Technical Session III :
Income-Tax & FEMA – Special relaxations, Precautions & Planning

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All India Chartered Accountants Society

Contents

1 Succession – Series of Tax Events

2 Income up to the date of death

3 Income after death, before distribution

4 Succession through private trusts

5 Taxation of the Beneficiary / Heir

6 FEMA - Inheritance of assets

01

Succession: A Series of Tax Events, not a Single Event

Succession triggers a chain of tax events

Chargeability

Whose income is it?

- The answer **changes at each phase** of the timeline.
- **Assessing the wrong person** - deceased, legal representative, executor or beneficiary - **renders the assessment void**.

Liability

Who pays and to what extent?

- Legal representatives and executors are **liable in a representative capacity** only.
- Liability limited to **value of estate.**
- Disposing of assets before clearing tax **can trigger personal liability.**

Computation

How is income and gain measured?

- Cost, holding period and indexation all **step back to the previous owner**.
- **Manjula J. Shah** (2011) 355 ITR 474 (Bombay) confirms indexation runs from the predecessor's acquisition year.

Why Planning Precedes Execution

- The purpose of succession planning is to ensure that the **estate and its income reach the intended beneficiaries** rather than being consumed in discharging tax liabilities.
- This concern was **acute while Estate Duty was in force** up to 1986, when the top rate of duty reached **85 per cent.**
- Although Estate Duty stands abolished, the **possibility of an inheritance-style levy** returning in some form is not ruled out.
- **Structuring decisions** taken today **should be robust** to that possibility.

Position	Status today	Planning implication
Estate Duty	**Abolished with effect from 1986**	No levy on the transmission itself
Inheritance tax / equivalent	**Not in force;** periodically debated	Build structures that **survive re-introduction**
Income-tax Act, 2025	Currently governs the entire taxability of succession	

ITA, 1961	ITA, 2025
47(iii)	70(b)
168	312

Journey of Estate – tax consequences at each stage

Phase	Trigger	Who Pays Tax?	Key Takeaway
Phase I	Income **up to date of death**	**Legal representative** (representative capacity)	**LR steps into** shoes **of deceased**
Phase II A – WILL exists	**After death but before assets are distributed**	**Executor** or administrator	**Estate income is taxed in hands of Executor** - Section 168
Phase II B – No WILL	**After death but before assets are distributed**	**Legal representative**	Estate provisions do not apply; **normal LR rules apply**
Phase III	**Assets are distributed to beneficiaries**	**Beneficiary** / heir	Future income is **taxed** directly in the **beneficiary's hands.**
Phase IV	**Subsequent transfer by beneficiary**	**Beneficiary** (capital gains)	Transfer by "Will" exempt u/s 47(iii); cost and holding period from previous owner; **Capital Gains apply on transfer.**

02

Income up to the date of death

Section 159 — the liability that does not die with the assessee

Section 159: Who is liable

ITA, 1961	ITA, 2025
2(29)	2(65)
168	312

The **legal representative** steps into the shoes of the deceased for income up to death

Who is a 'Legal Representative'?

Category	Is it covered?	Note
Legal heir of the deceased	Yes, but the term is wider	Heirship is not the test
Beneficiary of the estate	Yes	Included within the wider expression
Executor appointed under a Will	Yes	Also governed by section 168
Administrator appointed by Court	Yes	Letters of administration
Person who intermeddles with the estate / represents the estate in law	Yes	Express inclusion in CPC definition; Substance over appointment

ITA, 1961	ITA, 2025
2(29)	2(65)
159	302

Section 159: How far Legal Representative is liable

Scope of liability under Section 159

Scenario	Effect on legal representative
Pending proceedings	Deemed taken against the legal representative; continue from the stage at which they stood at death
Fresh proceedings	May be initiated against the legal representative as if the deceased were still alive
Deemed assessee	Legal representative is assessee for all purposes in respect of income of deceased up to date of death

Three core obligations

01 **File return** of deceased's income up to date of death

02 Participate in **assessment and other proceedings** as assessee

03 **Pay tax and all other sums due** from the deceased

ITA, 1961	ITA, 2025
2(29)	2(65)
159	302

Section 159: Liability ceiling and personal liability

Estate cap

- Liability is **limited to the extent** to which the **estate is capable** of meeting the tax demand.
- The legal representative's **personal assets are protected** as long as the estate is intact.

Personal liability of LR on asset disposal

- If the legal representative **disposes of or creates a charge** on any estate asset while tax remains undischarged, **personal liability arises** - capped at the value of the asset charged, disposed of, or parted with.
- Arrears **due from the deceased** cannot be set off against any refund due to the legal representative personally.

Protections and limits (Sections 161 & 159)

- **Section 161 parity rule:** Representative assessee **subject to the same duties, responsibilities, and liabilities** as if income were his own; assessed in his own name but in a representative capacity only.
- **Section 161 ceiling on liability:** Liability is limited to amount held in representative capacity - personal assets cannot be attached.
- **Right of retention (Section 162):**
  - May retain from money payable to beneficiaries a sum equal to estimated tax.
  - On disagreement, obtain an AO certificate — which serves as the legal warrant for retention.

03

Income after death, before distribution

Section 168 of Income Tax Act, 1961

ITA, 1961	ITA, 2025
168	312

Section 168: The executor and testate

Particulars	Position under section 168
Definition of executor	Includes an administrator or any other person administering the estate of a deceased person
Single executor	Assessed as an individual
Two or more executors	Assessed as an Association of Persons (AOP)
Residential status	Resident or non-resident according to the residential status of the deceased in the previous year of death

Testate estates (WILL exists + Section 168 applies)

Section 168 applies exclusively to testate estates (Will)

Intestate estates (No WILL + Section 168 does NOT apply)
Post-death income in intestate succession is assessable in the legal representative's hands, not the executor's.
[Madras HC in CIT v P. Manonmani (245 ITR 48)].

ITA, 1961	ITA, 2025
2(47)	2(109)
47(iii)	70(1)(b)

Is transfer at death a taxable transfer for the deceased?

- Transfer of assets at death is generally not a taxable transfer in the hands of the deceased.
- Section 47(iii) expressly exempts transfers under a will or irrevocable trust.
- Intestate succession and devolution by operation of law are similarly not treated as taxable.

Mode of transfer	Legal basis (for not a taxable transfer)
Will	• Section 47(iii) • Amended w.e.f. 01 April 2025; words 'by an individual or a Hindu undivided family' added
Irrevocable trust	• Section 47(iii) • Same amendment effective 01 April 2025
Intestate succession (death without a will)	• Section 2(47) - devolution by law should not be a transfer; • Devolution by operation of law; no deemed gain arises in hands of deceased

04

Succession through private trusts

Separating control from economic benefit

Why a trust instead of a simple Will?

