6

CAPITAL GAINS

Topic Referencer

- ☑ **Basis of Charge, Capital Asset, Transfer, Transaction not regarded as transfer**
- ☑ **Computation of Capital Gains**
- ☑ **Capital Gains in Special Cases**
- ☑ **Exemptions from Capital Gains**
- ☑ **Taxability of Capital Gains**
- ☑ **Miscellaneous Questions**

BASIS OF CHARGE, CAPITAL ASSET, TRANSFER, TRANSACTION NOT REGARDED AS TRANSFER

1. Discuss the basis of charge of 'Capital Gains' under section 45.

Ans: The basis of charge of Capital Gains is discussed as under –

(1) **Capital gains [Section 45] :** Any profits or gains arising from the **transfer** of a **capital asset** effected in the previous year shall, unless exempt under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54H, be chargeable to income-tax under the head "Capital Gains", and shall be deemed to be the income of the previous year **in which the transfer took place.**

(2) **Conditions for taxability under Capital Gains :** An income shall be taxable as 'Capital Gains' on the fulfilment of the following conditions –

- **(a)** There must be a capital asset ;
- **(b)** The capital asset must have been transferred ;
- **(c)** Such transfer must have taken place during the previous year ;
- **(d)** The transfer of such capital asset must give rise to profits or gains (includes loss also) ;
- **(e)** Such capital gains should not be exempt from tax u/s 54, 54B, 54D, 54EC, 54F, 54G, 54GA & 54H.

2. Define Capital asset.

Ans: The relevant provisions are discussed as under –

(1) **Capital Asset [Section 2(14)]** *:* "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,
- **(c)** any unit linked insurance policy (ULIP) issued on or after 01-02-2021, to which exemption u/s 10(10D) does not apply on account of –
  - **(i)** premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy; or
  - **(ii)** the aggregate amount of premium exceeding ₹ 2,50,000 in any of the previous years during the term of any such ULIP(s), in a case where premium is payable by a person for more than one ULIP issued on or after 01-02-2021.

but does **not include**—

- **(a)** any stock-in-trade [other than the securities referred above in point (b)], consumable stores or raw materials held for the purposes of his business or profession.
- **(b)** **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 –**
  - **(i)** jewellery;
  - **(ii)** archaeological collections;
  - **(iii)** drawings;
  - **(iv)** paintings;

(v) sculptures; or

(vi) any work of art.

[Thus, jewellery, archaeological collections, drawings, paintings, sculptures, and any work of art comes in the ambit of capital asset.]

Explanation : "Jewellery" **includes –**

(i) 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;

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

(c) **Rural Agricultural Lands :** Only rural agricultural lands in India are excluded from the purview of the term "capital asset". Hence, urban agricultural lands constitute capital assets.

Accordingly, the agricultural land described in (i) and (ii) below, being land situated within the specified urban limits, would fall within the definition of "capital asset", and transfer of such land would attract capital gains tax -

(i) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than 10000 according to last preceding census, or

(ii) agricultural land situated in any area within such distance, measured aerially, in relation to the range of population according to the last preceding census as shown hereunder -

	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (i)	**Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.**
(1)	≤ 2 kilometers	> 10,000 ≤ 1,00,000
(2)	≤ 6 kilometers	> 1,00,000 ≤ 10,00,000
(3)	≤ 8 kilometers	> 10,00,000

(d) **Specified Gold Bonds :** 6.5% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government.

(e) **Special Bearer Bonds, 1991,** issued by the Central Government.

(f) **Gold Deposit Bonds** issued under the Gold Deposit Scheme, 1999 notified by the Central Government or Deposit certificates issued under the Gold Monetisation Scheme, 2015.

(2) **Rights in or in relation to an Indian company – Included in property [Explanation] :** "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.

(3) **Other Aspects : Silver utensils** belonging to assessee, which are used in kitchen or dining room, are for his personal use, hence they are personal effects and not capital assets. However, silver bars, sovereigns and rupee coins used for puja, festivals etc. come in the ambit of 'capital asset'. Similarly, gold articles are capital assets.

3. Define - *(i)* short-term capital asset as per Section 2(42A); *(ii)* Long term capital asset as per Section 2(29A) of the Income-tax Act, 1961.

Ans: The relevant definitions are as under –

(1) **Short-term capital asset [Section 2(42A)] :** It means a capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer. However, in case of –

(a) Security (other than a unit) listed in a recognised stock exchange in India **(b)** Unit of UTI or Unit of an equity oriented fund **(c)** Zero Coupon Bond	These assets shall be treated as short-term capital asset if they are held for not more than **12 months** immediately preceding the date of transfer.
(a) Share of a company (not being a share listed in a recognised stock exchange in India) **(b)** An immovable property, being land or building or both	These assets shall be treated as short-term capital asset if it is held for not more than **24 months** immediately preceding the date of transfer.

Term	Meaning
Equity oriented fund	A fund set up under a scheme of a mutual fund or under a scheme of an insurance company comprising ULIPs issued on or after 1-2-2021, to which exemption u/s 10(10D) does not apply on account of – **(a)** premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy; or **(b)** the aggregate amount of premium exceeding ₹ 2,50,000 in any of the previous years during the term of any such ULIP(s), in a case where premium is payable by a person for more than one ULIP issued on or after 1-2-2021. and **(i)** in a case where the fund invested in the units of another fund which is traded on a recognised stock exchange – **(I)** a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund; and **(II)** such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and **(ii)** in any other case, a minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange. However, the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures. In case of a scheme of an insurance company comprising ULIPs issued on or after 1-2-2021, to which exemption u/s 10(10D) does not apply on account of the reasons stated in (a) or (b) above, the minimum requirement of 90% or 65%, as the case may be, mentioned in (i) and (ii) above, is required to be satisfied throughout the term of such insurance policy.
Zero Coupon Bond	A bond – ➢ issued by any infrastructure capital company or infrastructure capital fund or infrastructure debt fund or a public sector company or a scheduled bank on or after 1st June, 2005, ➢ in respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and ➢ which the Central Government may notify in this behalf. ***[Section 2(48)]***

(2) **Long term capital asset [Section 2(29A)] :** It means a capital asset which is not a short-term capital asset. In other words, a capital asset held for more than 36 months/12 months/24 months in case of specified assets given in table above shall be a long-term capital asset.

(3) **Determination of period of holding [Clause (i) of Explanation 1 to section 2(42A)] :** In determining period of holding of any capital asset by the assessee in the circumstances stated in column (1), the period shall be determined by considering the period specified in Column (2).

Determination of period of holding :

	Circumstances (Column 1)	Period of holding (Column 2)
1.	**Shares of company in liquidation :** Where **shares held in a company in liquidation**	The period subsequent to the date of liquidation of company shall be excluded.
2.	**Capital asset acquired u/s 49(1) modes :** Where asset becomes the property of an assessee by virtue of section 49(1)	The period for which the capital asset was held by the previous owner shall be included.
3.	**Conversion of inventory into capital asset :** Where inventory of business is converted into or treated as a capital asset by the assesse	Period from the date of conversion or treatment as a capital asset shall be considered.

4.	**Shares held in amalgamated company :** Where **share/s in the Indian company (amalgamated company)**, becomes the property of an assessee in lieu of share/s held by him in the amalgamating company at the time of transfer referred under section 47(vii).	The period for which the share(s) was held by the assessee in the amalgamating company shall be included.
5.	**Right shares :** Where the **share or any other security is subscribed** by the assessee **on the basis of right to subscribe** to any share or security or by the person in whose favour such right is renounced by the assessee	Period from the date of allotment of such share or security shall be reckoned.
6.	**Offer of Rights :** Where the **right to subscribe** to any share or security is renounced in favour of any other person	Period from the date of offer of such right by the company or institution shall be reckoned.
7.	**Bonus shares :** Where any **financial asset is allotted** without any payment and on the basis of holding of any other financial asset	Period from the date of allotment of such financial asset shall be reckoned.
8.	**Shares held in resulting company :** Where **share/s in the Indian company** being a resulting company becomes the property of an assessee in consideration of **demerger**	The period for which the share/s were held by the assessee in demerged company shall be included.
9.	**Equity shares acquired on conversion of preference shares :** Where **equity share** in a company becomes the property of the assessee by way of **conversion of preference shares** into equity shares referred under section 47(xb)	The period for which the preference shares were held by the assesse shall be included.
10.	**Sweat Equity Shares/ ESOP :** Where any **specified security or sweat equity shares is allotted** or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employees)	Period from the date of allotment or transfer of such specified security or sweat equity shares shall be reckoned.

Notes:

(1) An asset which is held exactly for 36 months or 12 months or 24 months, as the case may be, will be considered as short-term capital asset.

(2) **Property constructed on a land purchased earlier :** In case, a land is held by the assessee for more than 24 months but the building constructed over it is held for not more than **24 months**, then there will be long-term capital gains on sale of the land and short-term capital gains on sale of building. ***– CIT v. Citibank N.A. [2003] 261 ITR 570 (Bom.)***

Notification No. 18/2016 dated 17-3-2016	**Method of determination of period of holding of capital assets in certain cases [Rule 8AA] :** In the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in section 47(x) of the Act, there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.

4. What do you mean by "Transfer" in relation to capital asset ? *(4 Marks : Nov. 2002)*

Ans: **Transfer [Section 2(47)]** : In relation to a capital asset, **includes** –

(a) sale, exchange or relinquishment of the asset;

(b) compulsory acquisition thereof under any law;

(c) extinguishment of any rights therein;

(d) maturity or redemption of zero coupon bond;

(e) in 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;

(f) any transaction involving allowing of possession of an immovable property to be taken or retained in part performance of a contract of the nature referred under section 53A of Transfer of Property Act, 1882;

(g) any transaction (whether by way of acquiring shares in, or by way of becoming a member of, a co-operative society, company or other AOP or by way of any arrangement or agreement or in any other manner) that has the effect of transferring, or enabling the enjoyment of, any immovable property.

5. List the transactions that are not regarded as "Transfer".

Ans: **Transactions not regarded as "Transfer" [Section 47] :** The following transactions are not regarded as "Transfer"-

Sec. 47	Transactions
(i)	Any distribution of capital assets on the total or partial partition of a Hindu Undivided Family.
(iii)	Any transfer of a capital asset under a gift or will or an irrevocable trust. However, this section shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly to its employees under any Employees' Stock Option Plan or Scheme, in accordance with the guidelines issued by the Central Government in this behalf. In such a case, its fair market value on date of such gift/irrevocable trust shall be treated as full value of consideration.
(iv)	Any transfer of a capital asset by a company to its subsidiary company, if— **(a)** the parent company or its nominees hold the whole of the share capital of the subsidiary company, and **(b)** the subsidiary company is an Indian company. ***[Note-1]***
(v)	Any transfer of a capital asset by a subsidiary company to the holding company, if— **(a)** the whole of the share capital of the subsidiary company is held by the holding company, and **(b)** the holding company is an Indian company. ***[Note-1]***
(vi)	Any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company.
(vib)	Any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company.
(vid)	Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking.
(vii)	Any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if— **(a)** the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder itself is the amalgamated company; and **(b)** the amalgamated company is an Indian company. However, if besides share(s) in amalgamated company, the shareholder is allotted something more, say bonds or debentures, in consideration of such transfer; the transfer will not be exempt. Composite consideration is not covered by section 47(vii). ***- CIT v. Gautam Sarabhai Trust [1988] 173 ITR 216 (Guj.)***
(viiaa)	Any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident.
(viib)	Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.
(viic)	Any transfer of Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015, by way of redemption, by an assessee being an individual.
(ix)	Any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Government in the Official Gazette to be of national importance or to be of renown throughout any State(s).
(x)	Any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company.
(xb)	Any transfer by way of conversion of preference shares of a company into equity shares of that company.
(xvi)	Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.

Circular No. 6/2015, dated 09-04-2015]	The roll over of units of Mutual Funds under the Fixed Maturity Plans in accordance with the SEBI (Mutual Funds) Regulation, 1996 will not amount to transfer as the scheme remains the same. Accordingly, no capital gains will arise at the time of exercise of the option by the investor to continue in the same scheme. The capital gains will, however, arise at the time of redemption of the units or opting out of the scheme, as the case may be.

COMPUTATION OF CAPITAL GAINS

6. Define long-term capital gains and short-term capital gains and discuss their computation.

Ans: The relevant provisions are discussed as under –

(1) Short term capital gains [Section 2(42B)] : Short term capital gain means capital gains arising from the transfer of a short-term capital asset **.**

(2) Long term capital gains [Section 2(29B)] : Long-term capital gain means capital gains arising from transfer of a long-term capital asset.

(3) Mode of computation [Section 48] : Capital gains shall be computed as under –

Short term Capital Gains		₹	Long term Capital Gains		₹
Full Value of Consideration		××	Full Value of Consideration		××
Less: Expenses incurred wholly and exclusively in connection with such transfer		××	*Less:* Expenses incurred wholly and exclusively in connection with such transfer		××
Net Consideration		**××**	**Net Consideration**		**××**
Less: Cost of acquisition	××		*Less:* Indexed Cost of acquisition	××	
Cost of improvement	××	××	Indexed Cost of improvement	××	××
Short term Capital Gains		**××**	**Long term Capital Gains**		**××**
Less: Exemption u/s 54D, 54G, 54GA		××	*Less:* Exemption u/s 54, 54B, 54D, 54EC, 54F, 54G, 54GA		××
Taxable Short term Capital Gains		**××**	**Taxable Long term Capital Gains**		**××**

Notes:

(1) Computation of Indexed cost of acquisition or improvement –

Indexed Cost of Acquisition = $\dfrac{\text{Cost of acquisition} \times \text{Cost Inflation Index of the year of transfer}}{\text{Cost Inflation Index (CII) for –}}$

(i) the first year in which the asset was held by the assessee; or

(ii) for the year beginning on **1-4-2001,** whichever is later.

Indexed Cost of improvement = $\dfrac{\text{Cost of improvement} \times \text{Cost Inflation Index of the year of transfer}}{\text{Cost Inflation Index (CII) for the year in which improvement took place}}$

(2) Securities transaction tax paid is not allowed as deduction while computing capital gains.

(3) The benefit of indexation (second proviso to Section 48) and currency fluctuation (first proviso to Section 48) would not be applicable to the long-term capital gains arising from the transfer of the following assets referred to in section 112A –

(a) equity share in a company on which STT is paid both at the time of acquisition and transfer

(b) unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.

(4) Indexation benefit will not be available in computing the long-term capital gain arising from the transfer of a long-term capital asset, being a bond or debenture other than—

(a) Capital indexed bonds issued by the Government; or

(b) Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015.

(5) In case of an assessee being a non-resident, any gains arising on account of appreciation of rupee against a foreign currency at the time of redemption of rupee denominated bond of an Indian company **held** by him, shall be ignored for the purposes of computation of full value of consideration under this section**.**

(6) **"Cost Inflation Index",** in relation to a previous year, means such Index as the Central Government may, having regard to 75% of average rise in the Consumer Price Index for urban non-manual employees for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify, in this behalf.

COST INFLATION INDICES : The cost inflation indices notified by the Central Government are as follows –

Financial Year	CII	Financial Year	CII	Financial Year	CII	Financial Year	CII
2001-02	100	2002-03	105	2003-04	109	2004-05	113
2005-06	117	2006-07	122	2007-08	129	2008-09	137
2009-10	148	2010-11	167	2011-12	184	2012-13	200
2013-14	220	2014-15	240	2015-16	254	2016-17	264
2017-18	272	2018-19	280	2019-20	289	2020-21	301
2021-22	317						

Financial Year	CII
2022-23	**331**

7. What shall be the cost of acquisition (COA) and cost of improvement (COI) in case the asset is acquired before 1-4-2001 ?

