CAPITAL GAINS - I

Basis of charge [Section 45 (1)]

Profit or gain arising from the transfer of capital asset during a P.Y. is chargeable under the head "Capital Gains" if following conditions are satisfied :

Condition I	There should be a ***capital asset***.
Condition II	There is a ***transfer*** of capital asset
Condition III	Transfer takes place during the P.Y.
Condition IV	Any profit or gain arises as a result of transfer.
Condition V	Such profit or gain is not exempt from tax under Sections : 54, 54B, 54D, 54EC, 54F, 54G & 54GA.

Meaning of capital asset [Section 2 (14)]

Capital asset means ***property*** of any kind held by assessee, whether or not connected with his business or profession. However, following are not capital asset :

(i) Stock-in-trade, consumables stores or raw materials held for the purposes of business or profession.

(ii) ***Personal effects*** of the assessee, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes :

(a) ***jewellery***;

(b) archaeological collections;

(c) drawings;

(d) paintings;

(e) sculptures; or

(f) any work of art.

Explanation : "Jewellery" includes :

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(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.

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(iii) Agricultural land in ***India***.

If agricultural land in India is situated :

(a) in any area within the territorial jurisdiction of a Municipality or a Cantonment Board and which has a population of 10,000 or more

or

(b) in area not being more than 8 K.M. (i.e. within 8 K.M.) from the local limits of any Municipality or a Cantonment Board referred to in Clause (a) above.

then agricultural land will be a capital asset.

G. M. Omer Khan (Supreme Court) :

Population of municipality has to be taken into account and not the population of any area within the municipality to see as to whether a land falls under the definition of capital asset.

(iv) $6\frac{1}{2}$% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government.

(v) Special Bearer Bond, 1991 issued by the Central Government.

(vi) Gold Deposit Bonds issued under a Gold Deposit Scheme, 1999.

"Personal effects"

According to **Black's Law Dictionary**, only those effects can legitimately be said to be personal which pertain to the assessee's person. In other words, an intimate connection between the effects and person of the assessee must be shown to exist to render them "personal effects".

H. H. Maharaja Rana Hemant Singhji Vs. CIT (Supreme Court)

Gold, silver coins and silver bars used for Mahalaxmi Puja are not normally intended for personal use and therefore do not constitute personal effects. Only those effects can be legitimately said to be personal which pertains to the assessee's person.

Types of capital assets

Short-term capital asset [Section 2(42A)] / Long-term capital asset [Section 2(29A)]

- In case of shares (equity or preference) / units of UTI / units of MF specified u/s 10 (23D) / zero coupon bonds / ***listed*** securities :

If held up to 12 months immediately preceding the date of its transfer	Short-term capital asset
If held for more than 12 months immediately preceding the date of its transfer	Long-term capital asset

- In case of other asset :

If held up to 36 months immediately preceding the date of its transfer	Short-term capital asset
If held for more than 36 months immediately preceding the date of its transfer	Long-term capital asset

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Types of capital gains

Short-term capital gain [Section 2(42B)] / Long-term capital gain [Section 2(29B)]

STCG means capital gain arising from the transfer of a short-term capital asset.
LTCG means capital gain arising from the transfer of a long-term capital asset.

Definition of Transfer [Section 2 (47)]

Transfer ***includes*** :

(i) Sale / Exchange / Relinquishment of the capital asset; or

(ii) Extinguishment of any right in the capital asset; or

(iii) Compulsory acquisition of capital asset by Government; or

(iv) Conversion of capital asset into stock-in-trade; or

(v) The maturity or redemption of a zero coupon bond; or

(vi) Allowing possession of any immovable property in part performance of contract of nature referred u/s 53A of the Transfer of Property Act, 1882; or

(vii) Transfer or Enabling enjoyment of immovable property by Co-operative Society / Company / AOP etc. to members / shareholders.

Section 48 : Method of computation of capital gains

	₹	₹
Sale Consideration		*********
Less :		
Cost of acquisition (COA)	*********	
Cost of improvement (COI)	*********	
Transfer expenses	*********	*********
		*********
Less : Exemption u/s 54B, 54D, 54G & 54GA		*********
Short-Term Capital Gain (STCG)		*********

	₹	₹
Sale Consideration		*********
Less :		
Indexed Cost of acquisition (ICOA)	*********	
Indexed Cost of improvement (ICOI)	*********	
Transfer expenses	*********	*********
		*********
Less : Exemption u/s 54, 54B, 54D, 54EC, 54F, 54G & 54GA		*********
Long-Term Capital Gain (LTCG)		*********

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First Proviso to Section 48

- Applicable to NR (including foreign companies).
- Capital gain (STCG as well as LTCG) on shares (listed / unlisted) or debentures of ***Indian Company.***
- Purchase in foreign currency or in case of reinvestment.
- No benefit of indexation.
- Conversion of Sale Consideration, COA and transfer expenses into same foreign currency.
- Assessee should be NR in the P.Y. of sale.
- Assessee covered under First Proviso cannot choose to opt for Second Proviso.

Rule 115A : Method of conversion

Telegraphic transfer buying rate (TTBR) – LOWER

Telegraphic transfer selling rate (TTSR) – HIGHER

Item	Rate	Relevant Date
Sale consideration	Average of TTBR & TTSR	on the date of transfer
COA	Average of TTBR & TTSR	on the date of acquisition
Transfer expenses	Average of TTBR & TTSR	on the date of transfer

Now, Capital gain computed in foreign currency shall be reconverted into Indian currency by applying TTBR as on the date of transfer

Second Proviso to Section 48 : Indexation

- Indexation benefit is available in case of LTCG only.
- **ICOA** = COA X $\dfrac{\text{CII of the year in which the asset is transferred}}{\text{CII of the first year in which } \underline{\textit{asset was held by the assessee}} \textit{ or } \text{CII of the year beginning on 1-04-1981, whichever is later}}$
- **ICOI** = COI X $\dfrac{\text{CII of the year in which asset is transferred}}{\text{CII of the year in which improvement took place}}$
- No indexation benefit in case of LTCG on bonds or debentures. However benefit of indexation available on Capital Indexed Bonds.

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Cost Inflation Index (CII)

The Central Government has notified the CII for the purpose of LTCG as follows :

Financial Year	CII	Financial Year	CII	Financial Year	CII
1981-82	100	1991-92	199	2001-02	426
1982-83	109	1992-93	223	2002-03	447
1983-84	116	1993-94	244	2003-04	463
1984-85	125	1994-95	259	2004-05	480
1985-86	133	1995-96	281	2005-06	497
1986-87	140	1996-97	305	2006-07	519
1987-88	150	1997-98	331	2007-08	551
1988-89	161	1998-99	351	2008-09	582
1989-90	172	1999-00	389	2009-10	632
1990-91	182	2000-01	406	2010-11	711

Section 55 : Cost of acquisition

A. COA in case of goodwill of a *business* / trade mark / brand name / right to manufacture, produce or process any article or thing / tenancy rights / stage carriage permits / loom hours / right to carry on any business :

If *Purchased* : Purchase price

If *Self-generated* : Nil

Note : In case of above assets, option to take FMV as on 1-04-1981 is ***not*** available.

B. COA in case of shares/securities :

Category	Cost of Acquisition	Period of Holding [Section 2 (42A)]
Original share/security	Purchase price	From date of allotment.
Additional share/security if purchased (e.g. right shares)	Purchase price	From date of allotment.
Additional share/security if allotted without payment (e.g. bonus shares)	Nil	From date of allotment.
If right is renounced	Renouncer : Nil	Renouncer : From date of offer by Co.
	Renouncee : Amount paid to Renouncer + Amount paid to Co.	Renouncee : From date of allotment.

Note : In case of above assets option to take FMV on 1-04-1981 is available.

Note : Security means as defined in the Securities Contracts (Regulation) Act, 1956.

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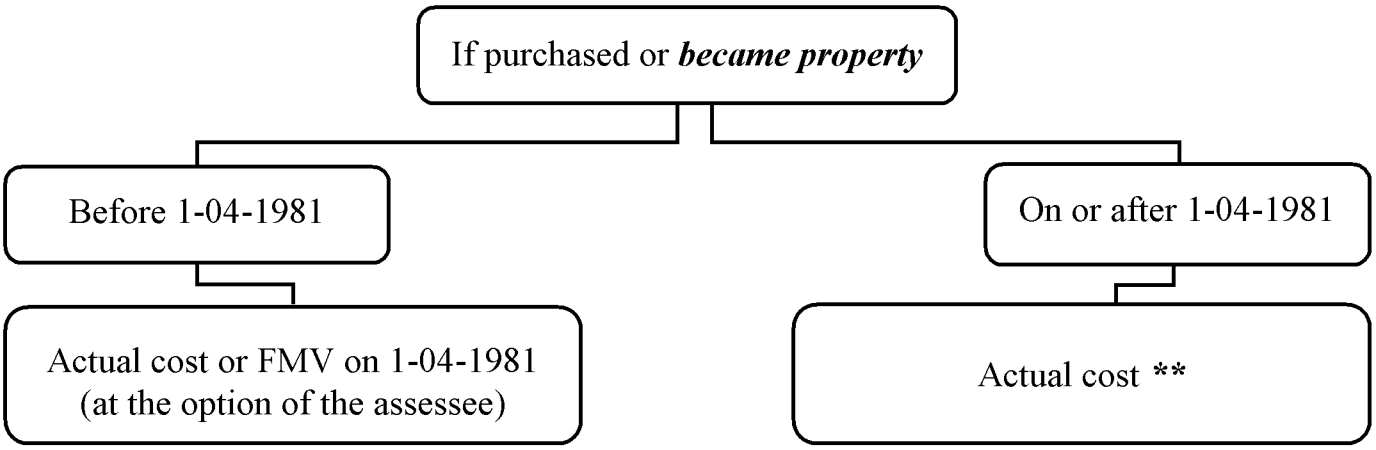
C. COA in case of other assets :



Note :

If asset ***became property*** of assessee by any of the modes specified under Section 49(1) : Period of holding of previous owner will also be considered.

