All India Chartered Accountants Society (AICAS)

CFO World and Forum of India’s Chartered Accountant Firms (FICAF)

9th workshop on Direct Taxes

Capital Gain & Buy Back Taxation

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Capital Gain & Buy Back Taxation : Road map

- Capital Asset (Inclusions & Exclusions) Transfer, STCG vs LTCG
- Impact of transfer of capital assets to inventory or vice versa
- Capital gain taxation of collaboration with builder,
- Specified Assets - Section 76 (Erstwhile Section 50AA)
- Computation & Tax Rates
- Special Provisions, Set-off & Carry Forward
- Buyback Taxation - Shareholder Taxation & Promoter Surcharge
- Change in Section 85 (Erstwhile Section 54EC in 1961 Act) – Implication for Depreciable Asset
- Capital Gain Exemptions in Section 82 – 89 (Erstwhile 54 Series)

Capital Gain :

Capital gain :

a) Capital Assets
b) Transfer
c) Profit or Gain arising
d) Deduction as provided in Section 82 – 89 (Erstwhile 54 Series)
e) Taxable in the year of transfer
f) There are Exception to Taxable in the year of transfer

Capital Asset :

2 (22) "capital asset" means—

(a) property of any kind **held by an assessee,** whether or not connected with his business or profession;

(b) any securities held by—

(i) a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992); or

(ii) an investment fund specified in section 224(10)(a) which has invested such securities in accordance with the provisions of the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or under the International Financial Services Centers Authority Act, 2019 (50 of 2019);

(c) any unit linked insurance policy to which exemption under Schedule II (Table: Sl. No. 2) does not apply,

Capital Asset : Inclusion

Definited :

“**property**” **includes any rights in or in relation to an Indian company, including rights of management or control or any other rights**; and

Capital Asset : Exclusions

But does not include—

(i) **any stock-in-trade**, other than the securities referred to in sub-clause (b), consumable stores or raw materials held for business or profession;

(ii) **Personal effects**;

(iii) **Agricultural land in India**, not being a land situated—

(A) in any area comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand; or

(B) in any **area within the distance** as specified in column C of the following **Table, measured aerially** from the **local limits** of any municipality or cantonment board **referred to in item (A) and having population as referred to in column B** of the **said Table**:—

Capital Asset : Exclusions Conti…

Sl. No.	Population of municipality or cantonment board	Within distance, measured aerially, from local limits of any municipality or cantonment board not being more than
A	B	C
1	More than 10000 and upto 1000000	Two Kilometers
2	More than 100000 and upto 1000000	Six kilometers
3	More than 1000000	Eight Kilometers

Capital Asset : Exclusions

(iv) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 as may be notified by the Central Government,

"**population**" shall mean the population according to the last preceding census of which the relevant figures have been published **before the first day of the tax year**;

Capital Asset : Exclusions

(B) "personal effects" means any movable property (including wearing apparel and furniture) held for personal use by the assessee or any family member dependent on him, **but excludes—**

(I) jewellery, which includes—

(a) ornaments made of gold, silver, platinum, or any other precious metal or any alloy of such precious metals, with or without precious or semi-precious stones, and whether or not worked or sewn into any wearing apparel; or

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel; or

(II) archaeological collections; or

(III) drawings; or

(IV) paintings; or

(V) sculptures; or

(VI) any work of art;

Capital Asset ; exemples

- **Booking right or rights in purchase or right to obtain title of improvable property**
- **Tenancy rights**
- **Compensation received from RERA** I

taxable as Capital Gains / Income from Other Sources. ?

TS-572-ITAT-2026(Delhi) Prem Narayan Chourasia v. ACIT A.Y.: 2020-21 Date of Order: 6.4.2026 Compensation received from RERA is taxable as Capital Gains and not Income from Other Sources. Held as booking right is Capital Assets and any gain arising from relinquishment or cancellation of booking right is capital gain or capital loss as the case may be.

Transfer : 2(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**

transfer ……..

(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,

Transfer ……..

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;

Transfer ……..

Hon'ble Bombay High Court in the celebrated case of **Chaturbhuj Dwarkadas Kapadia of Bombay v. CIT [2003] 129 Taxman 497/260 ITR 491.** held that once the assessee has entered into a development agreement and has also parted with the possession, it would amount transfer within the meaning of s. 2(47)(v).

Several decisions have then been rendered following the aforesaid legal position.

Transfer ....

The **amendment introduced under the Registration Act, 1908 and TOPA w.e.f. 24.09.2001**, there have been changes in the **interpretation to s. 2(47)(v).**

The provisions of s. 53A of TOPA were amended w.e.f. 24.09.2001 whereby the requirement of registration of agreement was made mandatory.

While the provisions of s. 53A prior to the said amendment were applicable irrespective of whether the contract between the parties had been registered or not, the said relaxation in registration was done away with pursuant to the said amendment.

:

Transfer …….. S. 53A of TOPA

"53 A. Part performance.- Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some Act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract."

Pursuant to amendment w.e.f. 24.09.2001, the phrase 'contract, though required to be registered, has not been registered' have been omitted.

Transfer ....

Simultaneous with the aforesaid amendment, the provisions of the Registration Act, 1908 were also amended and ss. (1A) was introduced in s. 17 w.e.f. 24.09.2001.