Ans: **In case if the asset is acquired before 1-4-2001 the cost of acquisition & cost of improvement shall be as under [Section 55] :**

(1) Cost of acquisition : FMV on **1-4-2001** or cost of property/cost to the previous owner (if property acquired under 49(1) modes), whichever is higher.

In case of a capital asset, being land or building or both, the fair market value of such asset on 01-04-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 01-04-2001.

"Stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

Where the cost for which previous owner acquired the property cannot be ascertained, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner. ***[Section 55(3)]***

Further, if, on the facts of a particular case, computation under section 48 is not possible, then capital gains shall not be charged to tax. Thus, if no cost can be ascertained in acquisition of an asset, capital gains cannot be charged.

(2) Cost of improvement : Capital expenditure incurred by the previous owner or the assessee in making any additions/ alterations to the capital asset on or after **1-4-2001**.

However, cost of improvement does not include any expenditure which is deductible in computing the income chargeable under the head "Income from house property", "Profits and gains of business or profession", or "Income from other sources".

Illustration 1 – *Capital gains - Basics :* Compute the capital gains for A.Y. 2023-24 in following independent cases –

(i) Mr. Ramesh, a property dealer, sells a commercial plot of land on 1-3-2023 for ₹ 100 lakhs which was acquired by him on 1-8-2018 for ₹ 25,00,000 for selling of offices constructed therein. He had incurred land development charges of ₹ 10,00,000 on 1-10-2018. He incurred ₹ 50,000 for selling the plot of land.

(ii) Mr. Roy sells his personal motorcar on 11-4-2022 for ₹ 2,55,000, which was acquired on 31-1-2018 for ₹ 6,50,000. The expenses on transfer are 2% of selling price.

(iii) Mr. Pawan sells his personal residential house on 1-4-2023 for ₹ 86,70,000, which was acquired by him on 1-10-2008 for ₹ 30,00,000. The expenses on transfer were ₹ 70,000.

(iv) Mr. Yash sells an agricultural land situated in rural area on 1-1-2023 for ₹ 10,50,000. The population of municipality under which the village is covered is 9,800. The land was acquired on 1-3-2002 for ₹ 1,00,000.

(v) Mrs. Priya sells her gold bracelet on 1-5-2022 for ₹ 5,00,000, which was acquired for ₹ 40,000 on 1-3-2005. A diamond was fitted onto that bracelet on 1-4-2007 for ₹ 10,000.

(vi) Mr. Kalicharan, a businessman, had acquired a sculpture for ₹ 8,36,600 and a drawing for ₹ 20,000 in the year 2004-05. He sold the sculpture for ₹ 9,00,000 to a university and the drawing for ₹ 15,000 to a National Museum on 25-12-2022.

Solution : Capital gains for A.Y. 2023-24 in respect of above cases shall be computed as follows,–

(i) Commercial plot of land acquired by property dealer 'Ramesh' for his business purpose is in the nature of stock-in-trade for him. Therefore, it is not a capital asset and hence, no capital gains will arise.

(ii) Personal motorcar sold by Mr. Roy is a personal effect. Therefore, it is not a capital asset and hence, no capital gains will arise.

(iii) The transfer of the residential house by Mr. Pawan was effected on 01-04-2023, which doesn't fall within the previous year 2022-23. Hence, this transaction is not liable to capital gains in the assessment year 2023-24, but will be taxable in the assessment year 2024-25.

(iv) In this case, agricultural land is situated in an area, the population of whose municipality is less than 10,000. Hence, the land is a rural agricultural land, thus not a capital asset.

(v) Bracelet for personal use is 'jewellery' and is specifically excluded from the term personal effect. Therefore, it is a capital asset liable to capital gains tax, as follows : ***(amounts in ₹)***

Full value of consideration	5,00,000
Less: Indexed cost of acquisition (₹ 40,000 × 331 ÷ 113)	1,17,168
Less: Indexed cost of improvement being fitting of diamond (₹ 10,000 × 331 ÷ 129)	25,659
Long-term capital gains	**3,57,173**

(vi) While sculpture/drawings are capital assets, but their transfer to a University/National Museum is exempt under section 47(ix). Hence, no capital gains shall arise.

Illustration 2 – *Computation of Capital Gains:* A owns a capital asset which was purchased by him on 1-5-1999 for ₹ 4,00,000. The market value of the said asset as on 1-4-2001 was ₹ 3,00,000. The said asset was sold for ₹ 18,00,000 on 30-01-2023. Expense incurred on transfer amounted to ₹ 5,000. Compute the capital gain for the A.Y. 2023-24. *(Cost inflation index for F.Y. 2001-02 = 100 and 2022-23= 331)*

Solution: **Computation of capital gains chargeable to tax *(amount in ₹)* -**

Full value of consideration	18,00,000
Less: Expenses on transfer	5,000
Net Consideration	**17,95,000**
Less: Indexed cost of acquisition (₹ 4,00,000 × 331 ÷ 100)	13,24,000
Long-term Capital Gains	**4,71,000**

Illustration 3 – *Computation of Capital Gains- Short term :* A owns shares of unlisted company which was purchased by him on 15-10-2022 for ₹ 4,00,000. The said asset was sold for ₹ 4,80,000 on 30-01-2023. Expense incurred on transfer amounted to ₹ 5,000. Compute the capital gain for the assessment year 2023-24.

Solution: **Computation of capital gains chargeable to tax *(amount in ₹)* -**

Full value of consideration	4,80,000
Less: Expenses on transfer	5,000
Net Consideration	**4,75,000**
Less: Cost of acquisition [WN]	4,00,000
Short-term Capital Gains	**75,000**

Working Note : Since the shares of unlisted company are not held for more than **24 months** immediately preceding the date of transfer the said capital asset is short term capital asset.

Illustration 4 – *Computation of Capital Gains – Long Term :* A owns shares of unlisted company which was purchased by him on 15-10-2016 for ₹ 4,00,000. The said asset was sold for ₹ 5,75,000 on 30-01-2023. Expense incurred on transfer amounted to ₹ 5,000. Compute the capital gain for the assessment year 2023-24. *(Cost inflation index for F.Y. 2016-17 = 264 and 2022-23 = 331)*

Solution: **Computation of capital gains chargeable to tax *(amount in ₹)* -**

Full value of consideration	5,75,000
Less: Expenses on transfer	5,000
Net Consideration	**5,70,000**
Less: Cost of acquisition (₹ 4,00,000 × 331 ÷ 264) [WN]	5,01,515
Long-term Capital Gains	**68,485**

Working Note : Since the shares of unlisted company are held for more than **24 months** immediately preceding the date of transfer the said capital asset is long term capital asset.

Illustration 5 – *Computation of Capital Gains – Long Term:* A owns a commercial property which was purchased by him on 15-10-2016 for ₹ 8,00,000. The said asset was sold for ₹ 15,75,000 on 30-01-2023. Expense incurred on transfer amounted to ₹ 5,000. Compute the capital gain for the assessment year 2023-24. *(Cost inflation index for F.Y. 2016-17 = 264 and 2022-23 = 331)*

Solution: **Computation of capital gains chargeable to tax (*amount in ₹*) -**

Full value of consideration	15,75,000
Less: Expenses on transfer	5,000
Net Consideration	**15,70,000**
Less: Cost of acquisition (₹ 8,00,000 × 331 ÷ 264) [WN]	10,03,030
Long-term Capital Gains	**5,66,970**

Working Note : Since the commercial property is held for more than **24 months** immediately preceding the date of transfer the said capital asset is long term capital asset.

Illustration 6 – *Computation of Capital Gains :* A owns a capital asset which was purchased by him on 01-5-1989 for ₹ 4,00,000. The fair market value as on 01-04-2001 is ₹ 15,00,000. The said asset was sold for ₹ 58,00,000 during financial year 2022-23. Expense incurred on transfer amounted to ₹ 15,000. Compute the capital gain for the assessment year 2023-24. *(Cost inflation index for F.Y. 2001-02 = 100 and 2022-23 = 331)*

Solution: **Computation of capital gains chargeable to tax (*amount in ₹*) -**

Full value of consideration	58,00,000
Less: Expenses on transfer	15,000
Net Consideration	**57,85,000**
Less: Indexed cost of acquisition (₹ 15,00,000 × 331 ÷ 100)	49,65,000
Long-term Capital Gains	**8,20,000**

Illustration 7 – *Computation of Capital gains :* Ram purchases a house property for ₹ 15,00,000 on 30th June, 1994. The following expenses were incurred by him for making addition/ alteration to the house property :

	₹
Cost of construction of first floor in 1995-1996	5,00,000
Cost of construction of second floor in 2002-03	7,50,000
Alteration/reconstruction of the property in 2006-07	6,25,000
Fair market value of the property on 1st April, 2001	21,00,000
Stamp duty value of the property as on 1st April, 2001	20,00,000

The house property is sold by him on 15th June, 2022 for ₹ 1,25,00,000 (expenses incurred on transfer ₹ 1,15,000). Compute the amount of capital gains chargeable to tax for the assessment year 2023-24.

Cost inflation indices : FY 2001-02 : 100; FY 2002-03 : 105; FY 2006-07 : 122 and 2022-23 : 331.

Solution: **Computation of capital gains/ loss chargeable to tax (*amount in ₹*) -**

Full value of consideration	1,25,00,000
Less: Expenses on transfer	1,15,000
Net Consideration	**1,23,85,000**
Less: Indexed cost of acquisition (₹ 20,00,000 × 331 ÷ 100) *[Stamp duty vale will be considered as cost of acquisition since it is less than the fair market value of the property]*	66,20,000
Less: Indexed cost of improvement (second floor) (₹ 7,50,000 × 331 ÷ 105)	23,64,286
Less: Indexed cost of improvement (₹ 6,25,000 × 331 ÷ 122)	16,95,697
Long-term Capital Gains	**17,05,018**

8. Write a short note on cost of acquisition in the circumstances as specified under section 49.

Ans: **Cost with reference to certain modes of acquisition [Section 49] :**

Sec. 49	Mode of acquisition	Cost
(1)	Where the capital asset became the property of the assessee under modes specified in Section 49(1). *[Note-1]*	Cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee. *[Note-2]*
(2)	Where the share(s) of an amalgamated Indian company became the property of the assessee in consideration of a transfer in scheme of amalgamation.	Cost of acquisition to the assessee of the share(s) in the amalgamating company.
(2A)	Where the shares or debentures of a company became the property of the assessee by way of conversion of bonds or debentures, debenture-stock or deposit certificates, referred to in Section 47(x)/(xa).	Cost of that part of debenture, debenture-stock, bond or deposit certificate in relation to which such asset is acquired by the assessee.
(2AA)	Transfer of specified security/stock options or sweat equity shares, referred to in Section 17(2)(vi).	Fair market value which has been taken into account while computing the value of perquisite.
(2AE)	Where the capital asset, being equity share of a company, became the property of the assessee in consideration of a transfer referred to in Section 47 (xb).	Cost of acquisition of the asset shall be deemed to be that part of the cost of the preference share in relation to which such asset is acquired by the assessee.
(2C)/ (2D)	Where the share(s) of resulting company became the property of the assessee in scheme of demerger.	Cost of shares in resulting co. = Cost of shares in demerged company × Net Book Value of assets transferred to resulting company ÷ Net worth of the demerged company before demerger. Cost of shares in demerged company = Total cost of shares – Cost of shares in resulting company computed above.
(4)	Transfer of a property, the value of which has been subject to tax under section 56(2)(vii)/(viia)/(x) (*i.e.* taxable gifts of movable/immovable property).	Value which has been taken into account for the purposes of computing taxable gifts under section 56(2)(vii)/(viia)/(x).
(5)	Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A) which is chargeable to tax in the previous year in which the completion of certificate for the whole or part of the project is issued by the competent authority),	Cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section i.e., stamp duty value on the date of issue of certificate of completion plus cash consideration. However, this does not apply to a capital asset, being share in the project which is transferred on or before the date of issue of said completion certificate [Section 49(7)].
(9)	Where the capital gain arises from the transfer of a capital asset referred to in Section 28(via),	Cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the purposes of Section 28(via).

Notes :

(1) The various modes specified under section 49(1) are –

Where the capital asset became the property of the assessee –

(i) On any distribution of assets on the total or partial partition of a Hindu undivided family;

(ii) Under a gift or will;

(iii) **(a)** by succession, inheritance or devolution, or

(b) on any distribution of assets on the liquidation of a company, or

(c) under a transfer to a revocable or an irrevocable trust, or

(d) under any transfer of capital asset by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in section 47(iv) and 47(v) respectively;

(e) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation;

(f) under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger;

(iv) In case of HUF-assessee, by conversion of member's individual property into HUF property.

(2) **'Previous owner'** means the last previous owner of the asset who acquired it by a mode of acquisition other than that referred to under section 49(1).

CIT v. Manjula J Shah [2011] 16 Taxman.com 42 (Bom.)	**Indexation benefit in respect of the gifted asset to apply from the year in which the asset was first acquired by the previous owner.**

Facts :

⇨ The assessee acquired a capital asset by way of gift. He treated the income arising on its transfer as long term capital gains after taking into consideration the period of holding of the previous owner as well (as given under explanation 1 to section 2(42A) read with section 49(1). The assessee computed the long term capital gains considering the CII of the year in which the asset was first held by the previous owner, *i.e.* -

$$\frac{\textit{CII of the year of transfer} \times \textit{capital gains}}{\textit{CII of the year in which asset was acquired by the previous owner}}$$

⇨ The AO raised an objection contending that the year in which the asset was first held by the assessee *i.e.* the year in which the gift was received by the assessee must be considered for indexation as per the meaning assigned to 'indexed cost of acquisition' (given in explanation (iii) to section 48).

[**Note:** *While period of holding is not disputed, the dispute is with respect to computation of the indexed cost of acquisition.*]

Decision :

⇨ Where the asset is acquired by the assessee in any of the modes mentioned in Section 49(1), then as per Explanation 1 to Section 2(42A) read with section 49(1), the period of holding of the previous owner is to be included while determining the period of holding of the asset and the cost to the previous owner is taken as 'cost of acquisition' of the assessee.

⇨ Therefore, it is logical to provide for indexation of the year in which the asset was first acquired by the previous owner. There is nothing to indicate that for determining the indexed cost of acquisition under section 48, the provisions of Section 2(42A) and 49(1) should not be followed.

⇨ Therefore, for determining the indexed cost of acquisition under section 48, the assessee must be treated to have held the asset from the year the asset was first held by the previous owner and accordingly, the CII for the year in which the asset was first acquired by the previous owner and not the year in which the asset was transferred to the assessee should be considered.

Author's Note : Answer has been solved by following the Ruling of Mumbai High Court in ***CIT v. Manjula J Shah [2011] 16 Taxman.com 42 (Bom.)***

Illustration 8 – ***Computation of capital gains when transferred asset acquired u/s 49(1) modes :*** Mrs. R sells a plot of land on 21-11-2022 for ₹ 50,00,000. She inherited the plot from her grandfather on 01-04-2013. Her grandfather had acquired the plot on 01-03-2001 for ₹ 5,00,000. Her grandfather incurred land development charges of ₹ 2,90,000 on 31-3-2001 and ₹ 6,60,000 on 01-05-2013. Mrs. R also incurred land development charges of ₹ 1,00,000 on 01-09-2015. The expenses incurred on transfer amounted to 1.5% of the sale price. The FMV of the plot as on 01-04-2001 was ₹ 8,00,000. Compute the capital gains.