**** Where the capital asset became the property of the assessee by any of the modes specified in Section 49(1), and the capital asset became the property of the previous owner before 1.4.1981, COA means the cost of the capital asset to the previous owner or the FMV of the asset as on 1.4.1981, at the option of the assessee.**

Certain transactions not regarded as transfer [Section 47] (i.e. no capital gain in following cases)

1. Distribution of capital assets on the partial or total partition of a HUF [Section 47(i)].
2. Transfer of a capital asset under gift or will or irrevocable trust [Section 47(iii)].
3. any transfer of a capital asset by a ***holding*** company to its ***subsidiary*** company if :
   (a) the whole of the share capital of the subsidiary company is held by the holding company, and
   (b) the ***subsidiary*** company is an Indian company [Section 47(iv)].
4. any transfer of a capital asset by a ***subsidiary*** company to the ***holding*** company if :
   (a) the whole of the share capital of the subsidiary company is held by the holding company, and
   (b) the ***holding*** company is an Indian company [Section 47(v)].
5. any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company [Section 47(vi)].
6. any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company [Section 47(vib)].
7. any transfer by way of conversion of bonds or debentures of a company into shares or debentures of that company [Section 47(x)].
8. Transfer of a capital asset in a transaction of reverse mortgage [Section 47(xvi)].

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9. **Section 47(via)** : Transfer of shares held in an Indian company, in a scheme of amalgamation, by the amalgamating foreign company to an amalgamated foreign company.

10. **Section 47(vic)** : Transfer of shares held in an Indian company, in a scheme of demerger, by the demerged foreign company to a resulting foreign company.

11. **Section 47(vicb)** : Transfer by a shareholder, in a business reorganization, of shares held in the predecessor co-operative bank, in consideration of the allotment of shares in the successor co-operative bank.

12. **Section 47(vid)** : Transfer or issue of shares by the resulting company, in a scheme of demerger, to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking.

13. **Section 47(vii)** : Transfer by a shareholder, in a scheme of amalgamation, of shares in the amalgamating company in consideration of allotment to him of shares in the amalgamated Indian company.

Section 49 : 'Cost' with reference to certain modes of acquisition

Section 49(1) :

Where capital asset became the property of the assessee under any of the mode referred in (1) to (13) above then COA shall be :

COA to the previous owner + COI of previous owner + COI of the assessee.

Note : For POH [Section 2 (42A)] → Period for which the asset was held by the previous owner shall also be considered.

Section 49(2AA) :

Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in Section 17(2)(vi), the COA of such security or shares shall be the FMV which has been taken into account for the purposes of the said Section 17(2)(vi).

Section 49(4) :

Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under Section 56(2)(vii) or Section 56(2)(viia), the COA of such property shall be deemed to be the value which has been taken into account for the purposes said Section 56(2)(vii) or Section 56(2)(viia) [i.e. Stamp Duty Value in case of immovable property and FMV in case of movable property].

Section 55 : Cost of improvement

I. COI in case of goodwill of a business / ~~trade mark~~ / ~~brand name~~ / right to manufacture, produce or process any article or thing / ~~tenancy rights~~ / ~~stage carriage permits~~ / ~~loom hours~~ / right to carry on any business :

If *Purchased*	:	Nil
If *Self-generated*	:	Nil

II. COI in case of *other assets* :

- COI incurred by the assessee and/or the previous owner after 1-04-81 will only be taken.
- COI incurred by the assessee and/or the previous owner before 1-04-81 is to be ignored.

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Section 50C : Adoption of stamp duty value for transfer of lands and building

Section 50C is applicable only in the case of transfer of the ***land or building or both***.

Where the consideration declared to be received or accruing as a result of the transfer is less then the value adopted or assessed ***[or assessable]*** by any authority of a State Govt. (i.e. "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 be deemed to be the full value of the consideration, and capital gain shall be computed on the basis of such consideration u/s 48.

Where the assessee claims before any A.O. that the value adopted or assessed ***[or assessable]*** for stamp duty exceeds the FMV of the property as on the date of transfer and the value so adopted or assessed ***[or assessable]*** by stamp valuation authority has not been disputed in any appeal or revision, the A.O. may refer the valuation of the asset to a Valuation Officer.

If the fair market value determined by the Valuation officer is less than the value adopted for stamp duty purposes, the A.O. ***may*** take such FMV as full value of consideration.

If the FMV determined by the Valuation Officer is more than the value adopted or assessed ***[or assessable]*** for stamp duty purposes, the A.O. shall ***not*** adopt such market value and will take stamp duty valuation as the full value of consideration.

If the value adopted or assessed ***[or assessable]*** for stamp duty purposes is revised in any appeal or revision, the assessment made shall be amended to recompute the capital gain by taking the revised value as the full value of consideration.

Note : The expression ***"assessable"*** means the price which the stamp valuation authority would have adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

Section 112 : Tax on capital gains

Where the Total Income (TI) of any ***assessee*** includes *LTCG*, then the tax payable by the assessee shall be : 20% of the LTCG included in the TI + Tax on balance of (TI – LTCG).

Note A : In case of an ***individual or HUF*** being a ***resident*** :

If TI – LTCG < Maximum amount which is not chargeable to tax, then 20% tax shall be laid on LTCG – [Maximum amount which is not chargeable to tax – (TI – LTCG)], in other words benefit of slab of ₹ 1,60,000 (or ₹ 1,90,000 or ₹ 2,40,000 as the case may be) will be available from LTCG.

Note B : Proviso to Section 112 :

In case of listed securities or units (units may be listed or unlisted) or zero coupon bonds :

Tax on LTCG shall be lower of the following :

(a) 20% of LTCG after applying 2nd Proviso to Section 48 (i.e. after Indexation).

(b) 10% of LTCG ignoring 2nd Proviso to Section 48 (i.e. before Indexation).

Notes :

1. Tax on LTCG will be calculated for each security / units separately.

2. If 1st proviso to Section 48 is applicable then tax on LTCG shall be 10%.

▸▸ **"Units"** mean units of UTI or any mutual fund specified under Section 10 (23D).

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- **"Listed Securities"** means the securities as defined in the Securities Contracts (Regulation) Act, 1956 and listed on any recognized stock exchange in India.

  As per Section 2 (h) of the Securities Contracts (Regulation) Act,1956, ***"Securities"*** include :

  (i) ***Shares***, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

  (ii) Government securities;

  (iii) Such other instruments as may be declared by the Central Government to be securities; and

  (iv) Rights or interest in securities.

Illustration :

R bought 500 listed shares in 1978 for ₹ 15 per shares. The market value of these shares in 1-4-1981 was ₹ 25 per shares.

(A) Compute the tax payable by R on capital gain from these shares, if the above shares were sold on 15-11-2010 by R for :

(a) ₹ 1,70,000

(b) ₹ 1,10,000

(c) ₹ 95,000

(d) ₹ 90,000

(B) What will be your answer if these shares have been sold through a recognised stock exchange and it is subject to securities transaction tax ?

Solution (A) :

Computation of tax on capital gains arising from sale of shares

Name of assessee : R
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 1978 to 14-11-2010
Nature of capital asset = Long-term capital asset

	Case (a)	Case (b)	Case (c)	Case (d)
(A) Sale consideration	1,70,000	1,10,000	95,000	90,000
(B) ICOA [(500 x 25) x 711/100]	88,875	88,875	88,875	88,875
(C) LTCG after indexation [(A) – (B)]	81,125	21,125	6,125	1,125
(D) Tax @ 20% on (C)	16,225	4,225	1,225	225
(E) LTCG without indexation [(A) – (500 x 25)]	1,57,500	97,500	82,500	77,500
(F) Tax @ 10% on (E)	15,750	9,750	8,250	7,750
(G) Tax Payable [(D) or (F), whichever is lower]	15,750	4,225	1,225	225

Solution (B) : The entire long-term capital gain on such shares shall be exempt as per Section 10 (38).

Note C : Deductions under Sections 80C to 80U is available only after deducting LTCG from GTI.

