CHAPTER 1: CAPITAL GAINS

1 PART I: DEFINITION OF CAPITAL GAINS

1.1 Meaning of capital gains:

Sec 45(1): Any profits from transfer of capital assets shall be taxable under the head capital gains in the previous year in which the transfer took place.

1.2 Meaning of capital assets:

Sec 2(14): Capital assets mean:

- Property of any kind held by the assesse whether for business purpose or not.
- Securities held by Foreign Institutional Investor (FII).
- Any ULIP which is not covered u/s 10(10D).
- However, the following assets are not considered as capital assets:
  1. Personal Movable assets.
  2. Stock in trade.
  3. Rural Agricultural Land.
  4. Gold Bonds.
- Further, the following personal movable assets are considered as capital assets: Drawings, Paintings, Sculptures, Archaeological Collections, Art of work and jewellery.

1.3 Meaning of transfer:

Sec 2(47): Transfer mean:

- Sale, exchange or relinquishment of assets.
- Extinguishments of rights on the assets.
- Compulsory acquisition of assets.
- Conversion of capital asset into stock-in-trade.
- Maturity or redemption of zero-coupon bonds.
- Transfer of possession of immovable property.

A. Important case laws:

- CIT v/s Benarshilal Katarika – No CG on transfer of silver utensils used for daily purpose.
- HH Maharaja Rana Hemant Singh - CG on sale of gold utensils, bars & sovereigns.
- Anarkali Sarabhai - Redemption of preference shares are taxable as CG.
- Orient trading co ltd - Exchange of shares is CG or PGBP.
- CR Subramanian v/s CIT - Land & Building are to be treated separately for computing CG.
- G Barshimhan - Reduction of share capital is transfer (In excess of Sec 2(22)(D)).

B. Long-term capital gains and Short-term capital gains:

Sec 2(42A): The capital gains is classified as long-term capital gain or short-term capital gain based on the period of holding which is as follows:

- Listed equity shares in India or equity oriented mutual funds or UTI or zero-coupon bond– It is long-term capital asset if hold for more than 12 months, otherwise it is short-term capital asset.

- Unlisted equity shares in India– It is long-term capital asset if hold for more than 36 months, otherwise it is short-term capital asset.
- Other capital assets - It is long-term capital asset if hold for more than 24 months, otherwise it is short-term capital asset.

2 PART II: SPECIAL CASES OF CAPITAL GAINS

2.1 Insurance claims.

Sec 45(1A): Notwithstanding anything contained in Sec 45(1), any consideration or FMV of assets received by assesse from insurance company as result of an insurance claim on destruction of the capital asset shall be taxable as capital gains. The capital gains are taxable in the year in which the insurance claim is received.

2.2 Capital gains on ULP's.

Sec 45(1B): Notwithstanding anything contained in Sec 45(1), where the maturity of the ULIP's is not exempted u/s 10(10D), then it is taxable as long-term capital gains u/s 112A as per the below formula:

- Capital gains = The total consideration received including bonus minus the aggregate of premiums paid during the term of the ULIP's.

2.3 Conversion of Capital Asset into stock-in-trade.

Sec 45(2): Notwithstanding anything contained in Sec 45(1), any conversion of capital asset into stock-in-trade shall be taxable under capital gains in the year in which the stock is sold or further transferred.
The FMV on date of conversion shall be the deemed sale consideration and the cost of acquisition shall be determined in the manner as provided u/s 55(2) which states that:

- If stock is acquired on or before 01-04-2001, then COA shall be higher of FMV as on 1st April 2001 or cost .
- If the stock is acquired after 01-04-2001, then the cost of acquisition shall be the actual cost.
- Further, the Period of holding will be from the date of purchase of stock till the year of conversion.

2.4 Transfer of assets by partner or member of a Firm / LLP / AOP / BOI to Firm / LLP / AOP / BOI.

Sec 45(3): Notwithstanding anything contained in Sec 45(1), transfer of any capital assets by the partner or member in form of capital contribution shall be taxable as capital gains in the hands of the partner or member in the previous year in which such transfer took place.
The Book value of the asset recorded in the Firm / LLP / BOI / AOP shall be the deemed consideration.