Cost Inflation Index : FY 2001-02 = 100; FY 2013-14 = 220; FY 2015-16 = 254 and FY 2022-23 = 331.

Solution: Here, the property (plot of land) was acquired by Mrs. R from her grandfather under inheritance *i.e.* Section 49(1)modes. Hence, the period of holding of Mrs. R's grandfather will be included, as a result of which, the plot of land becomes long-term capital asset for Mrs. R.

Cost of acquisition for Mrs. R = Cost to the previous owner or FMV as on 1-4-2001, whichever is higher = ₹ 8,00,000.
Cost of improvement incurred after 1-4-2001 by previous owner or the assessee is deductible. ***(amounts in ₹)***

Full value of consideration	50,00,000
Less: Expenses on transfer @ 1.5% of ₹ 50,00,000	75,000
Net consideration	**49,25,000**
Less: Indexed cost of acquisition (₹ 8,00,000 × 331 ÷ 100)	26,48,000
Less: Cost of improvement incurred after 1-4-2001 Mrs. R's grandfather (₹ 6,60,000 × 331 ÷ 220) + Mrs. R (₹ 1,00,000 × 331 ÷ 254)	11,23,315
Long-term capital gains	**11,53,685**

Illustration 9 – *Computation of capital gains in case of conversion of preference shares into equity shares :* Mr. A is the holder of 1,000 preference shares of XYZ Ltd. having a face value of ₹ 100 each. The preference shares were acquired by him on 10-07-2014 for ₹ 1,50,000. The company converted the preference shares into equity shares in ratio of 1:1 on 15-07-2022. The market value of the equity shares on the date of conversion was ₹ 250 per share. He sold all the equity shares on 10-03-2023 for ₹ 325 per share. Expenses on transfer amounted to ₹ 10,000. The shares are not listed in recognized stock exchange. Determine taxable capital gains. **Cost Inflation Index :** FY 2014-15 = 240.;

Solution: As per provisions of section 47(xb), conversion of preference share of a company into its equity share shall not be regarded as transfer. As per Section 49(2AE), where the capital asset, being equity share of a company, became the property of the assessee in consideration of such conversion, the cost of acquisition of the equity share shall be deemed to be that part of the cost of the preference share in relation to which such equity share is acquired by the assessee. In computing the period of holding of equity shares, there shall be included the period for which the preference shares were held by the assessee. The capital gains shall be computed as under ***(amount in ₹)*** :

Full value of consideration	3,25,000
Less: Expenses on transfer	10,000
Net consideration	**3,15,000**
Less: Indexed cost of acquisition (₹ 1,50,000 × 331 ÷ 240)	2,06,875
Long-term capital gains	**1,08,125**

Illustration 10 – *Perquisite and Capital gains of ESOP :* AB Co. Ltd. allotted 1,000 sweat equity shares to Sri Chand in June 2022. The shares were allotted at ₹ 200 per share as against the fair market value of ₹ 300 per share on the date of exercise of option by the allottee viz., Sri Chand. The fair market value was computed in accordance with the method prescribed under the Act.

(i) What is the perquisite value of sweat equity shares allotted to Sri Chand ?

(ii) In the case of subsequent sale of those shares by Sri Chand, what would be the cost of acquisition of those sweat equity shares ? ***(4 Marks, PCC Nov. 2010)***

Solution:

(i) As per Section 17(2)(vi), the value of sweat equity shares chargeable to tax as perquisite shall be the fair market value of such shares on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such shares. ***(amounts in ₹)***

Fair market value of 1,000 sweat equity shares @ ₹ 300 each	3,00,000
Less: Amount recovered from Sri Chand 1,000 shares @ ₹ 200 each	2,00,000
Value of perquisite of sweat equity shares allotted to Sri Chand	**1,00,000**

(ii) As per section 49(2AA), where capital gain arises from transfer of sweat equity shares, the cost of acquisition of such shares shall be the fair market value which has been taken into account for perquisite valuation under section 17(2)(vi). Therefore, in case of subsequent sale of sweat equity shares by Sri Chand, the cost of acquisition would be ₹ 3,00,000.

Illustration 11 – *Conversion of stock in trade into Capital Asset :* Mr. X, a trader in gold and silver jewellery furnishes you with the following information —

(1) On 14th May, 2021, X purchases 100 grams of gold bullion the rate of ₹ 30,000 per 10 gram as his stock-in-trade

(2) This stock-in-trade is not sold till 31st March, 2022. FMV of gold bullion on 31st March, 2022 is ₹ 31,500 per 10 grams.

(3) The above inventory of 100 grams gold bullion is converted into capital asset on 10th July, 2022. FMV of Gold bullion on 10th July, 2022 is ₹ 31,750 per ten grams.

(4) X transfers 50 grams of gold bullion on 25th March, 2023 at the rate of ₹ 32,500 per 10 gram.

Find out tax consequences of these transactions (assume that X has not undertaken any other transaction during the previous years 2021-22 and 2022-23).

Solution:

(1) For the previous year 2021-22, business income from the above transaction will be determined as follows *(₹)*—

Opening stock on 1st April, 2021	Nil	
Purchase of inventory during 2021-22 [₹ 30,000 ÷ 10 × 100]	3,00,000	
Sales during 2021-22		Nil
Closing value of inventory (cost or market price, whichever is lower)		3,00,000
Net profit	Nil	
Total	**3,00,000**	**3,00,000**

(2) Business income of X for the previous year 2022-23 will be computed as follows *(amount in ₹)*—

Opening stock on 1st April, 2022	3,00,000	
Purchase of inventory during 2022-23	Nil	
Sales during 2022-23		Nil
Fair market value on the date of conversion as per Section 28(via) [₹ 31,750 ÷ 10 × 100]		3,17,500
Closing value of inventory		Nil
Net profit	17,500	
Total	**3,17,500**	**3,17,500**

(3) Income under the head "Capital gains" will be as follows *(amount in ₹)*—

Full value of consideration (₹ 32,500 × 50/10)	1,62,500
Less: Cost of acquisition (being fair market value on the date of conversion) (₹ 31,750 × 50 ÷10) [WN]	1,58,750
Short-term capital gain	**3,750**

Working Note : Where the capital gain arises from the transfer of a capital asset referred to in Section 28(via) *i.e.* inventory converted into capital asset, the cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the purposes of Section 28(via) and the period of holding of such capital asset shall be reckoned from the date of conversion or treatment.

Illustration 12 – *Conversion of convertible debentures into shares :* Mr. B purchased convertible debentures for ₹ 5,00,000 during August 2002. The debentures were converted into equity shares in September 2012. These shares were sold for ₹ 20,00,000 in August, 2022. The brokerage expenses are ₹ 50,000. You are required to compute the capital gains in case of Mr. B for the assessment year 2023-24.

Cost Inflation Index : FY 2002-03 = 105; FY 2012-13 = 200 and FY 2022-23 = 331.

Solution: **Computation of Capital Gains of Mr. B for the A.Y. 2023-24 :**

Sale consideration	20,00,000
Less: Expenses on transfer *i.e.* Brokerage paid	50,000
Net consideration	19,50,000
Less: Indexed cost of acquisition (₹ 5,00,000 × 331/105)	15,76,190
Long term capital gain	**3,73,810**

Note: For determining the period of holding of a capital asset, being a share of a company, which becomes the property of the assessee by way of conversion of debentures of that company, the period for which the debenture was held by the assessee before conversion shall also be considered.

9. Write a short note on Cost of acquisition and improvement of intangible assets, in the context of capital gains, with reference to the provisions of the Income-tax Act, 1961.

Ans: The cost of acquisition and improvement of intangible assets is arrived as under –

Capital asset	COA	COI
Goodwill of business or right to manufacture/ produce/process any article/ thing, or right to carry on any business or profession.	*If self-generated:* NIL; *If purchased from previous owner:* Purchase Price	NIL
Trademark/brand name associated with business or tenancy rights or stage carriage permits/loom hours.	*If self-generated:* NIL; *If purchased from previous owner:* Purchase Price	Expenses incurred by assessee or previous owner after 31-3-2001
However, in case of a capital asset, being goodwill of a business or profession, in respect of which depreciation u/s 32(1) has been obtained by the assessee in any previous year (upto P.Y. 2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price as reduced by the total amount of depreciation (upto P.Y. 2019-20) obtained by the assessee u/s 32(1).		

Illustration 13 – *Computation of capital gains in case of self generated asset :* Mr. Sunil sells the goodwill on 20-01-2023 for ₹ 38,00,000. It was self-generated by him on 02-01-2001 and he incurred cost of improvement thereof for ₹ 5,55,000 on 1-4-2016. Compute his taxable gains.

Also compute the capital gains in case the goodwill was purchased by Mr. Sunil on 2-1-2001 for ₹ 5,46,000. he has not claimed any depreciation on the same.

Solution : **Computation of capital gains of Mr. Sunil *(amounts in ₹)*—**

Particulars		Self-Generated Goodwill	Purchased Goodwill
Full value of consideration		38,00,000	38,00,000
Less: Indexed cost of acquisition	[WN-1]	Nil	18,07,260
Less: Indexed cost of improvement	[WN-2]	Nil	Nil
Long-term capital gains		**38,00,000**	**19,92,740**

Working Notes :

(1) Indexed cost of acquisition in case of purchased goodwill = ₹ 5,46,000 × 331/100 = ₹ 1807260.

(2) Indexed cost of improvement shall be always NIL in case of goodwill.

10. What shall be the cost of acquisition of bonus shares allotted to an assessee ?

Ans: **The cost of acquisition of bonus shares is determined as under —**

(1) **Cost to be taken as Nil :** As per **Section 55,** in a case where, by virtue of holding a capital asset, being a share or any other security, the assessee becomes entitled to subscribe to any additional financial asset (bonus shares), then in relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial asset, the cost of acquisition of such shares is to be taken as NIL.

(2) **Bonus shares allotted before 1-4-2001 :** However, in respect of bonus shares allotted before 1-4-2001, although the cost of acquisition of the shares is nil, the assessee may opt for the fair market value as on 1-4-2001 as the cost of acquisition of such bonus shares.

(3) **Bonus shares allotted before 1-2-2018, on which STT has been paid at the time of transfer** – In case of transfer of bonus shares allotted before 1-2-2018 on which STT has been paid at the time of transfer, the cost would be the higher of –

- **(i)** Actual cost of acquisition (*i.e.,* Nil, in case of bonus shares allotted on or after 1-4-2001; and FMV on 1-4-2001, in case of bonus shares allotted before 1-4-2001)
- **(ii)** Lower of –
  - **(a)** FMV as on 31-1-2018; and
  - **(b)** Actual sale consideration.

11. How shall the cost of acquisition be determined in case of -

(a) Right shares;

(b) Offer for right shares.

Ans: The aforesaid points have been discussed below,–

(a) **Right shares [Section 55] :** In a case where, by virtue of holding a capital asset, being a share or any other security, the assessee becomes entitled to right shares, then its cost of acquisition shall be taken as the purchase price actually paid by the assessee to the company for acquisition of right shares.

However, in case the right shares are purchased by person in whose favour right was renounced, then cost shall be the aggregate of purchase price paid to company and amount paid by him for renouncement in his favour.

(b) Offer for right shares [Section 55] : In case of offer for rights, the cost shall be taken as NIL.

Illustration 14 – ***Capital gains in case of offer of rights:*** A is a shareholder of X & Co. Ltd., holding 1,000 shares of the face value of ₹ 10 each, allotted at the time of the company's incorporation in May, 2001. The company made a right issue in the ratio of 1 : 1 on 15-7-2022 at a premium of ₹ 40 per share. Instead of taking up the right, he renounced it in favour of 'B' at a price of ₹ 10 per share. What is the capital gain chargeable in the hands of 'A'? What will be the cost of the shares in the hands of B? ***(Nov. 1995, May 2000)***

Solution: **Capital Gain chargeable in the hands of A :**

(1) Short-term capital gains in hands of A = Sale proceeds of the right entitlements – Cost thereof = ₹ 10 × 1,000 – Nil = ₹ 10,000.

(2) Cost of acquisition for B = Amount paid to A + Amount paid to X Ltd. = 1,000 (₹ 10 + ₹ 50) = ₹ 60,000.

12. Discuss the determination of cost of acquisition of Share/ stock of company acquired on consolidation & division of share capital into shares of larger or smaller amount/ conversion of share into stock or vice-versa/ conversion of one kind of shares in other.

Ans: The cost of acquisition shall be determined as under –

Share/ stock of company acquired on consolidation & division of share capital into shares of larger or smaller amount/ conversion of share into stock or vice-versa/ conversion of one kind of shares in other : Cost of acquisition of such share or stock = Cost calculated with reference to the cost of acquisition of the shares or stock from which such share or stock is derived.

Illustration 15 – ***Computation of capital gains in case of sub-division of shares :*** In April, 2001, S subscribed to the first issue of equity capital of a public limited company (face value of each share was ₹ 100) to the extent of ₹ 25,000. In 2005, the company converted the face value of its shares from ₹ 100 to ₹ 10 each. Half of the holdings of the shares held by S was sold by him in October, 2022 for ₹ 50,000. S had to pay a brokerage of 2% on sale. What is the nature of gains realised and compute the same. The shares are transferred otherwise than through recognized stock exchange. ***(May 1998)***

Solution: **Computation of Capital Gain** ***(amounts in ₹)*** **-**

Full value of consideration [WN]	50,000
Less: Expenses on transfer *i.e.* brokerage @ 2%	1,000
Net consideration	**49,000**
Less: Indexed cost of acquisition (₹ 12,500 × 331 ÷ 100)	41,375
Long-term capital gains	**7,625**

Working Note : No. of original shares = 250 shares of ₹ 100 each. On sub-division of share capital from face value of ₹ 100 to ₹ 10, the total number of shares = 2,500 shares of ₹ 10 each.

13. List the cases where benefit of indexation is not available even in case of long-term capital assets.

Ans: The cases where benefit of indexation is not available even in case of long-term capital assets are as follows –

(1) Transfer of a bond or a debenture other than capital indexed bonds issued by the Government or Sovereign Gold Bond issued by the Reserve Bank of India under the Sovereign Gold Bond Scheme, 2015.

(2) Transfer of undertaking or division in a slump sale under section 50B.

(3) Transfer of shares/debentures of an Indian company purchased by a non-resident in foreign currency.

(4) Transfer of units purchased in foreign currency by an assessee covered under section 115AB.

(5) Transfer of bonds or shares purchased in foreign currency by an assessee covered under section 115AC.

(6) Transfer of global depository receipts by a resident employee of an Indian company under section 115ACA.

(7) Transfer of securities by foreign institutional investors under section 115AD.

(8) Transfer of a foreign exchange asset by a non-resident Indian under section 115D.

(9) Transfer of equity shares or equity-oriented mutual fund units or units of business trust as provided in sec 112A.