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Section 51 : Advance Money Forfeited

Where any capital asset was on any previous occasion the subject matter of negotiation for its transfer, and any advance money received is forfeited by the ***assessee*** (and not the previous owner), then the amount so forfeited shall be deducted from :

(a) COA

or

(b) FMV

as the case may be for computing COA.

Note :

If the advance money forfeited was received by the assessee before 1-04-1981 and assessee has taken the FMV as on 1-04-1981 as the COA, such advance money received (though before 1-04-1981) shall also be deducted as in Section 51 it is written that it will be deducted from FMV.

Travancore Rubber & Tea Co. Ltd. Vs. CIT (Supreme Court) :

A situation may arise where advance money forfeited is more than the COA. In such a case, the excess of advance money forfeited over the COA of such asset shall be a capital receipt not taxable.

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CAPITAL GAINS - I

PRACTICAL PROBLEMS

Question No. 1 :

X, a non-resident foreign citizen, remits US $ 60,000 to India on August 10, 1992. The amount is partly utilized on August 17, 1992 for purchasing 50,000 shares in Lotus Ltd., an Indian company, at the rate of ₹ 12 per share (brokerage paid : Re. 1 per share). These shares are sold for ₹ 28 per share on April 10, 2004 (brokerage paid on April 16, 2004 : ₹ 1.50 per share). The sale consideration is utilized on April 25, 2004 for purchasing 40,000 equity shares in Indian Sugar & Chemicals Ltd. at the rate of ₹ 34 per share (brokerage paid : Re. 1 per share). Shares in Indian Sugar & Chemicals Ltd. are transferred on April 20, 2010 @ ₹ 40 per share (brokerage paid @ ₹ 1.55 per share on June 30, 2010).

Find out the capital gains chargeable to tax for the A.Y. 2005-06 and 2011-12 on the assumption that telegraphic transfer, buying and selling rates of US dollars adopted by the SBI are as follows :

	Buying (1 US $) ₹	Selling (1 US $) ₹
August 10, 1992	18.30	19.10
August 17, 1992	18.40	19.30
April 10, 2004	25.90	26.40
April 16, 2004	26.10	26.60
April 25, 2004	26.10	26.60
April 20, 2010	28.30	29.10
June 30, 2010	30.10	31.15

Question No. 2 :

Compute capital gains arising from the following transactions in the hands of Mr. X :

Sl. No.	Description of assets	Date of acquisition	Cost of acquisition	Date of sale	Sale consideration	Fair market value as on 1-4-1981
1.	Route permit	15-06-1995	95,000	01-01-2011	4,50,000	----------
2.	Tenancy right	05-06-1979	1,50,000	15-05-2010	18,00,000	3,00,000
3.	Route permit	10-10-1997	Nil	17-08-2010	4,50,500	----------
4.	Tenancy right	15-08-1980	Nil	18-11-2010	14,50,000	3,50,000
5.	Patent	01-01-1981	Nil	18-07-2010	13,50,000	3,60,000

Question No. 3 :

Alpha Ltd. announced a right issue on 15-05-2002 in the ratio of 1:1. Issue price of right shares is ₹ 35 (Face Value ₹ 10). Market price of shares as on the date of announcement is ₹ 110 per share. Mr. Z is holding 200 shares (purchase price ₹ 50 per share) of Alpha Ltd. which were purchased on 1-1-2000. Mr. Z subscribed to the right shares on 15-06-2002. Alpha Ltd. made allotment of shares on 10-10-2002. Mr. Z sold 300 shares (200 shares from original holding) on 15-08-2010 (sale price ₹ 330 per share). Compute capital gain taxable in the hands of Mr. Z.

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Question No. 4 :

(a) The income of X, who is ***totally*** blind, for the previous year 2010-11, is as under :

	₹
Income from house property	1,32,000
Income from interest on loan	17,000
Income from interest on bank deposits	70,000
Long-term capital gains	1,20,000

He is eligible for deduction of ₹ 10,000 under Section 80C on account of PPF and ₹ 1,00,000 under Section 80U. Compute his total income and tax liability.

(b) What will be your answer in (a) if assessee X is a woman below 65 years of age?

Question No. 5 :

(a) H Ltd. acquired a land on 1.1.1989 for ₹ 1,00,000. H Ltd. sells the land to its 100% Indian subsidiary company S Ltd. on 1.1.1997 for ₹ 10,00,000. S Ltd. sells the land on 2.1.2011 for ₹ 12 Lakhs. Determine the capital gains chargeable to tax in the hands of H Ltd. and S Ltd.

(b) A Ltd. gets amalgamated with B Ltd. which is an Indian company on 1.1.1997. As per the scheme of amalgamation A Ltd. sold the land to B Ltd. on 1.1.1997 for ₹ 8,00,000. The said land was purchased by A Ltd. on 1.1.1980 for ₹ 1 Lakh (FMV as on 1-4-1981 : ₹ 3,00,000). B Ltd. sells the land on 30.6.2010 for ₹ 19 Lakhs. Determine the capital gains chargeable to tax in the hands of A Ltd. and B Ltd.

Question No. 6 :

Mr. Sunil purchased 1,000 equity shares of X Ltd. @ ₹ 150 on August 5, 2000. X Ltd. offers 1,500 right shares of ₹ 150 each at a premium of 10% on January 22, 2010 (Market Value of shares as on January 22, 2010 = ₹ 300 each). Mr. Sunil applied for 800 shares on February 15, 2010 and the balance rights are renounced on February 16, 2010 in favour of Mr. Amit for a consideration of ₹ 16,000. Mr. Amit applied for 700 shares on February 18, 2010. X Ltd. allotted shares against right entitlement to its shareholders on March 15, 2010. Mr. Sunil and Mr. Amit sold all the shares held by them @ ₹ 340 each on March 15, 2011.

Compute capital gain taxable in the hands of Mr. Sunil and Mr. Amit.

Question No. 7 :

Compute capital gain taxable in the hands of Mr. X from the following details :

- 100 original shares purchased on 1.1.1979 for ₹ 30/- each.
- 100 Right Shares allotted on 1.1.1980 for ₹ 40/- each.
- 400 Bonus shares allotted on 1.1.1981.
- 400 Right shares allotted on 1.1.1990 for ₹60/- each.
- 800 Bonus shares allotted on 30.6.2000.
- All shares sold on 1.1.2011 for ₹ 500/- per share.

(Fair market Value as on 1.4.1981 is ₹ 80/- per share).

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Question No. 8 :

X purchases a house property for ₹ 76,000 on June 30, 1968. The following expenses are incurred by him for making addition /alteration to the house property :

	₹
Cost of construction of first floor in 1976-77	1,10,000
Cost of construction of the second floor in 1983-84	4,40,000
Alteration/ reconstruction of the property in 1990-91	2,90,000

Fair Market Value of the property on April 1, 1981 is ₹ 6,50,000. The house property is sold by X on June 15, 2010 for ₹ 80,00,000 (expenses incurred on transfer : ₹ 50,000).

Compute capital gain taxable in the hands of X.

Question No. 9 :

X purchases a house property for ₹ 26,000 on May 10, 1962. He gets the first floor of the house constructed in 1967-68 by spending ₹ 40,000. He dies on September 12, 1978. The property is transferred to Mrs. X by his will. Mrs. X spends ₹ 30,000 and ₹ 36,700 during 1979-80 and 1984-85 respectively for renewal/ reconstruction of the property. Mrs. X sells the house property for ₹ 24,50,000 on March 15, 2011 (brokerage paid by Mrs. X is ₹ 24,500). The fair market value of the house on April 1981 is ₹ 2,68,000.

Question No. 10 :

Compute capital gains under the following circumstances :

(a) Mr. X acquired a land on 1-1-1988 for ₹ 3,00,000. He entered into an agreement to sell the land with Mr. Y on 1-1-1999 and received ₹ 75,000 as advance money. Mr. Y could not make the payment within the stipulated time and therefore Mr. X forfeited ₹ 75,000 on 30-6-1999. Mr. X sold the land on 1-1-2011 for ₹ 6,00,000 to Mr. Z.

(b) Mr. P acquired a capital asset on 1-1-1980 for ₹ 1,50,000. He forfeited ₹ 15,000 on the said asset on 1-1-1981. The FMV of the asset on 1-4-1981 is ₹ 2,00,000. Mr. P again forfeits ₹ 40,000 on the said asset on 1-1-1996. The asset is sold on 1-1-2011 for ₹ 12,00,000.

(c) Mr. R acquired a capital asset on 1-1-1980 for ₹ 1,00,000. The FMV of the asset as on 1-4-1981 is ₹ 2,00,000. Mr. R forfeited ₹ 50,000 on 1-1-1986 on the said capital asset. Mr. R gifts the capital asset to Mr. S on 1-1-1996 when the FMV of the asset was ₹ 5,00,000. Mr. S also forfeits ₹ 40,000 on the said asset on 1-1-1998. Mr. S sells the asset on 1-1-2011 for ₹ 9,00,000.

