SECTION 45(1): CHARGING SECTION
Section 45(1) is the charging section of capital gains and it provides as under:
  – any profits and gains arising 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 –
  (a) property of any kind held by an assessee, whether or not connected with his business or profession;
  (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

but does not include——
(i) any stock-in-trade[other than the securities referred to in sub-clause (b)]
      (Amended by Finance Act, 2014)
(ii) personal effects, 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 1 - For the purposes of this sub-clause, “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;

(iii) agricultural land in India, not being land situated -
   (A) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area
(B) in any area within the distance, measured aerially,—
   (I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or
   (II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or
   (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (A) and which has a population of more than ten lakh.

Explanation: "Population" to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

(iv) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

(v) Deposit Certificates issued under the Gold Monetisation Scheme, 2015.

Explanation.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

(Discussed later in Vodafone Chapter)

ANALYSIS OF AMENDMENT BY FINANCE ACT. 2014

Foreign Institutional Investors (FlI’s) are the major investors in India stock markets. Since they are frequently buying and selling shares, the revenue authorities are treating the shares held by them as stock-in-trade and consequently treating their income as business income attracting higher rate of tax. However, FlI’s are treating the shares as capital assets i.e., investments and claiming benefit of sections 10(38), 111A and 112. Revenue authorities are denying the benefit of sections 10(38), 111A and 112.

There has been a demand of FlI’s to settle this controversy. Therefore, Finance Act, 2014 has put an end to this litigation. In case of FlI’s, the securities will always be treated as capital assets, i.e., investments, therefore, the resultant/income will always be capital gains. Hence, FlI’s will get the benefit of sections 10(38), 111A and 112.

KEYNOTES:
1. Immovable Property in which the assessee resides is not a personal effect even though the assessee uses the immovable property for his personal purposes. It shall be treated as a capital asset since personal effects includes only moveable property.
2. Jewellery used for personal purposes is excluded from personal effects and shall be regarded as capital asset.
3. The following has been excluded:
(a) archaeological collections,
(b) drawings,
(c) paintings,
(d) sculptures,
(e) any work of art
from the personal effects. Accordingly these are capital assets and capital gains shall arise on sale of these assets. Therefore, if an assessee sells paintings, then capital gains shall arise on the sale of the same.

4. Moveable assets used for personal purposes e.g. television, fridge etc. are personal effects and are not treated as capital assets. Consequently the gain arising from sale of personal effects is not taxable under the head capital gains or under any other head of income.

5. Business assets are capital assets but stock-in-trade, consumable stores or raw materials held for the purpose of business or profession are not capital assets.

SECTION 2(47): DEFINITION OF TRANSFER

"Transfer", in relation to a capital asset, includes, -

(i) the sale, exchange or relinquishment of the asset; or
(ii) the extinguishment of any rights therein; or
(iii) the compulsory acquisition thereof under any law; or
(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or
(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882; or

Illustration:
The assessee Mr. X enters into an agreement to sell the House Property on 01.01.2020 with Mr. Y for Rs. 20,00,000. Mr. X hand over the possession of House Property to Mr. Y on 15.02.2020. Mr. Y make the payment of Rs. 20,00,000 on 30.04.2020. The house property is registered in the name of Mr. Y on 30.06.2020. When has the transfer taken place?

Solution:
As per section 2(47), transfer takes place on the date on which possession of immovable property is given in pursuance of agreement to sell. Therefore in the present case the transfer has taken place on the date of possession i.e. 15.02.2020 and accordingly capital gains shall be tax-able in hands of Mr. X in assessment year 2020-2021.

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

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

( Discussed later in Vodafone Chapter )

CERTAIN IMPORTANT ISSUES

Issue No. 1:
Whether capital gains arise on the sale of silver utensils?
In CIT v. Benarshilal Katarika, during the previous year relevant to assessment year 2019-2020, the assessee sold 49.521 kgs. of silver utensils which were in the form of thalis, katoris, tumblers, etc. The assessee contended that the silver utensils were for personal use and they were not capital assets within the meaning of section 2(14)(ii) of the Income-tax Act, 1961 and thus the profit on sale of these utensils was not liable to capital gains tax. The ITO rejected the assessee's claim that the silver utensils were 'personal effects'. The High Court held that silver utensils, as found by the Tribunal, consisted of thalis, katoris, tumblers, etc. which are meant for personal use although they may not be used daily. Whether silver utensils constitute personal effects depend not merely on the financial status of the assessee. The main factor in deciding whether an article constitute personal effect is the nature of the article. Therefore, in the present case, silver utensils constitute personal effects and no capital gains will arise on the sale of silver utensils.

Issue No. 2:
Whether capital gain arises on the sale of gold bars, sovereigns, etc. used for puja?
In case of H.H. Maharaja Rana Hemant Singji, the assessee sold 4825 gold sovereigns, 7,90,440 old silver rupee coins and silver bars weighing 2,54,174 tolas and claimed that no capital gains arose as the aforesaid items fell outside the definition of capital assets. The assessee claimed that these articles formed personal effects as they were used by the assessee and his family for personal use as it was evident that they were used for the purposes of mahalaxmi puja and other religious festivals in the family. His contention was rejected by the appellate authorities and the High Court. The Supreme Court also decided the case against the assessee as according to it, these articles did not constitute 'personal effects'. The Court held that only those effects can be legitimately be said to be personal which pertain to the assessee's person. In other words, an intimate connection between the effect and the person of the assessee must be shown to exist to render them 'personal effects'. The Court said that the silver bars or bullion can by no stretch of imagination be deemed to be "effects" meant for personal use. According to the Supreme Court, the gold sovereigns,
silver coins and silver bars have been used for puja of the dieties as a matter of pride or ornamentation but it is difficult to understand how such use can be characterised as personal use. Therefore, the capital gains are taxable in the present case.

**Issue No. 3:**

**Whether gold utensils are personal effects?**

Gold utensils are not personal effects and are capital assets. Capital gains shall arise on sale of gold utensils. It is a tradition in Indian families to use silver utensils on occasions but there is no such tradition to use gold utensils.

**Issue No. 4:**

**What are the tax implications on exchange of asset?**

(Section 50C and section 56(2)(x) have not been considered in this issue and concept is discussed.)

(a) "Exchange" is a "transfer". For Example, if Mr. A has purchased a house for 110 lakhs and he exchanged house with Mr. B and receives from Mr. B:

(i) **Case 1: Gold of FMV of Rs. 50 Lakhs:**

Here, Mr. A has transferred house for Rs. 50 Lakhs minus Rs. 10 lakhs in the hands of Mr. A. The cost of gold in the hands of Mr. A shall be Rs. 50 Lakhs.

(ii) **Case 2: Gold of FMV of Rs. 50 Lakhs and cash of Rs. 20 lakhs**

Here, Mr. A has transferred the house for Rs. 70 Lakhs. Capital Gain on house shall be Rs. 70 Lakhs minus Rs. 10 lakhs i.e., Rs. 60 Lakhs. The COA of gold in the hands of Mr. A shall be Rs. 50 lakhs.

(b) Mr. X has given a loan of Rs. 20 lakhs to Mr. Y. Mr. Y instead of refunding loan to Mr. X gives him gold of FMV of Rs. 35 lakhs which Mr. Y purchased for Rs. 12 lakhs. Now, Mr. Y has transferred gold to Mr. X for sale consideration of Rs. 20 lakhs. Capital Gain in the hands of Mr. Y is Rs. 20 lakhs minus Rs. 12 lakhs i.e., Rs. 8 lakhs. Cost of Acquisition of gold to Mr. X is Rs. 20 lakhs.

**Issue No. 5:**

**Whether exchange of shares of one company with shares of another company amounts to transfer?**

In case of **ORIENT TRADING CO. LTD. (SUPREME COURT)**, it is held that the exchange of shares amount to transfer and results in capital gains in the hands of the shareholder. However, if shares are held as stock-in-trade by the assessee, then income under the head P/G/B/P shall arise. The assessee company was a dealer in Shares and held 14,500 shares of Acetylene Ltd. which were purchased at face value of Rs. 10 each. The stock of shares of Acetylene Ltd. was recorded in the books at Rs. 1,45,000. A new company Oxygen Ltd. formed in January, 2015 made an offer to the assessee company to obtain 14,500 shares of Acetylene Ltd. in exchange of allotment of its own shares amounting to 55,100 Shares of Rs. 10 each. The assessee company exchanged 14,500 shares of Acetylene Ltd., with 55,100 shares of Rs. 10 each of Oxygen Ltd. The assessee continued showing 55,100 shares of Oxygen Ltd. at the cost of Rs. 1,45,000 and contends that there is no transfer. The Assessing Officer argues that since Oxygen Ltd. is a new company, the market value of its
shares is Rs. 10 each. According to the Assessing Officer, the assessee has made transfer of shares of Rs. 1,45,000 at Rs. 5,51,000 and want to tax Rs. 4,06,000 as business profit. Assessee contends that there is no transfer.

The Supreme Court held that having taken the shares in the Oxygen Ltd. in exchange of the shares of Acetylene Ltd., the assessee company has made realisation of the value of the shares of Acetylene Ltd. and difference between the price of the Shares i.e. Rs. 4,06,000 has to be treated as profits of the assessee. The cost of acquisition of shares of Oxygen Ltd. shall now be Rs. 5,51,000.

**Issue No.6:**

**Whether land and building have to be considered separately for the purpose of computing the period of holding?**

In case of CIT v. C.R. Subramanian, it was held that in case of sale of land and building, capital gain is to be bifurcated between long-term capital gain and short-term capital gain.

The assessee had purchased a site in 2004. The construction of the building was done in the year 2017. The building was sold in the relevant assessment year, i.e., 2019-20. The assessee treated that site and building as separate for the purpose of capital gains. In regard to the site he had treated the capital gains as long-term capital gains because there was a gap of more than three years from the date of purchase of the site to the date of sale. With regard to the building, the assessee treated it as short-term gains. The ITO did not accept this contention. The Tribunal, however, upheld the assessee's claim.

**Held** that the Tribunal was right in holding that the site and the building were separate assets for the purpose of capital gains and the profits arising from the sale of site were required to be considered as long-term capital gain and that the profits arising out of the sale of the building should be considered under short-term capital gain.

**SECTION 48: METHOD OF COMPUTATION OF CAPITAL GAINS**

(Other than assets maintained on BLOCK SCHEME)

The income chargeable under the head "Capital Gains" shall be computed as under:

Sale Consideration received or accruing as a result of transfer of capital asset.

Less: the cost of acquisition of the asset.

Less: the cost of any improvement to the asset.

Less: expenditure incurred wholly and exclusively in connection with such transfer

**FIRST PROVISO TO SECTION 48: CAPITAL GAINS IN CASE OF NON-RESIDENTS**

In case of an assessee who is a non-resident, the capital gains arising from the transfer of shares or debentures in an Indian company, shall be computed by converting

(i) the cost of acquisition of the asset

(ii) the expenditure incurred wholly and exclusively in connection with such transfer and

(iii) sale consideration received or accruing as a result of transfer of capital asset

into the same foreign currency as was initially utilised in the purchase of such shares or debentures. The capital gains so computed in the foreign currency shall be reconverted into Indian currency.
The above-said manner of computation of capital gains shall apply to capital gains arising from every reinvestment thereafter in and the sale of shares or debentures in Indian company.

**ANALYSIS OF FIRST PROVISO TO SECTION 48**

1. Non-resident includes a foreign company.

2. For the applicability of the first proviso, the shares or debentures should be purchased in the foreign currency or it should be a case of re-investment.

3. Debenture includes bonds.

4. The shares, debentures and bonds of a Government company are also covered by the first proviso. However, the bonds of Central Government, State Government and RBI are not covered.

5. The first proviso shall not apply to units of UTI and mutual funds. It also does not apply to units of a business trust.

6. The first proviso shall apply to listed as well as unlisted shares and debentures.

(Refer sec 112A later on)

7. Assesssee should be a non-resident in the previous year in which shares or debentures are sold.

8. The First Proviso to section 48 is mandatory. A non-resident cannot opt for the second proviso to section 48 if his case falls in the First Proviso to section 48.

9. Second Proviso to section 48 will not apply, i.e., no indexation where First Proviso applies.

10. This proviso is applicable for computing short term capital gains as well as long term capital gains.

11. **Equity Shares covered in sec 112A are not eligible for First Proviso to sec 48.**

**RULE 115A: METHOD OF CONVERSION**

(a) *The cost of acquisition* shall be converted at the average of the telegraphic transfer buying rate (TTBR) and the telegraphic transfer selling rate (TTSR) (of the foreign currency initially utilised for the purchase of shares/debentures) as on the date of acquisition of shares/debentures.

(b) The expenditure in connection with the transfer shall be converted at the average of TTBR and TTSR (of the foreign currency initially utilised for the purchase of shares/debentures) as on the date of transfer of shares/debentures.

(c) *The sales consideration* shall be converted at the average of TTBR and TTSR (of the foreign currency initially utilised for the purchase of shares/debentures) as on the date of transfer of shares/debentures.

(d) The capital gains computed in the foreign currency shall be converted into Indian currency by applying TTBR as on the date of transfer of shares/debentures.
Illustration:
A non-resident purchases shares of Reliance Industries Ltd. on 1.1.2015 by remitting US $. The following data is given:

- **COA**: Rs. 5,85,000
- **Date of Sale**: 1.1.2020
- **Sale Price**: Rs. 9,00,000
- **Date of expenditure on transfer**: 28.12.2019
- **Expenditure on transfer**: Rs. 6,600

On 24.4.2020, Rs. 6,15,000 was invested in shares (out of the sale proceeds of Rs. 9,00,000) which were sold on 31.12.2020 for Rs. 10,50,000.

Exchange Rates on various dates are as under:

<table>
<thead>
<tr>
<th>Date</th>
<th>TTBR</th>
<th>TTSR</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.01.2015</td>
<td>38</td>
<td>40</td>
</tr>
<tr>
<td>28.12.2019</td>
<td>42</td>
<td>44</td>
</tr>
<tr>
<td>01.01.2020</td>
<td>39</td>
<td>41</td>
</tr>
<tr>
<td>24.04.2020</td>
<td>40</td>
<td>42</td>
</tr>
<tr>
<td>31.12.2020</td>
<td>41</td>
<td>43</td>
</tr>
</tbody>
</table>

Answer:

**Assessment Year 2020-2021**

**Capital gain on Listed Securities**

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>1.1.2015 to 31.12.2019 (Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price (Rs.)</td>
<td>Rs. 9,00,000</td>
</tr>
<tr>
<td>Sales Price (US $)</td>
<td>$22,500</td>
</tr>
<tr>
<td>Less: (i) Cost of Acquisition</td>
<td>$15,000</td>
</tr>
<tr>
<td>(ii) Expenditure on transfer</td>
<td>$165</td>
</tr>
</tbody>
</table>

**Long Term Capital Gain**

<table>
<thead>
<tr>
<th>$ 7,335</th>
</tr>
</thead>
</table>

**Long Term Capital Gain (Rs.)** [$7,335 \times 39] Rs. 2,86,065

**Assessment Year 2021-2022**

**Capital Gain on Listed Securities**

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>24.4.2020 to 30.12.2020 (Short term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price (Rs.)</td>
<td>Rs. 10,50,000</td>
</tr>
<tr>
<td>Sales Price (US $)</td>
<td>$25,000</td>
</tr>
<tr>
<td>Cost of Acquisition</td>
<td>$15,000</td>
</tr>
</tbody>
</table>

**Short Term Capital Gain**

<table>
<thead>
<tr>
<th>$ 10,000</th>
</tr>
</thead>
</table>

**Short Term Capital Gain (Rs.)** [10,000 \times 41] Rs. 4,10,000

SECOND PROVISO TO SECTION 48: INDEXATION

1. This proviso is not applicable where the first proviso applies.
2. Where the capital gains arises from the transfer of a long term capital asset, then for the purposes of computing capital gains:

---

31.8
(a) "Indexed Cost of Acquisition" shall be taken instead of "Cost of Acquisition" and

(b) "Indexed cost of any improvement" shall be taken instead of "cost of any improvement".