Section (1A) is reproduced below:

"(1A) **The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A."**

The above provisions which were introduced w.e.f. 24.09.2001 by Registration and other related laws (Amendment) Act, 2001 shows that for all the agreement executed on or after 24.09.2001, they shall have no effect for the purpose of s. 53A of TOPA and the said s. 53A shall not be applicable if such agreement is not registered under the Registration Act.

Transfer ……..

Thus, the combined reading of the amendment introduced in s.53A of TOPA and introduction of s. 17(1A) and proviso to s. 49 under the Registration Act clearly mandate that any transaction involving allowing of the possession of the immovable property to be taken or retained in part performance of a contract of the nature referred to in s.53A shall not result in transfer if the agreement is not registered.

Transfer ……..

Hon'ble Supreme Court in the case of CIT v. Balbir Singh Maini [2017] 86 taxmann.com 94/251 Taxman 202/398 ITR 531.

The issue raised was with respect to taxability of capital gain arising from JDA which was not registered by the parties. The Court while analyzing and interpreting, inter alia, the said provisions referred to the amended provisions of s. 53A of TOPA and s. 17(1A) of the Registration Act to hold that if the agreement like JDA is not registered, then it will not have any effect, in law, for the purpose of s. 53A. The Court further observed that in absence of registration of agreement, there is no agreement in the eyes of law which can be enforced u/s. 53A. Since in order to qualify as transfer of a capital asset u/s. 2(47)(v) of the Income-tax Act, there should be contract which can be enforced, in law, u/s. 53A and that according to the Court, no capital gain would arise out of unenforceable contract executed between the parties.

Transfer : 2(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**

Exception to rule : Taxability of Capital Gain in the year of transfer

New section	Old section	Transaction
67(2) & 67(3)	45(1A)	Insurance money received on account of damage to, or destruction of, capital asset (taxable in year of receipt of money)
67(5)	45(1B)	Receipt of any sum by policyholder from ULIP exemption specified in Schedule –II (table. Sl. No2). Any capital gains, arising from such receipt, shall be taxed in the year of receipt.
67(6)	45(2)	Conversion of capital asset into stock-in-trade. The taxability of capital gain is only in the year in which there is ultimate sale of such (converted) stock-in-trade.
67(10)(a) & b	45(4)	Money or capital asset or both received by partner/member from firm/LLP/AOP/BOI in connection with the reconstitution of the firm/LLP/AOP/BOI (taxable in the year of receipt)
67(12)	45(5)	Compensation on compulsory acquisition including enhancement in compensation is taxable only on actual receipt basis

In continuation...

67(14)	**45(5A)**	**Where owner of land transfers it under Joint Development agreement – Taxability** postponed to the year in which completion certificate of project is received **subject to fulfilment of requirements of section 67(14)/ 45(5A).**
68(2)	46(2)	Assets distributed by the liquidator of a company is taxable only when the asset received exceeds cost of acquisition of those shares in the company.
71(2)	47A(3)	Succession of firm or proprietary concern by a company and breach of conditions contained in the proviso to section 70(zd), or section 70(zf) resulting in taxing the exempted capital gain as deemed capital gain of the previous year in which the conditions are breached.
71(3)	47A(4)	Conditions laid down in section 70(ze) are violated, then capital gains earlier exempted shall be taxed in year of violation in the hands of successor LLP or shareholder of the predecessor company, as the case may be.

Transactions not regarded as transfer.[S. 47 of the 1961 Act]

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;

(d) of a capital asset, not being stock-in-trade, by a subsidiary company to the holding company, if—

(i) the whole of the share capital of the subsidiary company is held by the holding company; and

(ii) the holding company is an Indian company;

Transactions not regarded as transfer.[S. 47 of the 1961 Act]

(t) in a relocation, of a capital asset by the original fund to the resulting fund;

(u) by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund;

(x) by way of redemption, of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015 or any subsequent Sovereign Gold Bond Scheme, **<u>if held by an individual from the date of original issue till maturity;</u>**

Transactions not regarded as transfer.[S. 47 of the 1961 Act]

(z) by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company;

(zb) by way of conversion of preference shares of a company into equity shares of that company;

(zc) of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to—

(i) the Government; or

(ii) a University; or

(iii) the National Museum, National Art Gallery or National Archives; or

(iv) such other public museum or institution as may be notified by the Central Government to be of national importance or of renown throughout any State;

Transactions not regarded as transfer.[S. 47 of the 1961 Act]

(zj) of a capital asset by a unit holder, being a unit or units, held by him in the consolidating scheme of a mutual fund, in consideration of the allotment to the unit holder of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund subject to the condition that the consolidation is of two or more schemes—(i) of an equity-oriented funds and (ii) of a fund other than equity-oriented fund;

(zk) of a capital asset by a unit holder, being a unit or units, held by him in the consolidating plan of a mutual fund scheme, in consideration of the allotment to the unit holder of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund;

Short-term Capital assets / gain

(102)"short-term capital gain" means capital gains arising from the transfer of a short-term capital asset;

(101)(a) "short-term capital asset" means a capital asset held by an assessee for not more than twenty-four months immediately preceding the date of its transfer

(b) where the capital asset is a—

(i) security listed in a recognised stock exchange in India; or

(ii) unit of the Unit Trust of India; or

(iii) unit of an equity-oriented fund; or

(iv) zero-coupon bond,

the provisions of sub-clause (a) shall have effect, as if for the words "twenty-four months", the words "twelve months" had been substituted; and

Short-term Capital assets / gain

(c) in determining the period for which capital asset is held by the assessee,—

(A) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation;

(B) there **shall be included the period** for which—

(C) there **shall be reckoned**, the period from…….