CAPITAL GAINS IN SPECIAL CASES

14. A person receives money from an insurer on account of damage to a capital asset resulting from accidental fire. Whether such money shall be taxable as capital gains ? ***(3 Marks, CS Dec. 2008)***

Ans: The relevant provisions are discussed as under –

(1) **Capital gains in case of damage or destruction of capital asset [Section 45(1A)] :** 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 –

- **(a)** flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or
- **(b)** riot or civil disturbance; or
- **(c)** accidental fire or explosion; or
- **(d)** 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 taxable as capital gains, where–

- **(a)** **Full value of consideration :** Value of money plus fair market value of assets on the date of such receipt.
- **(b)** **Year of taxability :** Previous year in which such money or other asset was received.

(2) **No taxability in other cases :** However, where damage/destruction is not attributable to any of the reasons aforesaid, there will be no charge of capital gains, as there can be no 'transfer' without existence of capital asset at the time of transfer. ***- Vania Silk Mills P Ltd. v. CIT [1991] 191 ITR 647 (SC)***

(3) **Computation of capital gains in respect of such assets :** As per board's circular, capital gains would be worked out in respect of assets which get destroyed, etc., as per the provisions of Sections 48 and 50, as the case may be, by taking the insurance money or the market value of the asset received from the insurer as the "full value of consideration". Further, adjustment for cost inflation index will be made for non-depreciable assets and for depreciable assets, the written down value of such assets will be reduced from the block of assets as provided for in Section 43(6).

Illustration 16 – ***Insurance compensation on damage/ destruction of capital asset :*** Mr. A is an individual carrying on business. His stock and machinery were damaged and destroyed in a fire accident. The value of stock lost (total damaged) was ₹ 6,50,000. Certain portion of the machinery could be salvaged. The opening WDV of the block as on 1-4-2022 was ₹ 10,80,000. During the process of safeguarding machinery and in the fire fighting operations, Mr. A lost his gold chain and a diamond ring, which he had purchased in April, 2005 for ₹ 1,20,000. The market value of these two items as on the date of fire accident was ₹ 1,80,000.

Mr. A received the following amounts from the insurance company :

- **(i)** Towards loss of stock = ₹ 4,80,000
- **(ii)** Towards damage of machinery = ₹ 6,00,000
- **(iii)** Towards gold chain and diamond ring = ₹ 4,00,000

Briefly comment on the tax treatment of the above three items.

Cost Inflation Index : FY 2005-06 = 117. ***(7 Marks, Nov. 2006)***

Solution: The taxability of the aforesaid items has been discussed herein below –

(i) **Treatment of compensation in respect of stock-in-trade :** Stock-in-trade is not a capital asset, hence its loss is a trading loss which will be allowed as deduction in computing income under the head Profits and gains of business or profession.

The whole of the value of stock can be claimed as deduction; and the insurance compensation received can be assessed as taxable business receipt. Alternatively net loss of stock-in-trade = Value of stock – Insurance compensation received = ₹ 6,50,000 – ₹ 4,80,000 = ₹ 1,70,000 can be claimed as deduction.

(ii) **Treatment of compensation in respect of machinery :** Since the machinery has been directly destroyed by fire, therefore, the compensation has been received under circumstances referred to in section 45(1A). Accordingly, the capital gains shall be computed as follows – ***(amounts in ₹)***

Particulars	Machinery
Full value of consideration (being insurance compensation received)	6,00,000
Less: Cost of acquisition being : WDV of the block of machinery	10,80,000
Short-term Capital Loss	**-4,80,000**

(iii) Treatment of compensation in respect of gold chain and ring : Since the gold chain and diamond ring has been destroyed during fire fighting operation (the immediate cause thereof being the fire). Therefore, the compensation has been received under circumstances referred to in Section 45(1A). Accordingly, the capital gains shall be computed as follows – ***(amounts in ₹)***

Particulars	Gold Chain & Ring
Full value of consideration (being insurance compensation received)	4,00,000
Less: Indexed cost of acquisition diamond ring and Gold chain (₹ 1,20,000 × 331 ÷ 117)	3,39,487
Long-term Capital Gains	**60,513**

Note : It is assumed that both the breaking out of the fire and receipt of insurance compensation took place during the previous year 2022-23 and whole of the insurance compensation has been received in cash.

15. Discuss the tax implications arising consequent to conversion of a capital asset into stock-in-trade of business and its subsequent sale. ***(6 Marks : May 2000, CS Inter Dec. 2004, May 2007)***

Ans: The tax implications are as under –

(1) Capital gains in case of conversion of a capital asset into stock-in-trade [Section 45(2)] : As per Section 45(2), In case of conversion of a capital asset into, or its treatment, by the owner, as stock-in-trade of a business carried on by him, the profits or gains arising shall be chargeable to tax as Capital gains, where –

- **(a) Full value of consideration** = Fair market value of the asset on the date of such conversion or treatment.
- **(b) Year of taxability** = Previous year in which such stock-in-trade is sold or otherwise transferred by him.

(2) Business Profits : Further, there will be business income in the year of transfer chargeable to tax under the head "Profits and Gains of Business or Profession", which shall be computed as = Sale price of stock *less* FMV of stock on the date of conversion.

Note : In this case, transfer takes place in the year of conversion, so CII of the year of conversion is used for computation of capital gains.

Illustration 17 – ***Computation of capital gains in case of conversion of a capital asset into stock-in-trade:*** Aarnav converts his plot of land purchased in July, 2003 for ₹ 80,000 into stock-in-trade on 31st March, 2022. The fair market value as on 31st March, 2022 was ₹ 2,50,000. The stock-in-trade was sold ₹ 2,75,000 in the month of January 2023. Find out the taxable income, if any, and, if so, under which 'head of income' and for which Assessment Year ? ***(5 Marks, May 2008)***

Cost Inflation Index : FY 2003-04 = 109; FY 2021-22 = 317 and FY 2022-23 = 331.

Solution : Conversion of capital asset into stock-in-trade is transfer exigible to capital gains tax, but the capital gains are charged to tax in the year of sale of stock-in-trade. The tax implications are ***(amounts in ₹) -***

Full value of consideration (FMV on the date of conversion)	2,50,000
Less: Indexed cost of acquisition (₹ 80,000 × 317 ÷ 109) [WN]	2,32,661
Long-term capital gains taxable in assessment year 2023-24	**17,339**
Sale price of stock	2,75,000
Less: Cost of stock being FMV as on the date of conversion	2,50,000
Business income taxable in assessment year 2023-24	**25,000**

Working Note : Since plot of land is converted into stock in trade therefore transfer takes place in the year of conversion, hence cost inflation index of the year of conversion (*i.e.,* F.Y. 2021-22) shall be taken.

16. Discuss the chargeability of capital gains in case of transfer of shares held by the assessee in Demat form.

Ans: **Capital gains in case of transfer of shares held by depository [Section 45(2A)] :** Where any person has, at any time during the previous year, any beneficial interest in any securities, then –

(i) profits or gains arising from transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to tax as the income of the beneficial owner of the previous year in which such transfer took place; and

(ii) shall not be regarded as income of the depository who is deemed to be the registered owner of securities.

Further, the cost of acquisition and the period of holding of securities shall be determined on the basis of the first-in-first-out (FIFO) method.

17. What shall be the tax implications of capital gains arising on compulsory acquisition of any capital asset under any law.

Ans: The tax implications are discussed as under –

(1) **Compulsory acquisition of any capital asset under any law [Section 45(5)] :** Where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer consideration for which was determined or approved by the Central Government or the RBI, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, there shall be the following consequences –

- **(a)** **Full value of consideration** : Amount of compensation/consideration so determined to be payable to the assessee.
- **(b)** **Year of taxability :** Previous year in which such compensation or part thereof, or such consideration or part thereof, is first received by the assessee.
- **(c)** **In case compensation is enhanced :** The amount by which the compensation/consideration is enhanced or further enhanced by the court, Tribunal or other authority shall be taxable as capital gains in the previous year in which such enhanced amount is received by the assessee, where full value of consideration shall be taken as the amount of enhanced compensation and the cost of acquisition and cost of improvement shall be taken as NIL.

  Compensation received by interim order – Taxable in the year when final order is received : If 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.
- **(d)** **In case compensation is reduced :** Where the capital gains have already been assessed in any previous year and subsequently in any previous year, such compensation/consideration is reduced by any court, Tribunal or other authority, then such assessed capital gains of that year shall be recomputed by taking the reduced compensation/ consideration as the full value of the consideration.
- **(e)** **Compensation taxable in hands of legal heirs :** In case the enhanced compensation is received by any other person due to the death of the transferor or any other reason, the amount will be deemed to be capital gain of the recipient.

(2) **Interest received on compensation or enhanced compensation – Taxable as Income from other sources :** The interest, if any, received on enhanced compensation shall be taxable in the previous year in which it is received, as income under the head 'Income from Other Sources', where taxable amount = 50% of such interest.

(3) **Compulsory acquisition of urban agricultural land - Exempt [Section 10(37)] :** In the case of an assessee, being an Individual or a Hindu Undivided Family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land shall be exempt, where –

- **(a)** such land is situated in any urban area;
- **(b)** such land, during the period of 2 years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or his parents;
- **(c)** such transfer is by way of compulsory acquisition under any law, or a transfer consideration for which is determined or approved by the Central Government or the Reserve Bank of India;
- **(d)** such income has arisen from the compensation or consideration for such transfer received by such assessee on or after 01-04-2004.

Illustration 18 – ***Capital gains on compulsory acquisition under any law :*** The house property of Abhinav is compulsorily acquired by the Government for ₹ 20,00,000 *vide* Notification issued on 12th March 2022. Abhinav has purchased the house in 2007-08 for ₹ 8,00,000. The compensation is received on 15th April 2022. The compensation is further enhanced by an order of the court on 5th April 2023 and a sum of ₹ 2,00,000 is received as enhanced compensation on 25th May 2023. Abhinav wants to claim full exemption of the capital gains. Advise Abhinav in this regard. Compute the capital gains and determine the year in which it is taxable. ***(CS June 2007)***

Cost Inflation Index : FY 2007-08 = 129; FY 2021-22 = 301 and FY 2022-23 = 331.

Solution: Mr. Abhinav's house property is compulsorily acquired by the Government on 12th March 2022 hence, the year of transfer is the financial year 2021-22. However, as specified in Section 45(5), the capital gains arising due to such acquisition shall be taxable as capital gains in the previous year in which the compensation or part thereof is first received. Thus, the liability for capital gains shall arise in previous year 2022-23 (assessment year 2023-24).

Computation of long term capital gains for the assessment year 2023-24 : *(amount in ₹)*

Full value of consideration	20,00,000
Less: Indexed cost of acquisition (₹ 8,00,000 × 317 ÷ 129)	19,65,891
Long term capital gains	**34,109**

Treatment of enhanced compensation : LTCG due to enhanced compensation = ₹ 2,00,000, which will be chargeable to tax in the year in which it is received *i.e.* previous year 2023-24 *(assessment year 2024-25).*

Exemption from capital gain [Section 54 read with Section 54H] : In order to claim full exemption, Mr. Abhinav should invest the amount of capital gains in acquiring/constructing another house property. The investment must be made within 2 years (in case of acquisition) or 3 years (in case of construction) from dates of receipt of compensation *i.e.* 15-4-2022 (for capital gains of ₹ 34,109) and 25-5-2023 (for capital gains of ₹ 2,00,000). *(Discussed later in this chapter).*

Illustration 19 – *Compensation by Interim order :* Mr. X purchased an urban land on 25-04-2006 for ₹ 6,00,000. His property was acquired in land acquisition proceedings on 15-07-2012 and award of ₹ 15,00,000 was determined and the same was paid on 18-07-2012. The assessee filed an appeal against the award so determined. The land acquisition court, by order dated 01-05-2013, enhanced the compensation amount by ₹ 10,00,000, which was not paid to the assessee on account of the contest by the State through an appeal. The High Court by interim order allowed the assessee to withdraw 50% of the enhanced compensation on 15-07-2022 and the assessee received the amount in the relevant financial year. The court by final order dated 01-10-2023 held the enhancement of compensation as valid and assessee received the balance award on 17-12-2023. Discuss the taxability of the said compensation. **Cost Inflation Index :** FY 2006-07 = 122; FY 2012-13 = 200 and FY 2022-23 = 331.

Solution: The original compensation will be taxable in the year of receipt. However, the amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made. Hence, the relevant computation will be as under :

Computation of long term capital gains on receipt of original compensation *(amount in ₹) :*

Full value of consideration	15,00,000
Less: Indexed cost of acquisition (₹ 6,00,000 × 200 ÷ 122)	9,83,607
Long term capital gains taxable in AY 2013-14	**5,16,393**

Computation of long term capital gains on receipt of enhanced compensation *(amount in ₹) :*

Full value of consideration	10,00,000
Less: Indexed cost of acquisition	NIL
Long term capital gains taxable in AY 2024-25	**10,00,000**

Note : The interim compensation of ₹ 5,00,000 will not be taxable in AY 2023-24 but will be taxable when the final award is received *i.e.* AY 2024-25.

18. Explain special provisions for computation of capital gains in case of joint development agreement as per Section 45(5A) of the Income-tax Act, 1961.

Ans: **Special provisions for computation of capital gains in case of joint development agreement [Section 45(5A)] :** The special provisions for computation of capital gains in case of joint development agreement as per Section 45(5A) of the Act are as under—

(1) **Applicability :** Individual or Hindu undivided family.

(2) **Capital Asset transferred :** Land or building or both, under a specified agreement.

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

(3) **Year of taxability :** Capital gains 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.

"Competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force.

(4) **Full value of consideration :** The stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

"Stamp duty value" means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

(5) **Consequences if the assessee transfers his share in the project on or before the date of issue of the completion certificate :** Where the assessee transfers his share in the project on or before the date of issue of the said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place and the provisions of this Act, other than the provisions of Section 45(5A), shall apply for the purpose of determination of full value of consideration received or accruing as a result of such transfer. Thus, Capital gains tax liability would arise in the previous year in which the property is handed over to the developer.

Taxability of capital gains in case of Specified Agreement : At a Glance

Individual/ HUF entering into specified agreement for development of project

↓

Is the individual/ HUF transferring his share in the project **after** the date of issue of completion certificate?

No → Is the individual/ HUF transferring his share in the project **on or before** the date of issue of completion certificate?

Yes ↓ Capital gains tax liability would arise in the **P.Y. in which the property is handed over to the developer**

Yes ↓

Capital gains tax liability would arise in the **P.Y. in which Certificate of Completion** for whole or part of project by **is issued** the Competent Authority

↓

Stamp duty value on the date of issue of certificate of completion (+) Cash consideration = **Full Value of Consideration as per section 45(5A)**

↓

Full value of consideration deemed to be the cost of acquisition for determining capital gains on subsequent sale of share of developed property

Illustration 20 – ***Compensation by Capital gains :*** Ms. Mishika has entered into an agreement with M/s. CVM Build Limited on 25-04-2017 in which she agrees to allow such Company to develop a shopping mall on land owned by her in New Delhi. She purchased such land on 05-05-2009 for ₹ 15,00,000. In consideration, M/s. CVM Build Limited will provide 20% share in shopping mall to Mishika. The certificate of completion of shopping mall was issued by authority as on 26-12-2022. On such date, Stamp duty value of shopping mall was ₹ 4,14,00,000. Subsequently on 18-03-2023, she sold her 15% share in shopping mall to Mr. Ketav in consideration of ₹ 65,00,000.