KEYNOTES:

1. **Cost Inflation Index has been notified as under:**

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Cost Inflation Index</th>
<th>Financial Year</th>
<th>Cost Inflation Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001-02</td>
<td>100</td>
<td>2011-12</td>
<td>184</td>
</tr>
<tr>
<td>2002-03</td>
<td>105</td>
<td>2012-13</td>
<td>200</td>
</tr>
<tr>
<td>2003-04</td>
<td>109</td>
<td>2013-14</td>
<td>220</td>
</tr>
<tr>
<td>2004-05</td>
<td>113</td>
<td>2014-15</td>
<td>240</td>
</tr>
<tr>
<td>2005-06</td>
<td>117</td>
<td>2015-16</td>
<td>254</td>
</tr>
<tr>
<td>2006-07</td>
<td>122</td>
<td>2016-17</td>
<td>264</td>
</tr>
<tr>
<td>2007-08</td>
<td>129</td>
<td>2017-18</td>
<td>272</td>
</tr>
<tr>
<td>2008-09</td>
<td>137</td>
<td>2018-19</td>
<td>280</td>
</tr>
<tr>
<td>2009-10</td>
<td>148</td>
<td>2019-20</td>
<td>289</td>
</tr>
<tr>
<td>2010-11</td>
<td>167</td>
<td></td>
<td><strong>2020-21</strong></td>
</tr>
</tbody>
</table>

2. **"Indexed Cost of acquisition" means:**

\[
\text{Cost of Acquisition} \times \frac{\text{Cost Inflation Index for the year in which asset is transferred}}{\text{Cost Inflation Index for the first year in which asset was held by the assessee or for the year beginning on 1-4-1981 whichever is later.}}
\]

3. **"Indexed Cost of Improvement" means:**

\[
\text{Cost of Improvement} \times \frac{\text{Cost Inflation Index for the year in which the asset is transferred}}{\text{Cost Inflation Index for the year in which the improvement to the asset took place}}
\]

**AMENDMENT MADE BY FINANCE ACT 2018:**

**THIRD PROVISO TO SEC 48**

Section 48 has been amended (with effect from the assessment year 2019-20). The amended version is applicable to determine capital gain from the transfer of a long-term capital asset (being an equity share in a company or a unit of equity oriented fund or a unit of a business trust referred to in section 112A). In such a case, the following special provisions will be applicable -

1. Indexation benefit will not be available.
2. Mode of computation of capital gain in foreign currency in the case of a non-resident (specified by first proviso to section 48) is not applicable.
FOURTH PROVISO TO SECTION 48: SECOND PROVISO TO SECTION 48 NOT TO APPLY

THE INDEXATION UNDER THE SECOND PROVISO TO SECTION 48 SHALL NOT APPLY TO THE CAPITAL GAINS ARISING FROM THE TRANSFER OF BONDS AND DEBENTURES.
However, benefit of indexation is available for capital indexed bonds issued by the Central Government and Sovereign Gold Bonds issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015.

KEY NOTES:
1. Benefit of indexation is not available for bonds/debentures of any company whether public sector company or any other company. Similarly, the benefit of indexation is not available in respects of Bonds issued by Government.
2. Benefit of indexation is available in respect of units of UTI and Units of Mutual Funds and units of a business trust (other than sec 112A).
3. Benefit of indexation is available on equity shares (other than sec 112A) and preference shares.

FIFTH PROVISO TO SECTION 48: { Read with Sec 47 }
Exemption is available if:
1. Assessee is a non-resident.
2. Gains arise on account of appreciation of rupee against foreign currency.
3. Gains arise on redemption of Rupee Denominated Bonds.
4. Assessee may be original subscriber or anyone else.
5. Exemption is not available if RDB is transferred before maturity.

SEVENTH PROVISO TO SECTION 48: SECURITIES TRANSACTION TAX NOT TO BE ALLOWED AS DEDUCTION
Securities transaction tax (STT) paid on sale of shares/units shall not be reduced from the sale price and the STT paid on purchase of shares/units shall not be added to the cost of acquisition.

FOR DISCUSSION ON COST OF ACQUISITION AND COST OF IMPROVEMENT REFER SUMMARY PAGE NO-_________.

31.10
ILLUSTRATIONS

Illustration 1:
Mr. X purchased route permits on 1.1.2006 for Rs. 1 lakh. The same are sold by him on 1.1.2021 for Rs. 5 lakhs.

Assessment Year 2021-2022

<table>
<thead>
<tr>
<th>Capital gains on route permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period of holding</td>
</tr>
<tr>
<td>Sales Price</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
</tr>
</tbody>
</table>

Illustration 2:
Mr. Z purchased tenancy rights on 1.1.2000 for Rs. 2 lakhs. The same was sold by him on 2.1.2021 for Rs. 22 lakhs. Fair market value of the tenancy rights as on 1.4.2001 = Rs. 5 lakhs.

Answer:    Assessment Year 2021-2022

<table>
<thead>
<tr>
<th>Capital gains on tenancy rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period of holding</td>
</tr>
<tr>
<td>Sales Price</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
</tr>
<tr>
<td>Long term Capital Loss</td>
</tr>
</tbody>
</table>

Illustration 3:
Mr. Y was awarded route permits between Delhi and Mumbai on the basis of his performance on 1.1.2004. He sells the same on 1.1.2021 for Rs. 8 lakhs. He claims that no capital gains are taxable since cost of acquisition is indeterminate.

Answer:    Assessment Year 2021-2022

In view of section 55, the cost of acquisition of the route permit shall be taken as Nil instead of considering as indeterminate. Therefore, the capital gain on route permit shall be computed as under:

<table>
<thead>
<tr>
<th>Capital gains on route permits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Period of holding</td>
</tr>
<tr>
<td>Sales Price</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
</tr>
</tbody>
</table>

Illustration 4:
Mr. Shyam became a tenant in a property on 1.1.2000. He did not pay anything to acquire such tenancy rights. Since 2000 he is paying a monthly rent of Rs. 1,000. On 1.1.2021, he vacated the tenanted premises and received Rs. 24 lakhs from the landlord for vacating the
premises. You are given that the fair market value of the tenancy rights as on 1.4.2001 was Rs. 6 lakhs.

**Answer:**

<table>
<thead>
<tr>
<th>Assessment Year 2021-2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital gain on tenancy rights</strong></td>
</tr>
<tr>
<td>Period of holding</td>
</tr>
<tr>
<td>Sales Price</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
</tr>
<tr>
<td><strong>Long term Capital Gain</strong></td>
</tr>
</tbody>
</table>

**Illustration 5:**

Mr. Natwar has purchased 100 shares of A Ltd. on 1.1.2005 @ Rs. 60 per share. The company announced a right issue in the ratio of 1:1 in May, 2009 of shares of paid up value of Rs. 10 at a premium of Rs. 30 per share. (Market value as on May, 2009 = Rs. 100 per share). Mr. Natwar subscribed to the right shares in June, 2009. The shares were allotted to him in September, 2009. Mr. Natwar sells 200 shares in November, 2020 @ Rs. 350 each. Compute capital gain on sale of shares in the hands of Mr. Natwar.

**Answer:**

Capital gains on original shares and right shares subscribed by Mr. Natwar have to be computed separately. The computation of capital gain is as under:

<table>
<thead>
<tr>
<th>Assessment Year 2021-2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital Gain on Original Shares (100 Shares)</strong></td>
</tr>
<tr>
<td>Period of holding</td>
</tr>
<tr>
<td>Sales Price</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
</tr>
<tr>
<td><strong>Long term Capital Gain</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assessment Year 2021-2022</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital Gain on Right Shares (100 Shares)</strong></td>
</tr>
<tr>
<td>Period of holding</td>
</tr>
<tr>
<td>Sales Price</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
</tr>
<tr>
<td><strong>Long term Capital Gain</strong></td>
</tr>
</tbody>
</table>

| **Total Long Term Capital Gain** |

**Illustration 6:**

Mr. X has purchased 100 shares of Binani Ltd. on 1.1.2002 for Rs. 100 per share. On 1.1.2020, the company Binani Ltd. sent him a letter of offer whereby he was offered 100 right shares of paid up value of Rs. 10 at a premium of Rs. 50 per share (Market value of share as on 1.1.2020 = Rs. 200). Mr. X on 28.1.2020 renounced the right in favour of Mr. Y and charged Rs. 75 per share from Mr. Y. Mr. Y applied for 100 shares on 28.1.2020 and was allotted these shares on 4.4.2020. These shares are sold by Mr. Y on 21.3.2021 @Rs. 300 per share. Compute the capital gains in the hands of Mr. X and Mr. Y.
Answer:     Mr. X  

Capital on right renounced  

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>1.1.2020 to 27.1.2020 (Short term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>Rs. 7,500</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Nil</td>
</tr>
<tr>
<td>Short term Capital Gain</td>
<td>Rs. 7,500</td>
</tr>
</tbody>
</table>

Mr. Y - Assessment Year 2021-2022  

Capital gain on right shares  

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>4.4.2020 to 20.3.2021 (Short term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>Rs. 30,000</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs. 13,500</td>
</tr>
<tr>
<td>Short term Capital Gain</td>
<td>Rs. 16,500</td>
</tr>
</tbody>
</table>

Illustration 7:  
Mr. X applied for MHADA flat on 20.01.2004 and paid Rs. 2,50,000 as application money. The flat was allotted to him on 04.06.2004 at total cost of Rs. 25 lakhs. Mr. X pays the balance amount as under:

1st instalment Rs. 7,50,000 on 01.01.2006  
2nd instalment Rs. 7,50,000 on 01.01.2007  
3rd instalment Rs. 7,50,000 on 01.01.2008  

Mr. X sells the flat on 02.01.2021 for a total price of Rs. 1 crore. Compute capital gains.

Answer:     Assessment Year 2021-2022  

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>04.06.2004 to 01.01.2021 (Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>Rs. 1,00,00,000</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>25,00,000 X</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
<td></td>
</tr>
</tbody>
</table>

*****************************************************************************
CHAPTER 32. CAPITAL GAINS - CHARGEABILITY

SECTION 45(1): CHARGING SECTION
- Any profits and gains
- arising from the transfer of a capital asset
- shall be charged to tax under the head "Capital Gains"
- in the previous year in which the transfer took place.

EXCEPTIONS TO CHARGING SECTION 45(1)
Charging section of the chapter of capital gains provides that the profit under the head capital gains shall be chargeable to tax in the previous year in which transfer took place. However there are certain exceptions to the rule that the capital gains shall be chargeable to tax in the previous year in which transfer took place. These exceptions are as under:
1. **Section 45(1A):** Capital Gains on insurance claim on damage or destruction of capital assets is taxable in the year of receipt of claim from the insurance company.

2. **Section 45(2):** Capital gains arising on conversion of capital asset into stock-in-trade shall be taxable in the year of in which stock-in-trade is sold although transfer takes place in the year of conversion.

3. **Section 45(5):** Capital gains on transfer by way of compulsory acquisition of an asset shall be chargeable to tax in the year in which compensation was first received by the assessee.

4. **Section 45(5A):** Capital Gains in case of Joint Development Agreements.

SECTION 45(1A): CAPITAL GAINS ON INSURANCE CLAIMS FOR DAMAGE OR DESTRUCTION OF CAPITAL ASSETS
Notwithstanding anything contained in sub-section (1), where any person receives at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of -

(i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or
(ii) riot or civil disturbance, or
(iii) accidental fire or explosion; or
(iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),
then any profits or gains arising from receipt of such money or other assets shall be chargeable to 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 and for the purposes of section 48, value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.
**Explanation** - For the purposes of this sub-section, the expression "insurer" shall have the meaning assigned to it in clause (9) of section 2 of the Insurance Act, 1938.

**KEY NOTES**

1. Section 45(1A) is not attracted if an asset is destroyed and no insurance & compensation is received. Such a destruction of asset shall not be treated as transfer and thus there will be no capital gains. The cost of the asset destroyed shall be a capital loss i.e. loss which has no tax treatment.

2. As per section 45(1A), the capital gains shall not be taxable in the year in which the asset is destroyed but shall be taxable in the year in which the insurance money is received or an asset is received from the insurance company. It is for this reason that section 45(1A) overrides section 45(1) which provides that the capital gains shall be taxable in the year of transfer.

3. **Destruction of an asset resulting in receipt of insurance claim** will now amount to a transfer and for the purposes of computing the nature of capital gains, the date of transfer of the capital asset destroyed should mean the date of destruction.

4. Later on the fair market value of such asset on the date on which it was received should be taken as its cost of acquisition.

**Illustration:**

An asset was purchased on 2.1.2003 for Rs. 1,00,000. The said asset is destroyed in fire on 10.1.2020 and the insurance company gives a new asset to the assessee on 21.05.2020 whose fair market value is Rs. 2,50,000.

Now, capital gains shall be taxable in assessment year 2021-2022 since insurance compensation is received in previous year ended 31.03.2021.

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>02.01.2003 to 09.01.2020</th>
<th>(Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price as per section 45(1A)</td>
<td></td>
<td>Rs. 2,50,000</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>1,00,000 X</td>
<td></td>
</tr>
<tr>
<td><strong>Long term Capital Gain</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**SECTION 45(2) AND SECTION 2(47): CAPITAL GAINS ON CONVERSION OF CAPITAL ASSETS INTO STOCK-IN-TRADE**

Bai Shrinbai K. Kooka (SC)

There is no transfer involved when an assessee converts a capital asset into stock in trade of the 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.

The above judgement has been overruled w.e.f. Assessment Year 1985-86 by an amendment in section 2(47) and section 45(2).

**Section 2(47):**

Transfer includes the conversion of a capital asset into stock in trade of the business carried on by the assessee.
Section 45(2):
Notwithstanding anything contained in section 45(1), the capital gains arising from the transfer by way of conversion of a capital asset into stock-in-trade shall be charged to tax in the previous year in which the stock-in-trade is sold or otherwise transferred by the assessee. For the purposes of computing the capital gains, the fair market value of the asset on the date of conversion shall be deemed to be the sales consideration for the purposes of section 48.

KEY NOTE:
1. Capital Gains shall be taxable in the previous year in which stock-in-trade is sold or otherwise transferred.
2. Section 2(47) provides that where a capital asset is converted into stock-in-trade, then such conversion shall be treated as a transfer. Further section 45(2) provides for the taxability of capital gains on conversion of capital asset into stock-in-trade. However, there is no provision in the Income Tax Act, 1961 which provide for the taxability of transaction of conversion of stock in trade into capital asset. Therefore, there is no tax treatment when stock-in-trade is converted into capital asset. (REFER FA 2018)
3. If a capital asset is converted into stock-in-trade of the business carried on by the assessee, then the FMV of the capital asset on the date of conversion shall be taken for computing capital gains as well as P/G/B/P. The amount recorded in the books of account of the business as the value of stock-in-trade is not relevant.