The trust creates a **separate legal ownership** (trustees) from economic interest (beneficiaries) and by taking effect during the settlor's lifetime.

Limitation of a bare Will	How a trust responds
Wills are **frequently challenged**	Trust settled during lifetime – clarity on who gets what
Assets **pass only on demise**; historically exposed to Estate Duty	Lifetime settlement moves **assets out of the estate before death (subject to lookback period)**
Simple Will transfers **both economic and controlling interests** together	Trust segregates the two — trustees hold **legal ownership; beneficiaries take economic interest**
Family assets **fragment among multiple legatees**	**Consolidated holding** under trustees preserves the asset block intact
Legatee **may lack capacity or skill** to manage inherited assets	Control stays in **chosen capable hands** — trustees are named and accountable

Key Aspects of Trust

Settlor (testator)	Trustee(s)	Beneficiary(ies)
Creates and settles assets	Hold, administer, retain control	Take the economic/beneficial interest

Specific: shares defined
Discretionary: trustees decide

Taxability of Trusts – Status under Tax Laws

- Trust **not a 'Person'** as per the tax laws
  - Is Trust an Association of Person?
  - Is Trust an Artificial Judicial person?

- A **Trustee is a Representative Assesse** in respect of income receives or is entitled to receive or for the benefit of any person

- Obligation to pay tax and file the return of income is on the Trustee

Contribution of assets to the trust: capital gains & other income

ITA, 1961	ITA, 2025
47(iii)	70(1)(b)
56(2)(x)	92(2)(m)

Capital gains for settlor [Section 47(iii)]

Irrevocable trust

- Transfer of asset to an irrevocable **trust shall NOT be regarded as a transfer**
- Exempt from **capital gains tax**
- Cost of acquisition and period of holding: as applicable to the previous owner (the settlor)

Revocable trust

- **No consideration** received, hence **not taxable** at contribution stage
- Transfer becomes taxable at a subsequent stage

Other sources income for trust [Section 56(2)(x)]

No recipient tax implications for trusts created **solely for the benefit of relatives.**

Relatives include:

- Spouse, brother or sister of the settlor
- Brother or sister of spouse of the settlor
- Brother or sister of either parent of the settlor
- Lineal ascendants or descendants of the settlor or their spouse
- Spouse of the persons referred to above

ITA, 1961	ITA, 2025
160	303
166	304

Taxability of Trust Income

Revocable Trust

Income arising from an asset transferred on a revocable basis taxable in the hands of the Author/ Settlor

Irrevocable Trust

- **Specific Trust**
  - Income does not include PGBP
    - Rates applicable to each beneficiary **(like manner and same extent)**
  - Income includes PGBP
    - Entire income is taxed at MMR
- **Discretionary Trust**
  - Entire income is taxed at MMR

- Sections 160-166 govern the **general trust assessment** framework.
- Section 166 preserves the **department's option** to assess beneficiaries directly (CIT v Kamalini Khatau, 209 ITR 101 SC).

ITA, 1961	ITA, 2025
160	303
164	307
166	304

Section 164: MMR

Discretionary Trusts taxed at MMR (Section 164)

Exception 1

Beneficiaries with no other taxable income

Conditions:

- No beneficiary has other income above the AOP exemption limit
- No beneficiary is a beneficiary under any other trust

Exception 2

Sole trust declared by Will

Conditions:

- Trust declared by Will
- It is the ONLY trust so declared by that Will

Result:

- Normal AOP rates apply

Exception 3

Business income: dependent relative trust

Conditions:

- Trust declared by Will
- Exclusively for a relative dependent on settlor for support and maintenance
- Only trust so declared

Result:

- Applicable rates of beneficiaries

Tax on distribution of income from Trust

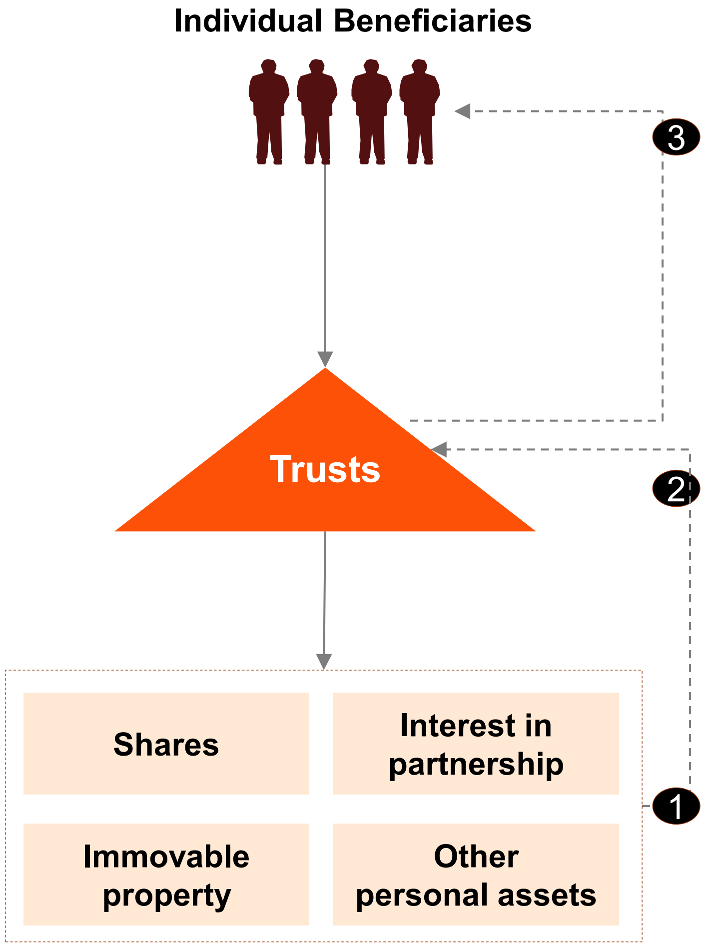
Distribution of Income from Trust: tax treatment

- **No Specific Section to provide exemption** for Distribution of Income from Trust to Beneficiaries
- Trustee discharges the taxes on the income as Representative Assessee of the Beneficiaries. The **same income when distributed should NOT be taxed twice***.
  - Smt. Alpana Kirloskar vs ACIT (46 taxmann.com 336) (ITAT Del)
  - JCIT vs Shantaben Patel
- **No tax on distribution** of property by trustee to beneficiary
  - Trustee holds property for the benefits of beneficiary
  - CGT v Trustees of HEH The Nizam's Wedding Gift Trust [175 ITR 266 AP]

