

CAPITAL GAINS

Immovable Property



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CHARGING SECTION -45

- ✖ Any profits or gains arising from
- ✖ the transfer of a capital asset
- ✖ Effected in the previous year
- ✖ Save as otherwise exempted
- ✖ Chargeable as capital gains
- ✖ Deemed as income of the previous year in which the transfer takes place

CONVERSION OF CAPITAL ASSET INTO STOCK

- ✘ **S. 45(2) – Contains provisions for taxation of conversion of capital asset into stock in trade.**
- ✘ **To be taxed in previous year in which such stock-in-trade is sold or otherwise transferred by him**
- ✘ **FMV of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.**
- ✘ **Difference thereafter would be taxed as PGBP**

CONVERSION OF STOCK TO CAPITAL ASSET

- ✘ Earlier conversion of capital asset into inventory was taxable u/s 45(2).
- ✘ Was no vice-versa provision
- ✘ As amended by Finance Act 2018, its to be taxed at FMV as on the date of conversion u/s 28(via) read with s. 2(24)(xiia).
- ✘ Cost of acquisition in such case for the converted capital asset would be the FMV as on the date of conversion u/s 49
- ✘ Period of holding such capital asset would commence from date of conversion u/s 2(42A)

CAPITAL ASSET – 2(14)

- ✖ Property of any kind held by an assessee
- ✖ Whether or not connected with his business or profession
- ✖ Any securities held by FII invested as per SEBI scheme
- ✖ Excludes
 - + Stock-in-trade (other than securities held by FII), consumable stores or raw materials held for the purposes of the business or profession

CAPITAL ASSET – 2(14)

✗ Excludes

+ Personal effects i.e. movable property including wearing apparel and furniture held for personal use by the assessee or any members of his family dependent on him but excludes

- (a) Jewellery
- (b) Archaeological collection
- (c) Drawings
- (d) Paintings
- (e) Sculptures
- (f) Any work of art

CAPITAL ASSET – 2(14)

- ✗ **Excludes - Agricultural Land not being situated in**
 - + **Municipality Area, Notified Area Committee, Town area committee or Cantonment board And which has a population of not less than 10000**
 - ✗ **In any area within the distance measured aerially**
 - ★ **Not more than 2 Kms from local limits of municipality or cantonment and which has population between 10k to 100k**
 - ★ **Not more than 6 Kms from local limits of municipality or cantonment and which has population between 1 L to 10 L**
 - ★ **Not more than 8 Kms from local limits of municipality or cantonment and which has population more than 10 Lacs**

CAPITAL ASSET – 2(14)

✖ Excludes

- + 6.5% Gold Bonds 1977 or 7% Gold Bonds or National defence Gold bonds issued by CG**
- + Special Bearer Bonds 1991 issued by CG**
- + Gold deposit Bonds (1999) or Gold deposit certificates (2015) issued by CG**

STCA

- ✖ **Capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer**
- ✖ **For company shares, securities listed in a recognised stock exchange, units of Unit Trust of India, 10(23D) units of mutual fund, zero coupon bonds the period will be 12 months**

STCG / LTCG

S.No.	Short term capital Gain	Long term capital Gain
1	STCG is included in the Gross total income of the assessee and <u>taxed as per rate applicable to that assessee except certain shares</u>	LTCG is in Gross total income and) s <u>taxed on the flat rate of 20% (10%in certain case)</u>
2	Deductions u/s 80C TO 80U are available	Deductions u/s 80C TO 80U are not available
3	Set off of minimum exemption limit is available from <u>all STCG for resident as well as Non-resident.</u>	Set off of minimum exemption limit is available <u>only for resident.</u>
4	STCL can be set off against <u>STCG and LTCG</u>	LTCL can be set off against <u>only LTCG</u>
5	Cost of acquisition & Cost of improvement are <u>not indexed in case of STCG.</u>	Cost of acquisition & Cost of improvement are <u>indexed in case of long term capital gains</u>

TRANSFER – 2(47)