Illustration 1:
A building has been acquired by the assessee on 1.06.2000 for Rs. 1,00,000. The assessee converts the building into stock in trade of his property dealing business on 1.01.2012 when the fair market value of the building is Rs. 9,00,000. The stock in trade is sold by the assessee on 1.01.2020 for Rs. 13,00,000. (FMV as on 1.04.2001 was Rs. 1,80,000).

Answer:
<table>
<thead>
<tr>
<th>P/G/B/P (Rs. 13,00,000 - Rs9,00,000)</th>
<th>Assessment Year 2020-2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAPITAL GAINS</td>
<td></td>
</tr>
<tr>
<td>Period of holding</td>
<td>01.06.2000 to 31.12.2011</td>
</tr>
<tr>
<td>Sales Price as per section 45(2)</td>
<td>Rs. 9,00,000</td>
</tr>
<tr>
<td>COA as per section 55</td>
<td>Rs. 1,80,000</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>Rs. 1,80,000 x / 100</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
<td></td>
</tr>
<tr>
<td>TOTAL INCOME</td>
<td></td>
</tr>
</tbody>
</table>

CONVERSION OF STOCK IN TRADE IN TO CAPITAL ASSET:

AMENDMENT MADE BY FINANCE ACT 2018:
Amendment to section 2(24)
Conversion of stock-in-trade into capital asset - A new sub-clause (xiia) has been inserted in section 2(24). It is applicable in the case of conversion of stock-in-trade into capital asset. By virtue of this amendment, fair market value of such inventory will be included in income.
Amendment to section 28
Conversion of inventory into capital asset –
Section 28 has been amended to provide that the fair market value (determined in the prescribed manner) of the inventory as on the date of its conversion or treatment as capital assets shall be chargeable to tax under the head "Profit and gains of business and profession".

Amendment to section 2(42A)
Section 2(42A), inter alia, provides for determination of period for which the capital asset is held by the assessee (in order to ascertain whether the capital asset is long-term capital asset or short-term capital asset). A new sub-clause (ba) has been inserted in Explanation 1(i) so as to provide that in case inventory is converted into or treated as a capital asset, the period of holding shall be reckoned from the date of its conversion or the treatment.

Provisions illustrated - X is a dealer in shares. He purchases 1,000 equity shares in A Ltd. as inventory on January 10, 2019. These shares are listed in Bombay Stock Exchange. These shares are converted into capital asset on May 2, 2019. The capital asset is transferred on March 15, 2020. It is transfer of short-term capital asset (period of holding: from May 2, 2019 to March 15, 2020).

Cost of acquisition in the case of conversion of stock-in-trade into capital asset
[Sec. 49]
Section 49 has been amended (with effect from the assessment year 2019-20) to provide that if stock-in-trade is converted into capital asset, cost of acquisition of such capital asset shall be deemed to be the fair market value which has been taken into account for the purpose of section 28(via) [ie., fair market value on the date of conversion of stock-in-trade into capital asset].

Amendment to section 43
The following amendments have been made to section 43 -

"Actual cost" when inventory is converted into capital asset - When inventory is converted into capital asset, "actual cost" of such asset for the purpose of section 43(1) shall be the fair market value on the date of conversion which is taken into consideration for the purpose of section 28(via) [applicable from the assessment year 2019-20].

Illustration:
The following points are noted from the records of X-
1. On May 14, 2018, X purchases 10,000 equity shares in A Ltd. at the rate of Rs. 20 per share as his stock-in-trade [securities transaction tax (STT) paid @ 0.1 per cent].
2. This stock-in-trade is not sold till March 31, 2019. Quoted value of A Ltd.’s share on March 31, 2019 is Rs. 22.
3. The above inventory of 10,000 equity shares is converted into capital asset on July 10, 2019. Quoted value of A Ltd.’s share on July 10, 2019 is Rs. 26.
4. X transfers 2,000 shares in A Ltd. on March 25, 2020 at the rate of Rs. 29 per share (STT paid @ 0.1 per cent).
5. X transfers 8,000 shares in A Ltd. on **August 14, 2020** at the rate of Rs. 45 per share (STT paid @ 0.1 per cent). Find out tax consequences of these transactions (assume that X has not undertaken any other transaction during the previous years 2018-19 and 2019-20).

1. For the previous year **2018-19**, business income from the above transactions will be determined as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening stock on April 1, 2018</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Purchase of inventory during 2018-19 (including cost of STT)</td>
<td>2,00,200</td>
<td>Nil</td>
</tr>
<tr>
<td>Sales during 2018-19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Closing value of inventory (cost or market price, whichever is lower)</td>
<td></td>
<td>2,00,200</td>
</tr>
<tr>
<td>Net profit</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2,00,200</td>
<td>2,00,200</td>
</tr>
</tbody>
</table>

2. Business income of X for the previous year **2019-20** will be computed as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening stock on April 1,2019</td>
<td>2,00,200</td>
<td></td>
</tr>
<tr>
<td>Purchase of inventory during 2019-20</td>
<td></td>
<td>Nil</td>
</tr>
<tr>
<td>Sales during 2019-20</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fair market value on the date of conversion as per section 28(via)</td>
<td>59,800</td>
<td>2,60,000</td>
</tr>
<tr>
<td>Closing value of inventory Net profit</td>
<td></td>
<td>59,800</td>
</tr>
<tr>
<td>Net profit</td>
<td>Nil</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2,60,000</td>
<td>2,60,000</td>
</tr>
</tbody>
</table>

3. Income under the head "Capital gains" will be as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>AY 2020-21 Rs.</th>
<th>AY 2021-22 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration (Rs. 29 x 2,000, Rs. 45 x 8,000)</td>
<td>58,000</td>
<td>3,60,000</td>
</tr>
<tr>
<td>Less: Cost of acquisition (being fair market value on the date of conversion) (Rs. 26 x 2,000, Rs. 26 x 8,000)</td>
<td>52,000</td>
<td>2,08,000</td>
</tr>
<tr>
<td>Less: STT paid at the time of transfer/purchase</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Short-term capital gain</td>
<td>6,000</td>
<td>-</td>
</tr>
<tr>
<td>Long-term capital gain</td>
<td>-</td>
<td>1,52,000</td>
</tr>
</tbody>
</table>

4. Short-term capital gain of Rs. 6,000 will be taxable under section 111A at the rate of 15% (+ SC + HEC). Long-term capital gain of Rs. 1, 52,000 will be taxable under section 112A. Rs. 52,000 will be taxable at the rate of 10% (+SC + HEC).

See Tax Calculations after studying sec 112A & 111A)
SECTION 45(3): CAPITAL GAIN ON TRANSFER OF A CAPITAL ASSET BY A PARTNER/MEMBER TO FIRM/AOP/BOI

The Capital gains arising from the transfer of a capital asset by a person to a firm in which he is or in which he becomes a partner, by way of capital contribution or otherwise, shall be chargeable to tax in the previous year in which such transfer takes place. The amount recorded in the books of account of the firm as the value of capital asset, shall be deemed to be the sales consideration for the purposes of section 48.

KEY NOTE:
The same provisions will apply where a member of AOP/BOI, transfers a capital asset to AOP/BOI.

Illustration 1:
Mr. A is admitted as a partner in a firm M/s. ABC. He transfers unlisted shares of a company on 1.1.2021 as his capital contribution to the firm. The fair market value of the unlisted shares is Rs. 50,00,000 but the firm records the value of the unlisted shares as Rs. 30,00,000. The unlisted shares were acquired by Mr. A on 1.1.2003 for Rs. 10,00,000. Discuss the tax implications.

Answer:

<table>
<thead>
<tr>
<th>Assessment Year 2021-2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the hands of Mr. A</td>
</tr>
<tr>
<td><strong>CAPITAL GAINS</strong></td>
</tr>
<tr>
<td>Period of holding : 01.01.2003 to 31.12.2020 (Long term)</td>
</tr>
<tr>
<td>Sales Price as per section 45(3) r.w Sec 50CA : Rs. 50,00,000</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition : 10,00,000 X</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
</tr>
</tbody>
</table>

IFOS Implications: (To be done later with IFOS)

Section 56(2)(x) is attracted since the said section applies when unlisted shares are received by a closely held company or a firm. In the present case, the unlisted shares have been received by the Firm, Rs. 20,00,000 is income from other sources under section 56(2)(x) in the hands of the firm. The COA in the hands of the firm shall be taken to be Rs. 50,00,000 as per section 49(4).

Illustration 2:
Mr. A is admitted as a partner in a firm M/s. ABC. He transfers a building on 1.1.2021 as his capital contribution to the firm. The stamp duty value of the building is Rs. 50 lakhs but the firm records the value of the asset as Rs. 30 lakhs. The building was acquired by Mr. A on 1.1.2003 for Rs. 10 lakh. Discuss the tax implications.

Answer:

As per section 45(3), Rs. 30,00,000 is deemed as the sale price in the hands of the partner. However, section 50C provides that where the land or building is transferred and the sale price is less than the value adopted by the stamp valuation authority, then such value adopted by stamp valuation authority is deemed as the sale price. Therefore, in the present case the sale price in the hands of the partner shall be taken to be Rs. 50,00,000.
Assessment Year 2021-2022

In the hands of Mr. A

CAPITAL GAINS

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>:</th>
<th>1.1.2003 to 31.12.2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Price as per section 45(3) read with Section 50C</td>
<td>:</td>
<td>Rs. 50,00,000</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>:</td>
<td>10,00,000 X</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

ISSUES ARISING ON DISSOLUTION OF FIRM

SECTION 45(4): CAPITAL GAIN ON TRANSFER OF A CAPITAL ASSET BY WAY OF DISTRIBUTION ON DISSOLUTION OF A FIRM/AOP/BOI OR OTHERWISE

The capital gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or otherwise shall be chargeable to tax as the income of the firm in the previous year in which such distribution takes place. The fair market value of the capital asset on the date of distribution shall be taken as the sales consideration for the purposes of section 48.

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

FROM THE JUDICIARY

1. COMMISSIONER OF INCOME-TAX V. A. N. NAiK ASSOCIATES (BOM.)
The word "otherwise" used in section 45(4) not only covers the case of dissolution but also covers a case where a partner retires from a firm and assets are given to him.

Therefore, if a partner retires from a firm and assets are given to him then capital gains would rise in the hands of the firm and the fair market value of such assets on the date of distribution shall be taken as the sales price.

2. A.L.A. FIRM (SUPREME COURT)
Where a firm is dissolved, its stock-in-trade must be valued 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 will apply where firm is dissolved and its business is also discontinued.

3. SAKTHI TRADING CO. V. CIT (SUPREME COURT)
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 was lower.

As a result of the death of one out of its six partners on 6.2.2015, the assessee-firm was dissolved. It was, however, reconstituted with effect from the next day, that is,
7.2.2015, with the remaining five partners. Two orders of assessment were made one for the period upto 6.2.2015, and the other for the period 7.2.2015 to 31.3.2015. The Commissioner made an order under section 263, as according to him the assessment order made by the ITO was erroneous and prejudicial to the interests of the revenue in valuing the stock in trade as on 6.2.2015 on the basis of cost or market rate, whichever was lower as that was the usual method the assessee used to adopt in valuing its stock. The Commissioner, relying upon the decision of the Supreme Court in A.L.A Firm v. CIT, came to the conclusion that the ITO ought to have valued the closing stock at its market rate as on 6.2.2015. Thus, setting aside the assessment order, the ITO was directed to pass a fresh order. The order of the Commissioner was challenged by the assessee in appeal before the Appellate Tribunal. The contention of the assessee before the Tribunal was that the question of valuing the closing stock at the market value could arise only on discontinuance of the business and as the business of the firm was never discontinued but was taken over on succession by another firm, the closing stock was not required to be revalued at the market value. The Tribunal found that the firm was reconstituted with the remaining five partners under the partnership deed dated 6.3.2015, with effect from 7.2.2015. According to the Tribunal, there was no warrant for revaluation of stock in a continuing business and the order of the ITO accepting the profit shown by the assessee, on the method of accounting regularly followed, was not in any way erroneous and did not require to be revised under section 263. The High Court reversed the Tribunal's order.

Held that it was evident that in A.L.A. Firm v. CIT, the Supreme Court was considering the question of valuation of closing stock at market value in a case where there was dissolution and also discontinuance of the business of the firm. In the present case, however, though there was dissolution on account of the death of one of the partners, there was no discontinuance of the business. The unchallenged finding recorded by the Tribunal was that there was no discontinuance of business. Even as per principles laid down in A.L.A. Firm's case, in such a case the closing stock is to be valued at the cost or market price, whichever is lower. That is an established rule of commercial practice and accountancy. The High Court was clearly in error in coming to the conclusion that stock had to be valued at market value. As already noticed, in the present case, there was no cessation of business and, therefore, the closing stock could not be directed to be valued at the market rate.

Therefore if a firm is dissolved and its business is also discontinued, then the judgement of Supreme Court in 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 judgement of Supreme Court in SAKTHI TRADING CO. shall apply and the stock shall not be valued at market price. The stock shall be valued as per normal accounting practices.

4. **CIT v. R. Lingmallu Raghukumar (Supreme Court)**

Excess amount received by the assessee on retirement from the firm is not assessable to capital gains.

Where a partner retires from a partnership and the amount of his share in the net partnership assets after deduction of liabilities and prior charges is determined on taking accounts in the manner prescribed by the relevant provisions of the partnership.
law there is no element of transfer of interest in the partnership assets by the retired partner to the continuing partners. It cannot be said that the retiring partner has transferred his share in firm to other partners.

If a partner retires from the firm and Rs. 10 Lakhs is his share in the firm and the firm gives him Rs. 50 Lakhs, then it cannot be said that he has transferred his share for Rs. 50 Lakhs. The share in the firm is not a capital asset since a partner cannot transfer his share in firm to anyone. Therefore, no capital gain will arise to the partner. Rs. 40 Lakhs is Income From Other Sources under section 56(2)(x)

Thus, the excess amount received by the assessee on retirement from the firm is not assessable to capital gains.

SECTION 45(5): CAPITAL GAIN ON TRANSFER BY WAY OF COMPULSORY ACQUISITION OF AN ASSET

Notwithstanding anything contained in section 45(1), where a capital asset is compulsorily acquired under any law or where the consideration for transfer of a capital asset is to be determined or approved by the Central Government or Reserve Bank of India, then the capital gains arising from the transfer of the capital asset shall be dealt with as under:

(a) The capital gains computed with reference to the original compensation shall be chargeable to tax as the income of the previous year in which such compensation or part thereof is first received by the assessee.

(b) The amount by which the compensation is enhanced (i.e. enhanced compensation) by the Court, Tribunal or other authority shall be deemed as the income under the head Capital gains of the previous year in which such amount is received by the assessee.

Provided that any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which the final order of such court, Tribunal or other authority is made.

(Proviso inserted by Finance Act, 2014)

(c) Where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation referred to in clause (a) or, as the case may be, enhanced compensation referred to in clause (b), and subsequently such compensation is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be recomputed by taking the compensation as so reduced by such court, Tribunal or other authority to be the full value of consideration.

KEYNOTES:
1. For determining nature of capital gains, the period shall be taken from the date the asset was acquired by the assessee to the date on which asset was acquired under any law or transferred.
2. The nature of capital gains computed with reference to the enhanced compensation shall be the same as the nature of capital gains computed with reference to the original compensation.
3. For the purpose of computing the capital gains with reference to the enhanced compensation, the cost of acquisition and the cost of improvement shall be taken to the NIL.
However, legal expenses incurred to obtain the enhanced compensation are deductible from the enhanced compensation and balance shall be the capital gains.

