CAPITAL GAINS AND TAXATION OF GIFTS

SECTION 45(1) - CHARGE OF CAPITAL ASSET

Any profits or gains from **transfer** of a **capital asset** effected in the previous year shall be chargeable to income tax under the head Capital Gains in the previous year in which transfer took place.

SECTION 2(14) - DEFINITION OF CAPITAL ASSET

"Capital asset" means property of any kind held by an assessee whether or not connected with his business or profession. Capital assets also includes Depreciable assets, Animals, Trees, Intangible assets etc.

Does Not Include:

1. Assets held as **Stock-in-trade**
2. **Personal Movable effects** i.e. movable item of personal use. But **it does not include** the following:
   - Jewelry
   - Archaeological Collection [Old Collection(Like Gandhi Ji's goggles)]
   - Drawings
   - Paintings
   - Sculptures
   - Any work of Art

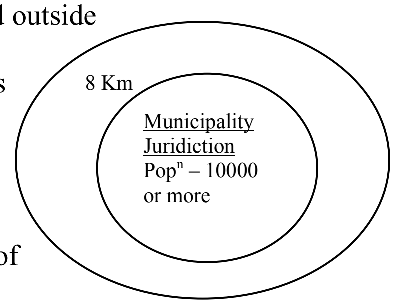
   CAPITAL ASSET

> **"Jewelry"** includes
> - Ornaments made of Gold, Silver, Platinum or other precious metal or any other alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, whether or not worked or sewn into any wearing apparel
> - Precious or Semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.
>
> **JUDICIAL DECISIONS**
> - **CIT v. Benarshilal Katarika** – No Capital Gain on transfer of silver utensils because silver utensils constitute personal affects
> - Capital Gains on transfer of Gold utensils (Because gold utensils are not personal affects)
> - **H.H. Maharaja Rana Hemant Singh Ji -** Capital gain on Transfer of Gold or Silver coins, Gold bars, sovereigns etc. used for puja
> - Capital gain on Transfer of Gold Biscuits or bricks or any other bullion
> - Capital gains on Transfer of collection of foreign stamps
> - Capital gains on Transfer of loose diamonds

3. Agricultural Land in INDIA in RURAL AREA is not Capital Asset. [Agricultural land outside India is a capital asset in all cases]

   Agricultural land in INDIA will be considered Capital Asset if Agricultural land is situated in URBAN AREA i.e. situated in:
   - any area where Population ***of the municipality*** is 10,000 or more

     or
   - any area within 8 Km from the local limits of any municipality referred above, and if the Central Government has declared it to be urban area for the purpose of Capital Gains.



> **OTHER POINTS**
> - The land shall be considered to be agricultural land only if it is agricultural land at the time of its sale and not that it was once agricultural land
> - If agricultural land is situated in a village which comes within the jurisdiction of a municipality, in this case population of municipality shall be taken into consideration instead of village.
> - If any person other than the assessee uses the land for the agricultural purposes and derived agricultural income from it, even then such land shall be considered to be agricultural land.

4. Transferred Gold Deposit Bonds under Gold Deposit Scheme, 1999 no capital gains
    - Gold Deposit Bonds means the bond issue by the Government against investment of gold.

SECTION – 2(47) - DEFINITION OF TRANSFER

It includes:

1. Sale
2. Exchange
3. Relinquishment of an asset
4. Extinguishment of any rights
5. Compulsory Acquisition under any law.
6. Conversion of Capital asset into Stock-in-trade.
7. Any transaction involving the allowing of the **possession of any immovable property** to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882
   [As Per section 53A of Transfer of Property Act, for any transfer of property for a consideration exceeding Rs.100 there must be an agreement to sell and such agreement must mention the time of possession and sales consideration]
   (i.e. Date of Possession will be considered as Date of transfer)
8. Any transaction (whether by way of becoming a **Member of**, or **Acquiring shares in**, a co-operative society, company or other association of persons or by way of **any agreement or any arrangement or in any other manner (like, power of attorney)** whatsoever) which has the effect of transferring, or enabling the enjoyment of any immovable property permanently.
   Note: Usually flats in multi storeyed building and other dwelling units and plots in group housing schemes are registered in the name of a co-operative society formed by the individual allottees. Sometimes, Companies are also floated for this purpose and allottees take shares in such companies. The shareholders/members in this case are deemed owners of the flat/house /land although the legal owner is the co-operative society or the company. If the deemed owner transfers the rights to use and enjoy the flat by changing the membership of co-operative society or by transferring the shares in the company, it will be treated as a transfer.
9. Redemption of **Zero Coupon Bonds.**

JUDICIAL DECISIONS

Anarkali Sarabhai (SC) – Redemption of Preference shares amount to transfer and will result in capital gains in the hands of the preference shareholder.

High Court – Amount spent by the assessee on the maintenance of the horse during the pregnancy period was really for protecting, preserving and keeping the horse in good health so that healthy offsprings are born. The Maintenance expenses can be regarded as COA. The court also held that training expenses would constitute COI.

SECTION 2(42A) - MEANING OF SHORT TERM/LONG TERM CAPITAL ASSET

- Capital Asset Transferred within 36 months. – Short Term
- Capital Asset Transferred after 36 months – Long Term
- Period of 36 months shall be taken as 12 months in case of following assets:
    - Shares in any company whether listed or not
    - Units of UTI/Mutual fund specified u/s 10(23D) whether listed or not
    - Zero Coupon Bond whether listed or not
    - Any other security if it is listed in recognized stock exchange.

SECTION – 48 - METHOD OF COMPUTATION OF CAPITAL GAIN

Sales Consideration *received or accruing* as a result of transfer of capital asset
Less: the **cost of acquisition** of the asset
Less: the **cost of improvement** to the asset
Less: **expenditure incurred** exclusively in connection with such transfer

FIRST PROVISO READ WITH RULE 115A - TRANSFER OF SHARES/DEBENTURES PURCHASED IN FOREIGN CURRENCY

If any **NR (includes a Foreign Company)** has purchased **SHARES OR DEBENTURES** in **INDIAN COMPANY in FOREIGN CURRENCY** and subsequently such shares or debentures were sold by him, in such cases Capital gain shall be computed in the manner given below:

- Convert **COA** in foreign currency at **Average** of TTBR and TTSR on the **Date of Acquisition**
- Convert **FVC and selling expenses** into foreign currency at the **Average** of TTBR and TTSR on the **Date of Transfer**
- Compute Capital gain in foreign currency
- Capital gains so computed shall be converted into INR at **TTBR on the Date of Transfer.**
- Indexation is not applicable even if the asset is Long Term.