2.5 Transfer of assets by Firm / LLP / AOP / BOI to partner or member of Firm / LLP / AOP / BOI.

Sec 45(4): Notwithstanding anything contained in Sec 45(1), transfer of any capital assets by the entity to the retiring partner at the time of the re-constitution shall be taxable as capital gains in the hands of the entity in the previous year in which the transfer took place.
The capital gain taxable will be the consideration (+) FMV of assets transferred (-) Balance as outstanding in the partner's capital or current account. However, that any balance standing in the partner's account on account of revaluation of assets or self-generated goodwill shall not be taken into consideration.

Rule 8AB: Capital gains so arrived shall be attributed to remaining assets which will be allow as deduction from capital gains arising from the transfer of the remaining assets.

2.6 Compulsory acquisition of assets.

Sec 45(5): Notwithstanding anything contained in Sec 45(1), any compensation received on compulsory acquisition of the assets shall be taxable under capital gains. However, the following points to be noted:

- Compensation is taxable in the year of receipt.
- Enhanced Compensation is taxable in year of final order and any legal fees paid in connection to the compensation is allowable as deduction.
- Any interest received on enhanced compensation will be taxable u/s 56(2)(viii) with a 50% standard deduction u/s 57.

2.7 Joint Development agreement.

Sec 45(5A): Notwithstanding anything contained in Sec 45(1), where the assesse has entered into a joint development agreement with the builder for the re-development of his own building, then:

- The Stamp duty value of the building on the date of the completion of the project i-e. the year in which the CC is received; shall be taxable under the head capital gains.
- Any additional compensation received is also taxable in the same previous year.
- The cost of acquisition shall be determined in the manner provided u/s 55(2) which states that:
  1. If the building is acquired on or before 01-04-2001, then the cost of acquisition shall be higher of FMV as on 1st April 2001 or actual cost. However, it is important to note that the FMV shall not exceed the SDV as on 1st April 2001.
  2. If the building is acquired after 01-04-2001, then the cost of acquisition shall be the actual cost.

2.8 Capital gains on liquidation.

Sec 46: Notwithstanding anything contained in Sec 45, where the assets of company are distributed to its shareholders, the said distribution shall not be regarded as transfer.
However, where a shareholder receives any assets or consideration from the company on liquidation, then such consideration and the FMV of the assets shall be taxable as capital gains and the cost of acquisition shall be the deemed dividend u/s 2(22)(c).
E.g.: ABC limited has 3 shareholders namely X, Y & Z having share capital of INR 1 lac each. ABC distributed its fixed assets amounting to INR 2.10 Lacs to its shareholders in ratio of their share capital. The FMV of the asset on date of liquidation is INR 6 Lacs.
Deemed Dividend u/s 2(22)(c) for each shareholder will be the cost of fixed assets i-e INR 70,000/-.
Capital gains u/s 46 will be the FMV of assets as reduced by the deemed dividend u/s 2(22)(c) i-e. INR 2,00,000 (-) 70,000 = INR 1,30,000/-

2.9 Capital gains on Buyback.

Sec 46A: Where the shareholders receive any consideration for buy-back of its shares by the company, then the difference between the consideration received and the cost price will be treated as capital gains.
Provided that, any consideration for buy-back is received on or after 1st Oct 2024, then consideration received will be taxable as deemed dividend u/s 2(22)(f) and cost price of the shares will be short-term capital loss.

2.10 Capital gains on Depreciable Assets.

Sec 50: Where asset sold is a depreciable asset, then the capital gains is to be computed in the following manner: The actual consideration received shall be the full value of consideration and the cost of acquisition shall be the opening WDV of the assets in the block (+) the actual cost of assets acquired during the year in the block.
If the consideration exceeds the cost, then it will be a short-term capital gain.
If the consideration is less than the cost, then the balance amount shall be considered as closing WDV on which depreciation will be charged.
Note: Depreciation is not allowed w.e.f AY 21-22, if goodwill is there in block of assets it is to be it is to be removed as follows: Calculate WDV only of goodwill as on AY 21-22 & reduce it from block.