Distribution of Income by the Trust to the beneficiaries should not be liable to tax in the hands of the beneficiaries

*CBDT Circular No. 157 dated 16.12.1974

Flow of Income and Tax in a typical structure



Distribution to Beneficiaries

- Distributions from Trust – Not liable to tax. No double taxation of income once assessed to tax

Taxability in the hands of the Trust

- Dividend from shares – Taxable at MMR
- Income from LLP/ Firm – Exempt
- Interest / Rental income – MMR
- Capital gains:
  - Short term capital gains – MMR
  - Long term capital gains – 12.5% + surcharge and cess

Distribution To Trust

- **Dividend on Shares –** No DDT
- **Interest in LLP/ firm** – No tax on distribution of profits from a LLP/ Firm

Trust with Non-Resident Beneficiaries – Repatriation of Distribution?

05

Taxation of the Beneficiary / Heir

Receipt, holding period, cost, indexation and full value of consideration

ITA, 1961	ITA, 2025
56(2)(x)	92(2)(m)

No upfront tax on inheritance — Section 56(2)(x) exemption

- Section 56(2)(x) imposes **tax on receipt** of money or property **without adequate consideration**.
- It **explicitly excludes** assets received **under a will** or by **way of inheritance**.
- As a result, **no income-tax liability** arises in the hands of the heir at the point of receipt.

Legal basis and scope of the exemption

Provision

- Section 56(2)(x) of the Income-tax Act, 1961 taxes receipt of money or property without adequate consideration.

Scope of exclusion

- Applies to assets received under a will or by way of inheritance.
- Covers all asset classes — immovable property, securities, jewelry, and other property.
- No monetary threshold or holding period condition.

Legacy receipt is exempt; capital gains arise only on sale

ITA, 1961	ITA, 2025
45	67
47	70
48	72
49	73
50C	78
50CA	79

- Section 47(iii) **excludes receipt of a capital asset** under a Will from the **definition of 'transfer'** -- **no capital gains** arise on distribution.
- Tax liability crystallises only when the legatee subsequently transfers the inherited asset.
- Previous owner's cost basis and holding period, with indexation running from the previous owner's year of acquisition

STEP 1
Death of testator

STEP 2
Distribution under Will
Section 47(iii) -- NOT a transfer; no capital gains

STEP 3
Legatee holds asset

STEP 4
Subsequent transfer by legatee
Sections 45, 48, 49, 50C, 50CA -- capital gains charged

ITA, 1961	ITA, 2025
49	73

Legacy receipt is exempt; capital gains arise only on sale

Holding period thresholds and computation rules

Sr. No.	Asset class	Holding Period	Type of Income	Cost basis (Section 49)	Indexation rule	Applicable Tax Rates
1.	Listed Securities or unit of an equity-oriented fund	≤ 12 months	STCG	Cost to previous owner (+ improvements)	Not Available	20% ++
		> 12 months	LTCG			12.5% ++
2.	Specified Mutual Fund / Market Linked Debenture / Unlisted Bond / Unlisted Debenture	NA	Deemed STCG	Cost to previous owner (+ improvements)	Not Available	Applicable Slab Rate ++
3.	All Kind of Capital Assets (Other than covered in Sr. No. 1 and 2)	≤ 24 months	STCG	Cost to previous owner (+ improvements)	Not Available	Applicable Slab Rate ++
		> 24 months	LTCG		Only for individuals and HUFs where land and building acquired before 23 July 2024	12.5% ++

- In case Capital Asset is **acquired before 01st April 2001** then, Cost of Acquisition shall be higher of:
  - Cost to previous owner
  - FMV as on 1 Apr 2001 if acquired before that date
- In case of listed equity shares, **grandfathering clause** is provided for capital gains accrued up to January 31, 2018

06

FEMA - Inheritance of assets

FEMA framework: when and why it applies

Four-step cross-border succession lifecycle — FEMA applies at every stage

Inherit asset — Hold asset — Sell asset — Repatriate funds

FEMA gaps: asset classes with no specific regulation

i. Gold, bullion, jewellery
ii. Paintings and objects of art
iii. Intellectual property rights
iv. HUF succession
v. Trust succession

FEMA - Inheritance of assets

Inheritance of Indian assets by Non-Residents -

- **Section 6(5)** of FEMA is the **foundational provision** permitting persons resident outside India to hold, own, transfer or invest in Indian currency, security or immovable property inherited from a person resident in India.
- This provision applies to the **broader non-resident category**, not just NRIs or OCIs.

Section 6(5), Foreign Exchange Management Act, 1999

"A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India."

FEMA - Inheritance of assets

Inheritance of Foreign assets by Residents -

FEMA Section 6(4) and the OI Rules 2022 together create a **permissive framework for Indian residents** to hold, transfer and repatriate foreign assets acquired by inheritance.

Section 6(4), Foreign Exchange Management Act, 1999

"A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India"

A navigational framework

Sr. No.	Testator Residency	Asset location	Heir Residency	FEMA Applicability	Key FEMA reference
1	Indian resident	India	Indian resident	No	Not applicable
2	Indian resident	India	Non-resident	Yes	• Section 6(4) applicable • Immovable Property in India ○ NRI/OCI can inherit, sale to IR / NRI /OCI ○ Agriculture Land – NRI / OCI can inherit, sale allowed to IR only ○ NR (not NRI / OCI) – RBI approval may be required • Equity Instruments – • NRI /OCI may acquire on non-repatriable basis • NR (not NRI /OCI) may require approval • Repatriation of sale proceeds: USD 1mn / yr

A navigational framework

Sr. No.	Testator Residency	Asset location	Heir Residency	FEMA Applicability	Key FEMA reference
3	Indian resident	Foreign	Indian resident	Yes	Acquisition under inheritance permissible – section 6(4) intepretation
4	Indian resident	Foreign	Non-resident	Yes	No specific provision. Post inheritance, outside FEMA perview.