Other Points:

1. Debentures include Bonds but bonds of CG, SG and RBI are not covered.
2. This proviso shall not apply to units of UTI and mutual funds.
3. The first proviso shall apply to listed as well as non-listed share and debentures.
4. If shares sold through Stock-exchange and hence STT has been paid on sale of shares, exemption u/s 10(38) is available.

SECOND PROVISO

1. Where the capital gains arises from the transfer of a **long term capital asset**, then capital gains shall be computed in the following manner:
   Sales Consideration *received or accruing* as a result of transfer of capital asset
   Less: the **Indexed cost of acquisition** of the asset
   Less: the **Indexed cost of improvement** to the asset
   Less: **expenditure incurred** exclusively in connection with such transfer

Cost inflation index for F.Y. 2010-11 = 711

THIRD PROVISO

Benefit of indexation is **not available** for Bonds and Debentures
Benefit of indexation is **available** for Capital Indexed Bonds issued by government.

FIFTH PROVISO

STT paid on Sale of shares/units – Not to be reduced from Sale price
STT paid on Purchase of shares/units – Not to be added to the COA.

SECTION – 55 - ASSET PURCHASED BEFORE 01-04-1981

Cost of Acquisition – Cost at which asset was acquired or its fair market value as on 01-04-1981, whichever is higher.
Cost of Improvement – If there is any cost of improvement prior to 01-04-1981, it will not be taken into consideration

SECTION – 55 – COST OF ACQUISITION & COST OF IMPROVEMENT

COST OF IMPROVEMENT

- **COI** shall be **NIL** in case of following:
  - Goodwill of Business [not for Profession]
  - Right to carry on B/P
  - Right to manufacture or produce various goods.

COST OF ACQUISITION

(A)

Capital Asset	Cost of Acquisition	
	Self Generated	**Acquired**
○ Goodwill of Business [not for Profession]	NIL	Purchase Price
○ Right to carry on B/P	NIL	Purchase Price
○ Right to manufacture or produce various goods.	NIL	Purchase Price
○ Tenancy Right	NIL	Purchase Price
○ Stage Carriage Permits	NIL	Purchase Price
○ Brand Name or Trade Mark	NIL	Purchase Price
○ Loom Hours	NIL	Purchase Price

- If above listed capital assets were acquired before 01.04.1981 then the option to take COA as FMV as on 01.04.81 is not available irrespective of the fact whether such assets are self generated or have been purchased from someone.
- If any other self-generated asset has been transferred than no capital gains. – **B.C. Srinivasa Setty (SC)**

(B)

Capital Asset	**Cost of Acquisition**	**Period of Holding**
Original Shares/Securities	Purchase Price	From date of Purchase/Allotment
Right Shares/Securities	Right Issue Price	From date of Allotment
Renouncement of right - in the hands of the person who renounces the right (Mr.A) - in the hands of the purchaser of right	 NIL Price paid to Mr.A + Price paid to company to acquire right shares	 From date of offer (Always Short term) From date of Allotment
Bonus Shares/Securities	NIL	From date of Allotment

- The option to take FMV as on 01.04.1981 is available.

(C) Under a scheme of for ***demutualization*** or corporatisation approved by the SEBI in relation to a capital asset, being:

Equity share or shares allotted to a shareholder of a recognized stock exchange in India	Cost of Acquisition of his original membership of the exchange
Trading or clearing rights of recognized stock exchange acquired by a shareholder	COA- Nil

SECTION – 50C - FULL VALUE OF CONSIDERATION IN CERTAIN CASES

If any person has transferred **Land or Building or Both** (i.e. immovable property) and the FVC claimed by him is less than the value **adopted/assessed/assessable*** by stamp valuation authority of SG for the purpose of stamp duty, in such cases FVC for the purpose of Capital gains shall be the value adopted by stamp valuation authority (SVA)

If any assessee claims before any A.O.

- that the value **adopted/assessed/ assessable*** by SVA is higher than the FMV as on the date of transfer
- and the value so **adopted/assessed/ assessable*** has not been disputed in any appeal/revision or no reference has been made before any authority, court or the High Court
  - in such cases assessing officer MAY refer the matter to the valuation officer and the value determined by the valuation officer shall be taken into consideration but if the value determined by valuation officer is higher than the value determined by SVA, in such cases value determined by SVA shall be taken into consideration.

* The word **assessable** means the price which the SVA would have if it were referred to such authority for the purposes of the payment of stamp duty. [Earlier the provision does not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney, but now it is covered]

Section 155 - Rectification

If the value determined by SVA is taken as FVC and subsequently such value is revised in any appeal/revision or any reference made before any authority, court or the High Court than

- the assessing officer SHALL amend the order of assessment
- and take FVC as value determined in such appeal etc.

The provisions of Section 154, so far as may be, apply and the period of 4 years shall be reckoned from the end of the previous year in which the order revising the value was passed.