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CAPITAL GAINS - I

SOLUTIONS TO PRACTICAL PROBLEMS

Answer to Question No. 1 :

Computation of capital gains

Name of assessee : X
P.Y. : 2004-05
A.Y. : 2005-06

Average of TTBR & TTSR as on 17-08-1992 (date of purchase) = (18.40+19.30)/2 = 18.85
Average of TTBR & TTSR as on 10-04-2004 (date of sale) = (25.90+26.40)/2 = 26.15
Period of holding : 17-08-1992 to 09-04-2004
Nature of capital asset = Long-term capital asset

Sale consideration (28 x 50,000)/26.15	$ 53,537.28
Less :	
Cost of acquisition [(12 + 1) x 50,000]/18.85	$ 34,482.76
Expenditure on transfer (1.5 x 50,000)/26.15	$ 2,868.07
LTCG in foreign currency	$ 16,186.45
LTCG in Indian currency ($ 16,186.45 x ₹ 25.90)	₹ 4,19,229.06

P.Y. : 2010-11
A.Y. : 2011-12

Average of TTBR & TTSR as on 25-04-2004 (date of purchase) = (26.10+26.60)/2 = 26.35
Average of TTBR & TTSR as on 20-04-2010 (date of sale) = (28.30+29.10)/2 = 28.70
Period of holding : 25-04-2004 to 19-04-2010
Nature of capital asset = Long-term capital asset

Sale consideration (40 x 40,000)/28.70	$ 55,749.13
Less :	
Cost of acquisition [(34 + 1) x 40,000]/26.35	$ 53,130.93
Expenditure on transfer (1.55 x 40,000)/28.70	$ 2,160.28
LTCG in foreign currency	$ 457.92
LTCG in Indian currency ($ 457.92 x ₹ 28.30)	₹ 12,959.14

Note 1 : Date of making expenditure in connection with transfer is not relevant.

Note 2 : As the shares in Indian Sugar and Chemicals Limited are transferred on or after October 1, 2004, X will be liable for securities transaction tax if shares are transferred through a recognized stock exchange and the LTCG will not be chargeable to tax.

Answer to Question No. 2 :

Computation of capital gains

Name of assessee : X
P.Y. : 2010-11
A.Y. : 2011-12

1. Period of holding : 15-06-1995 to 31-12-2010
   Nature of capital asset = Long-term capital asset

Sale consideration	4,50,000
Less : Indexed cost of acquisition : 95,000 x 711/281	2,40,374
LTCG	2,09,626

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2. Period of holding : 05-06-1979 to 14-05-2010
Nature of capital asset = Long-term capital asset

Sale consideration		18,00,000
Less : Indexed cost of acquisition :	1,50,000 x 711/100	10,66,500
LTCG		7,33,500

Note : In case of tenancy right, option to take FMV as on 1-04-1981 is ***not*** available.

3. Period of holding : 10-10-1997 to 16-08-2010
Nature of capital asset = Long-term capital asset

Sale consideration	4,50,500
Less : Indexed cost of acquisition	Nil
LTCG	4,50,500

4. Period of holding : 15-08-1980 to 17-11-2010
Nature of capital asset = Long-term capital asset

Sale consideration	14,50,000
Less : Indexed cost of acquisition	Nil
LTCG	14,50,000

Note : In case of tenancy right, option to take FMV as on 1-04-1981 is not available.

5. Period of holding : 01-01-1981 to 17-07-2010
Nature of capital asset = Long-term capital asset

Sale consideration	13,50,000
Less : Indexed cost of acquisition	Nil
LTCG	13,50,000

Note : In case of patent, option to take FMV as on 1-04-1981 is not available.

LTCG taxable in the hands of Mr. X for the A.Y. 2011-12=₹ 2,09,626+₹ 7,33,500+₹ 4,50,500+₹ 14,50,000+₹ 13,50,000=₹ 41,93,626.

Answer to Question No. 3 :

Computation of capital gains

Name of assessee : Z
P.Y. : 2010-11
A.Y. : 2011-12

Capital gain arising from transfer of original shares :

Period of holding : 01-01-2000 to 14-08-2010
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 330 x 200)		66,000
Less : Indexed cost of acquisition :	10,000 x 711/389	18,278
LTCG		47,722

Capital gain arising from transfer of right shares :

Period of holding : 10-10-2002 to 14-08-2010
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 330 x 100)		33,000
Less : Indexed cost of acquisition :	3,500 x 711/447	5,567
LTCG		27,433

Note : As the shares are transferred on or after October 1, 2004, assessee will be liable for securities transaction tax in case shares are transferred through a recognized stock exchange and the LTCG will not be chargeable to tax.

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Answer to Question No. 4 :

Computation of Total Income

P.Y. : 2010-11
A.Y. : 2011-12

	If X is Male	If X is Female
Income from house property	1,32,000	1,32,000
Income from interest on loan	17,000	17,000
Income from interest on bank deposits	70,000	70,000
LTCG	1,20,000	1,20,000
Gross Total Income	3,39,000	3,39,000
Less : Deductions u/s 80C to 80U (₹ 10,000 + ₹ 1,00,000)	1,10,000	1,10,000
Total Income	2,29,000	2,29,000

Computation of Tax Liability

	If X is Male	If X is Female
Total Income	2,29,000	2,29,000
Total income subject to special tax rate (i.e. LTCG)	69,000	39,000
Total income subject to normal tax rate	1,60,000	1,90,000
Tax on total income subject to special tax rate (i.e. on LTCG @ 20% u/s 112)	13,800	7,800
Tax on total income subject to normal tax rate	NIL	NIL
Income Tax	13,800	7,800
Add : EC @ 2%	276	156
	14,076	7,956
Add : SHEC @ 1%	138	78
Tax Payable (Rounded off)	14,210	8,030

Answer to Question No. 5(a) :

Computation of capital gains

Name of assessee : H Ltd.
P.Y. : 1996-97
A.Y. : 1997-98

Since H Ltd. transfers land to its 100% Indian subsidiary company, transaction is not regarded as transfer by virtue of Section 47 and therefore no capital gain arise in the hands of H Ltd.

Computation of capital gains

Name of assessee : S Ltd.
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding as per Section 2 (42A) : 1.1.89 to 1.01.2011
Nature of capital asset = Long-term capital asset

Cost of acquisition as per Section 49 (1)		1,00,000
Sale consideration		12,00,000
Less : Indexed cost of acquisition :	1,00,000 x 711/***305***	2,33,115
LTCG		9,66,885

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Answer to Question No. 5(b) :

Computation of capital gains

Name of assessee : A Ltd.
P.Y. : 1996-97
A.Y. : 1997-98

Since A Ltd. transfers land to B Ltd. (Indian company), in pursuance of scheme of amalgamation, transaction is not regarded as transfer by virtue of Section 47 and therefore no capital gain arise in the hands of A Ltd.

Computation of capital gains

Name of assessee : B Ltd.
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding as per Section 2(42A) : 1.1.80 to 29.06.2010
Nature of capital asset = Long-term capital asset

Cost of acquisition as per Section 49 (1) read with Section 55		3,00,000
Sale consideration		19,00,000
Less : Indexed cost of acquisition :	3,00,000 x 711/305	6,99,344
LTCG		12,00,656

Answer to Question No. 6 :

Computation of capital gains

Name of assessee : Mr. Sunil
P.Y. : 2009-10
A.Y. : 2010-11

Capital gain arising from renouncement of right entitlement :

Period of holding : 22-01-2010 to 15-02-2010
Nature of capital asset = Short-term capital asset

Sale consideration	16,000
Less : Cost of acquisition	Nil
STCG	16,000

P.Y. : 2010-11
A.Y. : 2011-12

Capital gain arising from transfer of original shares :

Period of holding : 05-08-2000 to 14-03-2011
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 340 x 1000)		3,40,000
Less : Indexed cost of acquisition :	(1,000 x ₹ 150) x 711/406	2,62,685
LTCG		77,315

Capital gain arising from transfer of right shares :

Period of holding : 15-03-2010 to 14-03-2011
Nature of capital asset = Short-term capital asset

Sale consideration (₹ 340 x 800)		2,72,000
Less : Cost of acquisition :	(₹ 150 x 110% x 800)	1,32,000
STCG		1,40,000

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Computation of capital gains

Name of assessee : Mr. Amit
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 15-03-2010 to 14-03-2011
Nature of capital asset = Short-term capital asset

Sale consideration (₹ 340 x 700)		2,38,000
Less : Cost of acquisition :	[₹ 16,000 + (₹ 150 x 110% x 700)]	1,31,500
STCG		1,06,500

Answer to Question No. 7 :

Computation of capital gains

Name of assessee : Mr. X
P.Y. : 2010-11
A.Y. : 2011-12

Capital gain arising from transfer of original shares purchased on 1-1-1979 :

Period of holding : 01-01-1979 to 31-12-2010
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 500 x 100)		50,000
Less : Indexed cost of acquisition :	(100 x ₹ 80) x 711/100	56,880
LTCG		(6,880)

Capital gain arising from transfer of right shares allotted on 1-1-1980 :

Period of holding : 01-01-1980 to 31-12-2010
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 500 x 100)		50,000
Less : Indexed cost of acquisition :	(100 x ₹ 80) x 711/100	56,880
LTCG		(6,880)

Capital gain arising from transfer of bonus shares allotted on 1-1-1981 :

Period of holding : 01-01-1981 to 31-12-2010
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 500 x 400)		2,00,000
Less : Indexed cost of acquisition :	(400 x ₹ 80) x 711/100	2,27,520
LTCG		(27,520)

Capital gain arising from transfer of right shares allotted on 1-1-1990 :

Period of holding : 01-01-1990 to 31-12-2010
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 500 x 400)		2,00,000
Less : Indexed cost of acquisition :	(400 x ₹ 60) x 711/172	99,209
LTCG		1,00,791

Capital gain arising from transfer of bonus shares allotted on 30-6-2000 :

Period of holding : 30-06-2000 to 31-12-2010
Nature of capital asset = Long-term capital asset

Sale consideration (₹ 500 x 800)		4,00,000
Less : Indexed cost of acquisition		Nil
LTCG		4,00,000

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LTCG taxable in the hands of Mr. X for the A.Y. 2011-12 = ₹ (6,880) + ₹ (6,880) + ₹ (27,520) + ₹ 1,00,791 + ₹ 4,00,000 = ₹ 4,59,511.