4. Where by reason of the death of the person who made the transfer or for any other reason, the enhanced compensation is received by any other person, then the amount so received shall be deemed to be the income under the head Capital gains of the person who receives the same.

SECTION 155(16): RECTIFICATION
(Special cases of rectification where time limit of 4 years expires)
- Where in the assessment for any year,
- a capital gain arising from the transfer of a capital asset,
- being a transfer by way of compulsory acquisition under any law, or a transfer, the consideration for which was determined or approved by the Central Government or the Reserve Bank of India,
- is computed by taking the compensation as referred to in clause (a) or, as the case may be, the compensation enhanced or further enhanced as referred to in clause (b) of sub-section (5) of section- 45, to be the full value of consideration deemed to be received or accruing as a result of the transfer of the asset
- and subsequently such compensation is reduced by any court, Tribunal or other authority,
- the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the compensation as so reduced by the court, Tribunal or any other authority to be the full value of consideration;
- and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which the order reducing the compensation was passed by the court, Tribunal or other authority.

SECTION 145B: METHOD OF ACCOUNTING IN CASE OF INTEREST RECEIVED ON COMPENSATION OR ON ENHANCED COMPENSATION
Notwithstanding anything contained in section 145 interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be DEEMED TO BE THE INCOME OF THE YEAR IN WHICH IT IS RECEIVED.

SECTION 56(2)(viii): INCOME FROM OTHER SOURCES
Income by way of interest received on compensation or on enhanced compensation referred to in section 145A shall be taxable under the head "Income from Other Sources".

SECTION 57: DEDUCTION IN RESPECT OF INCOME FROM OTHER SOURCES
The income chargeable under the head "Income from other sources" shall be computed after making the following deductions:

32.10
In the case of income of the nature referred to in section 56(2)(viii), a deduction of a sum equal to 50% of such income and no deduction shall be allowed under any other clause of this section.

Illustration 1.
Mr. Abdul purchased a land on 1.1.2002 for Rs. 1,00,000. The said land is compulsorily acquired by the Central Government on 1.1.2007 and the original compensation awarded is Rs. 3,00,000. The said compensation is received by the assessee on 1.1.2008. The assessee filed a suit for additional compensation in the High Court on 25.1.2008 and the High Court on 1.1.2020 awards him an additional compensation of Rs. 10,00,000.

The government informs the High Court that it will be filing an appeal against the High Court's order to the Supreme Court. The High Court directs the government to pay Rs. 10,00,000 to the assessee by 28.2.2020 and the government pays Rs. 10,00,000 on 28.2.2020. The High Court also directs the assessee to furnish a bank guarantee of Rs. 10,00,000 to the Government within a week of receiving the payment.

The government filed an appeal to the Supreme Court on 10.03.2020 and Supreme Court on 2.1.2023 decides that the order of High Court was correct. Discuss the tax implications.

Answer:  
Assessment Year 2008-2009  
CAPITAL GAINS W.R.T. ORIGINAL COMPENSATION  

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>1.1.2002 to 31.12.2006 (Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>Rs. 3,00,000</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>1,00,000 × 122/100 = Rs. 1,22,000</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
<td>Rs. 1,78,000</td>
</tr>
</tbody>
</table>

Assessment Year 2020-2021  
CAPITAL GAINS W.R.T. ENHANCED COMPENSATION  

| Additional Compensation received | Rs. 10,00,000 |
| Less: Cost of Acquisition | NIL |
| Long term Capital Gain | Rs. 10,00,000 |

Note: The additional compensation shall be taxable in the year of receipt irrespective of the fact that the same has been disputed by the Government. Section 155(16) shall not be attracted since the additional compensation is not reduced by the Supreme Court.

Illustration 2:  
Suppose in Illustration No. 1, the government had not filed an appeal to the Supreme Court, but the assessee had filed an appeal to the Supreme Court for enhancement of compensation. The Supreme Court decides on 2.1.2023 that the enhanced compensation should have been Rs. 12,00,000. Rs. 2,00,000 is received by the assessee on 30.6.2023. Discuss the tax implications.

Answer:  
Assessment Year 2008-2009  
Long Term Capital Gain | Rs. 1,78,000 |
Assessment Year 2020-2021  
Long Term Capital Gain | Rs. 10,00,000 |
Assessment Year 2024-2025

Long Term Capital Gain  Rs. 2,00,000

Illustration 3:
Suppose in Illustration No. 1 the government had appealed to the Supreme Court against the enhanced compensation of Rs. 10,00,000. The Supreme Court on 2.1.2023 decides that the additional compensation should have been Rs. 9,00,000 instead of Rs. 10,00,000. Discuss the tax implications.

Answer:
Assessment Year 2008-2009

Long Term Capital Gain  Rs. 1,78,000

Assessment Year 2020-2021

Long Term Capital Gain  Rs. 10,00,000

To give effect to the decision of the Supreme Court, the Assessing Officer shall amend his earlier order of assessment for Assessment Year 2020-2021 under section 155(16). In the rectification order, passed under section 155(16), he shall amend his earlier assessment made and shall re-compute the capital gains as under:

Assessment Year 2020-2021 (Revised)

Enhanced Compensation:  Rs. 9,00,000
Less: Cost of Acquisition:  NIL
Long term Capital Gain  Rs. 9,00,000

The rectification order under section 155(16) shall be passed by 31.03.2027. The assessee shall be granted the refund of tax on Rs. 1,00,000 (i.e. tax on Rs. 10,00,000 - tax on Rs. 9,00,000).

Illustration 4:
Suppose in Illustration No. 1 the government had filed an appeal to the Supreme Court against the enhanced compensation of Rs. 10,00,000. The assessee has also filed an appeal to the Supreme Court for increase of enhanced compensation. The Supreme Court decides on 2.1.2023 that the additional compensation should have been Rs. 9,00,000. Discuss the tax implications.

Answer:
Same as Answer to Illustration 3.

Illustration 5:
Suppose in Illustration No. 1 the government had filed an appeal to the Supreme Court against the enhanced compensation of Rs. 10,00,000. The assessee has also filed an appeal to the Supreme Court for increase of enhanced compensation. The Supreme Court decides on 2.1.2023 that the additional compensation should have been Rs. 12,00,000. Rs. 2,00,000 is received by the assessee on 30.6.2023. Discuss the tax implications.

Answer:
Assessment Year 2008-2009

Long Term Capital Gain  Rs. 1,78,000

Assessment Year 2020-2021

Long Term Capital Gain  Rs. 10,00,000

32.12
Illustration 6:
Suppose in Illustration No. 1, the Government had filed an appeal against the original compensation as well as additional compensation. The Supreme Court decides on 02.01.2023 that additional compensation should not have been awarded and original compensation should have been Rs. 2,00,000.

Answer:  
Assessment Year 2008-2009  
Long Term Capital Gain Rs. 1,78,000 
Assessment Year 2020-2021  
Long Term Capital Gain Rs. 10,00,000

Now to give effect to the judgement of Supreme Court, the Assessing Officer shall amend the order of assessment for Assessment Year 2008-09 as well as Assessment Year 2020-2021 by passing the rectification order under section 155(16). The rectification order under section 155(16) shall be passed by 31.03.2027 and assessment be rectified as under:

Assessment Year 2008-2009  
Long Term Capital Gain Rs. 78,000 
Assessment Year 2020-2021  
Long Term Capital Gain NIL

The assessee shall be refunded the excess tax paid by him.

Illustration 7:
An assessee purchased a land on 1.1.2000 for Rs. 1 lakh. The fair market value of the land as on 1.4.2001 is Rs. 1,00,000. The land is acquired by the Government on 1.1.2013 and the original compensation awarded is Rs. 10 lakhs which is received as under:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.6.2015</td>
<td>Rs. 3 lakhs</td>
</tr>
<tr>
<td>1.1.2017</td>
<td>Rs. 6 lakhs</td>
</tr>
<tr>
<td>1.1.2018</td>
<td>Rs. 1 lakh</td>
</tr>
</tbody>
</table>

On an appeal made by the assessee, the Court awards additional compensation of Rs. 20 lakhs on 31.12.2016 which is received as under:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1.2017</td>
<td>Rs. 2 lakhs</td>
</tr>
<tr>
<td>1.1.2018</td>
<td>Rs. 10 lakhs</td>
</tr>
<tr>
<td>1.1.2019</td>
<td>Rs. 8 lakhs</td>
</tr>
</tbody>
</table>

The Court also awards interest for the period 1.1.2015 to 31.12.2018 amounting to Rs. 9,00,000 which is received on 1.3.2019. Compute the tax liability of the assessee.

Answer:  
In view of section 145A and section 56(2)(viii), the interest is taxable in the year of receipt under the head income from other sources. In view of the Section 145A, 56(2)(viii) and section 45(5), the taxability shall be as under:
(a) Capital Gains with respect to original compensation

**Assessment Year 2016-2017**

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>01.01.2000 to 31.12.2012</th>
<th>(Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td></td>
<td>Rs. 10,00,000</td>
</tr>
<tr>
<td>Less: Indexed Cost of Acquisition</td>
<td>1,00,000 × 200/100</td>
<td>Rs. 2,00,000</td>
</tr>
<tr>
<td>Long term Capital Gain</td>
<td></td>
<td>Rs. 8,00,000</td>
</tr>
</tbody>
</table>

(b) Capital Gains with respect to enhanced compensation

**Assessment Year 2017-2018**

- Long Term Capital Gain: Rs. 2,00,000

**Assessment Year 2018-2019**

- Long Term Capital Gain: Rs. 10,00,000

**Assessment Year 2019-2020**

- Long Term Capital Gain: Rs. 8,00,000

(c) Taxability of Interest

In the view of section 145A, the interest is taxable in the year of receipt i.e., in Assessment Year 2019-20 under the head "Income from Other Sources":

**Assessment Year 2019-2020**

| Interest Income          | Rs. 9,00,000 |
| Less: Deduction under section 57 | Rs. 4,50,000 |
| Income from Other Sources | Rs. 4,50,000 |

SPECIAL PROVISIONS FOR COMPUTATION OF CAPITAL GAINS IN CASE OF JOINT DEVELOPMENT AGREEMENT [SECS. 45(5A), 49(7)]

Under the existing provisions of section 45, capital gain is chargeable to tax in the year in which transfer takes place except in certain cases. The definition of “transfer", *inter alia*, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred. In such a scenario, execution of Joint Development Agreement between the owner of immovable property and the developer triggers the capital gains tax liability in the hands of the owner in the year in which the possession of immovable property is handed over to the developer for development of a project.

With a view to minimise the genuine hardship which the owner of land may face in paying capital gains tax in the year of transfer, sub-section (5A) has been inserted in section 45 and sub-section (7) has been inserted in section 49. The salient features of these modifications are given below –
Section 45(4A) – A new sub-section (5A) in section 45 with effect from the assessment year 2018-19.

Conditions – Section 45(5A) is applicable if the following conditions are satisfied -

1. **Applicable to individual / HUF** – The assessee is an individual or a Hindu undivided family. He owns land or building or both.

2. **Transfer of land / building to developer** – The individual / HUF (who owns land or building or both) transfers such land or building.

3. **Specified agreement** - To transfer land or building, the individual/HUF enters into a “specified agreement” with a developer. “Specified agreement” is defined as follows -
   “……….. a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.”

The following are salient features of this definition -

- It is a registered agreement.
- One of the two parties to the agreement is the person who owns land or building or both.
- Another party to the agreement is real estate developer.
- Under the agreement, a real estate project will be developed by the developer on such land or building or both.
- Consideration is payable by the developer in the form of a share in the developed land or building with or without cash consideration.

- **Taxable in which year** - If the above conditions are satisfied, capital gain shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole (or part of the project) is issued by the competent authority.

- **How to compute capital gain** - The individual/HUF (who enters into joint development agreement) gets a share in the developed project. The stamp duty value of his share (being land or building or both) in the developed project as increased by any monetary consideration received, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of land or building or both by the owner. For this purpose, stamp duty value shall be the value on the date of issuing of completion certificate.

- **Consequences if land owner transfers his share before issue of completion certificate** - The benefit of above-mentioned special tax regime shall not apply to an assessee who transfers his share in the project to any other person on or before the date of issue of said certificate of completion. In such a situation, the capital gains (as determined under general provisions of the Act) shall be deemed to be the income of the previous year in which such transfer took place and shall be computed as per provisions of the Act without taking into account the above provisions.
Section 49(7) - A consequential amendment has been made in section 49 by inserting sub-section (7) with effect from the assessment year 2018-19. Under sub-section (7), the cost of acquisition of the share in the project (being land or building or both) in the hands of the land owner shall be the amount which is deemed as full value of consideration under the above provisions.

AMENDMENT RELATING TO TDS:

Tax deduction from payment under joint development agreement [Sec. 194-IC]

Section 194-IC has been inserted with effect from April 1, 2017. It provides tax deduction in the case of joint development agreement as follows-

- **Who is responsible for tax deduction** - Any person responsible for paying to a resident any sum by way of consideration (not being consideration in kind) under a joint development agreement, is responsible for tax deduction under section 194-IC.

- **Time of tax deduction** - Tax is deductible at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque/draft or by any other mode, whichever is earlier.

- **Threshold limit** - Nil

- **Rate of tax deduction** - Tax is deductible at the rate of 10 per cent (Reduced to 7.5% between 14/05/2020 to 31/03/2021). If PAN of recipient is not available, tax is deductible at the rate of 20 per cent.

- **Meaning of joint development agreement** - It is a registered agreement in which a land owner (i.e., a person who owns land or building or both) agrees to allow another person to develop a real estate project on such Land or building or both, in consideration of a share (being land or building or both) in such project, whether with or without payment of part of the consideration in cash.
CHAPTER 33. SPECIAL PROVISION IN CASE OF LAND & BUILDING

SECTION 50C: SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION IN CERTAIN CASES

(1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. (Also Refer FA 2020)

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

(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer; and

(b) the value so adopted or assessed or assessable by the stamp valuation authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer.

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

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

NOTE:

It has been provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of computing the full value of consideration.
Condition for taking Stamp duty value of the date of agreement:
However, the stamp duty value on the date of agreement can be adopted only in a case where the amount of consideration, or a part thereof, has been paid by way of an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode, on or before the date of the agreement for the transfer of such immovable property.

AMENDMENT MADE BY FINANCE ACT 2020:

Amendment to section 50C
Section 50C provides that in the case of transfer of land/building, the stamp duty value shall be taken as the full value of consideration for the purposes of computation of capital gains, if the same is more than actual sale consideration.
This provision has been amended. The amended version provides that where the value adopted/assessed/assessable by the stamp valuation authority does not exceed 110 per cent of the actual sale consideration, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration. In other words, stamp duty value will be taken as full value of consideration only if stamp duty value is more than 110 per cent of actual sale consideration.

(Amended by Finance Act 2020, earlier it was 105%)

E1 The following points are noted from the records of X-
1. X purchases a plot of land on August 10, 2008 for Rs. 60,000.
2. He enters into an agreement with B to transfer the plot of land on May 1, 2020 for Rs. 70,00,000 (stamp duty value being Rs. 76,00,000).
3. On May 1, 2020, X gets an advance of Rs. 1,00,000 by an account-payee cheque.
4. Conveyance deed is registered on June 5, 2020 (stamp duty value on the date of registration: Rs. 78,00,000).