TAXATION OF GIFTS

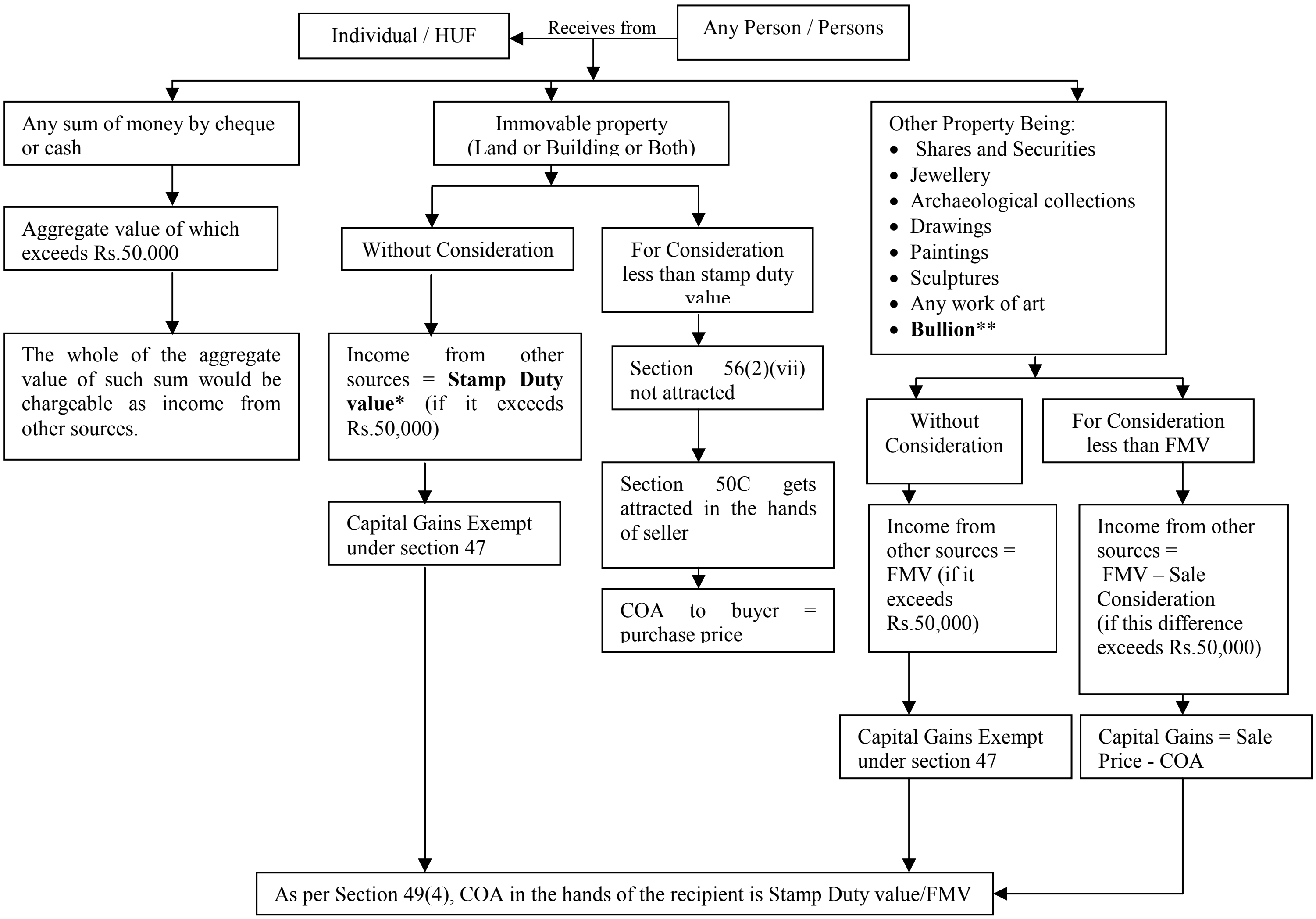
Basic Provision related to Gift

Section 47 – "Any transfer of a capital asset under a gift" shall not be considered as "transfer". Therefore, no capital gains hall arise on transfer of a capital asset under a gift.

Section 49(1) – Where a capital asset became the property of the assessee **under a gift** then the COA of the asset shall be deemed to be the cost of previous owner.

Section 2(42A) – In case of Gift, period of holding of previous owner shall also be included.

SECTION 56(2)(VII) READ WITH SECTION 50C, SECTION 47 AND SECTION 49(4)



* Stamp Duty Value determined in accordance with Section 50C (depending on situation whether case refer to valuation officer or assessee filed an appeal)

** Bullion means Pure Gold and silver e.g. silver coins, silver bars, gold coins and gold biscuits

OTHER POINTS

1. Gift received shall be exempt u/s 56(2)(vii) irrespective of amount in the following cases:-
   - From **Relative**.
   - On the occasion of marriage of Individual.
   - Under will or inheritance.
   - In contemplation of death from any person.
   - From Charitable Institutions, Hospitals, Educational Institutions, Local Authority, or other similar organization.
   - From any trust or institution registered under section 12AA

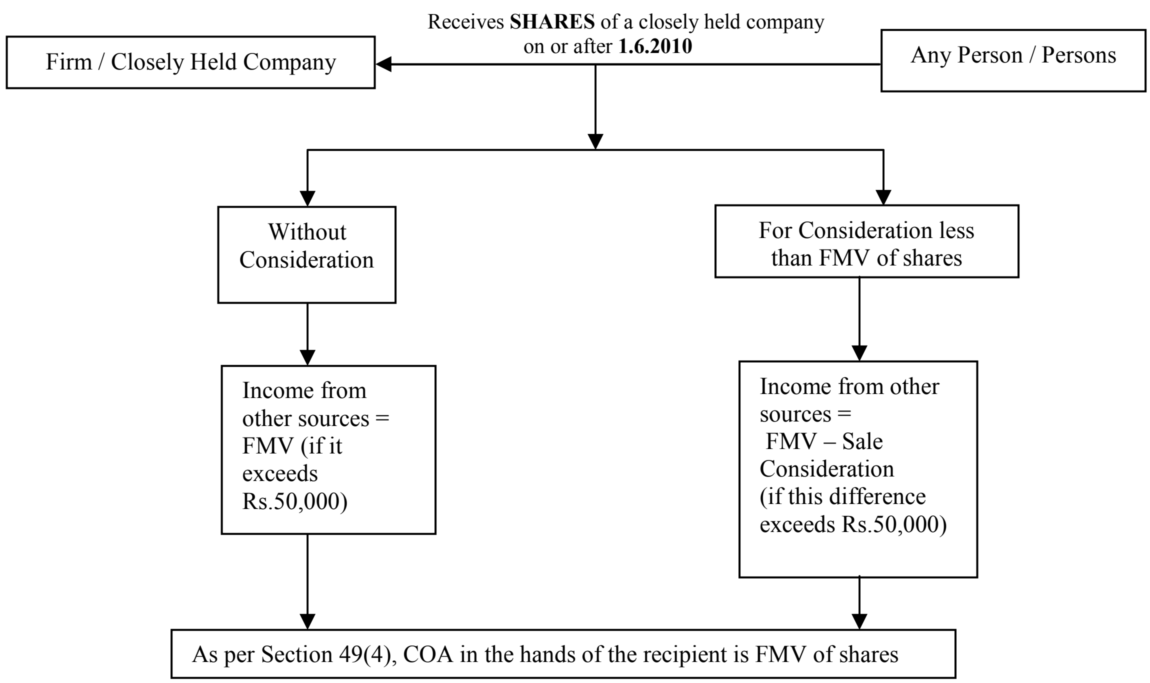
   Relative shall include:

   - Spouse of the Individual.