She has also purchased a house on 09-05-2022 in consideration of ₹ 46,00,000 and occupied for own residence. Punjab National Bank has sanctioned a loan of ₹ 35,50,000 (80% of stamp value) at the interest rate of 12% per annum on 01-05-2022 and disbursement was made on 01-06-2022. She does not own any other residential house on the date of sanction of loan. Principal amount of ₹ 1,30,000 was paid during the financial year 2022-23.

Cost Inflation Indices: 2022-23: 331, 2009-10: 148

Compute total income of Ms. Mishika for the assessment year 2023-24 assuming that she has not opted for the provisions under section 115BAC. ***(7 Marks, Dec. 2021)***

Solution: **Computation of total income of Ms. Mishika for the A.Y.2023-24 *(amount in ₹) :***

Income from house property [Self-occupied]		
Net Annual Value	Nil	
Less: Interest on housing loan of ₹ 3,55,000 [₹ 35,50,000 × 12% × 10/12 months] restricted to ₹ 2,00,000/-	2,00,000	
	-2,00,000	
Less: Set-off of loss against long-term capital gains	2,00,000	Nil

Long-term capital gains on transfer of land under specified agreement		
Since Ms. Mishika transferred her share in the project after issue of completion certificate, capital gains on transfer of land handed over to developer under specified agreement in the P.Y. 2017-18 would be taxable in the P.Y. 2022-23, being the year in which certificate of completion is issued as per section 45(5A). Accordingly, capital gain arising in respect of land would be —		
Full value of consideration, being 20% share in shopping mall [Stamp duty value on the date of issue of completion certificate (₹ 4,14,00,000 × 20%)]	82,80,000	
Less: Indexed of cost of acquisition [₹ 15,00,000 × 331/148]	33,54,730	
Long-term capital gain	**49,25,270**	
Less: Deduction under section 54F		
Deduction in respect of amount invested for purchase of a residential house acquired within one year prior to date of transfer would be allowable proportionately, since amount invested is less than the net consideration. Accordingly, deduction would be ₹ 27,36,261 (₹ 49,25,270 × ₹ 46,00,000/ ₹ 82,80,000)	27,36,261	
Long-term capital gains	**21,89,009**	
Less: Set-off of loss from house property [It is beneficial to set-off loss from house property against long-term capital gains, since in case of Ms. Mishika total income comprises of LTCG taxable @ 20% and STCG taxable at normal slab rates; and she can claim deduction of ₹ 1,30,000 under Chapter VI-A against STCG of ₹ 2,90,000. Moreover, the remaining STCG would also not be taxable since it would be below the basic exemption limit]	2,00,000	**19,89,009**
Short-term capital gains		
Sale of 15% share in shopping mall [short-term capital asset, since held for not more than 24 months]		
Net Sales consideration	65,00,000	
Less: Cost of acquisition, being the full value of consideration taxable on transfer of land [₹ 4,14,00,000 x 15%]	62,10,000	
Short-term capital gains		2,90,000
Gross Total Income		**22,79,009**
Less: **Deductions under Chapter VI-A** *(allowable against short-term capital gains of ₹ 2,90,000)*		
Deduction u/s 80C – repayment of principal amount of housing loan		1,30,000
Total Income *(rounded off)*		**21,49,010**

Note : As per section 45(5A), any capital gains arising from the transfer of a capital asset, being land or building or both, under a specified agreement, is chargeable to income-tax as income of the previous year in which the certificate of completion is issued by the competent authority. In the above solution, the CII of F.Y. 2022-23 has been considered on the basis of parity, since, as per section 45(5A), it is the stamp duty value of the developed property (shopping mall, in this case) on the date of issue of certificate of completion (26-12-2022), which is deemed as the full value of consideration for transfer of land handed over to the developer.

19. State the provisions relating to the computation of capital gains in the hands of shareholder of a company on distribution of assets upon liquidation. ***(May 2002, Nov. 2002)***

Ans: **Capital gains on distribution of assets by company in liquidation [Section 46] :** As per the provisions of the said section, where the assets of a company are distributed to its shareholders on its liquidation, the following tax implications shall arise –

(1) Taxability in the hands of company and shareholder : Such distribution shall not be regarded as a transfer in the hands of the company; and any money or other assets received by a shareholder from the company shall be chargeable to income-tax in his hands under the head "Capital gains".

(2) Computation of capital gains : The capital gains in the hands of shareholder shall be computed as follows –

Money so received or market value of other assets received on liquidation on the date of distribution	××
Less: Amount assessed as deemed dividend under section 2(22)(c) to the extent of accumulated profits as on the date of liquidation	××
Full value of consideration for the purposes of section 48	××
Less: Indexed cost of acquisition (or cost of acquisition) of the shares held in that company	××
Long-term Capital Gains or Short-term Capital Gains	××

(3) Cost of acquisition of assets received on liquidation in hands of shareholders [Section 55(2)] : In case of transfer of any capital asset received by the shareholder on liquidation of a company, which had been assessed under section 46, then the cost of acquisition will be the fair market value as on the date of distribution.

Illustration 21 – ***Computation of capital gains on distribution of assets by companies in liquidation :*** Mr. Raghu purchased 10,000 equity shares of AB Avenues Private Limited on 25-03-2005 for ₹ 1,20,000. The company went into liquidation on 31-07-2022. The following is the summarized financial position of the company as on 31-07-2022.

Liabilities	₹	Assets	₹
60,000 equity shares of ₹ 10 each	6,00,000	Agricultural lands in urban area	22,00,000
General reserve	40,00,000	Cash at bank	32,22,212
Provision for taxation	8,22,212		
Total	**54,22,212**	**Total**	**54,22,212**

The assets remaining after discharging liability for income tax were distributed to the shareholders in the proportion of their shareholding. The market value of agricultural land as on 31-07-2022 is ₹ 60,00,000.

The agricultural land received as above was sold by Mr. Raghu on 28-02-2023 for ₹ 15,00,000. Discuss the tax implications in the hand of the company and Mr. Raghu.

The cost inflation indices are F.Y. 2004-05 : 113 and F.Y. 2022-23 : 331. ***(Modified PCC May 2008, 8 Marks)***

Solution:

(1) Tax implications in the hands of the company :

(i) According to Section 46(1) of the Act, distribution of capital assets amongst the shareholders on liquidation of the company is not regarded as "transfer" in the hands of the company. Consequently, there will be no capital gains in the hands of the company.

(ii) According to Section 2(22)(c), any distribution made to the shareholders of a company on its liquidation, to the extent to which distribution is attributable to the accumulated profits of the company immediately before its liquidation would be deemed as dividend. Therefore, ₹ 40,00,000, being the amount of general reserves on the date of liquidation would be deemed as dividend.

The company will be liable to deduct tax at source under section 194 @ 10%.

(2) Tax implications in the hands of Mr. Raghu (shareholder) :

(i) On liquidation (31-07-2022) : Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "capital gains" in respect of the money so received or the market value of the other assets on the date of the distribution, as reduced by the amount assessed as dividend and the sum so arrived at shall be deemed to be the full value of consideration. ***(amount in ₹)***

Mr. Raghu holds $1/6^{th}$ of the shareholding of the company	
Market value of agricultural land received (₹ 60 lakhs × $1/6^{th}$) + Cash at bank [$1/6^{th}$ of (₹ 32,22,212 – ₹ 8,22,212)]	14,00,000
Less: Deemed dividend u/s 2(22)(c) *i.e.,* $1/6^{th}$ of ₹ 40,00,000	6,66,667
Full value of consideration	**7,33,333**
Less: Indexed cost of acquisition of Shares (₹ 1,20,000 × 331/113)	3,51,504
Long term capital gains	**3,81,829**

(ii) On sale of agriculture land : Hence, the short-term capital gains in the hands of Mr. Raghu (shareholder) at the time of sale of urban agricultural land should be computed as follows : ***(amount in ₹)***

Full value of consideration	15,00,000
Less: Fair market value of the agricultural land on the date of distribution [WN]	10,00,000
Short term capital gain	**5,00,000**

Working Note : Where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to capital gains in respect of that asset, the cost of acquisition means the fair market value of the asset on the date of distribution.

Dividend under section 2(22)(c) amounting to ₹ 6,66,667 will be taxable in hands of shareholder.

20. Discuss the tax consequences of capital gains under section 46A on buy-back of own shares or other specified securities by a company. ***(May 2001)***

Ans: **Capital gains on purchase by company of its own shares or other specified securities [Section 46A] :** Where a holder of specified securities **(other than shares)** receives any consideration from any company for purchase of its specified securities held by him, then there shall be the capital gains with the following tax implications –

(1) Taxability in the hands of the holder of specified securities :

- **(a) Capital gains :** Difference between the cost of acquisition and the value of consideration received by the holder of other specified securities.
- **(b) Year of taxability :** Previous year in which such specified securities are purchased by the company.

Note : As far as shares are concerned, this provision would be attracted in the hands of the shareholder only if the shares are bought back by a company, other than a domestic company.

(2) Buy back in case of Listed /Unlisted Company – Company liable to pay tax @ 23.296% – Not taxable in hands of shareholders : In case of **listed**/unlisted company, such company is liable to pay tax on such buy back of shares under section 115QA @ **23.296%.** In such case the amount received by the shareholders on buy back of shares is exempt from tax under section 10(34A).

(3) Summary : Taxability in case of buyback of shares and other specified securities can be summarized as under :

Taxability in the hands of the	Buyback of shares by domestic companies	Buyback of shares by a company, other than a domestic company	Buyback of specified securities by any company
Company	Subject to additional income-tax @ **23.296%**.	Not subject to tax in the hands of the company.	Not subject to tax in the hands of the company.
Shareholders	Income arising to shareholders of listed/ unlisted companies is exempt under section 10(34A)	Income arising to shareholder taxable as capital gains u/s 46A.	Income arising to holder of specified securities taxable as capital gains u/s 46A

21. Explain computation of capital gain in case of depreciable asset u/s 50. ***(6 Marks, May 2000, May 2008)***

Ans: In case of depreciable assets, the capital gains shall be computed as per the provisions of **Section 50 and 50A**, which are as follows –

(1) Where capital asset transferred is forming part of a block of assets in respect of which depreciation has been allowed u/s 32(1)(ii) [Section 50] : The capital gains shall be computed as follows –

(a) Block of assets does not cease to exist but WDV of block is reduced to zero [Section 50(1)] :

Full value of consideration	××
Less: **(1)** Expenditure incurred wholly and exclusively in connection with such transfer	××
(2) WDV of the block of assets at the beginning of the previous year	××
(3) Actual cost of asset, falling within the block of assets, acquired during the previous year	××
Short term Capital Gains	**×××**

(b) Block of assets ceases to exist due to the sale of all assets falling in that block [Section 50(2)] :

Full value of consideration	××
Less: **(1)** Expenditure incurred wholly and exclusively in connection with such transfer	××
(2) WDV of the block of assets at the beginning of the previous year	××
(3) Actual cost of asset, falling within the block of assets, acquired during the previous year	××
Short term Capital Gains/Loss	**×××**

(2) Where capital asset is an asset of power generating units on which depreciation allowed under section 32(1)(i) [Section 50A] :

- **(a) If moneys payable is less than WDV :** There will be terminal depreciation u/s 32(1)(iii) which is equal to WDV *less* Moneys Payable.
- **(b) If moneys payable exceeds WDV** :
  - **(i) Moneys payable does not exceed actual cost :** Balancing Charge u/s 41(2) = Moneys Payable – WDV
  - **(ii) Moneys payable exceeds actual cost :** Balancing Charge u/s 41(2) = Actual Cost – WDV; and Short-term/Long-term capital gains = Moneys Payable – Actual Cost.

Illustration 22 – ***Computation of capital gain in case of depreciable Asset :*** The written down value of the block of assets of Rosy Ltd. as on 1st April, 2022 was ₹ 5 lakhs. An asset of the same block was acquired on 11th May, 2022 for ₹ 3 lakhs. There was a fire on 18th September, 2022 and the assets were destroyed by fire and the assessee received a sum of ₹ 11 lakhs from the insurance company. Compute the capital gain assuming –

(i) All the assets were destroyed by fire; and

(ii) Part of the block of assets was destroyed by fire.

What will be the answer if assessee received ₹ 6 lakhs from insurance company instead of ₹ 11 lakhs ? ***(CS Dec. 2006)***

Solution:

(1) **If compensation is received for ₹ 11 lakhs :** Here, moneys payable exceeds WDV, thus there will be short-term capital gains which shall be computed as follows ***(amount in ₹) –***

Written down value of the block on 01-04-2022	5,00,000
Add: Asset acquired during the year	3,00,000
	8,00,000
Less: Sum received from the insurance company	11,00,000
Short term capital Gains	**3,00,000**

Note : In case (i) and (ii), both, *i.e.* whether the block is fully destroyed or partly destroyed by fire, there will be STCG of ₹ 3,00,000, since the sum received is more than the WDV of the block.

(2) **If compensation is received for ₹ 6 lakhs :**

(i) **If the block is fully destroyed :** Short-term capital loss = WDV – moneys payable = ₹ 8 lakhs - ₹ 6 lakhs = ₹ 2 lakhs.

(ii) **If the block is partly destroyed :** There will be no capital gains. Since the block and WDV both exists, therefore, the balance WDV of ₹ 2 lakhs will be eligible for depreciation.

22. Does any capital gains arise on the sale of an undertaking as a going concern? OR
What is Slump sale? How is capital gain computed in case of a slump sale? ***(May 2003, May 2006, Nov. 2008)***

Ans: The capital gains in case of slump sale shall be computed as under –

(1) **Slump Sale [Section 2(42C)]** ***[Amended by Finance Act, 2022 w.r.e.f. 01-04-2021]:*** It means transfer of one or more undertakings, by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such **transfer.**

Term	Meaning
Undertaking	It includes any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity. ***[Explanation 1]***
Transfer	Transfer shall have the meaning assigned to it in Section 2(47). *[it would include sale, exchange, relinquishment of capital asset, extinguishment of any rights therein, compulsory acquisition under any law etc.]* ***[Explanation 3]***

(2) **Special provision for computation of capital gains in case of slump sale [Section 50B] :** Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains in the previous year in which such transfer took place.

Where the capital asset, being one or more undertakings, was owned and held by an assessee for not more than 36 months immediately preceding the date of its transfer, the capital gains will be 'short term capital gains'; otherwise the same shall be long-term capital gains.

(3) **Computation of capital gains :** The capital gains shall be computed as follows –

Full Value of consideration being Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner**	×××
Less: Expenditure incurred wholly and exclusively in connection with such transfer	×××
Less: Net worth of the undertaking being the cost of acquisition and improvement	×××
Short term/Long term Capital gains	**×××**

Computation of net-worth :

Aggregate value of total assets of the undertaking or division (ignoring any change in the value of assets on account of revaluation of assets) *i.e.* –		
In case of depreciable assets, the WDV of the block as per Section 43(6)	××	
In case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction u/s 35AD	Nil	
In the case of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner	Nil	
In case of other assets, the book value	××	×××
Less: Value of liabilities of such undertaking or division as appearing in its books		×××
Net worth of the undertaking or division		**×××**

****Fair market value of the capital assets shall be higher of FMV1 or FMV2**

FMV1 = A + B + C + D – L		FMV2 = E + F + G + H	
A =	book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale as reduced by the following amount which relate to such undertaking or the division, — **(i)** any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and **(ii)** any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;	**E =**	value of the monetary consideration received or accruing as a result of the transfer;
B =	the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;	**F =**	fair market value of non-monetary consideration received or accruing as a result of the transfer represented by property referred to in rule 11UA(1) determined in the manner provided in rule 11UA(1) for the property covered in that sub-rule;
C =	Fair market value of shares and securities as determined in the manner provided in rule 11UA(1);	**G =**	the price which the non-monetary consideration received or accruing as a result of the transfer represented by property, other than immovable property, which is not referred to in rule 11UA(1) would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer, in respect of property.
D =	the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;	**H =**	the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property in case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property.
L =	book value of liabilities as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, but not including the following amounts which relates to such undertaking or division, namely: —		

	(i) the paid-up capital in respect of equity shares; **(ii)** the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company; **(iii)** reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation; **(iv)** any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto; **(v)** any amount representing provisions made for meeting liabilities, other than ascertained liabilities; **(vi)** any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.		