Note : As the shares are transferred on or after October 1, 2004, assessee will be liable for securities transaction tax in case shares are transferred through a recognized stock exchange and the LTCG will not be chargeable to tax.

Answer to Question No. 8 :

Computation of capital gains

Name of assessee : X
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 30-06-1968 to 14-06-2010
Nature of capital asset = Long-term capital asset

Sale consideration			80,00,000
Less :			
Indexed cost of acquisition :	6,50,000 x 711/100	46,21,500	
Indexed cost of improvement :	(4,40,000 x 711/116) + (2,90,000 x 711/182)	38,29,809	
Transfer expenses		50,000	85,01,309
LTCG			(5,01,309)

Answer to Question No. 9 :

Computation of capital gains

Name of assessee : Mrs. X
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 10-05-1962 to 14-03-2011
Nature of capital asset = Long-term capital asset

Sale consideration			24,50,000
Less :			
Indexed cost of acquisition	(2,68,000 x 711/100)	19,05,480	
Indexed cost of improvement	(36,700 x 711/125)	2,08,750	
Transfer expenses		24,500	21,38,730
LTCG			3,11,270

Answer to Question No. 10(a) :

Computation of capital gains

Name of assessee : Mr. X
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 1-1-1988 to 31-12-2010
Nature of capital asset = Long-term capital asset

Sale consideration		6,00,000
Less :		
Indexed cost of acquisition :	*2,25,000 x 711/150	10,66,500
LTCG		(4,66,500)

*COA as per Section 51 = ₹ 3,00,000 – ₹ 75,000 = ₹ 2,25,000

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Answer to Question No. 10(b) :

Computation of capital gains

Name of assessee : Mr. P
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 1-1-1980 to 31-12-2010		
Nature of capital asset = Long-term capital asset		
Sale consideration		12,00,000
Less :		
Indexed cost of acquisition : *1,45,000 x 711/100		10,30,950
LTCG		1,69,050
*COA as per Section 51 :		
FMV as on 1.4.1981		2,00,000
Less : Amount forfeited on :		
1-1-1981	15,000	
1-1-1996	40,000	55,000
		1,45,000

Answer to Question No. 10(c) :

Computation of capital gains

Name of assessee : Mr. S
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 1-1-1980 to 31-12-2010		
Nature of capital asset = Long-term capital asset		
Sale consideration		9,00,000
Less :		
Indexed cost of acquisition : *1,60,000 x 711/281		4,04,840
LTCG		4,95,160
*COA as per Section 51 :		
FMV as on 1.4.1981		2,00,000
Less : Amount forfeited by :		
Mr. R	--------	
Mr. S	40,000	40,000
		1,60,000

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CAPITAL GAINS – II

Capital receipts Vs. Revenue receipts

Capital receipts are always exempt from tax unless they are expressly taxable whereas revenue receipts are always taxable unless they are expressly exempt from tax.

B. C. Srinivasa Setty (Supreme Court)

COA of a self-generated asset is indeterminate. Amount received from transfer will be a capital receipt and hence no capital gain.

Note : Above judgement will not apply to the sale of goodwill of ***business***, tenancy right, stage carriage permits, loom hours and the right to manufacture, produce and process any article or thing as mentioned in Section 55. However judgement will apply to self-generated goodwill of ***profession***. Amount received on sale of self-generated goodwill of profession is a capital receipt and therefore not taxable.

Section 45 (1)

Any profit and gain arising from the transfer of a capital asset shall be charged to tax under the head capital gains in the previous year in which ***transfer took place.***

Section 45 (1A)

CG shall not be taxable in the year in which the asset is destroyed but shall be taxable in the year in which money is received or an asset is received from the insurance company. Section 45 (1A) overrides Section 45 (1) which provides that the CG shall be taxable in the previous year in which ***transfer took place***.

If money is received from insurance company : Value of money shall be sale consideration for the purpose of computation of CG.

If another asset is received from insurance company : FMV of asset received from insurance company shall be the sale consideration for the purpose of computation of CG.

Note : For POH 'date of transfer' means 'date of destruction'.

Illustration : Suppose Mr. X purchased an asset on 1.04.2006 for ₹ 2,00,000. Due to fire in the premises of Mr. X, asset is destroyed on 15.08.2009 and the insurance company gives a new asset to Mr. X on 15.04.2010 whose FMV is ₹ 4,00,000. In this case CG taxable in the hands of Mr. X will be as under :

Computation of Capital Gain

Name of assessee : Mr. X
Previous Year : ***2010-11***
Assessment Year : ***2011-12***

POH : 1.04.2006 to 14.08.2009

Nature of capital asset : Long-term capital asset

Sale Consideration	4,00,000
Less : ICOA (2,00,000 x ***632***/519)	2,43,545
LTCG	1,56,455

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Bai Shirinbai K. Kooka (Supreme Court)

There is no ***transfer*** when assessee converts a capital asset into stock-in-trade of business carried on by him. The act of conversion is similar to taking out the money from one pocket and keeping the same in the other pocket of the same person.

Notes :

1. This judgment is overruled w.e.f. A.Y. 1985-86 by an amendment in Section 2(47) and Section 45(2). In other words amendment is applicable if conversion into SIT takes place on or after 1-04-1984.

2. Section 2(47) : Transfer ***includes*** Conversion of capital asset into SIT of the business.

Section 45 (2)

CG arising from the transfer (conversion) of a capital asset into stock-in-trade (SIT) shall be charged to tax in the P.Y. in which stock-in-trade is sold or otherwise transferred (e.g. stock-in-trade exchanged with something else) by the assessee. FMV on the *date of conversion* shall be deemed to be the *sales consideration*.

Notes :

1. CG shall be computed as per provisions of law applicable in the P.Y. in which SIT is ***'sold'***.

2. If SIT is acquired otherwise than by way of purchase, then the COA of SIT shall be the FMV of such stock-in-trade on the date on which it was so acquired.

Illustration : Suppose a building has been acquired by the Mr. X on 1.6.1980 for ₹ 1,00,000. FMV as on 1.4.1981 was ₹ 1,80,000. Mr. X converts the building into stock-in-trade of his property dealing business on 1.1.1990 when the FMV of the building is ₹ 9,00,000. The stock-in-trade is sold by him on 1.1.2011 for ₹ 13,00,000. In this case total income of Mr. X shall be calculated as follows :

Computation of Total Income

Name of assessee : Mr. X
Previous Year : 2010-11
Assessment Year : 2011-12

	₹	₹
A. Profit and gains of business or profession :		
Profit on sale of stock (13,00,000 – 9,00,000)		4,00,000
B. Capital Gains :		
POH : 1.06.1980 to 31.12.1989		
Nature of capital asset : Long-term capital asset		
COA as per Section 55	1,80,000	
Sale Consideration as per Section 45 (2)	9,00,000	
Less : ICOA (1,80,000 x ***172***/100)	3,09,600	
LTCG		5,90,400
Total Income		9,90,400

Illustration : X Ltd. purchased a land on 1.1.1971 for ₹ 1,00,000 (FMV as on 1.4.1981 is ₹ 3,50,000). The company on 1.6.1983 decided to go into the real estate business and the said land is converted as stock-in-trade of the real estate business on 1.6.1983. The FMV of the land as on 1.6.1983 was ₹ 11,00,000. The stock in trade is sold on 1.1.2011 for ₹ 13,50,000. Discuss the tax implications. Will your answer be different if the land was converted into stock in trade on 1.1.1996 (assume FMV of the land as on 1.1.1996 was same as was on 1.6.1983 i.e. ₹ 11,00,000) ?

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Computation of Total Income

Name of assessee : X Ltd.
Previous Year : 2010-11
Assessment Year : 2011-12

If land was converted into stock-in-trade on 1.6.1983

	₹
A. Profit and gains of business or profession :	
Profit on sale of stock (13,50,000 – 11,00,000)	2,50,000
B. Capital Gains :	Nil
Total Income	2,50,000

Note : There will be no CG since the conversion into stock-in-trade took place in A.Y. 1984-85 and the amendments have been introduced from A.Y. 1985-86. The judgement of Supreme Court in Bai Shirinbai K. Kooka shall apply.