(D) for capital assets other than those mentioned in items (A) to (C), the said period shall be determined in such manner, as may be prescribed (Rule 6)

Shall be included the period … hold earlier

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)

Long –term Capital assets / gain

2(67) “**long-term capital asset**” means a capital asset which is not a short-term capital asset;

2 (68) “**long-term capital gain**” means capital gains arising from the transfer of a long-term capital asset;

Buy Back of shares

buy-back" means purchase by a company of its own shares in accordance with the provisions of Companies Act:

1. **115QA : Act 1961 : upto to 1st day of October, 2024.**

   Company : Pay Income-tax @ 20% on the distributed income

   (consideration paid by the company on buy-back of shares as reduced by the amount, which was received by the company for issue of such shares)

   Shareholder : section 10(34A) exempt

2. **During the period 01.10.2024 to 31.03.2026 : Deemed dividend approach**

   Company : No tax : TDS provision applicable section 194 @10%

   Shareholder : dividend : section 2(22)(f) and section 46A : Value of consideration will be nil. Cost of acquisition of share will be capital loss.

   (any payment by company on purchase of own shares from shareholder in accordance with provision of section 68 of the companies Act 2013)

BUYBACK OF SHARES

Income-tax Act, 2025,

Section 69 : Capital gain on purchase of own shares and other specified securities

- Difference between the cost of acquisition and the value of consideration received shall be deemed to be the “Capital gains”
- Shareholder or the holder of other specified securities,
- In the year in which the company purchases the shares or other specified securities.
- in accordance with the provisions of section 68 of the Companies Act, 2013 (18 of 2013) or
- **Promoters will pay an additional tax on buyback**

Promoter additional tax

The shareholder or holder of other specified securities is a promoter, the aggregate income-tax payable on such capital gains shall be—

(a) the income-tax payable on such capital gains in accordance with the provisions of this Act; and

(b) an additional income-tax in respect of capital gains specified in column B of the Table below, computed at the rate specified in column C or column D of the said Table:

Sl. No.	Income	Rate, where the promoter is a domestic company	Rate, where the promoter is other than a domestic company
A	B	C	D
1.	Short-term capital gains referred to in section 196 arising from the transfer of such securities.	2%	10%
2.	Long-term capital gains referred to in section 197 or section 198 arising from the transfer of such securities.	9.5%	17.5%

Nature of Gains	Non-Promoter	Promoter (Domestic Company)	Promoter (Not a Domestic Company)
Short-term capital gain on listed shares	20%	22% [20% + additional 2% as per 69(2)]	30% [20% + additional 10% as per 69(2)]
Short-term capital gain on unlisted shares	Slab rates/applicable rates	Slab rates/applicable rates	Slab rates/applicable rates
Long-term capital gain on listed/unlisted shares	12.5%	22% [12.5% + additional 9.5% as per 69(2)]	30% [12.5% + additional 17.5% as per 69(2)]

Buy Back .... Promoter means

(a) Listed companies :

‘promoter’ as assigned to it in regulation 2(k) of the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 201826 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(b) Other case : —

(i) “promoter” as defined in Section 2(69) of the Companies Act, 2013 (18 of 2013); or

(ii) a person who holds, directly or indirectly, more than 10% of the shareholding in the company;

Company Act section 2(69)

“promoter” means a person—

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity

Promoter…conti…

Under Regulation 2(k) of the SEBI (Buy-Back of Securities) Regulations, 2018, the term 'promoter' is explicitly defined as having the same meaning assigned to it in Regulation 2(1)(s) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (commonly referred to as the SAST Regulations).

Under the Takeover Regulations, a 'promoter' includes:

a) **Founders and Controllers**: Any person who has been or is identified as a promoter in the shareholding pattern or offer document filed with the Board (or stock exchanges).

b) **Persons in Control:** Any person who directly or indirectly exercises control over the affairs of the target company, whether as a shareholder, director, or otherwise.

c) **Persons Acting in Concert (PACs)**: Persons with whose advice, direction, or cooperation the promoter acts to acquire shares or voting rights in the target company.

Buy Back .... specified securities means :

meaning as assigned to it in Explanation 1 to section 68 of the Companies Act, 2013 (18 of 2013).

Explanation I.--For the purposes of this section and section 70, **"specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.**

Buy Back

No credit or deduction for such amount was to be allowed either to the shareholder or the company

Tax treatment when shares are sold on the exchange

- The buyback of shares results in capital gains,
- the tax liability shall remain the same, notwithstanding that the shares are sold in the buyback or in the open market.
- For promoters,
  - ✓ the tax liability will be lower if the shares are sold in the open market rather than tendered in the buyback.
  - ✓ Where shares are sold on the exchange, STCG and LTCG are taxed at 20% and 12.5%, respectively, rather than at 22% (promoter co.) or 30% (other promoters).