2.11 Capital gains on Market Linked debentures.

Sec 50AA: Where the capital asset is a Debt – Mutual Fund (Not more than 35% is invested in equity) or an Unlisted bond or debenture the capital gains is to be computed as follows:
A. If the Debt-mutual fund is purchased on or after 1st April 2023, the capital gain as computed in Sec 48 will be a short-term capital gain.
B. If the unlisted bonds or debentures is transferred on or after 23rd July 2024, the capital gain as computed in Sec 48 will be a short-term capital gain.

2.12 Capital gains on Slump Sale.

Sec 50B: Where one or more undertaking is transferred without any values being assigned to the individual assets and liabilities, the capital gain arising will be taxable under slump sale.

- Where the undertaking is held for more than 36 months, the capital gains will be a Long-term capital gains, otherwise it will be a short-term capital gain.
- In case of capital gains on slump sale, no benefit of indexation will be available.
- The Full value of consideration shall be higher of:
  A. Actual consideration received and FMV of non-monetary consideration.
  B. FMV of all assets and liabilities as determined in Rule 11UAE.
  Rule 11UAE: The FMV shall be: A + B + C + D – L, where:
    A = Book value of all assets (Other than Jewellery, artistic work, shares and securities and immovable property) reduced by:
    1. Income-tax paid less refund and
    2. Unamortized amount of Deferred expenditure.

    B = FMV of Jewellery and artistic work as determined by the registered valuer.
    C = FMV of shares and securities as determined under rule 11UA.
    D = SDV of Immovable property.
    L = Book value of all liabilities (Not including Paid up share capital, Dividend payable, Reserves and surplus, Provision for taxation, Uncertain liabilities, Contingent liabilities).
- The cost of acquisition shall be the net worth of the entity which is determined as follows:
  A. In case of depreciable assets, the WDV of the assets.
  B. In case of other assets and liabilities, the book value of assets and liabilities.
  C. Any revaluation reserve or any revaluation of the asset is to be ignored.

3 PART II: SPECIAL CASES OF CAPITAL GAINS

3.1 Transactions not regarded as transfer:

Sec 47: The following transactions not to be regarded as transfer and will not be liable to capital gains:

1. Distribution of Capital assets on partition of HUF.
2. Gift / Will / Inheritance (Not applicable in case of ESOP's).
3. Transfer of Capital Assets between Amalgamated (Indian) & Amalgamating Co.
4. Transfer of Capital Assets between 100% Holding & Subsidiary Co (Indian).
5. Transfer of Capital Assets between 100% Subsidiary & Holding Co (Indian).
6. Transfer of Shares in Indian co by Amalgamating foreign co to Amalgamated foreign co if > 25 % of SH continue to remain SH and CG is not taxable in FC.
7. Transfer of Shares in Indian co by demerged foreign co to resulting foreign co if < 75 % of SH continue to remain SH and CG is not taxable in FC.
8. Transfer of Bonds or GDR u/s 115AC / RDB / FC Bond or equity or units of MF or business trust or AIF or BDR.
9. Conversion of Sole proprietorship or firm into Co if: A. All A & L transferred to co. B. Members becomes shareholders. C. Consideration to members is only share in co. D. Members should hold > 50% during 5Y from conversion.
10. Conversion of Co into Co if: A. All A & L transferred to co. B. Shareholders becomes Members in PSR. C. Consideration to members is share in ESC & R&S. D. Members should hold > 50% during 5Y from conversion. E. No amount is paid to partner from accumulated profits within 3Y from conversion. F. Total T/O of Co should be < 60L in last 3 Preceding Years. G. Total Assets of Co should be < 5CR in last 3 Preceding Years.
11. Conversion of bonds or preference shares into equity shares of same co.
12. Redemption of sovereign gold bonds by individuals.
13. Any transfer by MF unit holder in consolidation scheme provided it should be of same scheme i-e equity to equity or debt to debt.

3.2 Exceptions to the transactions not regarded as transfer:

Sec 47A: The following transactions are regarded as transfer and thus will be liable to capital gains:
Where at any time during 8 PY from transfer of Capital asset between 100% Holding & Subsidiary Co if CA is converted into stock-in-trade or holding co ceases to hold shares of subsidiary Co. Then CG exempted earlier will be taxed to holding co for AY in which asset transferred.
Sec 49(3): Where 47A is attracted & CG is taxed to transferor co, COA for transferee co will be price at which transfer took place.