If land was converted into stock-in-trade on 1.1.1996

	₹	₹
A. Profit and gains of business or profession :		
Profit on sale of stock (13,50,000 – 11,00,000)		2,50,000
B. Capital Gains :		
POH : 1.01.1971 to 31.12.1995		
Nature of capital asset : Long-term capital asset		
COA as per Section 55	3,50,000	
Sale Consideration as per Section 45 (2)	11,00,000	
Less : ICOA (3,50,000 x ***281***/100)	9,83,500	
LTCG		1,16,500
Total Income		3,66,500

Section 45 (3)

Where a partner of a firm transfers an asset to the firm by way of capital contribution or normal sale, CG shall be chargeable to tax in the P.Y. in which transfer took place. In this case sales consideration will be the amount recorded in accounts of the firm.

Note : Same provisions will apply where a member of AOP / BOI, transfers a capital asset to AOP / BOI.

Illustration : Mr. X is admitted as a partner in a firm M/s. XYZ. He transfers a capital asset on 15.3.2011 as his capital contribution to the firm. FMV of the asset is ₹ 8 Lakhs but the firm records the value of the asset as ₹ 5 Lakhs. Mr. X purchased the capital asset on 15.06.1997 for ₹ 1 Lakh. In this case CG chargeable in the hands of Mr. X will be as under :

Computation of Capital Gain

Name of assessee : Mr. X
Previous Year : 2010-11
Assessment Year : 2011-12

POH : 15.06.1997 to 14.03.2011	
Nature of capital asset : Long-term capital asset	
Sale Consideration	5,00,000
Less : ICOA (1,00,000 x 711/331)	2,14,804
LTCG	2,85,196

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Section 45 (4)

CG arising from the transfer of a capital asset by way of distribution of capital asset to partners on dissolution shall be taxable as income of the firm in the P.Y. in which distribution takes place. FMV on the date of distribution will be sales consideration.

Note : Same provisions will apply where the assets are distributed by AOP/BOI to its members.

Illustration : A partnership firm M/s. ABC is dissolved on 1.1.2011 and the following assets are distributed to the partners :

Partners	Assets	COA	Date of Acquisition	FMV as on 1.1.2011
A	X	1,00,000	30.6.1996	10,00,000
B	Y	2,00,000	30.6.1996	13,00,000
C	Z	4,00,000	30.6.1996	15,00,000

In this case capital gain chargeable in the hands of the firm shall be as follows :

Computation of capital gains

Name of assessee : M/s. ABC
Previous Year : 2010-11
Assessment Year : 2011-12

POH : 30.06.1996 to 31.12.2010
Nature of capital asset : Long-term capital asset

Sale Consideration as per Section 45(4) = 10,00,000 + 13,00,000 + 15,00,000	38,00,000
Less : ICOA [(1,00,000 + 2,00,000 + 4,00,000) x 711/305]	16,31,803
LTCG	21,68,197

Section 45 (5)

Where a capital asset is compulsorily acquired under any law, then the CG arising from transfer of capital asset shall be dealt as follows :

CG on ***original (i.e. initial)*** compensation : Taxable in the P.Y. in which such compensation or ***part thereof*** is first received.

CG on ***enhanced (i.e. additional)*** compensation : Taxable in the P.Y. in which such compensation is received.

Notes :

1. Nature of CG of enhanced compensation same as nature of CG on original compensation.
2. POH : From date of acquisition by the assessee to the date of acquisition by the Central Government.
3. CG on ***enhanced*** compensation : COA & COI will be taken as nil.
4. Litigation expenses to get the enhanced compensation are deductible from enhanced compensation and balance taxable as CG.

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5. Where the amount of compensation is ***already received and taxed*** but receipt has been made a matter of dispute and amount is subsequently reduced by the court, Tribunal or other authority, the CG of that year, in which compensation received was taxed, shall be ***recomputed*** accordingly.

6. Interest received on original/enhanced compensation shall be deemed to be the income of the year in which it is received, irrespective of the method of accounting followed by the assessee [Section 145A(b)].

7. Interest received on original/enhanced compensation is taxable under the head "IOS" [Section 56(2)(viii)].

8. In the case of Interest received on original/enhanced compensation, a deduction of a sum equal to 50% of such income shall be allowed. [Section 57(iv)].

Illustration :

The Central Government acquires a house property owned by X on October 17, 1995. This property was purchased on April 10, 1976 for ₹ 76,000 (cost of improvement incurred during 1986-87 : ₹ 40,000 and fair market value of the property on April 1, 1981 was ₹ 1,42,000).

The Government awards ₹ 5,77,000 as compensation which is received partly (₹ 77,000) on May 13, 2010 and partly (₹ 5,00,000) on April 1, 2011. Being aggrieved against the award, X files an appeal. The Court, as per order dated August 12, 2011, enhanced the compensation from ₹ 5,77,000 to ₹ 9,50,000 (legal expenses incurred by X : ₹ 20,000). X receives the additional compensation of ₹ 3,73,000 on April 15, 2012. Compute the income of X under the head "Capital gains".

Computation of capital gain in respect of original compensation

Name of assessee : Mr. X
Previous Year : ***2010-11***
Assessment Year : ***2011-12***

POH : 10.04.1976 to 16.10.1995
Nature of capital asset : Long-term capital asset

Sale Consideration as per Section 45 (5)			***5,77,000***
Less : ICOA (1,42,000 x 281/100)		3,99,020	
ICOI (40,000 x 281/140)		80,286	4,79,306
LTCG			97,694

Computation of capital gain in respect of enhanced compensation

Name of assessee : X
Previous Year : ***2012-13***
Assessment Year : ***2013-14***

POH : 10.04.1976 to 16.10.1995
Nature of capital asset : Long-term capital asset

Sale Consideration as per Section 45 (5)			3,73,000
Less : ICOA		Nil	
ICOI		Nil	
Transfer expenses (legal expenses)		20,000	20,000
LTCG			3,53,000

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Illustration :

X purchases a house property in 1995. It is compulsorily acquired by the Government on April 20, 2005 (indexed cost of acquisition is ₹ 40,000). Compensation paid by the Government on May 6, 2010 : ₹ 6,00,000.

The Delhi Court increases the compensation from ₹ 6,00,000 to ₹ 9,30,000 on the appeal filed by X (legal expenditure incurred by X : ₹ 10,000). The Government on June 10, 2011 pays the additional compensation of ₹ 3,30,000 but Government files an appeal in the Supreme Court against the judgment of Delhi High Court. The Supreme Court reduces the quantum of compensation from ₹ 9,30,000 to ₹ 7,50,000 by its judgment dated March 20, 2013. X repays ₹ 1,80,000 to the Government on April 6, 2013. Legal expenditure incurred by X in Supreme Court is ₹ 25,000.

Computation of capital gain in respect of original compensation

Name of assessee : X
Previous Year : ***2010-11***
Assessment Year : ***2011-12***

POH : 1995 to 19.04.2005		
Nature of capital asset : Long-term capital asset		
Sale Consideration as per Section 45 (5)		6,00,000
Less : ICOA		40,000
LTCG		5,60,000

Computation of capital gain in respect of enhanced compensation

Name of assessee : X
Previous Year : ***2011-12***
Assessment Year : ***2012-13***

POH : 1995 to 19.04.2005		
Nature of capital asset : Long-term capital asset		
Sale Consideration as per Section 45 (5)		3,30,000
Less : ICOA	Nil	
Transfer expenses (legal expenses)	10,000	10,000
LTCG		3,20,000

Recomputation of capital gain after the verdict of Supreme Court

Name of assessee : X
Previous Year : ***2011-12***
Assessment Year : ***2012-13***

POH : 1995 to 19.04.2005		
Nature of capital asset : Long-term capital asset		
Sale Consideration as per Section 45 (5) [₹ 7,50,000 – ₹ 6,00,000]		1,50,000
Less : ICOA	Nil	
Transfer expenses (legal expenses) [₹ 10,000 + ₹ 25,000]	35,000	35,000
LTCG		1,15,000

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C A P I T A L G A I N S E X E M P T F R O M T A X