In this case, stamp duty value on the date of agreement is different from stamp duty value on the date of registration. X has received an advance of Rs. 1,00,000 by an account-payee cheque on or before the date of agreement. Consequently, stamp duty value on the date of agreement will be taken into consideration. Capital gain will be calculated as follows -

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration [110% of actual consideration of Rs. 70,00,000 is Rs. 77,00,000. Stamp duty value is Rs. 76,00,000. As stamp duty value does not exceed 110% of actual consideration, stamp duty value is not considered]</td>
<td>70,00,000</td>
</tr>
<tr>
<td>Less: Indexed cost of acquisition [Rs. 60,000 × CII of 2020-21 : 137]</td>
<td></td>
</tr>
<tr>
<td>Long-term capital gain</td>
<td></td>
</tr>
</tbody>
</table>
E2 In the above example, assume that advance of Rs. 1,00,000 is received on May 2, 2020. X has received an advance of Rs. 1,00,000 after the date of agreement. Consequently, stamp duty value on the date of registration will be taken into consideration. Capital gain will be calculated as follows –

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration [110% of actual consideration of Rs. 70,00,000 is Rs. 77,00,000. Stamp duty value is Rs. 78,00,000. As stamp duty value exceeds 110% of actual consideration, stamp duty value is taken as full value of consideration]</td>
<td>78,00,000</td>
</tr>
<tr>
<td>Less: Indexed cost of acquisition (as computed above)</td>
<td>(       )</td>
</tr>
<tr>
<td>Long-term capital gain</td>
<td>(       )</td>
</tr>
</tbody>
</table>

E3 In example E2, X claims before the Assessing Officer that stamp duty value of Rs. 78,00,000 is more than fair market value of plot of land. The Assessing Officer refers it to DVO who determines Rs. 75,00,000 (Situation 1) or Rs. 79,00,000 (Situation 2) as fair market value.

<table>
<thead>
<tr>
<th>Description</th>
<th>Situation 1</th>
<th>Situation 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration [110% of actual consideration of Rs. 70,00,000 is Rs. 77,00,000. In Situation 1, stamp duty value (being fair market value determined by DVO) does not exceed Rs. 77,00,000. Consequently, stamp duty value is not applicable. In Situation 2, stamp duty value (being fair market value determined by DVO or stamp duty value on the date of registration, whichever is lower) exceeds Rs. 77,00,000. Consequently, stamp duty value on the date of registration will be considered]</td>
<td>70,00,000</td>
<td>78,00,000</td>
</tr>
<tr>
<td>Less: Indexed cost of acquisition (as computed above)</td>
<td>(           )</td>
<td>(           )</td>
</tr>
<tr>
<td>Long-term capital gain</td>
<td>(           )</td>
<td>(           )</td>
</tr>
</tbody>
</table>

**SECTION 155(15): RECTIFICATION**

- Where in the assessment for any year,
- a capital gain arising from the transfer of a capital asset, being land or building or both,
- is computed by taking the full value of the consideration received or accruing as a result of the transfer
- to be the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in accordance with subsection (1) of section 50C,
- and subsequently such value is revised in any appeal or revision or reference referred to in clause (b) of sub-section (2) of that section,
- the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking
- the full value of the consideration to be the value as so revised in such appeal or revision or reference;
Illustration 1.
Mr. X had purchased a house property on **01.04.2000** for **Rs 3,00,000** (FMV as on **01.04.2001** - **Rs 4,20,000**). This property is sold by Mr. X on **23.12.2020** to Mr. Y. Mr. X has declared **Rs 50 lakhs** as the sales consideration for the purposes of computation of capital gains whereas, the value assessed by the Government Authority for the purposes of stamp duty valuation is:

**Case I:** **Rs 49,00,000**

**Case II:** **Rs 62,00,000**

Evaluate the tax implication on the above transaction in the hands of Mr. X and Mr. Y.

**Answer:**

**Case I: Assessment Year 2021-2022**

**In the hands of Mr. X**

<table>
<thead>
<tr>
<th>Capital Gains</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Period of holding</td>
<td>01.04.2000 to 22.12.2020 (Long term)</td>
</tr>
<tr>
<td>Sales Price [Section 50C shall not apply]</td>
<td>Rs 50,00,000</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs 4,20,000</td>
</tr>
<tr>
<td><strong>Long term Capital Gain (Subject to indexation)</strong></td>
<td>Rs 45,80,000</td>
</tr>
</tbody>
</table>

**In the hands of Mr. Y**

Cost of Acquisition = **Rs 50,00,000**

**Case II: Assessment Year 2021-2022**

**In the hands of Mr. X**

<table>
<thead>
<tr>
<th>Capital Gains</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Period of holding</td>
<td>01.04.2000 to 22.12.2020 (Long term)</td>
</tr>
<tr>
<td>Sales Price</td>
<td>Rs 62,00,000</td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs 4,20,000</td>
</tr>
<tr>
<td><strong>Long term Capital Gain (Subject to indexation)</strong></td>
<td>Rs 57,80,000</td>
</tr>
</tbody>
</table>

Illustration 2:
Mr. A had purchased a land on **15.08.2008** for **Rs 7,00,000**. The said land is sold on **02.03.2021** to Mr. B. Mr. A has declared **Rs 55,00,000** as the consideration for the sale of the land whereas, the value assessed by Government Authority for stamp duty valuation purposes is **Rs 68,00,000**. Mr. A claims that the fair market value of the land as on the date of transfer is less than the value adopted by the Government Authority for the purpose of payment of stamp duty, though he has not appealed in any manner against the value so adopted by such authority.

What is the correct value of sales consideration to be considered for computation of capital gains?
Answer:
By virtue of sections 50C(2) and 50C(3), where the assessee claims that the value adopted or assessed or assessable by the stamp valuation authority under section 50C(1) exceeds the fair market value of the property as on the date of transfer and the value adopted or assessed or assessable by the stamp valuation authority has not been disputed in any appeal or revision or no reference has been made before any authority or court or the High Court, then the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where such reference is made, the provisions of section 16A of the Wealth-tax Act, 1957 shall apply.

Where the value ascertained by the Valuation Officer is below the value adopted or assessed or assessable by the stamp valuation authority, the same would be taken as the value of sales consideration for the purposes of computation of capital gains but if the value ascertained by the Valuation Officer exceeds the value adopted or assessed or assessable by the stamp valuation authority, the value assessed by such authority shall be taken as the full value of sales consideration;

Illustration 3:
Suppose in Illustration 2 above, the Assessing Officer refers the valuation of the land to a Valuation Officer as per the provisions of section 50C(2) and the Valuation Officer ascertains the value of land as:

(i) Case I : Rs 66,50,000
(ii) Case II : Rs 70,00,000
(iii) Case III : Rs 55,00,000

Answer:
Case I: Assessment Year 2021-2022
In the hands of Mr. A
Capital Gains
<table>
<thead>
<tr>
<th>Period of holding</th>
<th>15.08.2008 to 01.03.2021</th>
<th>(Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price [By virtue of section 50C(3)]</td>
<td>Rs 66,50,000</td>
<td></td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs 7,00,000</td>
<td></td>
</tr>
<tr>
<td>Long term Capital Gain (Subject to indexation)</td>
<td>Rs 59,50,000</td>
<td></td>
</tr>
</tbody>
</table>

Case II: Assessment Year 2021-2022
In the hands of Mr. A
Capital Gains
<table>
<thead>
<tr>
<th>Period of holding</th>
<th>15.08.2008 to 01.03.2021</th>
<th>(Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price [By virtue of section 50C(3)]</td>
<td>Rs 68,00,000</td>
<td></td>
</tr>
<tr>
<td>Less: Cost of Acquisition</td>
<td>Rs 7,00,000</td>
<td></td>
</tr>
<tr>
<td>Long term Capital Gain (Subject to indexation)</td>
<td>Rs 61,00,000</td>
<td></td>
</tr>
</tbody>
</table>
### Case III:

**Assessment Year 2021-2022**

**In the hands of Mr. A**

**Capital Gains**

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>15.08.2008 to 01.03.2021 (Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price [By virtue of section 50C(3)]</td>
<td>Rs 55,00,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Cost of Acquisition</td>
<td>Rs 7,00,000</td>
</tr>
<tr>
<td><strong>Long term Capital Gain (Subject to indexation)</strong></td>
<td>Rs 48,00,000</td>
</tr>
</tbody>
</table>

**Illustration 4:**

Mr. A sells his building to Mr. B on 1.1.2021 for Rs 30,00,000 through a power of attorney. No registry is done for the said property. Mr. A purchased this property on 1.3.2003 for Rs 10,00,000. Assessable stamp duty value is Rs 50,00,000. Discuss the tax implication on the said transaction.

**Answer:**

**Assessment Year 2021-2022**

**In the hands of Mr. A**

**Capital Gains**

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>1.3.2003 to 31.12.2020 (Long term)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price [By virtue of section 50C(3)]</td>
<td>Rs 50,00,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Cost of Acquisition</td>
<td>Rs 10,00,000</td>
</tr>
<tr>
<td><strong>Long term Capital Gain (Subject to indexation)</strong></td>
<td>Rs 40,00,000</td>
</tr>
</tbody>
</table>
**AMENDMENT MADE BY FINANCE ACT 2017:**

**FAIR MARKET VALUE TO BE FULL VALUE OF CONSIDERATION FOR TRANSFER OF UNQUOTED SHARES [SEC. 50CA]**

Section 50CA has been inserted with effect from the assessment year 2018-19. It provides that where consideration for transfer of share in a company (other than quoted share) is less than the fair market value (FMV) of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computation of income under the head “Capital gains”.

For this purpose, “quoted share” means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

**Illustration:**

X transfers 1,000 shares in A Ltd. on June 28, 2020 to Y for a consideration of Rs. 9,40,000 (date of acquisition: July 19, 2019, cost of acquisition: Rs. 7,00,000, fair market value on the date of transfer: Rs. 10,00,000). Find out the tax consequences in the following different situations -

1. Shares in A Ltd. are not quoted in any stock exchange in India.
2. Shares in A Ltd. are regularly quoted in NSE/BSE. However, the above transaction takes place outside stock exchange.

**In the hands of X** - Capital gain chargeable to tax will be calculated as follows -

<table>
<thead>
<tr>
<th></th>
<th>Situation 1 Rs.</th>
<th>Situation 2 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration (‘under section 50CA, “section 50CA is not applicable in the case of quoted shares)</td>
<td>10,00,000*</td>
<td>9,40,000*</td>
</tr>
<tr>
<td>Less: Cost of acquisition</td>
<td>7,00,000</td>
<td>7,00,000</td>
</tr>
<tr>
<td>Short-term capital gain</td>
<td>3,00,000</td>
<td>2,40,000</td>
</tr>
</tbody>
</table>

**In the hands of Y** - Y has acquired shares in A Ltd. for inadequate consideration. Rs. 60,000 (being the difference between fair market value and cost of acquisition) is taxable in the hands of Y under section 56(2)(x), regardless of the fact whether shares in A Ltd. are listed in NSE/BSE or not listed in any stock exchange. (REFER IFOS)

---

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019**

Provided that the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

**Section 50D :- FAIRMARKET VALUED DEEMED TO BE FULL VALUE OF CONSIDERATION IN CERTAIN CASEES**

Where the consideration received or accruing as a result of transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer. (Added by Finance Act, 2012)
ANALYSIS

Section 50D has been introduced to nullify the following judgement:

**GOODYEAR TYRE AND RUBBER CO.**

Goodyear is an American Company. Singcell is a Company incorporated in Singapore and is a wholly owned subsidiary of Goodyear. Goodyear is a promoter of an Indian Company GEL and Goodyear holds 74% shares of GEL. GEL is listed on stock exchange in India.

Goodyear wants to make Singcell financially strong and an important entity of the Group. Goodyear, therefore, enters into a Share Contribution Deed (SCD) to contribute voluntarily the entire 74% shares it holds in GEL to Singcell WITHOUT ANY MONETARY CONSIDERATION.

Held that it is settled law that section 45 must be read with section 48 and if the computation provision cannot be given effect to for any reason, the charging section 45 fails. In the instant case, no consideration would accrue or arise to the Goodyear by the transfer of shares and the Goodyear cannot be said to have derived any profit or gain from the transaction. The consideration for transfer of shares of GEL to Singcell is to make Singcell financially strong and an important entity in the group. The Consideration is there for transfer but it can’t be quantified. As the consideration is incapable of being valued in definite terms or it remains unascertainable on the date of occurrence of taxable event, the question of applying section 45 read with section 48 would not arise.

As no consideration will pass on transfer of shares of GEL by Goodyear, no income will arise.

**THE ABOVE JUDGEMENT HAS BEEN OVER-RULED BY FINANCE ACT 2012 BY INTRODUCTING SECTION 50D.**

ANALYSIS

- Goodyear has not gifted the shares of GEL to Singcell because had it shown it has a gift, then section 28 shall be attracted and the value of gift shall be treated as a perquisite in the course of business. Had Goodyear shown it as a gift, then since the underlying asset is shares of Indian company, then the income from P/G/B/P shall be taxable in India.

- Goodyear argues that it has transferred the asset for a consideration and consideration is to make Singcell financially strong and important entity of Group. As per Goodyear, the sale consideration is there but it is not determinable or ascertainable. Therefore, capital gains cannot be computed.

- **Section 50D provides that now in the above case the FMV of shares of GEL on the date of transfer shall be taken as the sale price and capital gains be computed accordingly.**

Illustration:

Goodyear is an American Company. Singcell is a Company incorporated in Singapore and is a wholly owned subsidiary of Goodyear. Goodyear is a promoter of an Indian Company GEL and Goodyear holds 74% shares of GEL. GEL is listed on stock exchange in India.

Goodyear wants to make Singcell financially strong and an important entity of the Group. Goodyear, therefore, enters into a Share Contribution Deed (SCD) to contribute voluntarily
the entire 74% shares it holds in GEL to Singcell WITHOUT ANY MONETARY CONSIDERATION.

Goodyear argues that no capital gains will arise since computation cannot be made since sales consideration is not ascertainable and is indeterminate. Goodyear argues that charging section fails in this case. You are given that FMV of shares of GEL on the date Goodyear contributes the shares under share contribution Deed is Rs. 500 crores and its cost of acquisition is Rs. 100 crores.

Answer:
In view of section 50D introduced by Finance Act, 2012 the sale price of shares of GEL in hands of Goodyear shall be taken as Rs. 500 crores.

Capital Gain shall be computed as under:

<table>
<thead>
<tr>
<th>Sale Price</th>
<th>Cost of Acquisition</th>
</tr>
</thead>
<tbody>
<tr>
<td>500 crores</td>
<td>100 crores (Subject to Indexation)</td>
</tr>
<tr>
<td><strong>Capital gain</strong></td>
<td><strong>400 crores</strong></td>
</tr>
</tbody>
</table>

*****************************************************************************
CHAPTER 34. SLUMP SALE

BACKGROUND
A number of companies are going for restructuring in order to increase their profitability. In the restructuring exercise, certain companies sell off their unprofitable business activities and the business activity as a whole is sold along with assets and liabilities. Normally the business activity or division is sold for a lump sum consideration. The Assessing Officer used to take the view that the lump sum consideration should be allocated to various assets namely:

- Non-Depreciable assets
- Depreciable assets
- Stock
- Others.