Buy Back

Key conditions for buy-back

Some of the critical statutory conditions are:

- Buy-back must be authorised by the Articles of Association
- It requires shareholder approval through a special resolution

  Exception: Where buy-back ≤ 10% of paid-up equity capital and free reserves, /Board approval suffices
- The quantum of buy-back is capped at: 25% of paid-up capital + free reserves
- For equity shares, the 25% limit is linked to paid-up equity capital for that financial year
- Post buy-back, the debt-equity ratio must not exceed 2:1,
- unless relaxed by the Central Government Only fully paid-up shares/securities can be bought back Listed companies must comply with SEBI Buy-back Regulations
- Cooling-off period: No fresh buy-back within 1 year from closure of previous offer
- Time limit The buy-back must be completed within 1 year from:
  - ❑ special resolution, or
  - ❑ board resolution (in case of 10% route)

Impact of transfer of capital assets to inventory

Capital assets transfer to inventory : Section 67 (earlier section 45(2)

(6) Irrespective of anything contained in sub-section (1), if the profits or gains arising from the transfer by way of conversion of a capital asset into, or its treatment by the owner as, stock-in-trade of a business carried on by him, then,—

(a) such profits and gains shall be chargeable to income-tax as his income in the tax year in **which such stock-in-trade is sold or otherwise transferred by him**; and

(b) for the purposes of section 72, the fair market value 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 such capital asset.

Impact of transfer of capital assets to inventory or vice versa

Capital gain : to compute in the year of transfer of capital assets into stock.

taxability : deferment of tax : tax when the said stock sold.

Full value of Consideration : Fair value of capital assets as on date of transfer into stock

Fair value of capital assets :

Cost / period of holding : Normal provisions as applicable

Reinvestment / rollover provision :

The period of investment counting from the date of sale of stock / from the date of transfer of capital into stock ?? the time limits for making investments to claim exemptions would commence from the date of sale of the stock-in-trade and not from the date of conversion. The chargeability of the income is the determinative factor for triggering the timeline for availing rollover benefits.

Business profit = value on which stock sold minus fair value considered for capital gain

Impact of transfer of capital assets to inventory : fair market value

Interplay between

78 (50C) vs 67(45) : (land , building and both): stamp duty value

Section 78 overrides the term "full value of the consideration" used in Section 72. It prevents the understatement of consideration in real estate transactions by substituting the actual consideration with a statutory value

79(50CA) vs 67(45) : shares other than quoted shares : Rule 56, 57 58

Section 79 extends the anti-abuse framework applicable to capital gains taxation by deeming the FMV of unquoted shares to be the full value of consideration where the transfer consideration is lower than such FMV.

The provision seeks to curb the practice of transferring shares at artificially depressed values and ensures that capital gains are computed with reference to the intrinsic value of the asset transferred.

Interplay

74 (50) vs 67 : depreciable assets

Section 74 completely overrides Section 72 for depreciable assets. The concepts of individual asset cost, period of holding, and indexation are irrelevant. The gain is always deemed to be a short-term capital gain, regardless of how long the asset was held.

Impact of transfer of inventory into capital assets

Income under head “Profits and gains of business or profession”.[S. 28 of the 1961 Act]

26 (1) The incomes referred to in sub-section (2) shall be chargeable to income-tax under the head “Profits and gains of business or profession”

……

(j) the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the manner, as may be prescribed; and

fair market value : rule 57

Sl. No.	Section	Nature of property	Manner of determination of fair market value
A	B	C	D
1	Sections 26(2)(j) and 92	Jewellery	(a) The price which such jewellery would fetch, if sold in the open market on the valuation date; or (b) If the jewellery is received by way of purchase from a registered dealer, the invoice value of such jewellery; or (c) If the jewellery is received by any other mode and its value exceeds ₹50,000, the assessee may obtain a report from a registered valuer regarding the price it would fetch, if sold in the open market on the valuation date.
2	Sections 26(2)(j) and 92	Archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred as artistic work)	(a) The price which such artistic work would fetch, if sold in the open market on the valuation date; or (b) If the artistic work is received by way of purchase from a registered dealer, the invoice value of such artistic work; or (c) If the artistic work is received through any other means and its value exceeds ₹50,000, the assessee may obtain a report from a registered valuer regarding the price it would fetch, if sold in the open market on the valuation date.

fair market value : rule 57

Sl. No.	Section	Nature of property	Manner of determination of fair market value
A	B	C	D
3	Sections 26(2)(j) and 92	Quoted shares and securities	a) If the quoted shares and securities are received by way of any transaction carried out through any recognised stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange; b) If such quoted shares and securities are received by way of transaction other than through any recognised stock exchange, their fair market value shall be: (A) The lowest price of such shares and securities quoted on any recognised stock exchange on the valuation date; and (B) In cases where on the valuation date there is no trading in shares and securities on any recognised stock exchange, the lowest price of such shares and securities on any recognised stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange.

Sl. No.	Section	Nature of property	Manner of determination of fair market value
A	B	C	D
4	Sections 26(2)(j), 72 and 92	Unquoted equity shares	**Fair Market Value of Unquoted Equity Shares** = (A + B + C + D – L) × (PV)/(PE) Where: **A** = Book value of all assets as appearing in the books of the company (other than jewellery, artistic work, shares, securities and immovable property) in the balance sheet as reduced by: (a) Any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and (b) Any amount shown as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset. **B** = The price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer. **C** = Fair market value of shares and securities as determined in the manner provided in this rule. **D** = The value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property.

Sl. No.	Section	Nature of property	Manner of determination of fair market value
A	B	C	D
			L = Book value of liabilities shown in the balance sheet, but not including: I. The paid-up capital in respect of equity shares; II. The amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company; III. Reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation; IV. Any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto; V. Any amount representing provisions made for meeting liabilities, other than ascertained liabilities; and VI. Any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares. **PV** = Paid-up value of such equity shares. **PE** = Total amount of paid-up equity share capital as shown in the balance sheet.