		Section 54	Section 54B	Section 54D	Section 54EC	Section 54F	Section 54G	Section 54GA
1.	**Exemption available to**	Individual/HUF	Individual	Any person	Any person	Individual/HUF	Any person	Any person
2.	**Type of capital asset transferred**	Residential house property	Agricultural land if it was used by the individual or his parents for agricultural purposes for atleast 2 years prior to the date of transfer	Land or building forming part of an industrial undertaking which is compulsorily acquired by the Government and which is used for atleast 2 years for industrial purposes prior to the date of compulsory acquisition	Any capital asset	Any long-term capital asset (other than a residential house property) provided on the date of transfer the taxpayer does not own more than one residential house property except the new residential house property as stated in point no. 4 below.	Land, building, plant or machinery in order to shift an industrial undertaking from urban area to rural area	Land, building, plant or machinery in order to shift an industrial undertaking from urban area to any special economic zone
3.	**Nature of capital gain**	LTCG	STCG/LTCG	STCG/LTCG	LTCG	LTCG	STCG/LTCG	STCG/LTCG
4.	**Asset to be acquired to get exemption**	Residential house property	Agricultural land (may be in rural area or urban area)	Land or building for industrial purposes	Bonds of National Highway Authority of India (NHAI) or Rural Electrification Corporation (REC) ***[Investment cannot exceed ₹ 50 Lakhs]***	Residential house property	Land, building, plant or machinery in order to shift industrial undertaking to rural area	Land, building, plant or machinery in order to shift industrial undertaking to any special economic zone
5.	**Time limit for acquiring the new asset**	***Purchase :*** 1 year backward or two years forward from the date of transfer ***Construction :*** construction should be completed within 3 years forward from the date of transfer	2 years forward from the date of transfer	3 years forward from the date of receipt of compensation	6 months forward from the date of transfer	***Purchase :*** 1 year backward or 2 years forward from the date of transfer ***Construction :*** construction should be completed within 3 years forward from the date of transfer	1 year backward or 3 years forward from the date of transfer	1 year backward or 3 years forward from the date of transfer
6.	**Amount of exemption**	Investment in new asset or capital gain whichever is lower	Investment in new asset or capital gain whichever is lower	Investment in new asset or capital gain whichever is lower	Investment in new asset or capital gain whichever is lower	Investment in the new asset / *Net sales consideration x Capital gain *S.C-Transfer expenses	Investment in new asset or capital gain whichever is lower	Investment in new asset or capital gain whichever is lower
7.	**Exemption shall be revoked**	If the new asset is transferred within three years from the date of its acquisition	If the new asset is transferred within three years from the date of its acquisition	If the new asset is transferred within 3 years from the date of its acquisition	If the new asset is transferred or it is converted into money or a loan is taken on its security within 3 years from the date of its acquisition	(a) If the new residential house is transferred within 3 years from the date of its acquisition (b) If another residential house is purchased / constructed within 2 years / 3 years from the date of transfer of original asset	If the new asset is transferred within 3 years from the date of its acquisition	If the new asset is transferred within 3 years from the date of its acquisition
8.	**If exemption is revoked it is taxable as**	STCG in year in which exemption revoked	STCG in year in which exemption revoked	STCG in year in which exemption revoked	LTCG in year in which exemption revoked	LTCG in year in which exemption revoked	STCG in year in which exemption revoked	STCG in year in which exemption revoked
9.	**Scheme of deposit**	Applicable	Applicable	Applicable	Not applicable	Applicable	Applicable	Applicable

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Scheme of deposit :

If the new asset is not acquired upto the ***due date*** of filing of return of income, then the taxpayer will have to deposit the money in ***"Capital gain deposit account scheme"*** with a nationalised bank. The proof of deposit should be submitted along with return of income. On the basis of actual investment and the amount deposited in the deposit account, exemption will be given to the taxpayer.

The taxpayer can acquire the new asset by withdrawing from the deposit account. If the deposit account is not fully utilized for acquiring the new asset, the unutilized amount will become chargeable to tax in the P.Y. in which the specified time limit expires. It will be taxable as STCG/LTCG ***depending upon the original capital gain***.

The taxpayer can withdraw the unutilized amount after the expiry of the specified time limit.

Capital gains exempt from tax under various sub-clauses of Section 10

☯ Section 10 (33)

If Unit Scheme, 1964 (Popularly known as "US 64") is transferred on or after 1-4-2002, any capital gain (STCG/LTCG) arising from such transfer shall be exempt.

☯ Section 10 (37)

With a view to mitigate the hardship faced by the farmers whose agricultural land situated in specified urban limits has been ***compulsorily acquired***, the Finance Act, 2004 has inserted a new clause (37) in Section 10 so as to exempt the capital gains (whether STCG or LTCG) arising to an individual or HUF from transfer of agricultural land by way of ***compulsory acquisition*** where the ***original compensation or enhanced compensation is received on or after 1-4-2004***.

The exemption is available only when such land has been used for agricultural purposes during the preceding two years immediately preceding the date of ***compulsory acquisition*** by such individual (or by any of his parents) or by such HUF.

Where the compulsory acquisition has taken place before 1-4-2004 but the compensation is received after 31-3-2004, it shall be exempt. But if part of the original compensation in the above case has already been received before 1-4-2004, then exemption shall not be available even though balance original compensation is received after 31-3-2004.

However, enhanced compensation received on or after 1-4-2004 against agricultural land compulsory acquired before 1-4-2004 shall be exempt.

☯ Section 10 (38)

- If equity shares of a company or units of an ***equity oriented fund***
- are transferred on or after 1-10-2004,
- LTCG arising from such transfer shall be exempt
- provided such transaction is chargeable to securities transaction tax.

"equity oriented fund" means a Mutual Fund specified under Section 10 (23D) whose investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds of such fund.

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CUMULATIVE IMPACT OF SECTIONS 111A, 112, 10(33) & 10(38)

❖ Section 111A

STCG is taxable at Normal Tax Rate. However STCG under Section 111A is taxable at Special Tax Rate of 15%. Section 111A is applicable if the following conditions are satisfied :

1. The taxpayer may be ***any person*** (i.e. individual, HUF, firm, company or any other person).
2. During the previous year, taxpayer has generated **STCG** on transfer of ***equity shares or units of equity-oriented mutual fund.***
3. Transfer of equity shares or units of equity-oriented mutual fund takes place ***on or after October 1, 2004***.
4. Such transfer of equity shares or units of equity-oriented mutual fund is ***chargeable to securities transaction tax at the time of transfer***.

Consequences if the abovementioned conditions are satisfied :

(a) STCG is taxable at the rate of 15% (10% upto A.Y. 08-09) (plus SC plus EC plus SHEC, as applicable).

(b) No deduction is available under Sections 80C to 80U from the abovementioned STCG.

Proviso to Section 111A :

In the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, 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 the tax on the balance of such short-term capital gains shall be computed at the rate of ***10%***.

Section 112 : Tax on capital gains

Where the Total Income (TI) of any ***assessee*** includes *LTCG*, then the tax payable by the assessee shall be : 20% of the LTCG included in the TI + Tax on balance of (TI – LTCG).

Note 1 : In case of an ***individual or HUF*** being a ***resident*** :

If TI – LTCG < Maximum amount which is not chargeable to tax, then 20% tax shall be laid on LTCG – [Maximum amount which is not chargeable to tax – (TI – LTCG)], in other words benefit of slab of ₹ 1,60,000 (or ₹ 1,90,000 or ₹ 2,40,000 as the case may be) will be available from LTCG.

Note 2 : Proviso to Section 112 :

In case of listed ***securities*** or units (units may be listed or unlisted) or zero coupon bonds :

Tax on LTCG shall be lower of the following :

(a) 20% of LTCG after applying 2nd Proviso or 1st Proviso.

(b) 10% of LTCG ignoring 2nd Proviso (if 1st Proviso applies then 10% of LTCG applying 1st Proviso).

☯ Section 10 (33)

If Unit Scheme, 1964 (Popularly known as "US 64") is transferred on or after 1-4-2002, any capital gain (STCG/LTCG) arising from such transfer shall be exempt.

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☯ Section 10 (38)

- If equity shares of a company or units of an ***equity oriented fund***
- are transferred on or after 1-10-2004,
- LTCG arising from such transfer shall be exempt
- provided such transaction is chargeable to securities transaction tax.

"equity oriented fund" means a Mutual Fund specified under Section 10 (23D) whose investible funds are invested by way of equity shares in domestic companies to the extent of more than 65% of the total proceeds of such fund.

❖ When Securities Transaction Tax (STT) is applicable ?

- STT is applicable in the case of transfer of ***equity*** shares and units of ***equity-oriented mutual fund*** on or after October 1, 2004.
- It is applicable only if these assets are transferred in a recognized stock exchange in India.
- It is also applicable if units of equity-oriented mutual fund are transferred to the mutual fund.
- If these assets are transferred without recording the transaction in a recognized stock exchange in India or if units of equity-oriented mutual fund are transferred to a person other than mutual fund, securities transaction tax is not applicable, even if the transfer takes place on or after October 1, 2004.

The cumulative impact of Sections 111A, 112, 10 (33), and 10 (38) can be explained with the help of the following table :

Income-tax Rates (A.Y. 2011-12)

Capital Asset transferred	If STT is paid		If STT is not paid		
	LTCG	STCG	LTCG		STCG
			Without indexation	With indexation	
Equity shares (listed)	0%	15%	10%	20%	Normal
Equity shares (unlisted)	NA	NA	NA	20%	Normal
Preference shares (listed)	NA	NA	10%	20%	Normal
Preference shares (unlisted)	NA	NA	NA	20%	Normal
US-64	0%	0%	0%	0%	0%
Units (equity oriented fund)	0%	15%	10%	20%	Normal
Units (others) : listed or unlisted	NA	NA	10%	20%	Normal
Debentures (listed)	NA	NA	10%	NA*	Normal
Debentures (unlisted)	NA	NA	20%	NA*	Normal
Government securities	NA	NA	10%	20%	Normal

*No indexation benefit in case of LTCG on bonds or debentures. However benefit of indexation available on Capital Indexed Bonds.