- Brother / Sister of the Individual.
- Brother / Sister of the spouse of the Individual.
- Brother or sister of either of the parents of the individual
- Lineal Ascendant / Lineal Descendant of the Individual or spouse of the individual.
- Spouse of the persons mentioned above.

2. Section 56(2)(vii) shall apply if property is in the nature of **"Capital Asset"** in the hands of ***Recipient***. If the property is stock in trade in the hands of recipient than Section 56(2)(vii) shall not apply
Example: If an individual who is a jeweler buys jewellery from a customer for Rs.80 Lakhs and FMV of jewellery is Rs. 100 Lakhs. Now Section 56(2)(vii) shall not apply since jeweler receives jewellery as stock-in-trade. As and when he will sell the jewellery say for Rs. 105 Lakhs then Rs. 25 Lakhs shall be taxable as his business income.

SECTION 56(2)(VIIA) READ WITH SECTION 50C, SECTION 47 AND SECTION 49(4)



OTHER POINTS
1. Trust / AOP / BOI are not covered by this section. Only firm and Closely held company is covered
2. Section 56(2)(viia) is not applicable on Debentures.

SECTION – 45(1A) - CAPITAL GAINS IN CASE OF INSURANCE CLAIM

If any person **receives any money or other assets** under an **insurance claim** on account of **damage or destruction** of any capital asset, because of –
- Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature or
- Riot or civil disturbance or
- Accidental fire or explosion or
- Action by an enemy or action taken in combating an enemy (whether with or without a declaration of war)

Then **value of such money** or **FMV of other assets** shall be deemed to be the FVC of destroyed asset and any profits arising from receipt of such money/asset shall be chargeable to income tax under the head "Capital Gains" and shall be deemed to be the income of such person of the **previous year in which such money or other asset was received.**

- If no claim received on destruction of capital asset, no capital gain shall arise. The cost of the asset destroyed shall be a capital loss; i.e. dead loss which has no tax treatment
- Capital Gains shall be computed in the year in which asset destroyed but taxable in the year of receipt.
- For Other asset received, FMV of such asset shall be deemed to be its COA.

Example: An asset was purchased on 02.01.2001 for Rs.1,00,000. The said asset is destroyed in fire on 10.1.2010 and the insurance company gives a new asset to the assessee on 21.05.2010 whose FMV is Rs.2,50,000
Sol: Now capital gains shall be taxable in A.Y. 2011-12 since insurance compensation is received in previous year ended 31.03.2011.

Period of Holding	02.01.2011 to 09.01.2010	(Long Term)
Sale Price as per Section 45(1A)	2,50,000	
Less: Indexed COA – $100000 \times \frac{632}{406}$	1,55,665	
LTCG	**94335**	

SECTION – 45(2) - CAPITAL GAINS ON CONVERSION OF CAPITAL ASSET INTO STOCK-IN-TRADE

- Converted w.e.f. 01-04-1984 onwards [i.e. if converted before 01-04-1984, **no** capital gains as decided in **Bai Shirinbai K. Kooka (SC.)**]
- Conversion shall be considered to be "Transfer"
- Capital gains shall be computed in the year of conversion
- FVC = FMV of asset on the date of conversion
- Capital gains so computed shall be taxable in the year in which the stock-in-trade has been sold and any income subsequent to the conversion shall be considered to be business income

> Capital Gains = FMV of the asset on date of Conversion – COA
> PGBP = Sale Price of SIT - **FMV of the asset on date of Conversion***
> *** Amount recorded in the books of accounts of the business as a value of SIT is not relevant**

Example:
Mr. Rohit paul purchased Gold on 01.10.1971 for Rs.2,00,000 and its fair market value on 01.04.1981 is Rs.3,00,000 and he converted it into stock in trade on 01.10.1988 and FMV of the asset on the date of conversion was Rs.11,00,000 and subsequently half of the stock in trade was sold on 01.10.2009 for Rs.6,50,000 and balance half was sold on 01.10.2010 for Rs.7,50,000.
Compute his total income for various years.
Solution:
Computation of capital gains under section 45(2)

FVC	11,00,000
Less: ICOA	
= 3,00,000 / Index of 81-82 x Index of 88-89	
= 3,00,000 / 100 x 161 = Rs.4,83,000	(4,83,000)
LTCG	**6,17,000**
A.Y. 2010-11	
LTCG (1/2 of Rs.6,17,000)	3,08,500
Business Income	
(Rs.6,50,000 – Rs.5,50,000)	1,00,000
Total Income	**4,08,500**
A.Y. 2011-12	
LTCG (1/2 of Rs.6,17,000)	3,08,500
Business Income	
(Rs.7,50,000 – Rs.5,50,000)	2,00,000
Total Income	**5,08,500**

SECTION – 45(2A) - SALE OF SHARE BY A DEPOSITORY

If any shares or other securities are held in dematerialized form by any depository and subsequently the shares or securities have been sold by the depository, gain or loss shall be that of the beneficiary.
For the purpose of calculating the date of transfer and period of holding in respect of shares held in dematerialized form, the FIFO method shall be adopted.
In case the investor has more than one security account, FIFO method will be applied accountwise.

CIRCULAR NO. 704 DATED 28TH APRIL, 1995 – For Securities held in dematerialized form:

- Date of Transfer = Date of Broker's note (provided such transaction are followed up by delivery of shares and also the transfer deeds)
- Period of Holding = Reckoned from date of Broker's note for purchase on behalf of investors

SECTION – 45(3) - TRANSFER OF CAPITAL ASSET BY A PARTNER/MEMBER TO THE FIRM/AOP/BOI

If any person has transferred any capital asset to the partnership firm etc**. as a partner or to become a partner**, in such cases it will be considered to be a transfer and capital gains shall be computed in the hands of partner and FVC shall be the **amount recorded in the books of accounts of the firm** as the value of capital asset. The same provisions shall apply where a member of AOP/BOI transfers a capital asset to such AOP/BOI.