The Assessing Officers used to compute income under the head capital gains or business income with respect of each asset. The companies represented to the Government that in such cases the capital gains should not be computed with respect of each asset transferred but with respect to the undertaking or a division as a whole. It is in view of this, that the concept of Slump Sale has been introduced from assessment year 2000-01.

SECTION 50B: SPECIAL PROVISION FOR COMPUTATION OF CAPITAL GAINS IN CASE OF SLUMP SALE

1. Any profits or gains arising from slump sale effected in the previous year shall be chargeable to income-tax as capital gains and shall be deemed to be the income of the previous year in which transfer took place.

Note: Any profits or gains arising from the transfer under the slump sale of any undertaking owned and held by an assessee for not more than 36 months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from transfer of short-term capital assets.

Note: Any profits and gains arising from transfer under the slump sale of any undertaking owned and held by an assessee for more than 36 months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from transfer of long term capital assets.

2. In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48.

3. Every assessee, in case of slump sale, shall furnish in the prescribed form along with the return of income, a report of a chartered accountant indicating the computation of net worth of the undertaking or division, as the case may be and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

Explanation 1: For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by
the value of liabilities of such undertaking or division as appearing in its books of account:

Provided that any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

Explanation 2: For computing the net worth, the aggregate value of total assets shall be:

(a) in the case of depreciable assets, the written down value of block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of section 43(6); and

(b) in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and

(c) in the case of other assets, the book value of such assets.

The salient features of section 50B are as under:( Read this properly)

• If the agreement for transfer specifies the individual value of each asset to be transferred, then the provisions of "slump sale" shall not be applicable and capital gains on each asset shall be computed separately.

• Capital gains shall arise on slump sale.

• Capital gains shall be taxable in the previous year in which the slump sale is effected.

• Nature of capital gains will depend on the period of holding of the undertaking transferred by way of slump sale. If the undertaking is held for more than 36 months immediately preceding the date of transfer, then the capital gains shall be long term. This is irrespective of the fact that the undertaking consist of certain assets which are short term capital assets.

• No profits under the head P/G/B/P shall arise in case of a slump sale even if stock is transferred in slump sale.

• The cost of acquisition and cost of improvement of the undertaking shall be the "net worth" of the undertaking.

• The benefit of indexation shall not be available.

• No values should be assigned to the individual assets and liabilities.

• However, the values can be assigned to the assets for the limited purpose of payment of stamp duty, registration fees etc. This issue should be clarified in the agreement.

• Capital Gains = "Slump sale consideration" minus "Net worth of the Undertaking or division"

• "Net worth" = Aggregate value of total assets of the undertaking or division transferred minus Value of liabilities of the undertaking or division transferred as appearing in its books of account.

• Contingent liabilities do not appear in the books of account and therefore shall not be deducted while computing the "net worth".

• Revaluation of assets shall not be considered while computing the "net worth", i.e., revaluation of assets shall be ignored for computing the "net worth", irrespective of the fact that revaluation is done in the current year or in past years.
• For computing the "net worth", non depreciable assets are to be taken at their book values.
• For computation on "net worth" any asset whose whole cost has been allowed as deduction under section 35AD shall be taken as NIL.
• For computing the "net worth", in case of depreciable assets, the written down value of such assets shall be computed as per section 43(6)(c)(i)(C).
• A report of a chartered accountant certifying the correctness of computation of net worth of the undertaking or division has to be furnished before the specified date referred u/s 44AB.
• In case of a slump sale, the unabsorbed losses and unabsorbed depreciation of the undertaking shall not be available to the transferee for carry forward. There is no provision in law which enables the transferee to carry forward the unabsorbed losses and unabsorbed depreciation of the undertaking or division so sold in slump sale. Therefore, transferee shall not carry forward the losses and depreciation of the undertaking transferred. In section 72, the condition that business must be continued for carry forward of losses, has been deleted by the Finance Act, 1999. Therefore, the transferor can carry forward the unabsorbed losses of the transferred undertaking.
• Similarly, in section 32, the condition that business must be continued for carry forward of depreciation has been deleted by the Finance Act, 2000. Therefore, the transferor can carry forward the unabsorbed depreciation of the transferred undertaking.

**SECTION 43(6): WDV OF BLOCK OF ASSETS**

Section 43(6) which defines the written down value of Block of assets has been amended. It has been provided in section 43(6)(c)(i)(C) that the written down value of the transferor in case of slump sale shall be reduced by the following:

**Actual cost of the assets falling within that block transferred by way of slump sale as reduced by:**

Less: depreciation actually allowed up to assessment year 1987-88 in respect of the asset transferred.

Less: depreciation that would have been allowable for assessment year 1988-89 and future assessment years as if the asset was the only asset in the block of assets.

However, the above reduction shall be limited to the written down value of Block of assets.

The law does not prescribe as to what will be the actual cost of the assets in the hands of the transferee. A logical view is that the slump consideration should be apportioned on the basis of fair market value of the assets and depreciation be allowed on such apportioned cost.

**KEY NOTE:**

Slump sale may not always be beneficial. If the company finds that it is prudent to sell the assets separately, then it can do so if the tax incidence comes out to be lower.
Illustration 1: The balance sheet of a company X Ltd. as on 31.3.2019 is as under:

<table>
<thead>
<tr>
<th>LIABILITIES</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up Capital</td>
<td>5,00,000</td>
</tr>
<tr>
<td>Reserves &amp; Surplus</td>
<td>6,00,000</td>
</tr>
<tr>
<td>Revaluation Reserve</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Creditors</td>
<td></td>
</tr>
<tr>
<td>Software Division</td>
<td>1,50,000</td>
</tr>
<tr>
<td>Telecom Division</td>
<td>2,50,000</td>
</tr>
<tr>
<td>Cement Division</td>
<td>1,00,000</td>
</tr>
<tr>
<td><strong>Total Liabilities</strong></td>
<td><strong>18,00,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ASSETS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Software Division</td>
<td></td>
</tr>
<tr>
<td>Fixed Assets</td>
<td>2,00,000 (Revalued by <strong>Rs. 75,000</strong>)</td>
</tr>
<tr>
<td>Debtors</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Stock</td>
<td>50,000</td>
</tr>
<tr>
<td>Telecom Division</td>
<td></td>
</tr>
<tr>
<td>Fixed Assets</td>
<td>1,00,000 (Revalued by <strong>Rs. 75,000</strong>)</td>
</tr>
<tr>
<td>Debtors</td>
<td>75,000</td>
</tr>
<tr>
<td>Stock</td>
<td>2,10,000</td>
</tr>
<tr>
<td>Investment</td>
<td>1,50,000 (Market value <strong>Rs. 3,00,000</strong>)</td>
</tr>
<tr>
<td>Cement Division</td>
<td></td>
</tr>
<tr>
<td>Fixed Assets</td>
<td>4,35,000 (Revalued by <strong>Rs. 50,000</strong>)</td>
</tr>
<tr>
<td>Debtors</td>
<td>3,00,000</td>
</tr>
<tr>
<td>Stock</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Investments</td>
<td>80,000 (Market value <strong>Rs. 1,00,000</strong>)</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td><strong>18,00,000</strong></td>
</tr>
</tbody>
</table>

Now on 1.4.2019, the company X Ltd. decides to sell its Cement Division to another Company Z Ltd. for **Rs. 14,00,000**. The break up of fixed assets is as under:

- Land: 1,30,000 (Revalued by **Rs. 50,000**)
- Machinery (Depreciable): 3,05,000

**Total:** 4,35,000

The Cement Division was set up on 30.6.2013. In the agreement to sell, the company specifies that the land is valued at **Rs. 3,25,000** for the purpose of payment of stamp duty by the purchaser. It is clarified in the agreement that this value has nothing to do with the consideration of **Rs. 14,00,000**. The machinery transferred in the slump sale belongs to Block of Assets of Plant & Machinery on which depreciation rate is 15%. The WDV of Block of assets of Plant & Machinery as on 1.4.2019 is **Rs. 8,00,000**. The company has acquired a new machinery 'A' on 30.6.2019 for **Rs. 2,00,000** and has sold a machinery 'B' on 31.12.2019 for **Rs. 6,50,000**. From the records maintained under the Companies Act, 2013 the company ascertains that the machinery transferred in the slump sale was acquired at the actual cost of **Rs. 5,00,000** on 31.12.2013.
Answer:

- There is a sale of an undertaking being the Cement Division which constitutes business activity as a whole. The sale is for lumpsum consideration i.e. Rs. 14 Lakhs and therefore, it is a slump sale on which section 50B applies.
- Cement Division was established on 30.06.2013 and is transferred on 01.04.2019. Capital Gains shall be Long Term Capital Gains and taxable in Assessment Year 2020-2021.

**LONG TERM CAPITAL GAINS ON SLUMP SALE**
**ASSESSMENT YEAR 2020-2021**

Capital Gains as per Section 50B:

<table>
<thead>
<tr>
<th>Period of holding</th>
<th>:</th>
<th>30.06.2013 to 31.03.2019</th>
<th>Long Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>:</td>
<td>Slump Sale Consideration</td>
<td>Rs. 1,40,00,000</td>
</tr>
<tr>
<td>Less: NET WORTH of undertaking transferred</td>
<td></td>
<td></td>
<td>Rs. 6,65,214*</td>
</tr>
<tr>
<td>Long Term Capital Gain</td>
<td></td>
<td></td>
<td>Rs. 7,34,786</td>
</tr>
</tbody>
</table>

* NET WORTH = Book value of Non-Depreciable assets transferred  
+ WDV of Depreciable assets transferred as per section 43(6)(c)(i)(C)  
- Book value of Liabilities transferred  
= Rs. 5,60,000 + Rs. 2,05,214** - Rs. 1,00,000  
(See Note 2)  (See Note 1)  
= Rs. 6,65,214

**Note 1:** Computation Of WDV Of Block Of Assets Of X Ltd. For Assessment Year 2020-2021

| Opening WDV of Block of Assets as on 01.04.2019 | Rs. 8,00,000 |
| Add: Actual cost of Machinery 'A' acquired during the previous year | Rs. 2,00,000 |
| Less: Sales Price of Machinery 'B' sold during the previous year | Rs. 6,50,000 |
| Less: Reduction as per Section 43(6)(c)(i)(C) | Rs. 3,50,000 |
| Actual cost of Machinery transferred in slump-sale | Rs. 5,00,000 |
| Less: Depreciation for A/Y 2014-15 @ 7.5% | Rs. 37,500 |
| Less: Depreciation for A/Y 2015-16 @ 15% | Rs. 69,375 |
| Less: Depreciation for A/Y 2016-17 @ 15% | Rs. 58,969 |
| Less: Depreciation for A/Y 2017-18 @ 15% | Rs. 50,123 |
| Less: Depreciation for A/Y 2018-19 @ 15% | Rs. 42,605 |
| Less: Depreciation for A/Y 2019-20 @ 15% | Rs. 36,214 |
| WDV for Assessment Year 2020-21 | Rs. 2,05,214** |

Therefore, WDV of assets transferred in slump sale as per section 43(6)(c)(i)(C) is Rs. 2,05,214.
**Note 2:** Book value of Non-Depreciable Assets transferred in slump-sale is as under:
- Debtors  Rs. 3,00,000
- Stock  Rs. 1,00,000
- Investment  Rs. 80,000
- Land  Rs. 80,000

**Rs. 5,60,000**

**Illustration 2:**
Suppose in Illustration 1 above, the machinery B was sold for Rs. 9,50,000 instead of Rs. 6,50,000.

**Answer:**

**WDV of Block of Assets of X Ltd. for Assessment Year 2020-2021**

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opening WDV of Block of Assets as on 01.04.2019</td>
<td>Rs. 8,00,000</td>
</tr>
<tr>
<td><strong>Add:</strong> Actual cost of Machinery 'A' acquired during the previous year</td>
<td>Rs. 2,00,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Sales Price of Machinery 'B' sold during the previous year</td>
<td>Rs. 9,50,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Reduction as per Section 43(6)(c)(i)(C)</td>
<td>Rs. 50,000</td>
</tr>
<tr>
<td><strong>Rs. 2,05,214 Restricted to Rs. 50,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>WDV for Assessment Year 2020-2021</strong></td>
<td>NIL</td>
</tr>
</tbody>
</table>

Therefore, WDV of Assets transferred in slump-sale as per section 43(6)(c)(i)(C) is Rs. 50,000.

Long Term Capital Gains on slump sale shall be as under:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price: Slump Sale Consideration</td>
<td>Rs. 14,00,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Net Worth* of undertaking transferred</td>
<td>Rs. 5,10,000*</td>
</tr>
<tr>
<td><strong>Rs. 8,90,000</strong></td>
<td></td>
</tr>
<tr>
<td>* Net Worth of undertaking transferred is:</td>
<td></td>
</tr>
<tr>
<td>Land</td>
<td>Rs. 80,000</td>
</tr>
<tr>
<td>Debtors</td>
<td>Rs. 3,00,000</td>
</tr>
<tr>
<td>Stock</td>
<td>Rs. 1,00,000</td>
</tr>
<tr>
<td>Investment</td>
<td>Rs. 80,000</td>
</tr>
<tr>
<td>Machinery's WDV</td>
<td>Rs. 50,000</td>
</tr>
<tr>
<td><strong>Rs. 6,10,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Less:</strong> Liabilities</td>
<td>Rs. 1,00,000</td>
</tr>
<tr>
<td><strong>Rs. 5,10,000</strong></td>
<td></td>
</tr>
</tbody>
</table>
Illustration 3: Balance sheet of X Ltd. as on March 31, 2020 reads as under:

<table>
<thead>
<tr>
<th>Paid-up capital</th>
<th>Rs. 252 Lakh</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Unit A (in lakh)</th>
<th>Unit B (in lakh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed assets</td>
<td>100</td>
<td>150</td>
</tr>
<tr>
<td>Debtors</td>
<td>100</td>
<td>75</td>
</tr>
<tr>
<td>Liabilities</td>
<td>28</td>
<td>50</td>
</tr>
<tr>
<td>Stock-in-trade</td>
<td>50</td>
<td>25</td>
</tr>
<tr>
<td>Reserves</td>
<td>-</td>
<td>148</td>
</tr>
<tr>
<td>Share Premium</td>
<td>-</td>
<td>22</td>
</tr>
<tr>
<td>(Revaluation reserve)</td>
<td>-</td>
<td>70</td>
</tr>
</tbody>
</table>

The company acquired Unit B on April 1, 2017. It made certain capital additions in the form of generator set and additional building etc., for Rs. 25 lakh during the year 2017-2018. The members of the company have authorised the Board in their meeting held on January 28, 2020 to dispose of the Unit B. The company decides to sell the Unit B by way of slump sale for Rs. 225 lakh as consideration. The buyer has agreed with the vendor-company to give time for putting through the sale but not later than June 30, 2020 subject to a discount of 1% on agreed sale consideration. However, this discount is not applicable if the sale is completed after March 31, 2020. The company now approaches you to advise them as a measure of tax planning to determine the date of sale keeping in view of the capital gains tax.

**Answer:**

In this question, the provisions of section 50B relating to slump sale shall be applicable.

As per section 50B:

Capital Gains = "Slump Sale Consideration" **minus** "Net worth of the undertaking or division"

Net worth of the undertaking or division = Aggregate value of total assets of the undertaking or division transferred **minus** value of liabilities of the undertaking or division transferred as appearing in its books of account.

Section 50B also provides that Revaluation of assets shall not be considered while computing the Net worth.