- × **Transfer in relation to a capital asset, includes –**
 - (i) **The sale, exchange or relinquishment of the asset or**
 - (ii) **The extinguishment of any rights therein; or**
 - (iii) **The compulsory acquisition thereof under any law; or**
 - (iv) **In a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment;**
 - (iva) **the maturity or redemption of a zero coupon bond; or**

TRANSFER – 2(47)

- × **Transfer in relation to a capital asset, includes –**
 - (v) **Any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 ; or**
 - (vi) **Any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enable the enjoyment of, any immovable property.**

SECTION 54 VS. 54F

54

**No restriction on no.
of houses**

Gain to be invested

54F

**Not more than one
house**

**Full consideration to
be invested**

**Cannot purchase
another house in
next 1 year**

**Cannot construct
another house in
next 3 years**

SECTION 54

- ✗ Where the assessee purchased a house in Madras in the name of his wife after selling property at Bangalore out of money obtained by him by the sale of the property at Bangalore ,but the same was assessed in the hands of the assessee ,it was held that the assessee was entitled for exemption u/s 54

- ✗ [CIT V. Natarajan (2006) 287 ITR 271 (MAD)]

- ✗ Where the assessee purchased property from 2 persons, by virtue of 4 different sale instances in the shape of 4 different parcels which constitute 1 single residential unit or house ,it was held that the investment so made in the purchase of the same was eligible for deduction u/s 54

- ✗ [CIT V. Sunita Aggarwal (2006) 284 ITR 20(del)]

SECTION 54

- ✗ **Where assessee utilized the sale consideration for other purposes and borrowed the money for the purpose of purchasing the RHP to claim exemption u/s54,it was held that the contention that the same amount should have been utilized for the acquisition of new asset could not be accepted**
- ✗ **[Bombay Housing Corporation v. Asst. CIT (2002) 81 ITD 454(BOM)]**

SECTION 50 C

- ✖ **Value for the purpose of stamp duty, deemed to be the full value of the consideration from transfer of the capital asset for calculating CG**
- ✖ **Applicable in the case of seller of a capital asset being land &/or building.**
- ✖ **Can the assessee contend that actual value of property is less than stamp value?**
- ✖ **Is yes, what should be done?**
- ✖ **In case the value is disputed before the AO and the stamp duty valuation has not been disputed; the AO may refer to a Valuation Officer for ascertaining FMV**

REFERENCE TO DVO

- ✖ **Can be made for purpose of ascertaining FMV for Capital Gain u/s 50C (section 55A)**
- ✖ **Earlier could be referred only when value claimed is less than its FMV.**
- ✖ **W.e.f. 1.7.2012 it can be referred to DVO if value claimed is at variance with FMV i.e., if claim higher FMV too.**
- ✖ **No reference to DVO, if sale value is higher than stamp duty valuation**

IMMOVABLE PROPERTY S. 56(2)(X)

- ✗ **Covers land, building or both**
- ✗ **Receives without consideration - stamp duty value exceeds Rs. 50000/-**
- ✗ **Receives through inadequate consideration less than stamp duty value being higher of :**
 - + **Rs. 50000/-**
 - + **5% of consideration**
- ✗ **Where date of agreement & date of registration are not same, value on date of agreement if some payment made by a/c payee cheque / bank draft / ECS on or before date of agreement**

IMMOVABLE PROPERTY

- ✗ If value disputed by assessee u/s 50C(2) , AO may refer to Valuation Officer
- ✗ Is leasehold land covered?
 - + Transfer of leasehold rights in a building do not attract provisions of S. 50C - *DCIT v Tejinder Singh (2012) (50 SOT 391) (Kol)*
 - + Leasehold rights in plot of land is not 'land or building or both' - *Atul G. Puranik v. ITO (132 ITD 499)(Mum)*.
 - + S. 50C applies to Transfer of Development Rights - *Chiranjeev Lal Khanna v. ITO (132 ITD 474)(Mum)*

IMMOVABLE PROPERTY

- ✖ Mr. A (not a relative of Mr. B) gifts immovable property whose stamp duty value is Rs. 15 Lakhs to Mr. B.
 - ✖ Actual cost in hands of Mr. A was Rs. 18 Lakhs.
 - ✖ What would be the cost of acquisition in hands of Mr. B?
 - + S. 49(1) – cost to previous owner i.e. Rs. 18 L
 - + S. 49(4) – If subject to s. 56(2), stamp duty value i.e. Rs. 15 L
- + Rs. 15 L