The **fair market value of the capital assets** shall be determined **on the date of slump sale** and for this purpose, **valuation date** shall also mean the **date of slump sale**.

(4) **Indexation not available :** No indexation benefit shall be available in case of long-term capital asset.

(5) **Certificate by a Chartered Accountant:** Every assessee, in case of slump sale, shall furnish in the prescribed form a report of an Chartered Accountant before the specified date referred to in section 44AB indicating the computation of net worth and certifying that the net worth of the undertaking or division has been correctly arrived at.

Illustration 23 – ***Capital Gains in case of slump sale :*** M/s. Sriram Enterprises, a proprietorship having 2 units. Unit 1 is transferred on 1-4-2022 by way of slump sale for a total consideration of ₹ 14 lacs. Unit 1 was started in the year 2005-06. The expenses incurred for this transfer were ₹ 38,000. Balance Sheet as on 31-3-2022 is as under:

Liabilities	Total (₹)	Assets	Unit 1 (₹)	Unit 2 (₹)	Total (₹)
Own Capital	17,00,000	Building	13,00,000	3,00,000	16,00,000
Revaluation Reserve (for building of unit 1)	5,00,000	Machinery	4,00,000	2,00,000	6,00,000
Bank loan (70% for unit 1)	4,00,000	Debtors	2,00,000	1,40,000	3,40,000
Trade creditors (25% for unit 1)	3,50,000	Patents	2,50,000	1,60,000	4,10,000
Total	**29,50,000**	**Total**	**21,50,000**	**8,00,000**	**29,50,000**

Other information:

(i) Revaluation reserve is created by revising upward the value of the building of Unit 1. The stamp duty value on 1-4-2022 is ₹ 10 lakhs.

(ii) No individual value of any asset is considered in the transfer deed.

(iii) Patents were acquired on 1-7-2020 on which no depreciation has been charged.

Compute the capital gain for the assessment year 2023-24.

Solution: **Computation of capital gains on slump sale of Unit 1** ***(amount in ₹)*** **:**

Full value of consideration *[Fair market value on 1-4-2022]*	14,82,500
Less: Expenses on sale	38,000
Net sale consideration	**14,44,500**
Less: Net worth **[WN-1]**	11,73,125
Long-term capital gain	**2,71,375**

Working Notes:

(1) Computation of Full value of consideration *(amount in ₹)* :

Fair market value of the capital assets transferred by way of slump sale				
Building, being an immovable property *[stamp duty value on 1-4-2022, being the date of slump sale]*	[A]			10,00,000
Machinery *[Book value as appearing in the books of accounts]*	[B]			4,00,000
Debtors *[Book value as appearing in the books of accounts]*	[C]			2,00,000
Patents *[Book value as appearing in the books of accounts]*	[D]			2,50,000
				18,50,000
Less: Liabilities of Unit 1 [₹ 29,50,000 – ₹ 1,20,000 – ₹ 2,62,500]	[L]		25,67,500	
Excluding :				
(i) Own Capital		17,00,000		
(ii) Revaluation reserve		5,00,000	22,00,000	3,67,500
Fair market value of the capital assets transferred by way of slump sale [A+B+C+D-L] [FMV1]				**14,82,500**
Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] **[FMV2]**				14,00,000
Full value of consideration [Higher of FMV1 or FMV2]				**14,82,500**

(2) Computation of net worth of Unit 1 of Simran Enterprises :

Building (excluding ₹ 5 lakhs on account of revaluation)		8,00,000
Machinery		4,00,000
Debtors		2,00,000
Patents ***(See Note 3 below)***		1,40,625
Total assets		**15,40,625**
Less: Creditors [₹ 3,50,000 × 25%]	87,500	
Bank Loan [₹ 4,00,000 × 70%]	2,80,000	3,67,500
Net worth		**11,73,125**

(3) Written down value of patents as on 1-4-2022 :

Value of patents	**₹**
Cost as on 1-7-2020	2,50,000
Less: Depreciation @ 25% for Financial Year 2020-21	62,500
WDV as on 1-4-2021	**1,87,500**
Less: Depreciation for Financial Year 2021-22	46,875
WDV as on 1-4-2022	**1,40,625**

For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. The problem has been solved assuming that the Balance Sheet values of ₹ 4 lakh and ₹ 8 lakh (₹ 13 lakh – ₹ 5 lakh) represent the written down value of machinery and building, respectively, of Unit 1.

Illustration 24 – *Computation of capital gains in case of slump sale:* Mr. Patel is a proprietor of Star Stores since 20-05-2019. He has transferred his shop by way of slump sale for a total consideration of ₹ 40 lakh. The fair market value of capital assets on 31-03-2023 is ₹ 38 lacs. The professional fees & brokerage paid for this sale are ₹ 80,000. His balance sheet as on 31-03-2023 is as under :

Liabilities	**₹**	**Assets**	**₹**
Own Capital	10,50,000	Building	5,00,000
Bank Loan	5,00,000	Furniture	5,00,000
Trade Creditors	2,50,000	Debtors	2,00,000
Unsecured Loan	2,00,000	Other Assets	8,00,000
Total	**20,00,000**	**Total**	**20,00,000**

Other Information :

(1) No individual value of any asset is considered in the transfer deed.

(2) Other assets include trademarks valuing ₹ 2,00,000 as on 01-04-2022 on which no depreciation has been provided.

(3) Furniture of ₹ 1,50,000 purchased on 05-11-2022 on which no depreciation has been provided.

(4) Unsecured loan includes ₹ 50,000 as advance received from his wife, which she has agreed to waive off.

Compute the capital gain for A.Y. 2023-24. ***(4 Marks, July 2021)***

Solution: **Computation of capital gains on slump sale of shop** ***(amount in ₹)*** **:**

Full Value of consideration *[Higher of FMV of capital assets transferred or FMV of monetary consideration received]*	40,00,000
Less: Expenses on sale [professional fees & brokerage]	80,000
Net sale consideration	**39,20,000**
Less: Net worth **(See Working Note below)**	10,42,500
Short-term capital gain *[Since shop is held for not more than 36 months immediately preceding the date of transfer]*	**28,77,500**

Working Note : Computation of net worth of shop ***(amount in ₹)*** **:**

Building		5,00,000
Furniture	5,00,000	
Less: Deprecation on ₹ 1,50,000 @ 5%, being 50% of 10% since furniture is put to use for less than 180 days during the previous year	7,500	4,92,500
Debtors		2,00,000
Other assets	8,00,000	
Less: Deprecation on ₹ 2,00,000, being intangible asset @ 25%	50,000	7,50,000
Total assets		**19,42,500**
Less: Bank loan	5,00,000	
Trade creditors	2,50,000	
Unsecured loan ₹ 2,00,000 *less* ₹ 50,000, being the amount waived off by his wife	1,50,000	9,00,000
Net worth		**10,42,500**

23. Write short note on special provision for full value of consideration in certain cases, in the context of capital gains liability. ***(Nov. 2004)***

Ans: **Full value of consideration in certain cases [Section 50C] :** The provisions are as under –

(1) **Stamp duty value deemed to be full value of consideration in case it exceeds actual consideration :** Where the consideration received/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/assessed/assessable by the Stamp Valuation Authority for the payment of stamp duty in respect of such transfer, the value so adopted/assessed/assessable shall be deemed to be the full value of the consideration for the purpose of Section 48.

(2) **Stamp duty value on the date of agreement to be considered :** Where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer.

However, the above provisions shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer. *[***(a)** Credit Card; **(b)** Debit Card; **(c)** Net Banking; **(d)** IMPS (Immediate Payment Service); **(e)** UPI (Unified Payment Interface); **(f)** RTGS (Real Time Gross Settlement); **(g)** NEFT (National Electronic Funds Transfer), and **(h)** BHIM (Bharat Interface for Money) Aadhar Pay have been prescribed as mode of electronic payment].

(3) **Stamp duty value not to be full value of consideration :** Where the value adopted or assessed or assessable by the stamp valuation authority **does not exceed 110%** of the consideration received or accruing as a result of the transfer, 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.

(4) **Reference to Valuation officer :** The Assessing Officer may refer the valuation of the capital asset to Valuation Officer where –

- **(a)** the assessee claims before any Assessing Officer that the value adopted/assessed/ assessable by the Stamp Valuation Authority exceeds fair market value of the property as on the date of transfer, and
- **(b)** the value adopted or assessed or assessable by the Stamp Valuation Authority has not been disputed in appeal or revision or no reference has been made before any other authority, court or High Court.

(5) **Where the value ascertained by Valuation Officer exceeds the value assessed by the Stamp Valuation Authority :** Where the value ascertained by Valuation Officer exceeds the value adopted/assessed/assessable by the stamp valuation authority, then the value so adopted/assessed/assessable by such authority shall be taken as the full value of the consideration.

Thus, in case reference is made to Valuation Officer, the full value of consideration shall be lower of –

(a) Value as determined by the Valuation Officer; or

(b) Value assessed or adopted or assessable by the Stamp Valuation Authority.

(6) **Meaning of "assessable" :** Assessable means the price which the stamp valuation authority would have adopted or assessed, if it were referred to such authority for the purposes of payment of stamp duty.

Accordingly, even if the sale deed has not been registered with the stamp valuation authority and no actual value has been assessed for the payment of stamp duty, the stamp value under this section shall be the value that would have been assessed by the stamp valuation authority.

(7) **FMV as on 01-04-2001 not to exceed SDV as on that date :** In case of a capital asset, being land or building or both, the fair market value of such asset on 01-04-2001 shall not exceed the stamp duty value, wherever available, of such asset as on the 1-04-2001.

"Stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

Illustration 25 – ***Stamp value – Full value of consideration – Section 50C :*** From the following information compute taxable Capital gains in hands of X —

(1) X purchases a plot of land on 10th August, 2008 for ₹ 4,11,000.

(2) He enters into an agreement with B to transfer the plot of land on 1st May, 2022 for ₹ 80,00,000 (stamp duty value being ₹ 86,00,000).

(3) On 1st May, 2022, X gets an advance of ₹ 1,00,000 by an account-payee cheque.

(4) Conveyance deed is registered on 5th June, 2022 (stamp duty value on the date of registration : ₹ 89,00,000).

What would your answer be in case ₹ 1,00,000 is received on 2nd May 2022, instead of 1st May, 2022.

Note: Cost of Inflation Indices for the FY 2008-09 and FY 2022-23 are 137 and 331 respectively.

Solution:

(i) **When X has received an advance on the date of agreement :** 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 ₹ 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– ***(amount in ₹)***

Full value of consideration *[110% of actual consideration of ₹ 80,00,000 is ₹ 88,00,000. Stamp duty value is ₹ 86,00,000. As stamp duty value does not exceed 110% of actual consideration, stamp duty value is not considered.]*	80,00,000
Less: Indexed cost of acquisition [₹ 4,11,000 × 331 ÷ 137]	9,93,000
Long-term capital gain	**70,07,000**

(ii) **When X has received an advance after the date of agreement :** X has received an advance of ₹ 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— ***(amount in ₹)***

Full value of consideration *[110% of actual consideration of ₹ 80,00,000 is ₹ 88,00,000. Stamp duty value on date of registration is ₹ 89,00,000. As stamp duty value exceeds 110% of actual consideration, stamp duty value is taken as full value of consideration.]*	89,00,000
Less: Indexed cost of acquisition [₹ 4,11,000 × 331 ÷ 137]	9,93,000
Long-term capital gain	**79,07,000**

Illustration 26 – ***Capital gains on Land - Stamp Value to be full value of consideration - Section 50C :*** Mr. Ramesh purchased a building on 10-04-2001 for a sum of ₹ 35 lakh. The said building was sold by him to Mahesh, for ₹ 90 lakh on 1-1-2023, when the stamp duty value was ₹ 185 lakh. The agreement was entered on the same day and the property was registered on the same day. Discuss tax implications in hands of Ramesh.

What would be your answer if the agreement was entered into on 1-7-2022 when the stamp duty value was ₹ 120 lakh.

Mr. Ramesh had received a down payment of ₹ 15 lakh by cheque from Mahesh on the date of agreement. Will your answer change if the said sum of ₹ 15 lakhs has been received by cash instead of cheque.

Solution :

(1) The tax implications in hands of Ramesh shall be as under –

CASE I : In case the agreement has been entered on the date of sale and property has been registered on the same day : Full Value of Consideration = Value fixed by stamp valuation authority, as per the provisions of Section 50C *i.e.* ₹ 1,85,00,000 on the date of registration will be taken as full value of consideration since the stamp duty value exceeds 110% of the actual consideration and capital gains shall be computed as under : ***(amount in ₹)***

Full value of consideration [Section 50C]	1,85,00,000
Less: Indexed cost of acquisition (₹ 35,00,000 × 331 ÷ 100)	1,15,85,000
Long-term capital gains	**69,15,000**

CASE II : In case the agreement has been entered on 1-7-2022 : In this case the stamp duty value on the date of agreement will be considered to compute capital gains since on the date of agreement, sum of ₹ 15 lakh has been received by an account payee cheque and the value adopted or assessed or assessable by the stamp valuation authority exceed 110% of the consideration received as a result of transfer of capital asset. The capital gains shall be computed as under : ***(amount in ₹)***

Full value of consideration [Section 50C]	1,20,00,000
Less: Indexed cost of acquisition (₹ 35,00,000 × 331 ÷ 100)	1,15,85,000
Long-term capital gains	**4,15,000**

(2) **Yes,** the answer will change in case if on the date of agreement cash has been received instead of an account payee cheque. In such case stamp duty value on the date of agreement shall not be considered but the stamp duty value on the date of registration of property shall be considered and capital gains shall be ₹ 74,05,000.

Illustration 27 – *Capital gains on Land- Stamp Value to be full value of consideration :* Bala sold his vacant site on 30-09-2022 for ₹ 12,00,000. It was acquired by him on 01-10-1998 for ₹ 1,50,000. The fair market value on 01-04-2001 is ₹ 2,00,000 and the stamp duty value as on 01-04-2001 is ₹ 1,80,000. The State stamp valuation authority fixed the value of the site at the time of transfer at ₹ 13,20,000. Compute income under the head capital gains in the hands of Bala and give your reasons for computation.

Solution: **Computation of capital gains of Bala *(amounts in ₹)* –**

Full value of consideration	[WN-1]	12,00,000
Less: Indexed cost of acquisition (₹ 1,80,000 × 331 ÷ 100)	[WN-2]	5,95,800
Long-term capital gains		**6,04,200**

Working Note :

(1) Since the value adopted or assessed or assessable by the stamp valuation authority *i.e.* ₹ 13,20,000 does not exceed 110% of the consideration received *i.e.* ₹ 12,00,000, the consideration so received or accruing as a result of the transfer shall be deemed to be the full value of the consideration.