Sl. No.	Section	Nature of property	Manner of determination of fair market value
A	B	C	D
5	Sections 26(2)(j), 72 and 92	Unquoted shares and securities (other than equity shares in a company) which are not listed in any recognised stock exchange	The price it would fetch, if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.
6	Section 26(2)(j)	Immovable property being land or building or both	The value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of such immovable property on the valuation date.
7	Section 26(2)(j)	Any other property other than referred to at Sl. Nos. 1 to 6 above	The price that such property would ordinarily fetch on sale in the open market on the valuation date.

Capital gain taxation of collaboration with builder

Owner :

a) Year of transfer of land to builder

b) Year of taxability capital gain on transfer of undivided land to builder

c) Period of holding of land year of transfer or year of taxability

d) Full value of consideration to compute capital gain (builder up area plus amount)

e) Section 78 (50C)

f) Rollover deduction / exemptions

Builder :

a) Taxable under the head business and profession.

b) Income % of completion method / completion method

c) Applicability of section 53 (43CA)

Capital gain taxation of collaboration with builder

67 (14) Irrespective of anything contained in sub-section (1), if the capital gains arises to a person (being an individual or a Hindu undivided family), from the transfer of a capital asset, being land or building or both, under a specified agreement, then,—

(a) such capital gains shall be chargeable to income-tax for the tax year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and

(b) for the purposes of section 72, the stamp duty value, on the date of issue of the said certificate, of the share of such person, being land or building or both, in the project, as increased by any consideration received in cash or by a cheque or draft or by any other mode shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Capital gain taxation of collaboration with builder

(15) In sub-section (14),—

(a) "competent authority" means the authority empowered to approve the building plan under any law;

(b) "specified agreement" means a registered agreement in which a person owning land or building, or both, agrees to allow another person to develop a real estate project on such land or building, or both, in consideration of a share, being land or building or both, in such project, whether with or without payment of part of the consideration in cash.

Capital gain taxation of collaboration with builder

(16) The provisions of sub-section (14) shall not apply, if the person transfers his share in the project on or before the date of issue of the certificate of completion, and then,—

(a) the capital gains shall be deemed to be the income of the tax year of such transfer; and

(b) the provisions of this Act, other than sub-section (14), shall apply for the purpose of determination of full value of consideration.

Capital gain taxation of collaboration with builder : case study

The Mr. D and his wife Mrs. M are the joint owners (holding 50% Share each) of the residential property / plot situated at Sushant Lok, Phase-1, Gurugram. The Mr. D and Mrs. M had entered “Collaboration Agreement” dated 25-09-2020 (registered with Sub-Registrar, Gurugram) with the builder / developer (M/s. G H Private Limited) for construction of new residential building. Pursuant to and in accordance with the terms and conditions of the said Collaboration Agreement, it was mutually agreed that: -

i. To be received by the Collaborator / Builder:

The First Floor, Second Floor and the car parking space on the slit / ground floor along with 50% undivided share rights of land underneath (as released by the Mr. D and Mrs. M).

ii. To be received / retained by the Mr D and Mrs. M (50% Share each)

The Third Floor and Fourth Floor with terrace rights and car parking space on slit / ground floor. The Mr D and Mrs. M would release a 50% undivided share in the land to the developer / builder while retaining the remaining 50% undivided share in the land.

Capital gain taxation of collaboration with builder : case study

Question :

- Year of transfer
- Capital gain computation
- sales consideration
- cost of acquisition
- 54 F

Specified Assets - Section 76 (Erstwhile Section 50AA)

Special provision for computation of capital gains **in case of Market Linked Debenture.**

76. (1) Irrespective of anything contained in section 2(101) or section 72, the gains on the transfer or redemption or maturity, of a capital asset as mentioned in sub-section (2) shall be treated **as short-term capital gains** and shall be computed as per sub-section (3).

(2) For the purposes of sub-section (1), the capital asset shall be—

(a) a unit of a Specified Mutual Fund acquired on or after the 1st April, 2023 or a Market Linked Debenture; or

(b) an unlisted bond or an unlisted debenture which is transferred or redeemed or matures on or after the 23rd July, 2024.

(a) “Market Linked Debenture” means a security, by whatever name called, which has an underlying principal component in the form of a debt security and where the returns are linked to market returns on other underlying securities or indices, and include any security classified or regulated as a market linked debenture by the Securities and Exchange Board of India;

(b) "Specified Mutual Fund" means a Mutual Fund, by whatever name called, which invests more than 65% of its total proceeds in debt and money market instruments or a fund which invests 65% or more of its total proceeds in units of such Mutual Fund, subject to the following:—

(i) the percentage of investment in debt and money market instruments or in units of a fund shall be computed with reference to the annual average of the daily closing figures;

(ii) "debt and money market instruments" shall include any securities, by whatever name called, classified or regulated as debt and money market instruments by the Securities and Exchange Board of India.

Computation of capital gain

(3) For the purposes of sub-section (1), the short-term capital gains shall be computed as per the following formula: — $X = A – B – C$

where,—

X = short-term capital gains;

A = full value of consideration received or accruing as a result of the transfer or redemption or maturity of the debenture or unit or bond;

B = the cost of acquisition of the debenture or unit or bond; and

C = the expenditure incurred wholly and exclusively in connection with such transfer or redemption or maturity.

(4) In computing capital gains under sub-section (3), no deduction shall be allowed for any sum paid as securities transaction tax as per Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004).