A navigational framework

Sr. No.	Testator Residency	Asset location	Heir Residency	FEMA Applicability	Key FEMA reference
5	Non-resident	India	Indian resident	Yes	Not a capital account transaction under FEMA for Indian resident – should be permissible
6	Non-resident	India	Non-resident	Yes	Generally permissible for NRI/OCIs, remittance upto USD 1mn/ yr
7	Non-resident	Foreign	Indian resident	Yes	• Immovable property – permissible under inheritance • Shares – ODI /OPI under OI Rules 2022 – bonafide business rule applies; • Cash - 180-day surrender rule
8	Non-resident	Foreign	Non-resident	No	Not applicable

FEMA Considerations of Trust

Trust	Settlor	Trustee	Beneficiary
• **No specific provision** under FEMA to **determine the residential status** of a trust. • **Residential status of trustees and beneficiaries** may be considered.	Contribution by: • A **non-resident settlor** of **Indian assets**; and • A **resident settlor of foreign assets** in an Indian trust treated as a **capital account transaction.**	• A **trustee** can be a **non-resident.** • However, the **trustee should not undertake** any transaction relating to the management of the trust that is **prohibited for a non-resident.**	• **Beneficiary** can be **non-resident.** • **Repatriation** of funds or **distribution** of immovable property to **an NRI beneficiary**—subject to LRS? • **Proceeds from distribution** of immovable property be **repatriated** under the NRO route, subject to the **USD 1 mn annual limit?**

Thank You

Inheritance of Indian assets by NR

FEMA

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

NDI Rules

Acquisition and transfer of property in India by a NRI or an OCI

24. A NRI or an OCI may —

(*a*) acquire immovable property in India other than an agricultural land or farm house or plantation property:

Provided that the consideration, if any, for transfer, shall be made out of :

(*i*) funds received in India through banking channels by way of inward remittance from any place outside India ; or

(*ii*) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder:

Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;

(*b*) acquire any immovable property in India other than agricultural land or farm house or plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in clause (77) of section 2 of the Companies Act, 2013;

(*c*) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property:—

(*i*) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these rules ;or

(*ii*) from a person resident in India;

RBI FAQs

Q.4 Can foreign nationals acquire property in India?

Answer:

a. Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong or Democratic People's Republic of Korea (DPRK), irrespective of their residential status, cannot, without prior permission of the Reserve Bank, acquire or transfer immovable property in India, other than on lease, not exceeding five years. This prohibition shall not be applicable to an OCI.

b. Foreign nationals of non-Indian origin resident in India (except 11 countries listed at (a) above) can acquire immovable property in India.

c. Foreign nationals of non-Indian origin resident outside India can acquire/ transfer immovable property in India, on lease not exceeding five years and can acquire immovable property in India by way of inheritance from a resident.

Section 2(47) / 2(109)

(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 ; or

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

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

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

Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;

47A) "virtual digital asset" means—

(a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;

(b) a non-fungible token or any other token of similar nature, by whatever name called;

(c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify;

(109) "transfer" in relation to a capital asset, includes—

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

(b) the extinguishment of any rights therein; or

(c) the compulsory acquisition thereof under any law in force; or

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

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

(f) 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) which has the effect of transferring, or enabling the enjoyment of, any immovable property; or

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

(h) disposing of, or parting with, an asset or any interest therein, or creating any interest in any asset in any manner, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, irrespective of whether such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India,

where, the expression "immovable property" means—

(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also, such that the land, building, part of a building, machinery, plant, furniture, fittings and other things include any rights therein;

(ii) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein), which has been constructed or which is to be constructed, accruing or arising from 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 of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building;

Section 47(iii) / Section 70(1)(b)

Transactions not regarded as transfer.

47. Nothing contained in section 45 shall apply to the following transfers :—

(*i*) any distribution of capital assets on the total or partial partition of a Hindu undivided family;

(*ii*) [***]

71[(*iii*) any transfer of a capital asset by an individual or a Hindu undivided family, under a gift or will or an irrevocable trust;]

(*iv*) any transfer of a capital asset by a company to its subsidiary company, if—

(*a*) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and

(*b*) the subsidiary company is an Indian company;

Transactions not regarded as transfer.

70. (1) The provisions of section 67 shall not apply to transfer—

(*a*) by way of distribution of capital assets on the total or partial partition of a Hindu undivided family;

(*b*) of a capital asset by an individual or a Hindu undivided family, under a will or a gift or an irrevocable trust;

(*c*) of a capital asset, not being stock-in-trade, by a company to its subsidiary company, if—

(*i*) the parent company or its nominees hold the whole of the share capital of the subsidiary company; and

(*ii*) the subsidiary company is an Indian company;

Section 48 / 72 (1/2)

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

(*i*) expenditure incurred wholly and exclusively in connection with such transfer;

(*ii*) the cost of acquisition of the asset and the cost of any improvement thereto:

Provided that the cost of acquisition of the asset or the cost of improvement thereto shall not include the deductions claimed on the amount of interest under clause (*b*) of section 24 or under the provisions of Chapter VIA.

Explanation 1.—For the removal of doubt, it is hereby clarified that the cost of acquisition of a unit of a business trust shall be reduced and shall be deemed to have always been reduced by any sum received by a unit holder from the business trust with respect to such unit, which is not in the nature of income as referred to in clause (*23FC*) or clause (*23FCA*) of section 10 and which is not chargeable to tax under clause (*xii*) of sub-section (2) of section 56 and under sub-section (2) of section 115UA.

Explanation 2.—For the purposes of *Explanation 1*, it is clarified that where transaction of transfer of a unit is not considered as transfer under section 47 and cost of acquisition of such unit is determined under section 49, sum received with respect to such unit before such transaction as well as after such transaction shall be reduced from the cost of acquisition under the said *Explanation*;

(*iii*) in case of value of any money or capital asset received by a specified person from a specified entity referred to in subsection (4) of section 45, the amount chargeable to income-tax as income of such specified entity under that sub-section which is attributable to the capital asset being transferred by the specified entity, calculated in the prescribed manner:

Provided that in the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company :

Provided further that where long-term capital gain arises from the transfer [74][(which takes place before the 23rd day of July, 2024)] of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first provi so, the provisions of clause (*ii*) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:

Mode of computation of capital gains.

72. (1) Income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset, the following amounts:—

(*a*) expenditure incurred wholly and exclusively in connection with such transfer; and

(*b*) the cost of acquisition of the asset and the cost of any improvement thereto.

(2) For the purposes of item B of the formula in section 197(3), the provisions of sub-section (1) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted.

(3) In computing the income chargeable under the head "Capital gains", the following amounts shall not be allowed as a deduction:—

(*a*) the interest claimed as deduction under section 22(1)(*b*) or under Chapter VIII;

(*b*) any sum paid as securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004).