Net worth of Unit B is therefore as under:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed Assets</td>
<td>150 Lakhs</td>
</tr>
<tr>
<td>Less: Revaluation of Assets</td>
<td>70 Lakhs</td>
</tr>
<tr>
<td></td>
<td>80 Lakhs</td>
</tr>
<tr>
<td>Add: Debtors</td>
<td>75 Lakhs</td>
</tr>
<tr>
<td>Add: Stock-in-trade</td>
<td>25 Lakhs</td>
</tr>
<tr>
<td>Less: Liabilities</td>
<td>50 Lakhs</td>
</tr>
<tr>
<td></td>
<td><strong>130 Lakhs</strong></td>
</tr>
</tbody>
</table>

**Note 1:** WDV of assets cannot be worked out in absence of information.

**Note 2:** It is assumed that only assets of Unit B have been revalued by Rs. 70 Lakhs.
CASE-I: IF SLUMP SALE IS EFFECTED ON OR BEFORE 31.3.2020

<table>
<thead>
<tr>
<th>Period of holding of undertaking:</th>
<th>01.04.2017 to 31.3.2020</th>
<th>Short Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Price</td>
<td>225.00 Lakhs</td>
<td></td>
</tr>
<tr>
<td>Less: Discount (1% of 225 Lakhs)</td>
<td>2.25 Lakhs</td>
<td></td>
</tr>
<tr>
<td>Less: Net Worth</td>
<td>130.00 Lakhs</td>
<td></td>
</tr>
<tr>
<td>SHORT TERM CAPITAL GAINS</td>
<td>92.75 Lakhs</td>
<td></td>
</tr>
</tbody>
</table>

Short Term Capital Gains of Rs. 92.75 Lakhs shall arise since the undertaking is held for 36 months or less.

CASE - II: IF SLUMP SALE IS EFFECTED AFTER 31.3.2020

<table>
<thead>
<tr>
<th>Nature of Capital Gains</th>
<th>Long Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales Price</td>
<td>225 Lakhs</td>
</tr>
<tr>
<td>Less: Net Worth</td>
<td>130 Lakhs</td>
</tr>
<tr>
<td>Long Term Capital Gain</td>
<td>95 Lakhs</td>
</tr>
</tbody>
</table>

The capital gains shall be long term since the undertaking is held for more than 36 months. Therefore it is better to sell the undertaking after 31.3.2020 since the tax on Long Term Capital Gains is lower.

<table>
<thead>
<tr>
<th>Tax on Short Term Capital Gains (CASE I)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>30% of 92.75 Lakhs</td>
<td>27,82,500</td>
</tr>
<tr>
<td>Add: 7% Surcharge</td>
<td>1,94,775</td>
</tr>
<tr>
<td></td>
<td>*<em>29,77,275</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Tax on Long Term Capital Gains (CASE II)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>20% of 95 Lakhs</td>
<td>19,00,000</td>
</tr>
<tr>
<td>Add: 7% Surcharge</td>
<td>1,33,000</td>
</tr>
<tr>
<td></td>
<td>*<em>20,33,000</em></td>
</tr>
</tbody>
</table>

*Plus 4% Health & Education Cess. It is assumed that total income of company exceeds Rs. 1 crore.

It is assumed that the tax rates for Assessment Year 2021-2022 are the same as applicable to Assessment Year 2020-2021.

Illustration 4:

PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for Rs. 385 lakh to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR Limited as on 31st March 2020, being the date on which software unit has been transferred, is given hereunder –
**Balance Sheet as on 31.3.2020**

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Rs. in Lakh</th>
<th>Assets</th>
<th>Rs. in Lakh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up Share Capital</td>
<td>300</td>
<td><strong>Fixed Assets</strong></td>
<td></td>
</tr>
<tr>
<td>General Reserve</td>
<td>150</td>
<td>Hardware unit</td>
<td>170</td>
</tr>
<tr>
<td>Share Premium</td>
<td>50</td>
<td>Software unit</td>
<td>200</td>
</tr>
<tr>
<td>Revaluation Reserve</td>
<td>120</td>
<td><strong>Debtors</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Current Liabilities:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hardware unit</td>
<td>40</td>
<td>Hardware unit</td>
<td>140</td>
</tr>
<tr>
<td>Software unit</td>
<td>90</td>
<td>Software unit</td>
<td>110</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>750</strong></td>
<td><strong>Total</strong></td>
<td><strong>750</strong></td>
</tr>
</tbody>
</table>

Following additional information is furnished by the management:

(i) The Software unit is in existence since May, 2014.

(ii) Fixed assets of software unit includes land which was purchased at Rs. 40 lakh in the year 2008 and revalued at Rs. 60 lakh as on March 31, 2020.

(iii) Fixed assets of software unit mirrored at Rs. 140 lakh (Rs. 200 lakhs minus land value Rs. 60 lakh) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act is Rs. 90 lakh.

(A) Ascertain the tax liability, which would arise from slump sale to PQR Limited.

(B) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

**Answer:**

Following provisions of section 50B may be noted:

- Capital gains shall arise on slump sale.
- Capital gains shall be taxable in the previous year in which the slump sale is effected.
- Nature of capital gains will depend on the period of holding of the undertaking transferred by way of slump sale. If the undertaking is held for more than 36 months immediately preceding the date of transfer, then the capital gains shall be long term. This is irrespective of the fact that the undertaking consist of certain assets which are short term capital assets.
- The cost of acquisition and cost of improvement of the undertaking shall be the "net worth" of the undertaking.
- **The benefit of indexation shall not be available.**
- Capital Gains = "Slump sale consideration" minus "Net worth of the Undertaking or division"
- "Net worth" = Aggregate value of total assets of the undertaking or division transferred minus Value of liabilities of the undertaking or division transferred as appearing in its books of account.
- **Revaluation of assets shall not be considered while computing the "net worth", i.e., revaluation of assets shall be ignored for computing the "net**
worth", irrespective of the fact that revaluation is done in the current year or in past years.

- For computing the "net worth", non depreciable assets are to be taken at their book values.
- For computing the "net worth", in case of depreciable assets, the written down value of such assets shall be computed as per section 43(6)(c)(i)(C).

In the present case, the capital gains are long term since period of holding of software unit shall be from May 2014 to March 2020.

**COMPUTATION OF NET WORTH OF SOFTWARE UNIT -**

<table>
<thead>
<tr>
<th>Depreciable assets (W.D.V. as per Income Tax Act)</th>
<th>Rs. in lakh</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land</td>
<td>40</td>
</tr>
<tr>
<td>Debtors</td>
<td>110</td>
</tr>
<tr>
<td>Inventory</td>
<td>35</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>275</strong></td>
</tr>
<tr>
<td>Less: Current liability</td>
<td>90</td>
</tr>
<tr>
<td><strong>Net worth</strong></td>
<td><strong>185</strong></td>
</tr>
</tbody>
</table>

**Computation of capital gain on transfer of software unit -**

Full value of sale consideration | 385
Less: Net worth of software unit  | 185
Long - term capital gain          | 200

**Possible Tax planning aspects -**

1. Since the transfer is on slump sale basis, the benefit of indexation is not available. If the transfer of software unit is on item - wise basis, then land could be eligible for indexation benefit.

2. PQR Ltd. may resort to acquiring of 26% of the equity shares in S Ltd. in which case it will become a 100% subsidiary. Transfer of capital asset by the parent company to a 100% subsidiary company would not be regarded as transfer. However, this relationship must be retained for a period of at least 8 years from the date of transfer.

   { Refer Page _______}

3. The assessee can demerge the the Unit and make another company and then transfer the assets and accordingly all assets transferred will be exempt u/s 47.

   { Refer Page _______}
Sec 45(1): General Charging Section

Profits & Gains arising from Transfer of a Capital Asset

 Shall be chargeable to tax in the PY in which transfer took place.

Sec 2(14): Definition of “Capital Asset”

“Capital Asset” means -

(a) property of any kind held by an assessee, whether or not connected to B or P;

(b) any securities held by a Foreign Institutional Investor who is approved by SEBI but does not include—

(i) Stock in Trade.

(ii) Personal Movable Effect*

(iii) Rural Agriculture land in India (See Note Below)

(iv) Certain Gold deposit Bonds.


{Interest is exempt u/s 10(15)}

* However, following are capital Assets:

Jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.

Note:-

RURAL AGRICULTURE LAND IN INDIA IS NOT A CAPITAL ASSET.
Certain Issues:

(1) Whether Capital Gain arises on sale of silver utensils?

Ans. It was held that silver utensils constitute personal effect, although they are not to be used daily. **No capital gains shall arise.**

However, gold utensils are not personal effect and are capital assets. It is a tradition in Indian families to use silver utensils and not gold utensils.

(2) Whether capital Gains arises on sale of gold bars, Sovereigns etc which are used for puja?

Ans. It was held by the court that only those effects can be legitimately be said to be personal which pertains to Assessee. The court further said that gold bars, etc can by no stretch of imagination can deemed to be meant for personal use.

According to Supreme Court, gold bars etc have been used for the puja of deities as a matter of pride or ornamentation but if it is difficult to understand how such can be categories as personal use. **Therefore, capital gains are taxable in present case.**

(3) What do you mean by the term "Gain" for the purpose of charging Capital Gains u/s 45(1)?

Ans. It was held by Supreme Court, in the case of **"ITO v/s KP Varghese"** that the term GAIN means **only REAL GAINS** i.e. the selling price must be actual selling price and not fair market value or any other notional consideration. However, if govt wants to charge notional gain they have to make SPECIFIC CHARGING SEC for it. Eg:- **Sec 45(2)** i.e. when capital asset is converted into stock-in-Trade etc.

Sec 2(47): Definition of Transfer

"Transfer includes, -

(i) the **sale, exchange** or **relinquishment** of the asset; or

(ii) the **extinguishment** of any rights; or

(iii) the **compulsory acquisition** under any law; or

(iv) the of **conversion** of Capital Asset into Stock in Trade; or

(v) any transaction involving the allowing of the **possession of any immovable property** to be taken or retained in part performance of a contract; or
any transaction which has the effect of transferring enjoyment of any 'IP'.

Maturity or redemption of a zero coupon Bond.

**Certain Issues:**

(1) **Whether exchange of shares of one company with shares of another company amounts to transfer?**

**Ans.** In case of ORIENT TRADING CO. LTD. (SUPREME COURT), it is held that the exchange of shares amount to transfer and results in capital gains in the hands of the shareholder. However, if shares are held as stock-in-trade by the assessee, then income under the head P/G/B/P shall arise.

(2) **Whether land and building have to be considered separately for the purpose of computing the period of holding?**

**Ans.** In case of sale of land and building, capital gain is to be bifurcated between long-term capital gain and short-term capital gain.

<table>
<thead>
<tr>
<th>Sec 48: Computation of Capital Gains (other than block scheme)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full Value of Consideration (Accrued or received)</td>
</tr>
<tr>
<td>(-) Expenses on transfer</td>
</tr>
<tr>
<td>(-) Cost of Acquisition</td>
</tr>
<tr>
<td>(-) Cost of Improvement</td>
</tr>
<tr>
<td><strong>CAPITAL GAINS</strong></td>
</tr>
</tbody>
</table>

**First Proviso to Sec 48:**

Non-Resident (including FOREIGN CO’S)

(*)

Transfer SHARES OR DEBENTURES (incl. Bonds) of an INDIAN COMPANY

(*)

then compute COA, expenses to transfer and sale consideration by converting into same foreign currency as was initially utilised in purchase.

(*)
Then capital gains so computed in foreign currency shall be reconverted in Indian currency.

### Analysis

1. Non-resident includes a foreign company.
2. For the applicability of the first proviso, the shares or debentures should be purchased in the foreign currency or **it should be a case of re-investment.**
3. Debenture includes bonds.
4. The shares, debentures and bonds of a **Government company** are also covered by the first proviso. However, the bonds of **Central Government, State Government and RBI** are not covered.
5. The first proviso shall **not apply to units of UTI and mutual funds.** It also does not apply to units of a business trust.
6. The first proviso shall apply to listed as well as non-listed shares and debentures. **However, first proviso is not applicable for equity shares covered in sec 112A (See Later).**
7. Assessee should be a non-resident in the previous year in which shares or debentures are sold.
8. The **First Proviso to Sec 48 is mandatory.** A non-resident cannot opt for the second proviso to **Sec 48 if his case falls in the First Proviso to Sec 48.**
9. Second Proviso to **Sec 48 will not apply, i.e., no indexation** where First Proviso applies.
10. This proviso is applicable for computing short term capital gains as well as long term capital gains.

### Rule 115A: Method of Conversion

(a) **Cost of acquisition** = \(\frac{(TTBR+TTSR)}{2}\) on the date of Purchase.

(b) **Expenses on transfer** = \(\frac{(TTBR+TTSR)}{2}\) on the date of Transfer.

(c) **Sales consideration** = \(\frac{(TTBR+TTSR)}{2}\) on the date of Transfer.

(d) **Capital gains** = **TTBR** on date of Transfer.
Notes:-

(1) Cost Inflation Index for FY 2019-20 = 289 & for FY 2020-21 =__________.

(2) Indexation does not apply to bonds & debentures of any company.

(3) Indexation is available for units of UTI / Mutual Funds & Business Trust Units (other than covered u/s 112A).

(4) Indexation is available for CAPITAL INDEXED BONDS issued by CG.

(5) Indexation is available on transfer of SOVEREIGN GOLD BONDS (FA 2016).

(Also Refer Sec 47 later on)

(6) Benefit of Indexation is available on Equity and Preference Shares. However, benefit of indexation not available on Equity shares/ Equity Oriented Mutual Funds/ Units of Business Trust covered in sec 112A. (See Later)

(7) No deduction of STT shall be allowed. {In PGBP it is allowed u/s 36(1)(xv)}

Fifth Proviso to Sec 48:

Exemption from Capital Gains to Rupee Denominated Bonds to be issued by Indian Company to Non-Resident.

The currency exchange gain will be exempt from Capital Gains on redemption.

(Also Refer Sec 47 & 10)

<table>
<thead>
<tr>
<th>B.C. SRINIVASA SETTY (SC) (Landmark)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Department</strong></td>
</tr>
<tr>
<td>Self-Generated Goodwill of Business</td>
</tr>
<tr>
<td>Sale consideration</td>
</tr>
<tr>
<td>(-) Cost of Acquisition</td>
</tr>
<tr>
<td>Capital Gains</td>
</tr>
<tr>
<td>Sale consideration</td>
</tr>
<tr>
<td>(-) Cost of Acquisition</td>
</tr>
<tr>
<td>Capital Gains</td>
</tr>
</tbody>
</table>

It was held by Supreme Court in this landmark judgement that whenever computation mechanism fails, then charging Sec cannot be effectuated. Therefore, COA of Goodwill of a Business cannot be held as nil if it is not mentioned in sec 55. Therefore, no Capital Gain arise on self generated asset.
Therefore, Sec 55 was amended as follows:

**Sec 55: Cost of Acquisition**

In respect to Capital Assets being:-

- Goodwill of business, Trademark or brand name associated with a business,
- Tenancy Rights, Stage carriage permits, Loom hours, Right to manufacture etc,
- Right to carry on any business / Profession, Patents. **{Exhaustive List}**

### COST OF ACQUISITION:

| NIL if self Generated | If purchased, then purchase price |

(1) Further, in the above cases **(whether self-generated or purchased), the option of taking FMV as on 01.04.2001 is not available.** *(At 1 more place this option is not available)*

(2) **COA of Bonus shares = Nil. But will be compared with FMV on 01.04/2001 if bonus shares are allotted before 01.04.2001, (whichever is beneficial to owner)*

(3) **COA of Self generated goodwill of a profession is still not defined u/s 55.**

Even today No CG shall arise on such goodwill.