Computation & Tax Rates

72. (1) Income chargeable under the head "Capital gains" shall be computed,

full value of the consideration received or accruing as a result of the transfer of the capital asset,

Less : (Deduction)

(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.

Not 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).

Indexing : (grandfather provision)

(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.

Capital gain tax : New regime 12.5% and old regime 20% with indexing

Section 197(3) : Tax on long-term capital gains.

(3) In the case of an individual or a Hindu undivided family, being a resident, in the case of transfer of a long-term capital asset, being land or building, or both, which was acquired before the 23rd July, 2024, the excess income-tax computed as per the following formula shall be ignored:—

E = A – B

where—

E = excess income-tax to be ignored;

A = income-tax computed under sub-section (1)(b);

B = income-tax computed under sub-section (1)(b) taking the rate as 20% and the capital gains is computed by taking the cost of acquisition as "indexed cost of acquisition" and the cost of improvement as "indexed cost of improvement".

(grandfather provision)

- Individual and Hindu undivided family,
- a resident,
- transfer of a long-term capital asset, being land or building, or both,
- Acquired before the 23rd July, 2024,
- Option (new regime 12.5% without indexing and old regime 20% with indexing)

(grandfather provision)

90 (7) For the purposes of sections 72 and 73, "cost of acquisition", subject to sub-section (9)(a) and (b), in relation to 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 198, acquired before the 1st February, 2018, shall be **higher of**—

(a) the **cost of acquisition of such asset**; and

(b) **lower of—**

(i) the **fair market value of such asset**; and

(ii) the **full value of consideration received or accruing as a result of the transfer of the capital asset**.

In case of Partner of a firm/ member of AOP/BOI

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.

- For the purposes of section 72(5), the amount chargeable to income-tax as income of specified entity under section 67(10), shall be attributed to capital asset remaining with the specified entity in the manner provided in **rule no 50**
- **Form No. 27** shall be furnished on or before the due date referred to in section 263(1)(c) for the tax year in which the amount is chargeable to tax under section 67(10)

IN case of Non-resident :

(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(112A)) 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.

tax rate on capital gain

Particulars	Section	rate of tax	
Long term capital gain STT not applicable	197 (112)	12.5 % + SC+HEC Subject to threshold limit in case of Ind and HUF and Grand Father provision	total income of an assessee includes any income arising from the transfer of a long-term capital asset which is chargeable under the head “Capital gains”,
Long term capital gain STT applicable	198 (112A)	12.5 % + SC+HEC on > Rs 1.25 lakh Subject to threshold limit in case of Ind and HUF	▪ the capital gains arise 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; ▪ SST has— (i) equity share in a company paid on acquisition and transfer of such capital asset; or (ii) unit of an equity oriented fund or a unit of a business trust, been paid on transfer of such capital asset.

Note : the deduction under Chapter VIII shall be allowed from the gross total income as reduced by such capital gains.

The rebate under section 156 shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains. Only in section 112A

tax rate on capital gain

Particulars	Section	rate of tax	
Short term capital gain STT not applicable	no section	Normal rate of tax (slab rates)	
Short term capital gain STT applicable	196 (111A)	20 % + SC+HEC	Income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset— (a) being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust; and (b) the transaction of sale of such equity share or unit is chargeable to STT

Note : In the case of an individual or a Hindu undivided family, being a resident, where the total income, as reduced by short-term capital gains computed under sub-section (1), is below the maximum amount which is not chargeable to income-tax, then,—
(a) such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax; and
(b) the tax on the balance of such short-term capital gains shall be computed at the rate as applicable in sub-section (1)(i).

Special Provisions : Set-off & Carry Forward : inter-head

Set off of losses under same head of income.[S. 70 of the 1961 Act]

108. (1) Unless provided otherwise in this Act, for any tax year, if net result of computation from any source under any head of income (other than "Capital gains") is a loss, then assessee shall be entitled to set off such loss against his income from any other source under the same head for that tax year.

(2) Where the net result of computation of income made for any tax year under sections 72 to 90 in respect of—

(a) any short-term capital asset is a loss, such loss shall be set off against the income, computed in respect of any other capital asset for that year;

(b) any long-term capital asset is a loss, such loss shall be set off against the income computed in respect of any other long-term capital asset for that year.

Special Provisions : Set-off & Carry Forward –other heads

Set off of losses under any other head of income.[S. 71 of the 1961 Act]

109. (1) Subject to the provisions of this Chapter, for any tax year, if income computed under any head of income (other than "Capital gains") is a loss, such loss shall be set off against income of the assessee under any other head, including "Capital gains", if any, assessable for that tax year, subject to the following conditions:—

(a) loss under the head "Profits and gains of business or profession" shall not be set off against income assessable under the head "Salaries"; and

(b) loss under the head "Income from house property" shall be set off to the extent of ₹200000 against income under any other head.

(2) For any tax year, the loss under the head "Capital gains" shall not be set off against income under any other head.

Special Provisions : Set-off & Carry Forward : capital gain

Carry forward and set off of loss from Capital gains.[S. 74 of the 1961 Act]

111. (1)(a) Where for any tax year, loss computed under the head "Capital gains" cannot be wholly set off against the income under the head "Capital gains" as per section 108, so much of the loss not so set off or the whole loss, as the case may be, shall be carried forward to the following tax year and shall be set off in the following manner—

(i) if such loss relates to a short-term capital asset, it shall be set off only against the income under the head "Capital gains", if any, assessable for that tax year in respect of **any other capital asset**;

(ii) if such loss relates to a long-term capital asset, it shall be set off only against the income under the head "Capital gains", if any, assessable for that tax year in respect of any **other long-term capital asset**; and

Carry Forward : capital gain

(b) if the loss cannot be wholly so set off under clause (a), the amount of loss not so set off shall be carried forward to the following tax year and so on.