(2) In case of a capital asset, being land or building or both, the fair market value of such asset on 01-04-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 01-04-2001. Hence, in this case the SDV as on 01-04-2001 *i.e.* ₹ 1,80,000 shall be taken as cost of acquisition.

Illustration 28 – *Computation of Capital gains – Implications of Section 50C :* Mr. Vaibhav sold a house, held as a capital asset, to his friend Mr. Dhanush on 1st December, 2022 for a consideration of ₹ 25,00,000. The Sub-Registrar refused to register the document for the said value, as according to him, stamp duty valuation based on State Government guidelines was ₹ 45,00,000. Mr. Vaibhav preferred an appeal to the Revenue Divisional Officer, who fixed the value of the house as ₹ 35,00,000 (₹ 22,00,000 for land and the balance for building portion). The differential stamp duty was paid, accepting the said value determined. Mr. Vaibhav had purchased the land on 1st June, 2007 for ₹ 6,10,000 and completed the construction of the house on 21st December, 2021 for ₹ 14,00,000.

Briefly discuss the tax implications in the hands of Mr. Vaibhav and compute the capital gains chargeable to tax. ***(4 Marks, Nov. 2013)***

Note : Cost of Inflation Indices for the FY 2007-08 and FY 2022-23 are 129 and 331 respectively.

Solution: **Computation of capital gains chargeable to tax of Mr. Vaibhav** ***(amount in ₹)*** **:**

Particulars	Land	Building
Full value of consideration (Section 50C) [WN]	22,00,000	13,00,000
Less: Indexed cost/cost of acquisition (₹ 6,10,000 × 331 ÷ 129)	15,65,194	14,00,000
Long-term capital gain	6,34,806	–
Short-term capital gain/loss	–	-1,00,000
Taxable Capital Gains		**5,34,806**

Working Notes:

(1) In case, a land is held by the assessee for more than 24 months but the building constructed over it is held for not more than 24 months, then there will be long-term capital gains on sale of the land and short-term capital gains on sale of building ***– CIT v. Citibank N.A. [2003] 261 ITR 570 (Bom.).*** Hence, the capital gains have been computed accordingly.

(2) As per provisions of Section 50C, if the stamp duty value adopted by stamp valuation authority is disputed in appeal and the same is reduced by the appellate authority, the reduced value shall be taken to be full value of consideration for computing the capital gains chargeable to tax.

Since the value adopted or assessed or assessable by the stamp valuation authority as revised by Revenue Divisional Officer *i.e.* ₹ 35,00,000 exceed 110% of the consideration received *i.e.* ₹ 25,00,000, Value fixed by stamp valuation authority, as per the provisions of Section 50C shall be deemed to be the full value of the consideration *i.e.* 35,00,000.

(3) Short term capital loss can be set off from long term capital gains in accordance with provisions of Section 74 of the Income-tax Act, 1961.

Illustration 29 – ***Computation of Capital gains – Implications of Section 50C :*** Mr. T inherited a house in Jaipur under will of his father in May, 2002. The house was purchased by his father in January, 1980 for ₹ 2,50,000. He invested an amount of ₹ 7,00,000 in construction of one more floor in this house in June, 2006. The house was sold by him in November, 2022 for ₹ 37,50,000. The valuation adopted by the registration authorities for charge of stamp duty was ₹ 47,25,000 which was not contested by the buyer, but as per assessee's request, the Assessing Officer made a reference to Valuation Officer. The value determined by Valuation Officer was ₹ 47,50,000. Brokerage @ 1% of sale consideration was paid by Mr. T to Mr. S. The market value of house as on 1-4-2001 was ₹ 2,70,000. Compute the capital gain chargeable to tax. ***(9 Marks, PCE Nov. 2007)***

Note: Cost Inflation Index : FY 2002-03 = 105; FY 2006-07 = 122 and FY 2022-23 = 331.

Solution: **Computation of capital gains chargeable to tax of Mr. T** ***(amount in ₹) :***

Full value of consideration	[WN-1]	47,25,000	
Less: Expenses of transfer *i.e.* brokerage @ 1% of ₹ 37,50,000		37,500	
Net sale consideration			46,87,500
Less: Indexed cost of acquisition (₹ 2,70,000 × 331 ÷ 100)	[WN-2]	8,93,700	
Indexed cost of improvement (₹ 7,00,000 × 331 ÷ 122)		18,99,180	27,92,880
Long-term capital gains			**18,94,620**

Working Notes :

(1) As per Section 50C, where the value adopted or assessed or assessable by the stamp valuation authority exceeds 105% of the consideration received, the stamp duty value shall be deemed to be the full value of the consideration. Hence, in the given case – Sales consideration = ₹ 37,50,000, 110% of Sale Consideration= ₹ 41,25,000, Stamp duty value = ₹ 47,25,000, Valuation made by Valuation officer = ₹ 47,50,000, Therefore, full value of consideration = Higher of ₹ 41,25,000 and ₹ 47,50,000; subject to maximum of ₹ 47,25,000 = ₹ 47,25,000.

(2) Since the house has been obtained under inheritance *i.e.* one of the modes specified under section 49(1), therefore, its cost shall be the cost to the previous owner (father) *i.e.* FMV as on 1-4-2001 *i.e.* ₹ 2,70,000. The CII of acquisition will be of 2001-02 since his father has acquired the property prior to 01-04-2001.

24. Explain the special provision for full value of consideration for transfer of share other than quoted share.

Ans: **Special provision for full value of consideration for transfer of share other than quoted share [Section 50CA] :** Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, the value so determined shall, for the purposes of section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer.

However, 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.

"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. *[Explanation]*

25. What shall be the full value of consideration in case sale consideration cannot be ascertained ?

Ans: **Fair market value deemed to be full value of consideration in certain cases [Section 50D] :** Where the consideration received or accruing as a result of the 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.

26. What shall be the treatment of advance money received and forfeited while computing capital gains?

Ans: The relevant provisions are as under –

(1) **Advance money received [Section 51] :** Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiation shall be deducted from the cost for which the asset was acquired, or the WDV of the asset or the FMV in computing the cost of acquisition of the capital asset. Such sum of money must be received and forfeited before 01-04-2014.

Advance money forfeited not to be reduced if the same is taxable as Income from other Sources : However, any sum of money, received on or after 01-04-2014, as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year in accordance with the provisions of Section 56(2)(ix), then, such sum shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

Amount forfeited by previous owner not deductible : The amount forfeited by the previous owner shall not be deducted for computing cost of acquisition. Further, indexation applies to the cost arrived at after deducting such advance money received.

(2) **Earnest money forfeited to be deducted from cost :** It was held in **Travancore Rubber & Tea Co. Ltd. *v.* CIT [2000] 243 ITR 158 (SC)** that the phrase 'other money' would cover deposits made by purchaser for guaranteeing due performance of contracts. Therefore, the earnest money so received and forfeited and the compensation received for breach of contract by the prospective purchaser will be deducted from the cost of acquisition.

Tax treatment of advance money forfeited on failure of negotiations for transfer of a capital asset [Sections 51 & 56(2)(ix)]

If advance was received and forfeited before 1-4-2014	If advance was received and forfeited on or after 1-4-2014
Advance forfeited to be deducted while determining Cost of acquisition for computing capital gains	Advance forfeited to be taxed under 56(2)(ix) as Income from other sources
Taxability is postponed to the year of actual transfer of capital asset.	Tax liability is attracted in the year of forfeiture of advance

Illustration 30 – ***Advance money - Forfeited :*** Mr. Paresh purchased a house property on 14th Nov., 2015 for ₹ 10,00,000. He entered into an agreement with Mr. B for the sale of house on 15th September, 2022 and received an advance of ₹ 25,000. However, since Mr. B did not remit the balance amount, Mr. Paresh forfeited the advance. Finally, the house was sold by Mr. Paresh to Mr. Sanjay on 15-03-2023 for a consideration of ₹ 21,00,000. Discuss tax implications of such transaction in hands of Paresh. **Cost Inflation Index :** FY 2015-16 = 254 and FY 2022-23 = 331.

Solution: Section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise on or after 01-04-2014 in the course of negotiations for transfer of a capital asset shall be chargeable to income-tax under the head 'income from other sources' if such sum is forfeited and the negotiations do not result in transfer of such capital asset. The sum so taxable will not be reduced from cost of acquisition to compute capital gains on transfer of such asset.

Hence, the sum of ₹ 25,000 received as advance an forfeited by Mr. Paresh shall be taxable as his Income from other Sources in assessment year 2023-24.

Since the house property is held for more than 24 months immediately preceding the date of transfer, it will be regarded as long term capital asset. The capital gains shall be computed as under :

Computation of capital gains of Mr. Paresh for AY 2023-24 *(amounts in ₹)* –

Full value of consideration	21,00,000
Less: Indexed Cost of acquisition [₹ 10,00,000 × 331 ÷ 254] [WN]	13,03,150
Long-term capital gains	**7,96,850**

Working Note : The advance money forfeited by Paresh shall not be reduced since the same is taken into account while computing Income from other sources under Section 56(2)(ix).

Illustration 31 – ***Advance money received-forfeited by the assessee :*** Mr. Rakesh purchased a house property on 14th April, 1999 for ₹ 9,05,000 He entered into an agreement with Mr. B for the sale of house on 15th September, 2002 and received an advance of ₹ 25,000. However, since Mr. B did not remit the balance amount, Mr. Rakesh forfeited the advance. Later on, he gifted the house property to his brother Mr. A on 15th June, 2006.

Following renovations were carried out by Mr. Rakesh and Mr. A to the house property :

Particulars	Amounts (₹)
By Mr. Rakesh during FY 1999-2000	10,000
By Mr. Rakesh during FY 2003-04	50,000
By Mr. A during FY 2007-08	1,90,000

The fair market value of the property as on 01-04-2001 is ₹ 11,00,000

Mr. A entered into an agreement with Mr. C for sale of the house on 1st June, 2012 and received an advance of ₹ 80,000. The said amount was forfeited by Mr. A, since Mr. C could not fulfil the terms of the agreement. Finally, the house was sold by Mr. A to Mr. Sanjay on 2nd January, 2023 for a consideration of ₹ 42,00,000.

Compute the capital gains chargeable to tax in the hands of Mr. A for the assessment year 2023-24.

Cost inflation indices are as under :

Financial Year	Cost inflation index
2001-02	100
2003-04	109
2006-07	122
2007-08	129
2022-23	331

(8 Marks, IPCC Modified, May 2011)

Solution: **Computation of capital gains taxable in the hands of Mr. A :** Here, the house property so transferred shall be the long term capital asset for Mr. A as he has acquired the property from Mr. Rakesh by way of gift [one of the modes specified in Section 49(1)], hence, his period of holding = 14-4-1999 to 2-1-2022 *i.e.* more than 2 years. ***(amount in ₹)***

Full value of consideration		42,00,000
Less: Indexed cost of acquisition (₹ 10,20,000 × 331 ÷ 100)	[WN-1]	33,76,200
Less: Indexed cost of improvement by Mr. Rakesh (₹ 50,000 × 331 ÷ 109)	[WN-2]	1,51,835
Less: Indexed cost of improvement by Mr. A (₹ 1,90,000 × 331 ÷ 129)		4,87,519
Long-term Capital Gains		**1,84,446**

Working Notes :

(1) Cost of acquisition = FMV as on 01-04-2001 *Less* Advance forfeited by Mr. A = ₹ 11,00,000 - ₹ 80,000 = ₹ 10,20,000. Forfeiture made by Mr. Rakesh (previous owner) shall be ignored.

(2) Cost of improvement by Mr. Rakesh shall not include the improvements made before 1-04-2001.

EXEMPTIONS FROM CAPITAL GAINS

27. Discuss the exemption available on capital gains arising from transfer of Residential House Property.

Ans: **Profit on sale of property used for residence [Section 54] :**

(1) **Eligible Assessee :** Individual or a Hindu undivided family.

(2) **Capital asset transferred :** Long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property".

(3) **Basic condition subject to which exemption available** *:*

(i) **Where the amount of capital gains exceeds ₹ 2 crores :** The assessee has purchased within a period of 1 year before or 2 years after, or has constructed within a period of 3 years, one residential house in India after the date on which the transfer took place.

(ii) **Where the amount of capital gains does not exceed ₹ 2 crore :** Where the amount of capital gains does not exceed **₹ 2 crore**, the assessee may at his option,—

(a) purchase two residential houses in India within **1 year** before or **2 years** after the date of transfer (or)

(b) construct two residential houses in India within a period of **3 years** after the date of transfer.

If the assessee has exercised the option to make investment in **two residential houses**, he shall not be subsequently entitled to exercise the said option for the same assessment year or any subsequent assessment year. Thus, the aforesaid option can be exercised once in life time. However, he can continue to claim exemption under section 54 by investing in purchase or construction of one residential house property.

This implies that if an assessee has availed the option of claiming benefit of section 54 in respect of purchase of two residential houses in Alwar and Jodhpur, say, in respect of capital gains of **₹ 1.50 crores** arising from transfer of residential house at Mumbai in the P.Y. 2022-23 then, he will not be entitled to avail the benefit of section 54 again in respect of purchase of two residential houses in, say, Surat and Nagpur, in respect of capital gains of **₹ 1.20** crores arising from transfer of residential house in Alwar in the P.Y. 2024-25, even though the capital gains arising on transfer of the residential house at Alwar does not exceed **₹ 2 crore**.

(4) **Amount of Exemption :**

(i) If the amount of the capital gain is greater than the cost of the residential house **or houses as the case may be** so purchased or constructed, then capital gains to the extent of the cost of the new residential house(s) shall be exempt.

(ii) If the amount of the capital gain is equal to or less than the cost of the new residential house(s), then whole of the capital gains shall be exempt.

(5) **Lock-in-period :** 3 years.

Hence, in case if the new asset is transferred within 3 years of its purchase or construction, then its cost of acquisition shall be reduced by the amount of the capital gains exempted earlier for the purpose of computing capital gains on such transfer.

(6) **Capital Gains Accounts Scheme, 1988 :** The assessee availing exemption under this section has to comply with the provisions of this scheme, which are as follows –

(i) **Exemption available only if amount deposited in the Deposit A/c before due date of return :** The exemption is available if the investment in new asset is made within the time allowed. In case, the amount of capital gains could not be appropriated for the specified purposes before the due date of furnishing return of income, then, the same is to be deposited by him, before the due date of furnishing such return, in deposit account in any such bank or institution as may be specified. Such return shall be accompanied by proof of such deposit.

(ii) **Withdrawal out of deposit account :** If the amount withdrawn from the Deposit A/c for specified purposes is not so utilised either wholly or partly, then the amount not so utilised shall be chargeable to tax as 'Capital gains' of previous year in which specified period expires.

(iii) **In case of death of individual :** If an individual dies before the expiry of stipulated period, then the unutilised amount cannot be taxed in the hands of the deceased or legal heirs, as the unutilised portion is not income but only a part of the estate devolving upon them. ***[Circular 743, dated 06-05-1996]***

Illustration 32 – ***Advance money received and Exemption u/s 54 :*** Compute the net taxable capital gains of Smt. Megha on the basis of the following information : A house was purchased on 01-05-2007 for ₹ 4,50,000 and was used as a residence by the owner. The owner had contracted to sell this property in June, 2012 for ₹ 10,00,000 and had received an advance of ₹ 70,000 towards sale. The intending purchaser did not proceed with the transaction and the advance was forfeited by the owner. The property was sold in April, 2022 for ₹ 18,00,000. The owner, from out of sale proceeds, invested ₹ 4 lakhs in a new residential house in India in January, 2023.