4 PART II: SPECIAL CASES OF CAPITAL GAINS

4.1 Computation of capital gains:

Sec 48: The capital gains are calculated in the following manner:

Particulars	STCG (In INR)	LTCG (in INR)
Full value of consideration	XXXX	XXXX
Less: Expenses incurred in connection with the transfer	(XXX)	(XXX)
Net Value of consideration	XXXX	XXXX
Less: 1. Cost of acquisition 2. Indexed cost of acquisition (CII of Year of sale / CII of year of purchase)	(XXX)	(XXX)

Less: 1. Cost of improvement 2. Indexed cost of improvement (CII of Year of sale / CII of year of purchase)	(XXX)	(XXX)
Taxable Capital Gains	**XXXX**	**XXXX**
Less: Exemption u/s 54, 54B, 54D, 54EC, 54EE, 54F, 54G	(XXX)	(XXX)
Net Taxable Capital Gains	**XXXX**	**XXXX**

However, the above computation is subject to the following provisos of Sec 48:

1. The CG in case of NR for Sale of Shares or debentures of Indian Company is as follows:

Particulars	(In INR)
Consideration [Avg. Rate on Date of transfer (DOT)]:	XXXX
(-) Expenses [Avg. Rate on Date of transfer (DOT)]:	(XXX)
(-) COA [Avg. Rate on Date of Acquisition (DOA)]:	(XXX)
Capital Gains (TTBR on Date of transfer)	XXXX

- The TTBR or TTSR should be of SBI Bank.
- It is taxable @ 12.5% u/s 112 & is applicable to listed as well as unlisted Shares or debentures whether short term or long term.
- Second proviso will not apply in this case.

2. Indexation benefit to be applied for LTCG or LTCL on transfer took place before 23rd July 2024 as follows:
   A. Indexed COA = COA X CII for year of transfer / CII for year of Purchase or 1/4/1 (later).
   B. Indexed COI = COI X CII for year of transfer / CII for year of Improvement.
3. First and second proviso not to apply where Sec 112A is applicable.
4. Second Proviso not to apply on Sale of bonds or debentures except capital indexed bonds or sovereign gold bonds.
5. Loss on exchange rate shall be ignored while computing CG for NR on sale of RDB other than in sec 10(4C). However, this proviso is not applicable if the RDB is sold before maturity.
6. Where shares, debentures or warrants are transferred under a gift or irrevocable trust as an ESOP to employees, then FMV on date of transfer shall be full value of consideration for purpose of capital gains.
7. STT paid is not allowed for deduction under capital gains.

4.2 Computation of capital gains:

Sec 50C: Full Value of consideration in case of land and building is to be determined in the following manner:

1. If the SDV is greater than 110% of the sale consideration, then the SDV is to be considered as the full value of consideration.
2. If the SDV is less than 110% of the sale consideration, then the actual consideration is to be considered as the full value of consideration.
3. If the Date of agreement is different from Date of transfer and whole or part of consideration is not received in banking modes, than SDV on date of transfer is to be considered.
4. Where a valuation is done by the valuation officer and the value determined by the valuation officer is greater than the SDV, then the SDV should be considered.
5. Where a valuation is done by the valuation officer and the value determined by the valuation officer is less than the SDV, then the value determined by the officer should be considered.

Sec 50CA: If the consideration for transfer shares other than quoted (Listed Shares) is less than the FMV of the shares, then the FMV of shares shall be considered as the full value of consideration. The FMV of the unquoted shares is to be determined under Rule 11UA:

Rule 11UA: FMV of Shares
The FMV shall be “(A + B + C + D – L) X PV / PE, where:
A = Book value of all assets (Other than Jewellery, artistic work, shares and securities and immovable property) reduced by:

1. Income-tax paid less refund and
2. Unamortized amount of Deferred expenditure.

B = FMV of Jewellery and artistic work as determined by the registered valuer.
C = FMV of shares and securities.
D = SDV of Immovable property.
L = Book value of all liabilities (Not including Paid up share capital, Dividend payable, Reserves and surplus, Provision for taxation, Uncertain liabilities, Contingent liabilities).
PV = Paid up value of Equity shares held.
PE = Total Paid up value of Equity shares of the company.
Note: FMV can also be determined as the price that it would fetch is sold openly in the market.

