, 54G. 54GA and 54GB.

CAPITAL GAIN ON COMPULSORY ACQUISITION OF URBAN AGRICULTURAL LAND [SEC. 10 (37)]

- Sec 10 (37) is applicable if the following conditions are satisfied-
  1. The assessee is an **individual** or a **Hindu undivided family**
  2. He or it owns an **agriculture land situated in an urban area in India.**
  3. There is transfer of the agriculture land by way of compulsory acquisition or the consideration for transfers approved or determined by the Central Government (not by a State Government) or RBI
  4. The **agriculture land was used** by the assessee (and/or his parents if the land was owned by an individual) **for agricultural purposes during 2 years immediately prior to the date of transfer**
  5. The asset may be long-term capital asset or short-term capital asset.
  6. Compensation (and/or additional compensation) is received by the assessee **after March 31, 2004**
- If the above conditions are satisfied, capital gain (short-term or long-term) is exempt from tax. NOTE: If agricultural land is situated in a rural area in India, the asset itself is not a "capital asset" and no capital gain arises in such a case.

EXEMPTION ON TRANSFER OF LONG-TERM RESIDENTIAL HOUSE PROPERTY [SEC. 54]

Essential conditions

1. This exemption is available only to **individuals and HUF**
2. The assessee has transferred any **long term residential house property (being buildings or land appurtenant thereto)** during previous year.
3. The assessee should **invest the amount of capital gains** either in the **purchase or construction of one new house property in India within the specified period.**

   Specified period:

   (a) In case of purchase - within 1 year before or 2 years after the date of transfer

   (b) In case of construction - within 3 years from the date of transfer
4. The **newly purchased/constructed house property should not be transferred within 3 years from the date of its acquisition.**

AMOUNT OF EXEMPTION
AMOUNT OF LONG-TERM CAPITAL GAIN
OR
ACTUAL AMOUNT INVESTED
WHICHEVER IS LESS

EXEMPTION ON TRANSFER OF LONG-TERM RESIDENTIAL HOUSE PROPERTY [SEC. 54]

6. **Asset that should be acquired to get the benefit of exemption:** If the amount of capital gain **does not exceed ₹ 2 crore, the assesse** (may at his option) **can purchase/construct two residential properties in India** from A.Y. 2020-21. However, this concession is available only once in life time. [Proviso to Section 54(1)]

Capital gains Account Scheme 1988

As per section 54 the assessee is allowed maximum 2 years to purchase or 3 years for construction of house property (i.e. investment) however as per section 139(1) the return of income has to be filed on or before due date. So there is contradiction in the time allowed for investment. To solve this problem Income tax act has introduced a scheme known as capital gain account scheme, 1988. If assessee deposit the required amount under this scheme on or before the due date of filing return of income then he is entitled for exemption. **The amount deposited in this scheme should be actually utilized for investment within 3 years from date of transfer.**

EXEMPTION ON TRANSFER OF LONG-TERM RESIDENTIAL HOUSE PROPERTY [SEC. 54]

<u>Penalty for default</u>

1. If the amount deposited in the capital gains account scheme has not been utilized for investment within 3 years from the date of transfer of original asset then the unutilized amount, of which exemption has already been claimed shall be taxable as long term capital gains after expiry of 3 years.

EXEMPTION ON TRANSFER OF LONG-TERM RESIDENTIAL HOUSE PROPERTY [SEC. 54]

2. If the **newly purchased/constructed house property has been transferred within 3 years from the date of its purchase/ construction** then while calculating capital gains on such transfer the **amount exempted earlier (u/s 54**) **should be deducted from cost of acquisition**. The nature of capital gains is-

(a) short term capital gains- if the new house is transferred within 2 years.

(b) Long term capital gain if house property is transferred after 2 years but before 3 years from its date of acquisition. Benefit of indexation will be allowed on net COA.

EXEMPTION ON TRANSFER OF LAND USED FOR AGRICULTURAL PURPOSES [SEC. 54B]

Essential Conditions

1. This exemption is available only to individuals or HUF.
2. The assessee has transferred agricultural land whether short-term or long-term during the previous year.
3. Such land should be used by assessee or his parents for agricultural purposes for at least 2 years immediately before the date of transfer.
4. The assessee should invest the amount of capital gains in the purchase of new agricultural land (whether urban or rural) within 2 years from the date of transfer original asset.

AMOUNT OF EXEMPTION
AMOUNT OF CAPITAL GAIN
OR
ACTUAL AMOUNT INVESTED IN NEW ASSET
WHICHEVER IS LESS

EXEMPTION ON TRANSFER OF LAND USED FOR AGRICULTURAL PURPOSES [SEC. 54B]

Essential Conditions

5. The newly purchased agricultural land should not be transferred within 3 years from the date of its acquisition.

6. Capital Gains Account Scheme 1988 is applicable in this case also

Penalty for default

1. If the amount deposited in the capital gains account scheme has not been utilised for investment within 2 years from the date of original transfer then the unutilised amount of which exemption has already been claimed shall be taxable as capital gains after expiry of 2 years from the date of transfer. The nature of capital gain is same as of original transfer.

2. If the newly purchased agricultural land has been transferred within 3 years from the date of its acquisition then while calculating capital gains on such transfer the amount exempted earlier u/s 54B should be deducted from cost of acquisition. The nature of capital gains is

(a) short term capital gains- if the new agricultural land is transferred within 2 years.