(2) No loss shall be carried forward under this section for **more than eight tax years immediately succeeding the tax year for which the loss was first computed**.

Section 85 : Capital gains not to be charged on investment in certain bonds.[S. 54EC of the 1961 Act]

- **long-term capital gains** arising from the transfer of land or building, or both, (original asset)
- Six months after the date of such transfer
- invested whole or part of the capital gains in a long-term specified asset (new Assets) ,
- Capital gains :

  Capital gains > investment in the new asset then capital gain taxable = capital gains -investment

  Capital gains <= investment in the new asset then no capital gain charged under section 67.
- Shall not exceed fifty lakh rupees,— (a) During any tax year; or (b) In the year of transfer of the original asset or assets and in the subsequent tax year.
- If New asset is transferred or converted (otherwise than by transfer) into money within five years of its acquisition : shall be deemed LTGC in the tax year of its transfer or conversion.
- Any loan or advance taken on the security of the new asset: shall be deemed to have converted on the date of such loan or advance.
- "long-term specified asset" : bond, redeemable after five years and issued by NHAI / RECL.

Section 85 : Capital gains not to be charged on investment in certain bonds.[S. 54EC of the 1961 Act]

- **long-term capital gains** arising from the transfer of land or building, or both, (original asset)
- Capital gain **from long-term capital Assets** being land or building, or both, (original asset)
- **Deprecated assets : deemed short term capital gain but may be from long term capital assets**
- **Assessee is entitled to exemption under section 54E in respect of capital gains arising on transfer of a capital asset on which depreciation has been allowed [2016] 74 taxmann.com 15 (SC) Commissioner of Income-tax, Panji v. V.S. Dempo Company Ltd.**
- **The Ratio of V.S. Dempo Cannot Survive in new Act 2025 Section 85**

74 : Special provision for computation of capital gains in case of depreciable assets.[S. 50 of the 1961 Act]

74. (1) Irrespective of anything contained in section 2(101), for a capital asset forming part of a block of assets on which depreciation has been allowed under the Indian Income-tax Act, 1922 (11 of 1922) or under the Income-tax Act, 1961 (43 of 1961) or under this Act, the provisions of sections 72 and 73 shall be subject to the provisions of sub-sections (2) and (3).

(2) If, during the tax year, the **full value of consideration received or accruing for the transfer of one or more assets in a block of assets exceeds the total of the following**:—

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

(b) the written down value of the block of assets at the start of the tax year; and

(c) the actual cost of any asset falling within the block of assets acquired during the tax year, such excess shall be deemed to be capital gains arising from the **transfer of short-term capital assets.**

74 : Special provision for computation of capital gains in case of depreciable assets.[S. 50 of the 1961 Act]

(3) If any block of **assets ceases to exist** for the reason that all the assets in that block are transferred during the tax year, then,—

(a) the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the tax year, as increased by the actual cost of any asset falling within that block of assets, acquired by the assessee during the tax year; and

(b) the income received or accruing as a result of such transfer or transfers shall be deemed to be capital gains arising from the **transfer of short term capital assets.**

Capital Gain Exemptions in Section 82 – 89 (Erstwhile 54 Series)

Sl	Particulars	Section 82 (54)	Section 86 (54F)
1	Eligible assessee	Individual or a HUF	Individual or a HUF
2	Nature of asset transferred	LTCA being a residential house	Any LTCA other than a residential house
3	Condition for claiming deduction	Re-investment in residential house property either by:— ▪ purchase within 1 year before the date of transfer, or ▪ purchase within 2 years after the date of transfer, or ▪ construct it within 3 years after the date of transfer	Re-investment in residential house property either by:— ▪ purchase within 1 year before the date of transfer, or ▪ purchase within 2 years after the date of transfer, or ▪ construct it within 3 years after the date of transfer
4	Amount of Deduction	If capital gain < amount invested = full amount If capital gain > amount invested = difference is taxable	If cost of new house > net consideration = full amount If cost of new house < net consideration = Capital gain × Cost of new house net consideration

In continuation....

5	Lock-in-period for transfer of new property	3 years from the date of its acquisition or construction	3 years from the date of its acquisition or construction
6	Consequences of transfer before 3 years	Capital gain exempted earlier would be reduced from the cost of new asset while computing the capital gain in respect of transfer of new asset.	Capital gain exempted earlier shall be deemed to be the income of the P.Y. in which the new asset is transferred
7	Other requirements	___	▪ Assessee owns not more than one residential house other than the new asset on the date of transfer ▪ Shall not purchase/construct any residential house, other than the new residential house, within 2 years after the date of transfer of the original asset, otherwise the capital gain exempted earlier will be taxable in the year of purchase or construction as LTCG.

in Contin…

- **Capital gain account and compliance . Deposit , withdraw and utilization**
- **If the cost of new asset exceeds ten crore rupees, the amount exceeding ten crore rupees shall not be taken into account**
- **If the capital gains not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India and Assessee not be entitled to exercise such option for the same tax year or any other tax year.**

a) Mr. A sold plot at DLF Sunrise Gurgaon on 06.06.2024 In AY 25-26

Sale consideration : Rs.12,00,00,000

Less brokerage and expenses : Rs. 12,65,291/-

Cost of acquisition: Rs.9,07,055/-

Index cost: Rs. 32,92,609/-

Long term capital gain: Rs. 11,54,42,100/-

Deduction under section 54F

(Purchase of flat in Vasant Vihar

on 18.11.2023) : Rs. 10,00,00,000/-

Assessee claimed benefit/ deduction u/s 54F

case study :

B) Mr. A. purchased Basement and Ground Floor, G.K.-2 on 24.09.2025

c) Mr. A sold Vasant Vihar on 03.07.2026.