Sec 50D: Where the consideration is not cash or banking modes, then the FMV as on that date shall be the full value of consideration.

4.3 Computation of Cost of acquisition:

Sec 55: The cost of acquisition for the purpose of capital gains will be:

1. Goodwill, Intangible assets which are self-generated – NIL.
2. Goodwill, Intangible assets acquired on business purchase – Purchase price or cost of previous owner.
3. Bonus shares received before 1st April 2001 – FMV as on 1st April 2001.
4. Bonus shares received on or after 1st April 2001 – NIL.
5. Right Shares – Purchase Price.
6. Renouncement of Right Shares – Purchase price paid to Co (+) Price paid to transferor.
7. Land & Building acquired before 1st April 2001 – Higher of FMV as on 1st April 2001 or Purchase Price (FMV shall not exceed SDV as on 1st April 2001).
8. Land & Building acquired on or after 1st April 2001 – Purchase price.
9. Other capital assets acquired before 1st April 2001 – Higher of FMV as on 1st April 2001 or Purchase Price.
10. Other capital assets acquired on or after 1st April 2001 – Purchase price.

Sec 55: The cost of improvement for the purpose of capital gains will be:

1. Cost of improvement is allowed for improvements made after 1st April 2001 and is allowed for the current as well as the previous owner.
2. Cost of improvement before 1st April 2001 is not allowed as it is included in the FMV as on 1st April 2001.

Sec 49: The cost of acquisition and cost of improvement for the capital assets transferred u/s 47 will be the cost to the previous owner. Further, the period of holding of the previous owner will also be considered and thus indexation benefit will be available of the previous owner.

Sec 51: Any advance money received on or before 01st April 2014 for purchase of immovable property is forfeited is to be reduced from the cost of acquisition.

5 PART II: SPECIAL CASES OF CAPITAL GAINS

5.1 Tax on short – term capital gains:

Sec 111A: Tax on sale of listed equity shares on which STT is paid or sale of equity – oriented mutual fund.

- Where the transfer takes place before 23rd July 2024, the tax rates will be 15%.
- Where the transfer takes place on or after 23rd July 2024, the tax rates will be 20%.
- No Deduction under Chapter VI – A or u/s 80 shall be allowed for such capital gains.
- Rebate u/s 87A will be allowed on such capital gains to a resident.
- If the STCG is below the BE Limit, then it can be adjusted against the BE Limit.

On other short-term capital gains, the tax rates will be as per the normal tax rates.

5.2 Tax on long – term capital gains:

Sec 112: Tax on sale of Long-term capital assets other than covered u/s 112A:

1. In case of Individual or HUF being a resident:
   - Tax @ 20% (10% without Indexation) for transfer took place before 23rd July 2024.
   - Tax @ 12.5% for transfer took place on or after 23rd July 2024.
   - Where, land and building are acquired before 23rd July 2024 and transferred on or after 23rd July 2024, the tax rate will be @ 20% with Indexation (10% without Indexation).
   - No Deduction under Chapter VI – A or u/s 80 shall be allowed for such capital gains.
   - Rebate u/s 87A will be allowed on such capital gains.
   - If the LTCG is below the BE Limit, then it can be adjusted against the BE Limit.

2. In case of Other assesses:
   A. Tax @ 20% (10% without Indexation) for transfer took place before 23rd July 2024.
   B. Tax @ 12.5% for transfer took place on or after 23rd July 2024.

Sec 112A: Tax on sale of listed equity shares on which STT is paid or sale of equity–oriented mutual fund.

- Where the transfer takes place before 23rd July 2024, the tax rates will be 10%.
- Where the transfer takes place on or after 23rd July 2024, the tax rates will be 12.5%.
- No Deduction under Chapter VI – A or u/s 80 shall be allowed for such capital gains.
- Rebate u/s 87A will not be allowed on such capital gains.
- If the LTCG is below the BE Limit, then it can be adjusted against the BE Limit.
- Exemption limit is provided of an aggregate amount of INR 1,25,000 for transfer took place before 23rd July 2024 or on or after 23rd July 2024.