(b) Long term capital gain if new agricultural land is transferred after 2 years but before 3 years from its date of acquisition. Benefit of indexation will be allowed on net COA

EXEMPTION ON TRANSFER OF LONG TERM CAPITAL ASSET ON THE BASIS OF INVESTMENT IN CERTAIN BONDS [SEC. 54EC]

- **Essential Conditions**

1. This exemption is available to **all the assesses**
2. The assessee has transferred any **long term capital asset (being land or building or both)** may be residential or commercial or may be situated in India or outside India during the previous year.
3. The assessee should **invest the amount of capital gains within 6 six months from the date of transfer** in **the purchase of specified bonds** of specified authority which are redeemable after minimum period of 3 years (if investment is made before April 1, 2018) or 5 years (2018-19 onwards) (long term specified Bonds).
4. Specified bonds:

   NHAI – National Highways Authority of India or REC– Rural electrification Corporation or notified bonds

5. The maximum amount of investment in a financial year is **₹ 50,00,000.**
6. Capital Gains Account Scheme is not applicable in this section

EXEMPTION ON TRANSFER OF LONG TERM CAPITAL ASSET ON THE BASIS OF INVESTMENT IN CERTAIN BONDS [SEC. 54EC]

AMOUNT OF EXEMPTION
AMOUNT OF CAPITAL GAIN
OR
ACTUAL AMOUNT INVESTED IN NEW ASSET
OR
WHICHEVER IS LESS but restricted to ₹ 50,00,000

- **Penalty for default**
- In the following cases, exemption will be taken back and the amount of exemption given earlier u/s 54EC will become LTCG of the year in which assessee commits the following default
- If the newly purchased specified bonds are transferred or converted into money or any loan/advance is taken on the security of those specified bonds within 3 or 5 years (as the case may be) from the date of acquisition of such bonds.

EXEMPTION ON TRANSFER OF ANY LONG TERM CAPITAL ASSET OTHER THAN RESIDENTIAL HOUSE PROPERTY [SEC. 54F]

- <u>**Essential Conditions**</u>
- This exemption is available **only to individual & HUF**
- The assessee has transferred **any long term capital asset other than residential house property** during the previous year.
- The assessee should invest the amount of **net sale consideration (Sale consideration (minus) expenses on transfer) in the purchase/construction of one residential house property in India** within the specified period.
- Specified Period

  (a) In case of purchase: within 1 year before or two years after the date of transfer.

  (b) In case of construction: within 3 years from the date of transfer.
- The assessee should not own more than one residential house property excluding the one on the basis of which exemption under this section has been claimed, on the date of transfer
- CG Scheme is available.
- The newly purchased/constructed house property should not be transferred within 3 years from the date of its acquisition.

EXEMPTION ON TRANSFER OF ANY LONG TERM CAPITAL ASSET OTHER THAN RESIDENTIAL HOUSE PROPERTY [SEC. 54F]

AMOUNT OF EXEMPTION
Amount of Capital Gain
OR
Gross LTCG $\times \frac{Amount\ invested\ in\ new\ house\ (or\ deposited)}{Net\ Sale\ Consideration}$
WHICHEVER IS LESS

Penalty for default

1. If the amount deposited in the capital gains account scheme has not been utilized for Investment within 3 years from the date of transfer then the unutilized amount, of which exemption has already been claimed shall be taxable as long term capital gains after expiry of 3 years from the date of transfer. The unutilized amount is calculated as under:

Step 1: Gross LTCG $\times \frac{Amount\ invested/deposited}{Net\ sale\ consideration}$

Step 2: Gross LTCG $\times \frac{Amount\ actually\ invested}{Net\ sale\ consideration}$

Step 3: Step1-Step 2

EXEMPTION ON TRANSFER OF ANY LONG TERM CAPITAL ASSET OTHER THAN RESIDENTIAL HOUSE PROPERTY [SEC. 54F]

- **Consequences where the new house is transferred within a period of 3 years of its of purchase or construction:** In this case, there will be following **2 capital gains**:

1. Capital gain exempt earlier under this Section i.e. 54F shall be treated as long-term capital gain of the previous year in which the new asset is transferred.
2. Capital gain/loss on transfer of new house which will be:
    1. short-term capital gain if the new house is transferred within 2 years.
    2. long-term capital gain if the house property is transferred after 2 years but before 3 years from the date of its acquisition. Benefit of indexation of the net cost of acquisition (i.e. cost of acquisition - capital gain exempt under section 54 earlier) will also be allowed.

3. Consequences where **the assessee purchases, within a period of two years of the transfer of the original asset, or constructs, within a period of 3 years of transfer of such an asset, a residential house other than the new house bought/constructed,** whose income is chargeable under the head Income from House Property: In this case, the **capital gain exempt u/s 54F earlier shall be treated as long-term capital gain** of the previous year in which the second house is bought/constructed.

Extension of time limit for acquiring new asset or depositing or investing amount of capital gain in case of COMPULSORY ACQUISTION [Sec. 54H]

- There may be a time lag between the previous year in which the asset is compulsorily acquired and the previous year in which the compensation is actually received.
- As per section 54H, the **period for acquiring the new asset** by the assessee referred to in sections 54, 54B, 54D, 54EC and 54F (i.e. six months, one year before or two/three years after the date of transfer of the asset) shall **be reckoned from the date of receipt of such compensation and not from the date on which the asset was originally transferred**.
- In the case of compulsory acquisition, the transfer takes place in the year in which the asset is compulsorily acquired by law, but the capital gain arises in the previous year in which the part/full amount of compensation is received.

- For Section 111A, 112, 112A refer PDF, book and class notes.

- **References:**

- Simplified Approach to Income Tax by Dr. Girish Ahuja and Dr. Ravi Gupta
- Students' Guide to Income Tax (University Edition) by Dr. Vinod K. Singhania and Dr. Monica Singhania