Section 50C and 56(2)(viia) shall apply

SECTION – 45(4) - TRANSFER OF CAPITAL ASSET BY WAY OF DISTRIBUTION OF A FIRM/AOP/BOI OR OTHERWISE

If any Partnership Firm has transferred any **Capital Asset** on its dissolution or **otherwise***, it will considered to be a transfer and capital gains shall be computed in the hands of the Partnership firm and FVC shall be the FMV of the asset on the date of distribution. The same provisions will apply where the assets are distributed by AOP/BOI to its members.

***A.N. Naik Associates –** The word "**otherwise**" in Section 45(4) also covers **Retirement.**

JUDICIAL DECISIONS

1. **A.L.A. Firm (SC)** – Where a firm is dissolved, its **stock in trade** must be at the fair market value. The difference between the fair market value of stock and the book value of stock is assessable as P/G/B/P in the hands of the firm. This case applies where the business of the firm is discontinued on dissolution and is not continued by anyone.
2. **Sakthi Trading Co. (SC)** – Where, on dissolution following death of One partner, assessee-firm was reconstituted with remaining partners without discontinuation of business, closing stock of firm was to be valued at Cost or Market Price whichever is lower.

   Therefore, if a firm is dissolved and its business is also discontinued, then the judgment of A.L.A. FIRM shall apply and the stock shall be valued as per the fair market value. If however, the firm is dissolved but the business of the firm is continued by some-one, then the judgment of SC in SAKTHI TRADING CO. shall apply and the stock shall not be valued at market price.

3. **R. Lingmallu Raghukumar (SC)** – Excess amount received by the assessee on retirement from the firm is not assessable to capital gains. But such excess amount shall be treated as Income from other sources u/s 56(2)(vii).

SECTION 55A RULE 111AA - REFERENCE TO VALUATION OFFICER

If any capital gain is to be computed on the basis of FMV, than in the following cases AO can refer the valuation of capital asset to a valuation officer:

1. If the market value has been determined by the Registered Valuer (Private Valuer) is less than the FMV.
2. In any other case, if in the opinion of assessing officer
   - FMV is exceeding by more than 15% of the value claimed by the assessee

- or it is exceeding by more than Rs.25000 of the value claimed by assessee, whichever is less

For Example:
Mr. X has converted one capital asset into stock-in-trade and he claims the market value to be Rs.1 Lac but AO considers the market value to be Rs.110000, in this case matter cannot be referred to the valuation officer, but if the value in the opinion of the AO is Rs.120000, in this case matter can be referred to the valuation officer.

SECTION – 45(5) - CAPITAL GAINS IN CASE OF COMPULSORY ACQUISITION BY GOVERNMENT

- Capital gains shall be computed in the year in which the asset has been acquired but taxable in the year in which the compensation has been received (either partial or full).
- If assessee has filed an appeal in the high court etc. and the assessee has received enhanced compensation, such enhanced compensation shall be considered to be capital gains in the year in which such enhanced compensation has been received and COA and COI shall be taken to be nil, however any legal expense shall be allowed to be deducted and nature of capital gains [LT/ST] shall be the same as in case of original asset.
- If on Death of assessee, **original compensation** is received by son, than son shall file ROI of the deceased father and declare the capital gains therein. But if by reason of death or by any other reason, **enhanced compensation** is received by any other person, than such amount shall be deemed to be the income of such other person u/h Capital Gains

Section 155 – Rectification
If subsequently compensation has been **reduced** by any court, Tribunal or other authority, than
- the assessing officer SHALL amend the order of assessment
- and take compensation so reduced by the court to be FVC

The provisions of Section 154, so far as may be, apply and the period of 4 years shall be reckoned from the end of the previous year in which the order reducing the compensation was passed.

Section 145A read with Section 56(2)(viii) – Interest Received by an assessee on Compensation or Enhanced Compensation shall be deemed to be the income in the year of receipt and shall be taxable u/h Other Sources. Further as per **Section 57** Deduction of sum equal to 50% of such interest shall be allowed.

SECTION – 47 - TRANSACTIONS NOT CONSIDERED TO BE TRANSFERRED

(i) Distribution of capital asset in connection with **partition of HUF** (partial or full)
(ii) Transfer of capital asset under **gift** or **will** or an **irrevocable trust**.
(iii) Transferred of asset by amalgamating company to amalgamated company (INDIAN)

Related to (i), (ii) and (iii) Point

Section 43C – If under amalgamation, partition of HUF, gift, will or irrevocable trust, a capital asset has been transferred as SIT, then
- COA of such SIT = Actual cost of capital asset in the hands of transferor + COI incurred by transferor and transferee + transfer expenses incurred by transferor.

Note 1 – Option to take FMV as on 1.4.1981 to be COA is not available as here we are calculating income u/h PGBP and not u/h Capital Gains
Note 2 – Similarly, COI incurred before 1.4.1981 shall be considered for Section 43C

(iv) Transfer of Capital Asset by Holding company to its 100% Subsidiary company(INDIAN)
(v) Transfer of Capital Asset by 100 % Subsidiary company to its Holding company(INDIAN)

Related to (iv) and (v) point

- The Exemption under (iv) and (v) point shall not be available if the capital asset is transferred as Stock-in-trade.
- **Section 47A** – **Withdrawal of Exemption**
  If before the expiry of 8 Years from the date of transfer of capital asset:
  - Such Capital Asset is converted into Stock-in-trade OR
  - The Holding Company or its nominees cease to hold the whole of the share capital of the 100% subsidiary (i.e. even a single share has been sold)

  Then Exemption [(iv) and (v)] shall be withdrawn and the capital gains shall be charged to tax in the year when such transfer took place. (From Back)

  Section 155 – Assessment of transferor shall be rectified u/s 154 and 4 years shall be counted from the end of the previous year
  - in which capital asset was converted into SIT or
  - in which the holding company or its nominees ceased to hold the whole of the share capital of 100%subsidiary company.

  Section 49(3) – As the exemption has been withdrawn than for calculating capital gains in the hands of transferee, COA shall be the price at which the asset is transferred by the transferor company. (i.e. Section 49(1) is not applicable)

(vi) Transfer of **shares held in Indian Company** by the **Amalgamating Foreign Company to Amalgamated Foreign Company.** Provided

- At least 25% of Shareholders of **Amalgamating Foreign Company** continue to remain shareholders of **Amalgamated Foreign Company**, and
- Such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated.
  (If such transfer attracts tax on capital gains in the country in which the amalgamating company is incorporated then, the transfer is NOT EXEMPT under section 47 of the Income Tax Act. The capital Gains shall be taxable as per the relevant DTAA.)