(4) If a unit holder receives any amount from a business trust with respect to a unit that is not in the nature of income under Schedule V (Table: Sl. No. 3 or 4) and is not chargeable to tax under section 92(2)(*k*) or 223(2), then,—

(*a*) such amount shall be reduced from the cost of acquisition of such unit; and

(*b*) if the transaction of transfer of a unit is not considered as transfer under section 70 and cost of acquisition of such unit is determined under section 73, the amount received with respect to such unit before as well as after such transaction, shall be reduced from the cost of acquisition.

(5) In case of value of any money or capital asset received by a specified person from a specified entity, as referred to in section 67(10), the specified entity, in addition to deductions under sub-section (1), shall also be entitled to a deduction calculated in such manner, as may be prescribed for computing the amount chargeable to income-tax in its hands under that sub-section which is attributable to the transfer of such capital asset.

(6) In the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company (other than equity shares referred to in section 198) shall be computed—

(*a*) by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures; and

(*b*) the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the said manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every re-investment thereafter in, and sale of, shares in, or debentures of, an Indian company.

(7) In the case of an assessee who is a non-resident, any gains arising on account of

Section 48 / 72 (2/2)

Provided further that where long-term capital gain arises from the transfer [74][(which takes place before the 23rd day of July, 2024)] of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first provi so, the provisions of clause (*ii*) shall have effect as if for the words "cost of acquisition" and "cost of any improvement", the words "indexed cost of acquisition" and "indexed cost of any improvement" had respectively been substituted:

Provided also that nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A:

Provided also that nothing contained in the second proviso shall apply to the long-term capital gain arising from the transfer of a long-term capital asset, being a bond or debenture other than—

(*a*) capital indexed bonds issued by the Government; or

(*b*) Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015:

Provided also that in case of an assessee being a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company held by him, shall be ignored for the purposes of computation of full value of consideration under this section:

Provided also that where shares, debentures or warrants referred to in the proviso to clause (*iii*) of section 47 are transferred under a gift or an irrevocable trust, the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for the purposes of this section :

Provided also that no deduction shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.

Explanation.—For the purposes of this section,—

(*i*) "foreign currency" and "Indian currency" shall have the meanings respectively assigned to them in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);

(*ii*) the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at the rate of exchange prescribed in this behalf;

(*iii*) "indexed cost of acquisition" means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on the 1st day of April, 2001, whichever is later;

(*iv*) "indexed cost of any improvement" means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place;

(*v*) "Cost Inflation Index", in relation to a previous year, means such Index as the Central Government may, having regard to seventy-five per cent of average rise in the Consumer Price Index (urban) for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify, in this behalf.

74. Ins. by the Act No. 15 of 2024, w.r.e.f. 23-7-2024.

(4) If a unit holder receives any amount from a business trust with respect to a unit that is not in the nature of income under Schedule V (Table: Sl. No. 3 or 4) and is not chargeable to tax under section 92(2)(*k*) or 223(2), then,—

(*a*) such amount shall be reduced from the cost of acquisition of such unit; and

(*b*) if the transaction of transfer of a unit is not considered as transfer under section 70 and cost of acquisition of such unit is determined under section 73, the amount received with respect to such unit before as well as after such transaction, shall be reduced from the cost of acquisition.

(5) In case of value of any money or capital asset received by a specified person from a specified entity, as referred to in section 67(10), the specified entity, in addition to deductions under sub-section (1), shall also be entitled to a deduction calculated in such manner, as may be prescribed for computing the amount chargeable to income-tax in its hands under that sub-section which is attributable to the transfer of such capital asset.

(6) In the case of an assessee, who is a non-resident, capital gains arising from the transfer of a capital asset being shares in, or debentures of, an Indian company (other than equity shares referred to in section 198) shall be computed—

(*a*) by converting the cost of acquisition, expenditure incurred wholly and exclusively in connection with such transfer and the full value of the consideration received or accruing as a result of the transfer of the capital asset into the same foreign currency as was initially utilised in the purchase of the shares or debentures; and

(*b*) the capital gains so computed in such foreign currency shall be reconverted into Indian currency, so, however, that the said manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every re-investment thereafter in, and sale of, shares in, or debentures of, an Indian company.

(7) In the case of an assessee who is a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company held by the assessee, shall be ignored for computing the full value of consideration under this section.

(8) For the purposes of this section,—

(*a*) "Cost Inflation Index", in relation to a tax year, means such Index as the Central Government may, having regard to 75% of average rise in the Consumer Price Index (urban) for the immediately preceding tax year to such tax year, by notification, specify, in this behalf;

(*b*) "indexed cost of acquisition" means an amount which bears to the cost of acquisition, the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on 1st April, 2001, whichever is later;

(*c*) "indexed cost of any improvement" means an amount which bears to the cost of improvement, the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place; and

(*d*) the conversion of Indian currency into foreign currency and the reconversion of foreign currency into Indian currency shall be at such rate of exchange as may be prescribed in this behalf.

Section 49 / 73

Cost with reference to certain modes of acquisition.

49. (1) 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;

(*ii*) under a gift or will;

(*iii*) (*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

(*e*) under any such transfer as is referred to in clause (*iv*) or clause (*v*) or clause (*vi*) or clause (*via*) or clause (*viaa*) or clause (*viab*) or clause (*vib*) or clause (*vic*) or clause (*vica*) or clause (*vicb*) or clause (*vicc*) or clause (*viiac*) or clause (*viiad*) or clause (*viiae*) or clause (*viiaf*) or clause (*xiii*) or clause (*xiiib*) or clause (*xiv*) of section 47;

(*iv*) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64 at any time after the 31st day of December, 1969,

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

Cost with reference to certain modes of acquisition.

73. (1) In the case of a capital asset specified in column B of the Table below, the cost of acquisition of the asset shall be deemed to be the cost as mentioned in column C of the said Table.

TABLE

Sl. No.	*Description of the capital asset*	*Cost of acquisition*
A	*B*	*C*
1.	If the capital asset became the property of the assessee— (*a*) under a gift or will; or (*b*) by succession, inheritance or devolution; 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 (*e*) being a Hindu undivided family, by the mode referred to in section 99(3) after the 31st December, 1969; or (*f*) under any such transfer as is referred to in section 70(1)(*a*), (*c*), (*d*), (*e*), (*g*), (*h*), (*i*), (*j*), (*l*), (*m*), (*n*), (*o*), (*t*), (*u*), (*v*), (*w*), (*zd*), (*ze*) or (*zf*).	The cost for which the previous owner of the property acquired it, as increased by the cost of any improvement incurred or borne by the previous owner or the assessee.