6 PART II: SPECIAL CASES OF CAPITAL GAINS

6.1 Tax on short – term capital gains:

Sec 54: Exemption on purchase of residential land and building.

- Eligible Assessee: Individual And HUF.
- Transfer of Asset: Long term capital asset being Land and building.
- Asset to Purchase: Land and building, if the amount of land and building is less than INR 2 Crores, then the assessee can purchase 2 residential houses. However, if the option is exercised once it cannot be opted again.
- Investment amount: Max INR 10 Crores.
- Time limit to purchase: 1 year before transfer or 2 years after transfer, if the asset is under construction, then 3 years from transfer. If the amount is not utilized before filling ROI, it can be deposited in CAGS.
- Exemption amount: Lower of capital gains or cost of new asset.
- Conditions: The new asset purchase should not be sold within 3 years, if sold then the capital gains exempted earlier will be reduced from COA.

Sec 54B: Exemption on purchase of urban agricultural land.

- Eligible Assessee: Individual And HUF.
- Transfer of Asset: Capital asset being Urban agricultural land.
- Asset to Purchase: Urban agricultural land.
- Time limit to purchase: 1 year before transfer or 2 years after transfer. If the amount is not utilized before filling ROI, it can be deposited in CAGS.
- Exemption amount: Lower of capital gains or cost of new asset.
- Conditions: The new asset purchase should not be sold within 3 years, if sold then the capital gains exempted earlier will be reduced from COA.

Sec 54D: Exemption on compulsory acquisition of land and building.

- Eligible Assessee: Individual And HUF.
- Transfer of Asset: Land and building which is compulsorily acquired.
- Asset to Purchase: Land and building.
- Time limit to purchase: 3 years after transfer. If the amount is not utilized before filling ROI, it can be deposited in CAGS.
- Exemption amount: Lower of capital gains or cost of new asset.
- Conditions: The new asset purchase should not be sold within 3 years, if sold then the capital gains exempted earlier will be reduced from COA.

Sec 54EC: Exemption on purchase of bonds.

- Eligible Assessee: All Assesses.
- Transfer of Asset: Any Capital Asset.
- Asset to Purchase: NHAI and RECL Tax Saving bonds.
- Investment amount: Max INR 50 Lacs.
- Time limit to purchase: 6 months transfer. If the amount is not utilized before filling ROI, it can be deposited in CAGS.
- Exemption amount: Lower of capital gains or cost of new asset.

- Conditions: The new asset purchase should not be sold within 3 years, if sold then the capital gains exempted earlier will be reduced from COA.

Sec 54EE: Exemption on purchase of units of specified mutual fund.

- Eligible Assessee: All Assesses.
- Transfer of Asset: Any Capital Asset.
- Asset to Purchase: Units of specified mutual fund.
- Investment amount: Max INR 50 Lacs.
- Time limit to purchase: 6 months transfer. If the amount is not utilized before filling ROI, it can be deposited in CAGS.
- Exemption amount: Lower of capital gains or cost of new asset.
- Conditions: The new asset purchase should not be sold within 3 years, if sold then the capital gains exempted earlier will be reduced from COA.

Sec 54F: Exemption on purchase of Land and building.

- Eligible Assessee: Individual and HUF.
- Transfer of Asset: Any Capital Asset.
- Asset to Purchase: Land and building.
- Investment amount: Max INR 10 Crores.
- Time limit to purchase: 1 year before transfer or 2 years after transfer, if the asset is under construction, then 3 years from transfer. If the amount is not utilized before filling ROI, it can be deposited in CAGS.
- Exemption amount: COA (X) CG / Net Sales consideration
- Conditions:
- The new asset purchase should not be sold within 3 years, if sold then the capital gains exempted earlier will be reduced from COA.
- The Assesse should not own more than 1 residential house on date of transfer and it should not purchase or construct any new land and building within 1 year or 3 years from the date of transfer.