(vii) Transfer of capital assets by the **Banking Company to Banking Institution** in the scheme of **amalgamation.**

(viii) **Transfer of Bonds or Global Depository Receipts** referred to in Section 115AC **made Outside India by a NR to another NR**

(ix) Transfer of any work of **art, paintings etc**. to any national museum or national art gallery or other similar organizations as notified by the CG.

(x) Transfer by way of Conversion of **Bonds or Debentures or Debenture Stock or Deposit Certificates** into **Shares/Debentures** of **THAT** Company.

(xa) Transfer by way of **Conversion of Bonds referred to in Section 115AC** into **Shares/Debentures** of **ANY** company

<u>Related to (x) and (xa) Point</u>

<u>Section 49(2A) -</u> In case point (x) and (xa) capital gain shall be computed in the following manner:

- COA shall be the COA of the debentures, bonds etc. so converted
- Period of holding shall start from the date of **conversion.**

(xi) Transfer by a shareholder, in the scheme of amalgamation, shares in the amalgamating company. Provided

- Shareholder shall receive **only shares** in amalgamated company, and
- The amalgamated company is an Indian Company.

<u>Related to (xi) Point</u>

<u>Section 49(2) –</u> The COA of the shares in the amalgamated company shall be the COA of shares of the amalgamating company

<u>Section 2(42A)</u> - Period of holding of the shares in the amalgamating company shall also be considered.

<u>Gautam Sarabhai Trust</u> (Imp) – If the consideration for transfer of shares in amalgamating company consists of something more than the shares in the amalgamated company, then exemption under Section 47 will not be available.

(xii) Transfer of **LAND of Sick Industrial Company**. Provided

- The land is transferred during the period beginning from the previous year in which the said company has become a sick industrial company and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
- The Sick Industrial Company is managed by its worker's co-operative
- The land is transferred under a scheme prepared and sanctioned by BIFR

(xiii) Transfer of Capital Asset or Intangible Asset by a Partnership firm to a company in case where firm is succeeded by a company in the ***business*** carried on by it. Provided

- All the Assets and liabilities of the firm relating to business immediately before the succession become the assets and liabilities of the company.
- All the partners of the firm immediately before the succession became the shareholders (Eq/Pref.) of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession. (Not in the ratio of PSR)
- The partners of the firm do not receive any consideration or benefit, directly or indirectly in any form or manner, other than by way of allotment of Shares (Eq/Pref.) in the company
- The aggregate of the shareholding in the company of the partners of the firm is not less than 50% of total voting power in the company and their shareholding continues to be as such for a period of 5 years or more form the date of succession.

<u>Other points</u>

1) The same business should be carried on by the company after succession. The company may add on any other line of business.
2) Partner include minor partner admitted to the benefits of the partnership

3) The capitals shall include aggregate of all capital accounts. i.e. Fixed Capital as well as Current Capital account and will include the share of profits in the firm upto date of succession
4) Exemption is not possible if any of the partners have a negative capital since conditions of exemption cannot be fulfilled. In such a case, this partner will have to convert his capital into positive before the succession takes place
5) Business Profits are not exempt. Therefore the profit on sale of SIT by the firm to the company shall be taxable in the hands of the firm as business profits. The firm should transfer the SIT to the company at Cost. *(Sakthi Trading Co. (SC) shall apply)*
6) Exemption u/s 47(xiii) is applicable for a partnership carrying on a business. Exemption is not applicable if it is carrying on profession

(xiv) Transfer of Capital Asset or Intangible Asset by a Proprietary Concern to a company in case where such proprietary concern is succeeded by a company in the ***business*** carried on by it. Provided

- All the Assets and liabilities of the sole proprietary concern relating to business immediately before the succession become the assets and liabilities of the company.
- The shareholding of the sole proprietor in the company is not less than 50% of total voting power in the company and his shareholding continues to be as such for a period of 5 years or more form the date of succession.
- The sole proprietor does not receive any consideration or benefit, directly or indirectly in any form or manner, other than by way of allotment of Shares (Eq/Pref.) in the company

Other points

1) The same business should be carried on by the company after succession. The company may add on any other line of business.
2) Business Profits are not exempt. Therefore the profit on sale of SIT by the proprietary concern to the company shall be taxable in the hands of the proprietary concern as business profits. The proprietary concern should transfer the SIT to the company at Cost. *(Sakthi Trading Co. (SC) shall apply)*
3) Exemption u/s 47(xiii) is applicable for a proprietary concern carrying on a business. Exemption is not applicable if it is carrying on profession

Related to (xiii) and (xiv) Point

Note: If the Company allot shares to the wife or friends of partners/proprietor and conditions of Section 47(xiii)/(xiv) are satisfied, then also exemption is available.

Section 47A – **Withdrawal of Exemption**

If the capital gains have been exempted under Section 47(xiii)/(xiv) and the partner/proprietor ceases to hold 50% of total voting power of the company within period of 5 years from the date of succession, then the capital gains exempted earlier shall be taxable in **hands of the company** in the **year** in which partners/proprietor **cease to hold 50%** of total voting power.

Section 72A

The accumulated Loss and the unabsorbed depreciation of the firm/proprietary concern shall be deemed to be the loss or allowance for depreciation of the successor company as if incurred in the year of conversion and set off and carry forward shall be allowed accordingly. However if the partner/proprietor ceases to hold 50% of total voting power of the company within period of 5 years from the date of succession, the set off of loss or allowance of depreciation made in any previous year in the hands of the company, shall be deemed to be the income of the company chargeable to tax in the year in which partners/proprietor **cease to hold 50%** of total voting power.

(xv) Any transfer in scheme for **lending of any securities** under an agreement or arrangement which the assessee has entered into with the **borrower** of such securities and which is subject to the guidelines issued by the SEBI or RBI in this regard.

(xvi) Transfer of Capital asset to a company in the course of ***demutualization*** or corporatisation of a recognize stock exchange **in India** as a result of which an AOP/BOI is succeeded by such company. Provided

- All the assets and liabilities of AOP/BOI relating to the business immediately before the succession become the assets and liabilities of the company
- Such corporatisation is carried out in accordance with the scheme approved by SEBI.