Section 50C / 78

Special provision for full value of consideration in certain cases.

50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer :

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer:

Provided also that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and ten per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration.

(2) Without prejudice to the provisions of sub-section (1), where—

- (*a*) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;
- (*b*) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (*i*) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

Explanation 1.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(3) Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

Special provision for full value of consideration in certain cases.

78. (1) If the consideration received or accruing from the transfer of a capital asset, being land or building or both, is less than the stamp duty value, then, for the purposes of section 72, the stamp duty value shall be deemed to be the full value of the consideration received or accruing as a result of such transfer, subject to the following:—

- (*a*) the stamp duty value on the date of agreement may be taken as the full value of consideration, if—
  - (*i*) the date of the agreement fixing the consideration and the date of registration for the transfer of the capital asset are not the same; and
  - (*ii*) part or full consideration is received on or before the date of the agreement in "specified banking or online mode" as defined in section 66(*32*);
- (*b*) if the stamp duty value does not exceed 110% of the consideration recei- ved or accruing from such transfer, such consideration shall be deemed to be the full value of the consideration for section 72.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer, and the provisions of section 269(3) to (8), shall, with necessary modifications, apply in relation to such reference, where—

- (*a*) the assessee claims that the stamp duty value exceeds the fair market value of the property as on the date of transfer; and
- (*b*) the stamp duty value has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court.

(3) If the value determined by the Valuation Officer on a reference made under sub-section (2) exceeds the stamp duty value, such stamp duty value shall be taken as the full value of consideration.

Section 56(2)(x) / 92(2)(m)

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ten per cent of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause :

(m) where any person receives in any tax year, from any person or persons—

(i) any sum of money without consideration, the total of which exceeds Rs. 50000, the whole of such sum;

(ii) any immovable property—

(A) without consideration, the stamp duty value of which exceeds Rs. 50000, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property that exceeds such consideration, if this excess amount is more than the higher of the following amounts:—

(I) Rs. 50000; or

(II) 10% of the consideration;

(iii) any property, other than immovable property,—

(A) without consideration, the aggregate fair market value of which exceeds Rs. 50000, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50000, the aggregate fair market value of such property as exceeds such consideration.

Provided that this clause shall not apply to any sum of money or any property received—

(I) from any relative; or

(II) on the occasion of the marriage of the individual; or

(III) under a will or by way of inheritance; or

(IV) in contemplation of death of the payer or donor, as the case may be; or

(V) from any local authority as defined in the *Explanation* to clause (20) of section 10; or

(VI) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(VII) from or by any trust or institution registered under section 12A or section 12AA or section 12AB; or

(VIII) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-

(3) The provisions of sub-section (2)(m) shall not apply to any sum of money or any property received—

(a) from any relative; or

(b) on the occasion of marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer or donor; or

(e) from any local authority as defined in Schedule III (Note 6); or

(f) from or by any registered non-profit organisation as defined in section 355(g), except when received by any person referred to in section 355(h); or

(g) by way of a transaction not regarded as transfer under section 70(1)(a), (c), (d), (e), (f), (g), (i), (j), (k), (l), (n), (o), (t), (u), (v) or (w); or

(h) from an individual by a trust created or established solely for the benefit of relative of the individual; or

(i) from such class of persons and subject to such conditions, as may be prescribed.

Section 159 / Section 302

Legal representatives.

159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(*c*) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub-section (5), be limited to the extent to which the estate is capable of meeting the liability.

I.—Legal representatives

Legal representative.

302. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purposes of making an assessment (including an assessment, reassessment or recomputation under section 279) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative as per the provisions of sub-section (1), —

(*a*) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(*b*) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(*c*) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall be deemed to be an assessee for the purposes of this Act.

(4) Subject to the provisions of sub-sections (5), (6) and (7), the liability of a legal representative referred to in sub-section (1) shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

(5) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while such liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession.

(6) The liability of a legal representative referred to in sub-section (5) shall be limited to the value of the asset so charged, disposed of or parted with.

(7) The provisions of sections 304(2) and (5) and 305 shall, in so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

Section 160 / Section 303

Representative assessee.

160. (1) For the purposes of this Act, "representative assessee" means—

(*i*) in respect of the income of a non-resident specified in sub-section (1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;

(*ii*) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot;

(*iii*) in respect of income which the Court of Wards, the Administrator- General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

(*iv*) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

(*v*) in respect of income which a trustee appointed under an oral trust receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.

Explanation 1.—A trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] shall be deemed, for the purposes of clause (*iv*), to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the Assessing Officer,—

(*i*) where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and

(*ii*) in any other case, within three months from the date of declaration of the trust.

Explanation 2.—For the purposes of clause (*v*), "oral trust" means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] and which is not deemed under *Explanation 1* to be a trust declared by a duly executed instrument in writing.

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

Representative assessee.

303. (1) For the purposes of this Act, "representative assessee" means—

(*a*) in respect of the income of a non-resident specified in section 9, the agent of the non-resident, including a person who is treated as an agent under section 306;

(*b*) in respect of the income of a minor or a person who is mentally ill or of unsound mind, the guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor or a person who is mentally ill or of unsound mind;

(*c*) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

(*d*) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913)] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

(*e*) in respect of income which a trustee appointed under an oral trust receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.

(2) For the purposes of sub-section (1)(*d*), a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913)] shall be deemed to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustee or trustees, setting out the purpose or purposes of the trust, particulars as to the trustee or trustees, the beneficiary or beneficiaries and the trust property, is forwarded to the Assessing Officer,—

(*a*) where the trust has been declared before the 1st June, 1981, within three months from that day; and

(*b*) in any other case, within three months from the date of declaration of the trust.

(3) For the purposes of sub-section (1)(*e*), "oral trust" means a trust which is not declared by a duly executed instrument in writing [(including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913)] and which is not deemed under sub-section (2) to be a trust declared by a duly executed instrument in writing.

(4) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

Section 161 / Section 304

Liability of representative assessee.

161. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(1A) Notwithstanding anything contained in sub-section (1), where any income in respect of which the person mentioned in clause (*iv*) of sub-section (1) of section 160 is liable as representative assessee consists of, or includes, profits and gains of business, tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate :

Provided that the provisions of this sub-section shall not apply where such profits and gains are receivable under a trust declared by any person by will exclusively for the benefit of any relative dependent on him for support and maintenance, and such trust is the only trust so declared by him.

(2) Where any person is, in respect of any income, assessable under this Chapter in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

Liability of representative assessee.

304. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially and for this purpose,—

(*a*) the representative assessee shall be liable to assessment in his own name in respect of that income and any such assessment shall be deemed to be made upon him in his representative capacity only; and

(*b*) the tax on such income shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from the representative assessee in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(2) If any person, in respect of any income is assessable under this Chapter in the capacity of a representative assessee, then he shall not, in respect of that income, be assessed under any other provisions of this Act.

(3) Irrespective of the provisions of this Chapter, the Assessing Officer may directly assess the person on whose behalf or for whose benefit income therein referred to is receivable, or may recover from such person the tax payable in respect of such income.

(4) If only part of the income of a trust is chargeable under this Act, then the proportion of income receivable by a beneficiary from such trust derived from the chargeable part shall be determined as follows:—

$$\frac{A}{B} \times C,$$

Where,—

A = the chargeable part of the income of the trust;

B = the whole income of the trust; and

C = the income receivable by the beneficiary from the trust.

(5) The Assessing Officer shall have the same remedies in the same manner against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, whether the demand is raised against the representative assessee or against the beneficiary direct.

Section 166 / Section 304

D.—Representative assessees - Miscellaneous provisions

Direct assessment or recovery not barred.

166. Nothing in the foregoing sections in this Chapter shall prevent eitherthe direct assessment of the person on whose behalf or for whose benefit income therein referred to is receivable, or the recovery from such person of the tax payable in respect of such income.

Liability of representative assessee.

304. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially and for this purpose,—

(*a*) the representative assessee shall be liable to assessment in his own name in respect of that income and any such assessment shall be deemed to be made upon him in his representative capacity only; and

(*b*) the tax on such income shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from the representative assessee in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(2) If any person, in respect of any income is assessable under this Chapter in the capacity of a representative assessee, then he shall not, in respect of that income, be assessed under any other provisions of this Act.

(3) Irrespective of the provisions of this Chapter, the Assessing Officer may directly assess the person on whose behalf or for whose benefit income therein referred to is receivable, or may recover from such person the tax payable in respect of such income.

(4) If only part of the income of a trust is chargeable under this Act, then the proportion of income receivable by a beneficiary from such trust derived from the chargeable part shall be determined as follows:—

$$\frac{A}{B} \times C,$$

Where,—

A = the chargeable part of the income of the trust;

B = the whole income of the trust; and

C = the income receivable by the beneficiary from the trust.

(5) The Assessing Officer shall have the same remedies in the same manner against all property of any kind vested in or under the control or management of any representative assessee as he would have against the property of any person liable to pay any tax, whether the demand is raised against the representative assessee or against the beneficiary direct.

Section 168 / Section 312

E.—Executors

Executors.

[92] **168.** (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests[93].

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.—In this section, "executor" includes an administrator or other person administering the estate of a deceased person[94].

5. —Executors

Executor.[*Ss. 168 and 169 of the 1961 Act*]

[45] **312.** (1) The income of the estate of a deceased person shall be chargeable to tax in the hands of the executor[46] as an individual, if there is only one executor, or as an association of persons, if the executors are more than one.

(2) For the purposes of this Act, the executor shall be deemed to be resident or non-resident according to the residential status of the deceased person for the tax year in which his death took place.

(3) For the purposes of this section, "executor" includes an administrator or other person administering the estate of a deceased person[46].

(4) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(5) Separate assessments shall be made under this section on the total income of each completed tax year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.[46]

(6) In computing the total income of any tax year under this section, any income of the estate of that tax year distributed to, or applied to the benefit of, any specific legatee of the estate during that tax year shall be excluded; but the income so excluded, shall be included in the total income of the tax year of such specific legatee.

(7) The provisions of section 305[47] shall, so far as may be, apply in the case of an executor in respect of tax paid or payable by him, as they apply in the case of a representative assessee.

Section 168 / Section 312

E.—Executors

Executors.

[92] **168.** (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

(2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests[93].

(4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.

Explanation.—In this section, "executor" includes an administrator or other person administering the estate of a deceased person[94].

5. —Executors

Executor.[*Ss. 168 and 169 of the 1961 Act*]

[45] **312.** (1) The income of the estate of a deceased person shall be chargeable to tax in the hands of the executor[46] as an individual, if there is only one executor, or as an association of persons, if the executors are more than one.

(2) For the purposes of this Act, the executor shall be deemed to be resident or non-resident according to the residential status of the deceased person for the tax year in which his death took place.

(3) For the purposes of this section, "executor" includes an administrator or other person administering the estate of a deceased person[46].

(4) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

(5) Separate assessments shall be made under this section on the total income of each completed tax year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.[46]

(6) In computing the total income of any tax year under this section, any income of the estate of that tax year distributed to, or applied to the benefit of, any specific legatee of the estate during that tax year shall be excluded; but the income so excluded, shall be included in the total income of the tax year of such specific legatee.

(7) The provisions of section 305[47] shall, so far as may be, apply in the case of an executor in respect of tax paid or payable by him, as they apply in the case of a representative assessee.

Section 171 / Section 315 (1/2)

Assessment after partition of a Hindu undivided family.

171. (1) A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment under section 143 or section 144, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Assessing Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the Assessing Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the Assessing Officer under this section, and the partition took place during the previous year,—

(*a*) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and

(*b*) each member or group of members shall, in addition to any tax for which he or it may be separately liable and notwithstanding anything contained in clause (*2*) of section 10, be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the Assessing Officer under this section, and the partition took place after the expiry of the previous year, the total income of the previous year of the joint family shall be assessed as if no partition had taken place; and the provisions of clause (*b*) of sub-section (4) shall, so far as may be, apply to the case.

(6) Notwithstanding anything contained in this section, if the Assessing Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the Assessing Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

Assessment after partition of Hindu undivided family.

315. (1) A Hindu family, hitherto assessed as undivided, shall be deemed for the purposes of this Act to continue to be a Hindu undivided family, except where and in so far as a finding of partition has been given under this section in respect of the Hindu undivided family.

(2) Where, at the time of making an assessment under section 270 or section 271, it is claimed by or on behalf of any member of a Hindu family assessed as undivided that a partition, whether total or partial, has taken place among the members of such family, the Assessing Officer shall make an inquiry thereinto after giving notice of the inquiry to all the members of the family.

(3) On the completion of the inquiry, the Assessing Officer shall record a finding as to whether there has been a total or partial partition of the joint family property, and, if there has been such a partition, the date on which it has taken place.