Purchase of flat in Vasant Vihar on 18.11.2023

Sold plot at DLF Sunrise Gurgaon on 06.06.2024

Capital gain : in FY 25-26 purchase of GK property and nature of income whether rollover benefit available u/s 54

Capital gain in FY 26-27 on sale Vasant Vihar flat and whether rollover benefit available u/s 54

Conditions to be satisfied for claiming exemption from Capital Gains under section 83 of the Act–

Sl.	Particulars
1	The exemption is available to an **Individual or an HUF**.
2	The land which is being sold must have been used for agricultural purposes by the individual or his parents or by the HUF for a period of **two years** immediately before the date of transfer.
3	Another land to be used for **agricultural purposes** (whether Rural or Urban) should be purchased within a period of **two years** from the date of transfer of this land.
4	The new agricultural land which is purchased to claim capital gain exemption should not be sold within a period of **three years** from the date of its purchase
5	In case the assessee is not able to purchase such agricultural land before the due date of furnishing of Income Tax Return under section 139 of the Act, the amount of such capital gains must be deposited before the due date of filing of return in any bank or institution specified according to the Capital Gains Account Scheme, 1988. The exemption can be claimed for the amount which is deposited.
6	If the amount which was deposited as per Capital Gains Account Scheme is not utilised for the purchase of agricultural land, then it shall be treated as the capital gain of the year in which the period of **two years** from the date of transfer of land expires.
7	Amount of exemption from Capital Gains– If the cost of new Agricultural Land is equal or greater than capital gains, then the entire capital gains would be exempt. However, if the cost of new Agricultural Land is less than capital gains, then capital gains only to the extent of the cost of new agricultural land would be exempt and the balance would be chargeable to tax.

Basic Difference between Section 83 and Sections 82 and 86 of the Act

One basic difference between provisions of section 83 of the Act on one hand and sections 82 and 86 of the Act on the other, is that in the case of sections 82 and 86 of the Act, exemption in rerolling is available only on transfer of a long-term capital asset while there is no such restriction in the case of transfer of an urban agricultural land in the sense that rerolling benefit is available even in the case of transfer of a **short-term capital asset** in the form of an urban agricultural land.

In continuation…

The following points are also worth noticing:

- An important point to be noted is that there is no requirement that the old land should have been a long-term capital asset in order to claim exemption under section 83 of the Act.
- In fact, it is not even necessary that the assessee should have owned the land for two years.
- The section only requires that the assessee or his parent should have used the land for agricultural purposes in the two years immediately preceding the date of its transfer.
- Even if the assessee was a tenant on the land and he purchased the land only a month before the date of its transfer by him, he can still claim the exemption under section 83 of the Act if he fulfils all the other requirements of the section
- There is nothing in the section to suggest that the agricultural land transferred should be in India nor does the section suggest that the new agricultural land acquired should be in India.
- The sale of rural agricultural land can be used to purchase urban agricultural land thus allowing for the capital gains exemption under section 83 of the Act.

Section 84 : Capital gains on compulsory acquisition of lands and buildings not to be charged in certain cases.[S. 54D of the 1961 Act]

- Capital gains from the transfer as compulsory acquisition under any law

  (land or building or any right in land or building, forming part of an industrial undertaking)
- That capital assets used for the business of the said undertaking in the **two years immediately preceding the date of transfer (original asset);**

- **Reinvested rollover :**
- In three years, Assessee purchased any other land or building or any right in any other land or building or constructed any other building for shifting or re-establishing the said undertaking or setting up another industrial undertaking (new asset),

- ***Computation***
- When Capital gains > cost of new asset = Excess amount
- When capital gains <= cost of new assets = Nil

In continuation…

- If new asset transfer within three years of its purchase or construction in that case cost of that new asset reduced by the deducted amount of capital gains.
- **<u>Capital gain account</u>**

  Not utilised before due date of filing the return of income under section 263, then unutilised amount shall be deposited in a specified bank or institution and utilised as per the scheme notified by the Central Government;

  the proof of deposit shall be submitted along with such return.
- **<u>Cost of new Assets</u>** :

  the amount already utilised for purchasing or constructing the new asset and amount deposited in capital gain account shall be deemed to be the cost of the new asset.
- **<u>Non utilisation of amount in capital gain account</u>** :

  If capital gain amount not fully utilised for the purchase or construction of the new asset within the period three years then the unutilised amount shall be capital gain income of the tax year where that three years expires and the assessee shall be entitled to withdraw such unutilised amount in accordance with the scheme.

Filing of return to claim rollover benefit

Section 263 provides that a person claiming benefit of exemption from capital gains tax under sections 82, 83, 84, 85, 86,87 and 88 of the Act will be required to file return of income even if his total income (before Chapter xvii or provision of VIII and these deduction) is not more than the threshold exemption limit.

Questions ??

Thanks

CA Baldev Raj