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Mr. X (A.Y. 2011-12)
(Engaged in the business of buying and selling equity shares)

- Profit on sale of shares
  - Taxable under the head "PGBP"
    - Deduction U/S 36(1)(xv) allowed if STT is paid
- Dividend income
  - Received from Domestic Co.
    - Exempt U/S 10(34)
  - Received from Foreign Co.
    - Taxable under the head "IOS"

Mr. Y (A.Y. 2011-12)
(Invests in equity shares)

- Profit on sale of shares
  - Taxable under the head "CG" (Income-tax rates as per above table)
    - STT paid is ***not*** deductible as transfer expenditure ***[5th Proviso to Section 48]***
- Dividend income
  - Received from Domestic Co.
    - Exempt U/S 10(34)
  - Received from Foreign Co.
    - Taxable under the head "IOS"

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CAPITAL GAINS - II

PRACTICAL PROBLEMS

Question No. 1 :

X gives the following information regarding his Residential house property situated at Kolkata :

Date of transfer	December 30, 2010
Date of purchase	June 30, 1979
Sale consideration	40,00,000
Cost of acquisition	1,70,000
FMV as on 1-4-1981	2,00,000
Cost of improvement incurred during the financial year 2000-01	80,000
Expenses on transfer	40,000
Amount deposited in capital gains deposit account scheme on July 20, 2011	20,00,000
Due date of filing return of income	31st July, 2011

To get the exemption under section 54, the following residential house property is purchased at Chennai by X by withdrawing from the deposit account :

Date of purchase	June 20, 2012
Cost of acquisition	18,00,000

Compute capital gains chargeable to tax for the different assessment years.

X does not want to purchase or construct another property, what is the earliest date when he can withdrew the unutilized amount from the deposit account.

Question No. 2 :

X sold a residential house on 28-6-2010 for ₹ 13,00,000. He had purchased this house on 1-10-1986 for ₹ 1,20,000 and had spent ₹ 70,000 on improvement of the house during the year 1987-88. He purchased a new residential house on 21-10-2010 for ₹ 3,00,000. He sold this house on 16-07-2011 for ₹ 6,00,000.

Compute the capital gains taxable for the different assessment years.

Question No. 3 :

X sold gold ornaments on 16-7-2010 for a sum of ₹ 10,00,000. His father purchased this gold in 1978 for ₹ 60,000. The fair market value of the gold as on 1-4-1981 was ₹ 1,00,000. His father gifted the gold to him on 14-7-2010. He spent ₹ 2,00,000 till 31-7-2011 (the due date for filing of the return) on construction of a house property and deposited ₹ 5,00,000 on 31-7-2011 under capital gain scheme and a further sum of ₹ 1,50,000 on 31-8-2011. He withdrew from the capital gain scheme a sum of ₹ 4,00,000 for construction of the house property till the stipulated time. Compute the capital gain chargeable to tax on this transaction for various relevant assessment years assuming that on the date of selling the gold ornaments :

(a) X does not own any residential house.

(b) X owns one residential house.

(c) X owns two residential houses.

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Question No. 4 :

X acquired agricultural land in Delhi, on 15-5-1992 for ₹ 4,00,000. The land is compulsorily acquired by the Delhi Government on 15-4-2002 and the compensation fixed was ₹ 25,00,000. ₹ 10,00,000 was received by X on 15-1-2004 and the balance on 6-4-2004. R was not satisfied with the compensation and filed a suit in the Court. The compensation was enhanced by ₹ 5,00,000 which was received on 25-03-2011. X also received interest of ₹ 97,500 from the Government as awarded by the Court on the same day (i.e. on 25-03-2011).

(a) Compute the capital gain taxable in the hands of X for various assessment years.

(b) What shall be the answer if the entire original compensation of ₹ 25,00,000 was received on 6-4-2004 ?

(c) What will be the tax treatment of interest received by X ?

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CAPITAL GAINS - II

SOLUTIONS TO PRACTICAL PROBLEMS

Answer to Question No. 1 :

Computation of capital gains

Name of assessee : X
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 30-06-1979 to 29-12-2010		
Nature of capital asset = Long-term capital asset		
Sale consideration		40,00,000
Less :		
Indexed cost of acquisition (2,00,000 x 711/100)	14,22,000	
Indexed cost of improvement (80,000 x 711/406)	1,40,099	
Transfer expenses	40,000	16,02,099
LTCG		23,97,901
Less : Exemption u/s 54		20,00,000
LTCG (Chargeable to tax for the A.Y. 2011-12)		3,97,901

X can purchase a new residential property, by withdrawing from the deposit account, upto December 29, 2012 or he can complete construction of a residential property upto December 29, 2013.

P.Y. : *2013-14*
A.Y. : *2014-15*

Amount deposited in capital gains deposit account scheme	20,00,000
Less : Purchase of new residential property at Chennai	18,00,000
LTCG (chargeable to tax for the A.Y. 2014-15)	2,00,000

If X does not want to purchase or complete construction of another property, he can withdrew the unutilized amount of ₹ 2,00,000 in the deposit account at any time after December 29, 2013.

Answer to Question No. 2 :

Computation of capital gains

Name of assessee : X
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 01-10-1986 to 27-06-2010		
Nature of capital asset = Long-term capital asset		
Sale consideration		13,00,000
Less :		
Indexed cost of acquisition (1,20,000 x 711/140)	6,09,429	
Indexed cost of improvement (70,000 x 711/150)	3,31,800	9,41,229
LTCG		3,58,771
Less : Exemption u/s 54		3,00,000
LTCG (Chargeable to tax for the A.Y. 2011-12)		58,711

House purchased on 21-10-2010 should not have been transferred before 20-10-2013 but X transferred the house on 16-7-2011. Tax treatment in this case will be as follows :

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P.Y. : 2011-12
A.Y. : 2012-13

Period of holding : 21-10-2009 to 15-7-2011
Nature of capital asset = Short-term capital asset

Sale consideration	6,00,000
Less : Cost of acquisition	
(₹ 3,00,000 – Capital gain exempt u/s 54 in the A.Y. 2011-12 i.e. ₹ 3,00,000)	Nil
STCG (Chargeable to tax for the A.Y. 2012-13)	6,00,000

Answer to Question No. 3 :

Computation of capital gains

Name of assessee : X
P.Y. : 2010-11
A.Y. : 2011-12

Period of holding : 1978 to 15-7-2010
Nature of capital asset = Long-term capital asset

Sale consideration	10,00,000
Less : Indexed cost of acquisition (1,00,000 x 711/711)	1,00,000
LTCG	9,00,000
Less : Exemption u/s 54F [(2,00,000 + 5,00,000)/10,00,000 x 9,00,000]	6,30,000
LTCG (Chargeable to tax for the A.Y. 2011-12)	2,70,000

No exemption will be allowed in respect of ₹ 1,50,000 deposited on 31-8-2011 because deposit must have been made upto 31-7-2011.

P.Y. : 2013-14
A.Y. : 2014-15

Exemption already claimed u/s 54F in A.Y. 2011-12	6,30,000
Less : Exemption allowed based upon the actual amount spent within 3 years from the date of transfer of the original asset i.e. upto 15-7-2013 [(2,00,000 + 4,00,000)/10,00,000 x 9,00,000]	5,40,000
LTCG (Chargeable to tax for the A.Y. 2014-15)	90,000

If on the date of transfer of gold ornaments :

(a) X does not own any residential house – Tax treatment will be the same as above.

(b) X owns one residential house – Tax treatment will be the same as above.

(c) X owns two residential houses – No exemption will be allowed u/s 54F

Answer to Question No. 4 (a) :

Computation of capital gains

Name of assessee : X
P.Y. : 2003-04
A.Y. : 2004-05

Period of holding : 15-5-1992 to ***14-4-2002***
Nature of capital asset = Long-term capital asset

Sale consideration	25,00,000
Less : Indexed cost of acquisition (4,00,000 x 447/223)	8,01,794
LTCG	16,98,206

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P.Y. : 2010-11
A.Y. : 2011-12

The entire enhanced compensation of ₹ 5,00,000 shall be exempt as per Section 10 (37) as it received after 31-3-2004.

Answer to Question No. 4 (b) :

P.Y. : 2004-05
A.Y. : 2005-06

The entire original compensation of ₹ 25,00,000 shall be exempt as per Section 10 (37) as it received after 31-3-2004.

P.Y. : 2010-11
A.Y. : 2011-12

The entire enhanced compensation of ₹ 5,00,000 shall be exempt as per Section 10 (37) as it received after 31-3-2004.

Answer to Question No. 4 (c) :

As per Section 145A(b) interest of ₹ 97,500 shall be taxable in the P.Y. 2010-11 irrespective of the method of accounting followed by X. It is taxable under the head "IOS" as per Section 56(2)(viii). However as per Section 57(iv) only ₹ 48,750 shall be taxable in the hands of X because a deduction of a sum equal to 50% of such interest shall be allowed.

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