**Sec 2(42A) - Short Term Capital Assets.**

Short term capital Asset = held by an assessee for not more than 36 months preceding the date of transfer. Long term, in following cases:-

<table>
<thead>
<tr>
<th>Particulars</th>
<th>If held more than</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Equity shares / Preference shares (Listed)</td>
<td>12 months (+)</td>
</tr>
<tr>
<td>(2) Equity shares / Preference shares (Unlisted)</td>
<td>24 months (+) <em>(FA 2016)</em></td>
</tr>
<tr>
<td>(3) Securities (like debentures, bond, govt Sec, etc) (Listed)</td>
<td>12 months (+)</td>
</tr>
<tr>
<td>(4) Units of UTI (listed or unlisted)</td>
<td>12 months (+)</td>
</tr>
<tr>
<td>(5) Units of Equity oriented mutual Funds (L or UL)</td>
<td>12 months (+)</td>
</tr>
<tr>
<td>(6) Units of Debt oriented mutual Funds (L. Or UL)</td>
<td>36 months (+)</td>
</tr>
<tr>
<td>(7) Zero coupon Bonds (Listed or unlisted)</td>
<td>12 months (+)</td>
</tr>
<tr>
<td>(8) Any other capital Assets</td>
<td>36 months (+)</td>
</tr>
</tbody>
</table>
For Land & Building: (FA 2017)

In case of immovable property being land or building or both the period of holding should be **24 months** to determine whether a capital asset is long term or short term.

Q. **How to compute period of holding?**

Ans: Date of Purchase of Land - 15/04/2020. Date of Transfer of Land - 15/04/2022.

Period of Holding - 15/04/2020 to **14/04/2022**. Therefore, the Land is a Short Term Capital Asset.

⇒ Note: For determining the POH, consider till the date prior to the date of transfer.

Q. **What will be the COA in cases of Right shares?**

A.i) A shareholder who renounce his right to someone else for him, **COA will be nil.**

(Sec 55)

ii) A person who subscribe to such right share, for him COA is **price paid** by him to the person renouncing **such rights and amount paid** by him to the company for acquiring such right shares. The option of taking FMV on 01.04.2001 is available.

(Sec 55)

**Amendment made by Finance Act 2020**

The existing provisions of **Sec 55** of the Act provide that for computation of capital gains, an assessee shall be allowed deduction for cost of acquisition of the asset and also cost of improvement, if any. However, for computing capital gains in respect of an asset acquired before 1st April, 2001, the assessee has been allowed an option of either to take the fair market value of the asset as on 1st April, 2001 or the actual cost of the asset as cost of acquisition.

In case of a capital asset, being land or building or both, the fair market value of such an asset on 1st April, 2001 shall not exceed the stamp duty value of such asset as on 1st April, 2001 where such stamp duty value is available.
Sec 45(1): - General Charging Section

Exceptions to capital gains shall be chargeable in the PY in which transfer took place:

<table>
<thead>
<tr>
<th>Sec 45(1A) Insurance claim “received”</th>
<th>Sec 45(2) Conversion of Capital Asset into Stock In-Trade.</th>
<th>Sec 45(5) Compensation Received on Compulsory Acquisition</th>
</tr>
</thead>
</table>

4th Exception: Sec 45(5A) Capital Gains on Joint Development Agreements

Sec 45 (1A): - Capital Gains on Insurance Claims for Damage or Destruction of Capital Assets.

Asset is damaged or destroyed

(+)

Insurance money (or) other asset RECEIVED

(+)

then Capital Gains shall arise in

(year of receipt not in year of destruction)

Notes:

(1) If asset is not insured, then 45(1A) is not attracted and therefore it is a capital loss.

(2) Date of Transfer = Date of Destruction (To determine nature of Capital Assets and Indexation.)

(3) If the asset is a part of block the reduce the Insurance Amount received from the Block of Asset.

Sec 2(47) and Sec 45(2):- Conversion of CA into SIT

(1) Sec 2(47) includes conversion of capital Asset into Stock-in-Trade.
(2) Capital Gains arising from conversion of CA into SIT shall be chargeable in the year in which such SIT is sold. Therefore, in the year of sale there will be implication of tax under two heads i.e. PGBP and CG.

For computing CG, sale consideration will be FMV of the CA on date of conversion. Further, while computing PGBP the cost of goods will be considered as FMV on the date of conversion.

This Sec is not applicable if SIT is converted into CA.

<table>
<thead>
<tr>
<th>Amendment made by Finance Act 2018:</th>
</tr>
</thead>
<tbody>
<tr>
<td>PY 20-21</td>
</tr>
<tr>
<td>Jewellery (SIT)</td>
</tr>
<tr>
<td>Cost = 1 L</td>
</tr>
</tbody>
</table>

(1) As per Sec 2(24), FMV of such inventory will be included in income (i.e. Rs. 5 L)

(2) As per Sec 28, FMV of inventory on the date of conversion will be chargeable under PGBP (unlike 45(2), taxability is not deferred) i.e. Taxable in PY 2023-24.

(3) As per Sec 2(42A) → period of holding shall be considered from date of conversion to determine LTCA/STCA i.e. from PY 23-24 to PY 28-29.

(4) As per Sec 49 → COA of such converted CA = FMV of SIT on date of conversion

(5) As per Sec 43(1) → Actual cost of such converted asset = FMV of SIT on date of conversion

**Sec 45(3):- Capital Gains on transfer by Partner/ Member to Firm / AOP**

Partner / Member transfers assets to Partnership Firm / AOP / BOI

then Sale Consideration = Amount recorded in BOA by Firm / AOP
Sec 45(4):- Capital Gain on transfer by Firm to partners / members

| Firm/AOP, BOI | transfers CA to Partners ON | dissolution | OR | Otherwise |

1. **Chargeable** in P.Y. in such **distribution** takes place.
2. Sale consideration = FMV on the date of distribution.
3. Cost of Acquisition of such asset to partner will be FMV on the date of transfer.

[Sec 49(4)].

**Issues relating to Dissolution:**

*CIT v/s A.N. Naik Associates (Bom HC)*

The word otherwise used in Sec 45(4) not only cover the case of dissolution but also covers a case where a partner **retires** from a firm and assets are given to him.

**A.L.A. Firm (SC)**

Where a firm is dissolved, its stock-in-trade must be valued at Fair Market value. This case will apply where firm is dissolved and its business is also discontinued.

**Sakthi Trading Co. (SC)**

If firm is dissolved but business of firm is **continued** by someone, then judgement of SC in **Sakthi Trading** shall apply and stock shall not be valued at market price. The stock shall be valued as per normal accounting principles. *(Also Refer discussion of sec 47(xiii)).*

**R. Lingamallu Raghukumar (SC)**

Where a partner **retires** and he receives **excess** amount from the firm then that cannot be **chargeable** to capital gains as **share of profit** cannot be transferred by a partner to any other partner because share of profit does not amount to capital assets.
### Sec 45(5):- Capital gain on Compulsory Acquisition.

<table>
<thead>
<tr>
<th>(a) Capital Gains in respect of original compensation. ↓ Taxable in PY in which Compensation or part thereof is first Received by Assessee</th>
<th>(b) Enhanced compensation ↓ Taxable in the PY in which it is Received.</th>
<th>(c) Proviso Any amount of compensation received in pursuance of interim order of court, Tribunal or other authority ↓ Taxable in the PY in which final order is made.</th>
</tr>
</thead>
</table>

#### Notes:-

1. For determining nature of capital Gains, the period shall be taken from DATE asset was acquired by assesseee to the DATE on which asset was acquired under any other law. (Same for enhanced compensation).

2. Cost of Acquisition & Improvement shall be taken to be NIL for Enhanced compensation. However, LEGAL EXPENSES incurred to obtain enhanced compensation are deductible.

3. Where by reason of death or any other reason, the enhanced compensation is received by any other person, then it is deemed to be CG of person who receives it.

#### Treatment under IFOS

<table>
<thead>
<tr>
<th>Sec 145B</th>
<th>Sec 56(2)(viii)</th>
<th>Sec 57</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notwithstanding anything contained in sec 145, interest received on compensation, deemed to be income of the year in which it is received.</td>
<td>Such interest is taxable under Income from Other sources.</td>
<td>Deduction of 50% of such income is available.</td>
</tr>
</tbody>
</table>

Sec 155(16) shall apply for rectifying the order within 4 years from the end of the FY in which the Court has passed the order.
Sec 45(5A): CG in case of Joint Development Agreements

1. This Sec is applicable if an **individual or HUF** who owns a land or building or both gives a possession of land to a developer. As we have already seen in the definition of transfer that transfer includes giving possession of immovable property. Therefore, such transactions will get taxed on the day of giving possession. Sec 45(5A) defers such taxability to the year of completion of project (either in full or part).

2. For this purpose, the assessee i.e. owner has to enter into an agreement with the developer.

3. **What will be the FVC of such transfer?**

   \[ FVC = \text{Amount received in monetary terms (in cash or otherwise)} \]

   **AND**

   Stamp duty value on the date of issuance of completion certificate in respect of share received (i.e. flat) in the developed project.

4. **What will be the cost of acquisition to the assessee subsequently?**

   Cost of Acquisition of share received in developed project = FVC u/s 45(5A) i.e. amount derived in Q.3.

5. The benefit of 45(5A) shall **not be available if the original owner transfers his share before the completion** of project. In such a situation, capital gains shall be computed as per the general provisions of the Act i.e. it will be chargeable in the year in which transfer took place (i.e. when original owner sells to someone else.)

6. Further the developer while making the payment to owner in monetary terms will deduct **TDS @ 10% on payment or credit** whichever is earlier (Reduced to 7.5% between 14.05.2020 to 31.03.2021) (If PAN of payee is not available, then deduct @ 20%) (Sec 194-IC)

   This Sec is **applicable only if the payee is resident.** In case the payee is a nonresident then deduct TDS at the rate or rates in force as per Sec 195.

   There is **no threshold** limit for deducting TDS. i.e. any amount paid in monetary terms, TDS has to be deducted. {Earlier we have done Sec 194-I/IA/IB}

   **ALL THE BEST**
chapter 35
Deemed Full Value of Consideration

Sec 50C: Computation in case of Immovable property (Land or Building or both)

(1) Sale consideration will be higher of

| (a) Consideration Received or accruing | OR | (b) Stamp Duty valuation* |

*(1) Where the assessee claims before A.O. that value adopted by stamp duty authority exceeds FMV of property on the date of transfer AND Stamp Duty valuation is not disputed in any appeal, revision, etc.
Then, A.O. may refer the valuation of C.A. to a valuation officer.

Two options possible after valuation officer:

| (a) If V.O. > Stamp Duty Value Valuation | (b) If V.O. < Stamp Duty Value Valuation |

then, SC = Stamp Duty Valuation
then, SC = V.O. Value

Proviso to Sec 50C:
Where the date of agreement fixing the amount of consideration and date of registration are not same, then the SDV on the date of agreement may be taken as the full value of consideration.
However above proviso shall apply only in case where the amount of consideration or part thereof has been received by A/c payee cheque, A/c payee draft or ECS or SUCH OTHER ELECTRONIC MODE AS MAY BE PRESCRIBED on or before the date of agreement.
Amendment made by Finance Act 2020:
SDV shall be taken as FVC only if SDV is “more than” 110% of actual sale consideration.

Q. What is the fate of those transactions which are not registered with stamp duty Authorities?

Earlier the provision of Sec 50C provides that where the consideration received or accruing is less than the value adopted or assessed by stamp duty authority for the purpose of payment of stamp duty then the value so adopted or assessed shall deemed to be FVC for the purpose of Sec 48.

However, the scope of this erstwhile provision does not include transactions which are not registered with stamp duty authority.

With a view to prevent leakage of revenue sec 50C was amended to provide that where consideration received or accruing is less than value adopted assessed or assessable by stamp duty authority for the purpose of payment of stamp duty then the value so adopted or assessed or assessable shall be deemed to be full value of consideration for the purpose of Sec 48.
DEEMED FULL VALUE OF CONSIDERATION

As per explanation to Sec 50C the expression assessable means the price which the stamp valuation authority would have adopted or assessed if it was referred to such authority for the purpose of payment of such authority.

Sec 155(15):- Rectification
Where for any year the value adopted / assessed / assessable by stamp duty authority is revised in any appeal, revision, etc then the A.O. shall amended the order by taking the revised value and the period of 4 years shall be reckoned from the end of the PY in which the order revising the value was passed.

Sec 50CA: FVC in case of Unquoted Shares:
FVC = Actual Selling Price or FMV of Unquoted Shares whichever is higher.

Treatment in the hands of Buyer:
In the hands of buyer Sec 56(2)(x) shall be attracted as gift.
Taxable Gift under IFOS = FMV - SP, if the difference is more than Rs. 50,000/-

Amendment made by Finance Act (No.2) 2019:
This Sec shall not be applicable if transfer of unquoted shares is made by such class of persons which may be prescribed.

Sec 50D:- FMV deemed to be sale consideration in certain cases:
Where the consideration received or accruing as a result of transfer by an assessee is not ascertainable or cannot be determined, then FMV of the said asset on the date of transfer shall be deemed to be full value of the consideration. {Refer Case Law of Goodyear Tyre & Rubber Co}

ALL THE BEST
Sec 50B:- Slump Sale

(1) As per Sec 2(42C) slump sale means transfer of one or more undertakings as a result of sale for a lump sum consideration without values being assigned to individual assets and liabilities in such sale.

As per the explanation it has been provided that if the agreement determines the value for the sale purpose of payment of stamp duty, registration fees or similar taxes then this will not amount to assignment of values to individual assets & liabilities.

(2) If the agreement for transfer specifies the individual value of each asset to be transferred then the provision of slump sale shall not be applicable and the capital Gains on each asset shall be computed separately.

(3) Nature of capital gain will depend on period of holding of the undertaking transfer by the way of slump sale. If the undertaking is held for more than 36 months immediately preceding the date of transfer than CG shall be long term. This is irrespective of the fact that the undertaking consists of certain assets which are short term capital Assets.

(4) No PGBP shall arise in case of slump sale even if the stock is transferred in slump sale. The COA shall be the Net worth of the undertaking.

(5) The benefit of indexation shall not be available.

Calculation of Capital Gains:

Slump sale consideration \( \times x \) 

(-) Net worth of undertaking \( \times x \times x \) 

\( \times x x x \) 

LTCG / STCG 

Net worth = Aggregate value of Total Assets of undertaking transferred 

(-) Value of liabilities of undertaking as appearing in its BOA

(6) Contingent Liabilities do not appear in BOA and therefore shall not be deducted while calculating Net worth.

(7) Revaluation of Assets shall NOT be considered while calculating the Net worth.

(8) For computing net worth, non-depreciable assets are to be taken at their book values.
(9) For computation of Net worth any asset whose cost has been allowed as dedn u/s 35AD shall be taken as nil.

(10) For computing Net worth in case of **depreciable asset** the WDV of an asset shall be computed as per **Sec 43(6)(c)(i)(C).**

(11) **Losses and UAD** of the undertaking transferred shall be **carried forward by the Transferor** only and not by transferee.

(12) **Sec 50B is optional.** If the assesse wants to sell all assets separately then he can do so.

ALL THE BEST