(4) Where a finding of total or partial partition has been recorded by the Assessing Officer under this section, and the partition took place during the tax year,—

(*a*) the total income of the joint family in respect of the period up to the date of partition shall be assessed as if no partition had taken place; and

(*b*) each member or group of members shall, in addition to any tax for which he or it may be separately liable and irrespective of anything contained against Schedule III (Table: Sl. No. 1), be jointly and severally liable for the tax on the income so assessed.

(5) Where a finding of total or partial partition has been recorded by the Assessing Officer under this section, and the partition took place after the expiry of the tax year, the total income of the tax year of the joint family shall be assessed as if no partition had taken place, and the provisions of sub-section (4)(*b*), shall so far as may be, apply to the case.

(6) Irrespective of anything contained in this section, if the Assessing Officer finds after completion of the assessment of a Hindu undivided family that the family has already effected a partition, whether total or partial, the Assessing Officer shall proceed to recover the tax from every person who was a member of the family before the partition, and every such person shall be jointly and severally liable for the tax on the income so assessed.

Section 171 / Section 315 (1/2)

(7) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial.

(8) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

(9) Notwithstanding anything contained in the foregoing provisions of this section, where a partial partition has taken place after the 31st day of December, 1978, among the members of a Hindu undivided family hitherto assessed as undivided,—

- (*a*) no claim that such partial partition has taken place shall be inquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such partial partition had taken place and any finding recorded under sub-section (3) to that effect whether before or after the 18th day of June, 1980, being the date of introduction of the Finance (No. 2) Bill, 1980, shall be null and void;
- (*b*) such family shall continue to be liable to be assessed under this Act as if no such partial partition had taken place;
- (*c*) each member or group of members of such family immediately before such partial partition and the family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition;
- (*d*) the several liability of any member or group of members aforesaid shall be computed according to the portion of the joint family property allotted to him or it at such partial partition,

and the provisions of this Act shall apply accordingly.

Explanation.—In this section,—

- (*a*) "partition" means—
  - (*i*) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or
  - (*ii*) where the property does not admit of a physical division, then such

(7) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period up to the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period.

(8) Irrespective of anything contained in the foregoing provisions of this section, where a partial partition has taken place after the 31st December, 1978, among the members of a Hindu undivided family hitherto assessed as undivided,—

- (*a*) a claim that such partial partition has taken place shall not be inquired into under sub-section (2) and no finding shall be recorded under sub-section (3) that such partial partition had taken place and any finding recorded under sub-section (3) to that effect at any time, shall be *null* and *void*;
- (*b*) such family shall continue to be liable to be assessed under this Act as if no such partial partition had taken place; and
- (*c*) each member or group of members of such family immediately before such partial partition and the family shall be jointly and severally liable for any tax, penalty, interest, fine or other sum payable under this Act by the family in respect of any period, whether before or after such partial partition.

(9) For the purposes of this section, the several liability of any member or group of members thereunder shall be computed according to the portion of the joint family property allotted to him or it at the partition, whether total or partial and the provisions of this Act shall apply accordingly.

(10) For the purposes of this section,—

- (*a*) "partition" means,—
  - (*i*) where the property admits of a physical division, a physical division of the property, but a physical division of the income without a physical division of the property producing the income shall not be deemed to be a partition; or
  - (*ii*) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;
- (*b*) "partial partition" means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

Appendix A: Statutory map — key sections at a glance

This reference table maps each key provision of the Income-tax Act to its subject matter and the critical rule it embodies, enabling quick lookup during planning and compliance review.

Section	Subject	Key point
S. 2(29) r/w CPC 2(11)	Legal representative	Wider than heir; includes intermeddler; covers all income up to death
S. 45 / 47(iii)	Capital gains / exclusion	Gift, Will or irrevocable trust is not a transfer; no capital gains on devolution
S. 48 (proviso)	Indexation	Cost inflation index runs from the previous owner's year of acquisition (CIT v Manjula J. Shah)
S. 49	Cost of acquisition	Previous owner's cost adopted; FMV as on 1 April 2001 may be taken at assessee's option
S. 50C	Full value of consideration	Stamp duty value treated as consideration; Valuation Officer reference available
S. 159	Liability of legal representative	Assessed on income up to date of death; personal liability capped by the estate assets received
S. 161	Representative assessee	Same duties and liabilities as principal; personal liability capped by amount held in that capacity
S. 164	Indeterminate shares	MMR applies where individual shares are unknown; three exceptions available
S. 166	Direct assessment	Department may assess beneficiary directly instead of trustee (CIT v Kamalini Khatau, SC)
S. 168	Executors	Applies to testate estates only pending distribution (CIT v P. Manonmani, Mad FB)
S. 171	HUF partition	Formal finding of partition required; physical division of assets is necessary

Appendix B: case law compendium

Eleven judicial authorities spanning the Supreme Court, High Courts and Tribunals form the jurisprudential backbone of succession tax analysis. These decisions govern executor liability, beneficiary assessment, coparcenary rights and capital gains indexation.

Case name	Citation	Proposition
CIT v P. Manonmani	245 ITR 48 (Mad) (FB)	Section 168 applies to testate estates only; executor role does not arise in intestacy.
ITO v K. Krishnamachari	(1985) 11 ITD 194 (Hyd)	A court receiver is not an 'executor' for the purposes of Section 168.
ITO v C.P. Venkatesh (minor)	27 ITD 298 (Mad)	Minority income is taxed in the executor's hands until distribution to beneficiaries.
CIT v Kamalini Khatau	(1994) 209 ITR 101 (SC)	Section 166 permits direct assessment of the beneficiary in lieu of the representative assessee.
Kaloomal Tapeswari Prasad (HUF) v CIT	133 ITR 690	Apportionment with cash equalisation; partial partition claim rejected by the court.
Arunachala Mudaliar v Muruganatha	AIR 1953 SC 495	No presumption of joint family property; testator's intention governs characterisation.
C Krishna Prasad v CIT, Bangalore	1975 (1) SCC 160	Sole surviving coparcener holds property as separate property with full disposition powers.
Rohit Chauhan v Surinder Singh	2013 (9) SCC 419	Separate property of a male Hindu becomes coparcenary property on birth of a son.
Uttam v Saubhag Singh	AIR 2016 SC 1169	Tenants-in-common view adopted -- subsequently disapproved by a larger bench.
Vineeta Sharma v Rakesh Sharma	Larger Bench, SC	Coparcenary character is retained even after partition; disapproves Uttam v Saubhag Singh.
CIT v Manjula J. Shah	(2011) 355 ITR 474 (Bom)	Indexation benefit runs from the previous owner's year of acquisition, not the assessee's.