- The actual cost of asset received by the company shall be deemed to be the amount which would have been regarded as actual cost had there been no such demutualization.
- In case of block of assets - the WDV of the assets in case of company shall be the WDV of transferred assets immediately before such transfer.

(xvii) Transfer of **membership right** held by a member of a recognized stock exchange in India for **acquisition of shares and trading or clearing rights**

Under a scheme of for ***demutualization*** or corporatisation approved by the SEBI in relation to a capital asset, being:

	COA (Section 55)	**Period of Holding (Section 2(42A)**
Equity share or shares allotted to a shareholder of a recognized stock exchange in India	Cost of Acquisition of his original membership of the exchange	The period from which the person was a member of stock exchange in India immediately prior to such demutualization or corporatisation shall also be considered.
Trading or clearing rights of recognized stock exchange acquired by a shareholder	COA- Nil	

(xviii) Transfer of Capital Asset in a transaction of Reverse Mortgage under a scheme made and notified by CG.

Section 10(43)
Any amount received by an individual as a loan, either in lump sum or in installment, in a transaction of reverse mortgage is exempt from income tax

COMPUTATION OF CAPITAL GAINS IN CASES (i) TO (vii) ABOVE

- **Section – 49(1)**, COA of the previous owner shall be considered to be the COA for the assessee
- **Section – 2(42A)**, the period of holding of the previous owner shall also be taken into consideration

SECTION – 51 - FORFEITURE OF ADVANCE MONEY

In case, if any assessee has entered into an agreement to sell any capital asset and **advance money or any other money** was forfeited because the buyer has refused to buy the asset, in that case if such asset has been sold subsequently to any other person, the advance money forfeited shall be deducted from

- COA of the asset, or
- FMV as on 01.04.1981 (where FMV as on 1.4.1981 has been taken as COA), or
- WDV (in case of depreciable assets)

and capital gains shall be computed accordingly.

NOTES:

1. "Other money received" includes any earnest money received for guaranteeing the performance of the contract and not forming part of sales consideration.
2. Amount forfeited before 1.4.1981 is also to be deducted as per Section 51
3. Amount forfeited by previous owner is not to be deducted under Section 51. In other words if any amount has been forfeited by any person who has transferred the asset through the transaction of **Section – 47,** the amount so forfeited shall not be adjusted.
4. **Tranvancore Rubber & Tea Co. Ltd. (SC)** (Imp) - If advance money forfeited exceeds the cost, the excess shall be a Capital receipt not taxable**.**
5. **K.R. Srinath (Mad.)** (Imp) – If the seller default in performing the sale agreement and the buyer receives compensation from the seller then it will be said that the buyer has relinquished his right for specific performance and the amount so received by the buyer is assessable as capital gains. The amount paid by him as advance money will be regarded as COA.

SLUMP SALE

- **Section 2(42C)** – Slump Sale means
  - transfer of one or more ***undertaking****
  - for a lump sum consideration
  - *without values being assigned to the individual assets and liabilities*
    (Determination of the value of an asset or liability for the sole purposes of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.)

***Undertaking** – shall include Part/Unit/Division of undertaking that constitute a business activity as a whole

- **Section 50B** – Computation of Capital Gains in case of Slump Sale
  - Capital Gains shall be taxable in the previous year in which transfer took place
  - **No profits under the head PGBP shall arise in case of slump sale even if stock is transferred in slump sale.**
  - COA and COI shall be **NET WORTH** of the undertaking on the date of transfer and if the undertaking is setup for a period of more than 36 months Capital Gains shall be Long Term **(However benefit of Indexation is not available)**
  - Net Worth = Aggregate value of total assets of the undertaking transferred ***minus*** Value of liabilities of the undertaking transferred as appeared in the books of accounts.
  - **Revaluation of assets shall not be considered while computing the net worth irrespective of the fact that revaluation is done in the current year or in past years.**
  - For Computing Net Worth
    - Non Depreciable assets are to be taken at their book values
    - In case of Depreciable assets, WDV of such assets shall be computed as per section 43(6)(c)(i)(C)
    - The assets on which deduction has been allowed under section 35AD, the value of such assets shall be taken to be NIL
  - Transferee cannot carry forward unabsorbed losses and unabsorbed depreciation. However **Transferor himself can carry forward unabsorbed losses and unabsorbed depreciation**
- **Section 43(6)(c)(i)(C)** – WDV of depreciable assets transferred by way of slump sale shall be computed as under:

  Actual Cost of the assets
  Less: **depreciation actually allowed up to assessment year 1987-88**
  Less: **for subsequent period notional depreciation shall be computed as if the asset was the only asset in the block of assets**

SOME JUDICIARY DECISIONS

1. **RM. Arunachalam (SC)** (Imp) – Where the legal heir inherits the mortgaged property and pays the mortgage debts, then the COA to the legal heir is the COA in the hands of the deceased + amount paid to clear the mortgage debt.
2. **V.S.M.R. Jagadishchandran (SC)** (Imp) – Where the mortgage was created by the assessee himself, there will be no tax treatment of discharge of mortgage debt and the same cannot be said to be COA or COI of the property.
3. **C.R. Subramaniam (Kar.)** (Imp) – Where Land and Building were Long Term and Short Term capital assets respectively, then for the purpose of capital gains, the profits arising from the sale of land were required to be considered as long-term capital gains and that the profits arising out of the sale of the building should be considered under short-term capital gain.
4. **Miss Piroja C. Patel** – The compensation paid to hutment dwellers was allowable as COI
5. No capital gains shall arise if the assets are distributed in a family settlement in order to avoid disputes.
6. Where assessee purchased a property and on the same day mortgaged it to raise loan to pay part consideration of property, mortgage expenses incurred and the interest payable on the mortgage amounts, which had been utilized as part of the consideration, would form part of the COA of the property for the purpose of computation of capital gains.