PROPERTY

<i>Sale made of</i>	<i>Assessee</i>	<i>Investment in</i>	<i>Relevant section</i>	<i>Amount to be invested</i>
LTCA being Res. Propty.	Ind or HUF	Res. House	54	CG
LTCA other than Res. Property	Ind or HUF	Res. House	54F	Net Consideration
LTCA being land or building or both	Any	LTSA – Bonds	54EC	CG

OTHER THAN PROPERTY

<i>Sale made of</i>	<i>Asse ssee</i>	<i>Investme nt in</i>	<i>Relevan t section</i>	<i>Amount to be invested</i>
Agri Land	Ind	Agri land	54B	CG
Indl. undertaking compulsory acquired	Any	Land, build for Indl Pur	54D	CG
Shifting of Indl undertaking from urban area to rural	Any	Land, building, Plt, Mach	54G	CG
Shifting of Indl undertaking from urban area to SEZ	Any	Land, building, Plt, Mach	54GA	CG

CASE STUDY

- ✗ **M/s ABC sold Building whose WDV was Rs. 49 Lacs in AY 2010-11. Cost in AY 2002-03 was Rs. 89 Lacs.**
 - + **Is it STCG or LTCG?**
 - + **Is indexation allowable?**
 - + **Is any deduction/investment option available?**
- ✗ **S. 50 is restricted only to mode of computation of CG. It does not convert LTCA into STCA –**

CIT vs. Ace Builders P. Ltd. (2006) 281 ITR 210 (Bom)

SECTION 2(47)(V)

- ✕ Transfer includes 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.**

PART PERFORMANCE

- ✕ **Section 53A of Transfer of Property Act**
 - + **There should be a contract for consideration**
 - + **Contract should be in writing**
 - + **It should be signed by the transferor**
 - + **Should pertain to immovable property**
 - + **Transferee should have taken the possession of the property**
 - + **Transferee should be ready and willing to perform his part of the contract**

SECTION 53A TPA

- ✖ **S. 17A of Registration Act, 1908 amended in 2001**
- ✖ **Documents for the purpose of S. 53A of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of Registration and other Related Laws (Amendment) Act, 2001**
- ✖ **If such documents not registered - they shall have no effect for purpose of S. 53A of Transfer of Property Act**
- ✖ **Safeguard - unregistered agreement of sale executed earlier would be taken as a tool to enforce part performance of the contract by the other part.**
- ✖ **S. 53A of TPA also amended where the wordings “...the contract, though required to be registered, has not been registered”**

REGISTRATION OF JDA

- ✘ **Transfer of any immovable property in part performance of a contract of the nature referred in S. 53A of the Transfer of Property Act will be completed only when the Agreement u/s 53A of the Transfer of Property Act is registered under the Indian Registration Act.**

CIT vs. Balbir Singh Maini (2017) 398 ITR 0531 (SC)

Pr. CIT vs. Fardeen Khan (Legal heir of Late Feroz Khan) (2018) 102 CCH 0307 MumHC

IMMOVABLE PROPERTY - JDA

✖ S. 45(5A) – Joint Development Agreement

- + Has to be a registered agreement**
- + Individual / HUF - CG in PY in which certificate of completion for whole / part of project is issued by competent authority**
- + Value of full consideration - Stamp duty value of his share in property in project on date of issue of said certificate as increased by any monetary consideration received.**
- + If transfer his share before completion, normal provisions**
- + 10% TDS on consideration paid u/s 194-IC**

????

- ✖ Mr. A gifts immovable property whose stamp duty value is Rs. 10 Lakhs to Mr. B (not a relative). Is there any tax on Mr. A or Mr. B?

✖ On B

- ✖ Mr. X gifts immovable property whose stamp duty value is Rs. 15 Lakhs to Mr. Y (not a relative) on the occasion of her daughter marriage. Is there any tax on Mr. X or Mr. Y?

✖ On Mr. Y

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


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