Particulars	SECTION 54	SECTION 54B	SECTION 54D	SECTION 54EC	SECTION 54F	SECTION 54G	SECTION 54GA	SECTION 115F
Allowed to	Individual and HUF	Individual	All assesses	All assesses	Individual and HUF	All the assesses	All the assesses	NRI (Not NR)
On transfer of	Resident H/P	Agricultural land (Urban) which is used for agricultural purposes for a period of at least 2 yrs. immediately preceding its transfer by the assessee himself or by his parents.	Land or Building of an industrial undertaking which is compulsory acquired by govt. and which is being used for the purpose of industrial undertaking for a period of at least 2 yrs preceding its acquisition	Any Capital Asset	Any Capital Asset except Resident H/P	Land, Building, or Plant & machinery in connection with shifting of Industrial undertaking from Urban Area to any other area.	Land, Building, or Plant & machinery in connection with shifting of Industrial undertaking from Urban Area to SEZ (May be in rural or any other area)	Foreign Exchange Asset
Asset should be	Long Term	Short Term / Long Term	Short Term / Long Term	Long Term	Long Term	Short Term / Long Term	Short Term / Long Term	Long Term
Investment to be made in	Resident H/P	Agricultural Land (Urban or Rural)	Land or Building for industrial purposes	Long Term Specified Asset i.e. Bonds or debentures which are redeemable after a period of at least 3 yrs and such bonds or debentures should be issued by: 1 – National highways Authority of India(NHAI) 2 – Rural Electrification Corporation (REC)	Resident H/P	Land, Building, or Plant & machinery for industrial purposes	Land, Building, or Plant & machinery for industrial purposes	Specified Asset(See other points) or saving certificate u/s 10(4B)
Time limit for Investment	Purchase one or more houses within 1 yr before or 2 yrs after or construct one or more houses within 3 yr after the date of transfer of original asset	One or more within 2 yrs after the date of transfer of original asset	Within 3 yrs after the date of payment by the Govt.	Within 6 Months after the date of transfer of original asset	Purchase only one house within 1 yr before or 2 yrs after or construct only one house within 3 yr after the date of transfer of original asset.	Within 1 yr before or 3 yr after the date of transfer of original asset.	Within 1 yr before or 3 yr after the date of transfer of original asset	Within 6 Months after the date of transfer of original asset
Exemption	Amount of Investment or Capital gains whichever is less	Amount of Investment or Capital gains whichever is less	Amount of Investment or Capital gains whichever is less	Amount of Investment or Capital gains whichever is less	Capital gain x Investment / Net Consideration NC = FVC – Selling Expenses	Amount of Investment or Capital gains whichever is less	Amount of Investment or Capital gains whichever is less	Capital gain x Investment / Net Consideration NC = FVC – Selling Expenses

Particulars	SECTION 54	SECTION 54B	SECTION 54D	SECTION 54EC	SECTION 54F	SECTION 54G	SECTION 54GA	SECTION 115F
Withdraw of Exemption	New Asset has been transferred within 3 yrs. of its acquisition	New Asset has been transferred within 3 yrs. of its acquisition	New Asset has been transferred within 3 yrs. of its acquisition	New Asset has been transferred or converted into cash within 3 yrs. of its acquisition	New Asset has been transferred within 3 yrs. of its acquisition OR the assessee has purchased or constructed more than one house within the prescribed time period	New Asset has been transferred within 3 yrs. of its acquisition	New Asset has been transferred within 3 yrs. of its acquisition	New Asset has been transferred within 3 yrs. of its acquisition
Method of Withdraw	COA shall be reduced by the exemption earlier allowed	COA shall be reduced by the exemption earlier allowed	COA shall be reduced by the exemption earlier allowed	LTCG of the year in which it has been transferred or converted into cash	LTCG of the year in which it has been transferred OR in which the more than one house has been purchased or constructed	COA shall be reduced by the exemption earlier allowed	COA shall be reduced by the exemption earlier allowed	LTCG of the year in which it has been transferred
Capital Gains Account Scheme, 1988	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Other Points	As per **<u>Section 54H</u>**, if it is a case of compulsory acquisition, the period of investment shall be determined from the date of payment by the govt. instead of the date of compulsory acquisition	As per **<u>Section 10(37)</u>**, if any agricultural land has been acquired by the Government or other similar agency, no capital gains shall be computed provided such land should be owned by any Individual or HUF.		Maximum Investment allowed per assessee cannot exceed Rs.50 Lac Converted into cash means taking a loan on the security of bonds	The assessee should not have more than one house in his name on the date of transfer of original asset except the house which has been purchased for taking exemption	Exemption is allowed even for shifting expenses	Exemption is allowed even for shifting expenses	Foreign Exchange Asset means any of the following asset provided it was purchased in foreign currency: • Shares in Indian Company whether public ltd or private ltd. • Debentures or deposits in Indian Public Ltd co. • Securities of Central Government • Any other notified for this purpose

<u>Capital Gain Account Scheme, 1988</u>

- The assessee should make the investment till the last date of filing of return of income or the amount should be deposited in Capital Gains Account Scheme, 1988 and the amount can be withdrawn subsequently for making the investment within the prescribed time period.
- If the assessee has misutilized the amount, it is taxable in the year in which the amount has been misutilized.
- If the amount remains unutilized till the last date, unutilized amount shall be considered to be capital gains of the year in which the time period has expired.
- Any interest received on Capital Gains Account Scheme, 1988 shall be taxable under the head other sources.
- Taxability of unutilized amount in case if the individual dies before the expiry of the stipulated period:- Such amount cannot be taxed in the hands of the deceased and also cannot be taxed in the hands of the legal heir. (CBDT Circular)

JUDICIAL DECISIONS

Section 54

1. **T.N. Aravinda Reddy (SC)** – Where the co-owner or co-owners release his/their respective share or interest in the property in favour of one of the co-owners, it can be said that the property has been purchased by the co-owner to whom interest has been released.
2. Construction of new floor – it will be considered that assessee has purchased new property
3. Construction of new house may be started before the date of transfer but it should be completed within 3 years from the date of transfer.
4. If the assessee has paid the full consideration and obtained the possession of the house within the specified period, he is eligible for exemption even if the sale deed has not been registered in his favour.
5. Exemption u/s 54 shall be available on the purchase price of the house so purchased as well as the cost of construction of additional floor to the said house.
6. **CBDT Circular:** If the amount of capital gains for the purposes of Section 54 is appropriated towards purchase of a plot and also towards construction of a residential house thereon, the aggregate cost should be considered for determining the quantum of deduction u/s 54.