What would your answer be if the new residential house property is purchased in Dubai instead of India.

Cost Inflation Index : FY 2007-08 = 129 and FY 2022-23 = 331. ***(6 Marks, IPCC Nov. 2009)***

Solution:

(1) **Computation of taxable capital gains in the hands of Megha** ***(amounts in ₹) -***

Full Value of consideration		18,00,000
Less: Indexed cost of acquisition [₹ 3,80,000 × 331 ÷ 129]	[WN-1]	9,75,039
Long-term capital gains		**8,24,961**
Less: Exemption u/s 54	[WN-2]	4,00,000
Taxable long-term capital gains		**4,24,961**

Working Notes :

(1) For computing cost of acquisition, advance money received and forfeited shall be deducted. Hence, cost of acquisition = ₹ 4,50,000 – ₹ 70,000 = ₹ 3,80,000. *[Section 51]*

(2) Exemption u/s 54 shall be available in respect of one/two new house(s) purchased within 2 years from the date of transfer of existing residential house.

(2) In case the residential house property is purchased in Dubai, the benefit of exemption u/s 54 shall not be available since the house property must be located in India for getting the exemption u/s 54. Hence, the taxable Capital Gains will be ₹ 8,24,961.

Illustration 33 – *Exemption under section 54 :* Mr. Surinder furnishes the following particulars for the previous year ending 31-3-2023, and requests you to compute the taxable capital gain :

(i) He had a residential house inherited from father in 2006, the fair market value of which as on 1-4-2001 is ₹ 5 lakhs.

(ii) In the year 2007-08, further construction and improvements costed ₹ 6 lakhs.

(iii) On 10-5-2022, the house was sold for ₹ 90 lakhs. Expenditure in connection with transfer = ₹ 50,000.

(iv) On 20-12-2022, he purchased a residential house for ₹ 10 lakhs.

Cost Inflation Index : FY 2006-07 = 122; FY 2007-08 = 129 and FY 2022-23 = 331. ***(May 2002)***

Solution: **Computation of Capital gains *(amounts in ₹)* -**

Full value of consideration			90,00,000
Less: Expenditure in connection with transfer			50,000
Net Sale Consideration			**89,50,000**
Less: Indexed Cost of Acquisition (₹ 5,00,000 × 331 ÷ 100)	[WN 1]	16,55,000	
Less: Indexed Cost of Improvement (₹ 6,00,000 × 331 ÷ 129)		15,39,535	31,94,535
Long Term Capital Gains			**57,55,465**
Less: Exemption u/s 54	[WN 2]		10,00,000
Taxable Long Term Capital Gains			**47,55,465**

Working Note :

(1) In this question it is assumed that his father has acquired the property before 01-04-2001. Hence, cost inflation index of the year 2001-02 is taken for determining indexed cost of acquisition.

(2) Exemption under section 54 shall be the cost of new house acquired *i.e.* ₹ 10,00,000 as the amount of capital gain is more than the cost of new house.

Illustration 34 – *Section 50C and Exemption u/s 54 :* Mr. Sunil entered into an agreement with Mr. Dhaval to sell his residential house located at Navi Mumbai on 16-08-2022 for ₹ 80,00,000. The sale proceeds was to be paid in the following manner :

(i) 20% through account payee bank draft on the date of agreement.

(ii) 60% on the date of the possession of the property.

(iii) Balance after the completion of the registration of the title of the property.

Mr. Dhaval was handed over the possession of the property on 15-12-2022 and the registration process was completed on 14-01-2023. He paid the sale proceeds as per the sale agreement.

The value determined by the Stamp Duty Authority on 16-08-2022 was ₹ 1,10,00,000 whereas, on 14-01-2023 it was ₹ 1,11,50,000.

Mr. Sunil had acquired the property on 01-04-2001 for ₹ 20,00,000. After recovering the sale proceeds from Dhaval, he purchased another residential house property for ₹ 32,00,000.

Compute the income under the head "Capital Gains" for the Assessment Year 2023-24.

Cost Inflation Index for Financial Year(s) : 2001-02 – 100 ; 2002-03 – 105 and 2022-23 – 331. ***(5 Marks, Nov. 2017)***

Solution: **Computation of taxable capital gains *(amount in ₹)* :**

Full value of consideration [Section 50C]	[WN-1]	1,10,00,000
Less: Indexed cost of acquisition (₹ 20,00,000 × 331 ÷ 100)	[WN-2]	66,20,000
Long-term capital gains		**43,80,000**
Less: Exemption u/s 54	[WN-3]	32,00,000
Taxable long-term capital gains		**11,80,000**

Working Notes:

(1) As per provisions of section 50C, since the value adopted or assessed or assessable by the stamp valuation authority *i.e.* ₹ 1,10,00,000 exceeds 110% of the consideration received *i.e.* ₹ 80,00,000, stamp duty value will be taken as full value of consideration. In this case the stamp duty value on the date of agreement will be considered to compute capital gains since on the date of agreement, 20% of sales consideration *i.e.* ₹ 16 lakh has been received by an account payee bank draft.

(2) Since the residential house property was held by Mr. Sunil for more than 24 months immediately preceding the date of its transfer, the resultant capital gains will be long term capital gains.

(3) Exemption under section 54 shall be available in respect of one/two new house(s) purchased within 2 years from the date of transfer of existing residential house.

Illustration 35 – *Exemption u/s 54 :* The following information is given by X and Y for the previous year 2022-23 :

	X (₹)	Y (₹)
Sales consideration of a residential house property situated in Mumbai	2,30,00,000	9,40,00,000
Stamp duty value on the date of transfer	2,55,00,000	9,50,00,000
Cost of acquisition in 1996-97	8,00,000	1,60,00,000
Fair market value on 1 April, 2001	9,00,000	2,10,00,000
Cost of improvement incurred in 2002-03	40,000	50,00,000
Expenditure on transfer borne by transferor	40,000	50,000
Purchase of residential house property in Cochin on 1 December, 2022	60,70,000	20,10,000
Purchase of another residential house property in Mumbai on 10 July, 2023	2,02,00,000	1,20,00,000

Determine taxable capital gains for assessment year 2023-24.

Cost Inflation Index for Financial Year(s) : 2001-02 : 100 ; 2002-03 : 105 and 2022-23 : 331.

Solution: **Computation of capital gains—**

	X (₹)	Y (₹)
Full value of consideration *(In case of Mr. X stamp duty value is taken as it exceeds 110% of sale consideration)*	2,55,00,000	9,40,00,000
Less: Expenses on transfer	40,000	50,000
Net Consideration	**2,54,60,000**	**9,39,50,000**
Less: Indexed cost of acquisition :		
– In the case of X (₹ 9,00,000 × 331 ÷ 100)	29,79,000	-
– In the case of Y (₹ 2,10,00,000 × 331 ÷ 100)	-	6,95,10,000
Indexed cost of improvement :		
– In the case of X (₹ 40,000 × 331 ÷ 105)	1,26,095	-
– In the case of Y (₹ 50,00,000 × 331 ÷ 105)	-	1,57,61,905
Long-term capital gain before exemption	**2,23,54,905**	**86,78,095**
Less: Exemption u/s 54		
– In the case of X (as long-term capital gain exceeds ₹ 2 crore, X can avail section 54 exemption only for investment in one residential house property)	2,02,00,000	-
– In the case of Y (as long-term capital gain does not exceed ₹ 2 crore, Y can claim section 54 exemption for investment in two residential house properties) ₹ 20,10,000 + ₹ 1,20,00,000, subject to maximum of long-term capital gain of ₹ 86,78,095)	-	86,78,095
Income under the head "Capital gains"	**21,54,905**	**Nil**

Illustration 36 – *Exemption u/s 54 :* Mr. Roy owned a residential house in Noida. It was acquired on 09-09-2009 for ₹ 30,00,000. He sold it for ₹ 1,57,00,000 on 07-01-2019.

Mr. Roy utilized the sale proceeds of the above property to acquire a residential house in Panchkula for ₹ 2,05,00,000 on 20-07-2019. The said house property was sold on 31-05-2022 and he purchased another residential house in Delhi for ₹ 2,57,00,000 on 02-03-2023. The property at Panchkula was sold for ₹ 3,25,00,000.

Calculate capital gains chargeable to tax for the A.Y. 2019-20 and 2023-24. All workings should form part of your answer. ***(6 Marks, May 2019-NS)***

Cost inflation index for various financial year are as under : 2009-10 : 148, 2018-19 : 280 2019-20 : 289 and 2022-23: 331

Solution:

(i) Computation of capital gains for A.Y. 2019-20 *(amount in ₹)* :

Sale of Residential House in Noida	
Full value of consideration	1,57,00,000
Less: Indexed Cost of Acquisition (₹ 30,00,000 × 280/148)	56,75,676
Long-term capital gains	1,00,24,324
Less: Exemption u/s 54 (Since investment in new residential house in Panchkula exceeds the capital gains, entire capital gains shall be exempt from tax)	1,00,24,324
Taxable Long-term capital gains	**Nil**

(ii) Computation of capital gains for A.Y. 2023-24 *(amount in ₹)* :

Sale of Residential House in Panchkula		
Full value of consideration		3,25,00,000
Less: Indexed cost of acquisition		
Cost of Acquisition	2,05,00,000	
Less: Exemption claimed u/s 54 *[See Note]*	1,00,24,324	
(₹ 1,03,13,514 × 331/289)	1,04,75,676	1,19,98,092
Long term capital gains		**2,05,01,908**
Less: Exemption u/s 54 (on purchase of new house at Delhi)		2,05,01,908
Taxable Long-term capital gains		**Nil**

Note : The house purchased in Panchkula has been transferred before **3 years** from the date of its acquisition, hence cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.

28. Explain briefly the exemption available under section 54B in respect of capital gains arising on transfer of agricultural land.

Ans: **Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases [Section 54B] :**

(1) Assessee eligible for exemption : Individual or Hindu Undivided Family.

(2) Capital asset transferred : Long term capital asset being land which, in the 2 years immediately preceding the date on which the transfer took place, was being used by the HUF or individual or his parents for agricultural purposes.

(3) Basic condition subject to which exemption available : The assessee has, within a period of 2 years after the date of transfer, purchased any other land for being used for agricultural purposes.

(4) Amount of Exemption :

(i) If the amount of the capital gain is greater than the cost of the land so purchased, then capital gains to the extent of the cost of new land shall be exempt.

(ii) If the amount of the capital gain is equal to or less than the cost of the new asset, then whole of the capital gains shall be exempt.

(5) Lock-in-period : 3 years.

Hence, in case if the new asset is transferred within 3 years of its purchase, then its cost of acquisition shall be reduced by the amount of the capital gains exempted earlier for the purpose of computing capital gains on such transfer.

(6) Capital Gains Accounts Scheme, 1988 : Same provisions as in Section 54.

29. Discuss the exemption available on capital gains in relation to compulsory acquisition of land and building .

Ans: **Capital gain on compulsory acquisition of land and buildings not to be charged in certain cases [Section 54D] :**

(1) Assessee eligible for exemption : Any person.

(2) Capital asset transferred : Short term or long term capital asset being land or building or any right in land or building, forming part of an industrial undertaking belonging to the assessee which, in 2 years immediately preceding the date on which the transfer took place, was being used by the assessee for the purposes of the business of the said undertaking.

(3) Basic condition subject to which exemption available : The assessee has, within a period of 3 years after that date, purchased any other land or building or any right in any other land or building or constructed any other building for the purposes of shifting or re-establishing the said undertaking or setting up another industrial undertaking.

(4) Amount of Exemption :

(i) If the amount of the capital gain is greater than the cost of the new asset, then capital gains to the extent of the cost of the new asset shall be exempt.

(ii) If the amount of the capital gain is equal to or *less* than the cost of the new asset, then whole of the capital gains shall be exempt.

(5) Lock-in-period : 3 years.

Hence, in case if the new asset is transferred within 3 years of its purchase or construction, then its cost of acquisition shall be reduced by the amount of the capital gains exempted earlier while computing capital gains on such transfer.

(6) Capital Gains Accounts Scheme, 1988 : Same provisions as in Section 54.

30. State the exemption available u/s 54EC in respect of capital gains which are invested in certain bonds.

Ans: **Capital gain not to be charged on investment in certain bonds [Section 54EC] :**

(1) Assessee eligible for exemption : Any person.

(2) Capital asset transferred : Long-term capital asset being land or building or both. Such asset can also be a depreciable asset (in this case, building) held for more than **24 months.**

(3) Basic condition subject to which exemption available : The assessee has, at any time within a period of 6 months after the date of such transfer, invested the whole or any part of capital gains in the long-term specified asset.

However, the investment made by the assessee in the long-term specified asset **during any financial year must not exceed ₹ 50 lakhs.**

Maximum investment in bonds for capital gains exemption arising from transfer of one or more capital assets during a financial year, must not exceed ₹ 50 lakhs : The investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year **does not exceed ₹ 50 lakh**.

(4) Long-term specified asset means any bond, redeemable after **5 years**

(i) issued by National Highways Authority of India; or

(ii) issued by Rural Electrification Corporation Limited; or

(iii) notified by the Central Government in this behalf. *[The Central Government has notified any bond redeemable after three years and issued by the Power Finance Corporation Limited on or after 15-06-2017 or by the Indian Railway Finance Corporation Limited on or after 08-08-17 as 'long-term specified asset']*

(5) Amount of Exemption :

(i) If the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, then whole of such capital gain shall be exempt.

(ii) If the cost of the long-term specified asset is less than the capital gain, then capital gains to the extent of the cost of such asset shall be exempt.

(6) Lock-in-period : 5 years.

Hence, where the long-term specified asset is transferred or converted into money at any time within **3 years/ 5 years** from the date of its acquisition, the amount of capital gains exempt earlier shall be deemed to be the income chargeable under the head "Capital gains"of the previous year in which the said asset is so transferred or converted.

Loan or advance taken on security of specified asset-deemed conversion into money [Explanation to Section 54EC] : Where the original asset is transferred and the assessee invests the whole or any part of the capital gain received or accrued as a result of transfer of the original asset in any long-term specified asset and such assessee takes any loan or advance on the security of such specified asset, he shall be deemed to have converted such specified asset into money on the date on which such loan or advance is taken.

(7) No deduction u/s 80C : If exemption is claimed u/s 54EC in respect of investment in a new asset, then no deduction shall be allowed u/s 80C for the amount of investment for which exemption has been claimed.

Illustration 37 – *Exemption under Section 54EC :* Mr. Chandru transferred a vacant site on 28-10-2022 for ₹ 100 lakhs. The site was acquired for ₹ 9,99,300 on 30-6-2001. He deposited ₹ 40 lakhs in eligible bonds issued by Rural Electrification Corporation Ltd. (REC) on 20-3-2023. Again, he deposited ₹ 30 lakhs in eligible bonds issued by National Highways Authority of India (NHAI) on 16-4-2023.

Compute the chargeable capital gain in the hands of Chandru for the assessment year 2023-24.

Financial Year	Cost Inflation Index
2001-02	100
2022-23	331

(5 Marks, PCC May 2011)

Solution: **Computation of capital gains *(amounts in ₹) -***

Full value of consideration	1,00,00,000
Less: Indexed Cost of Acquisition [₹ 9,99,300 × 331 ÷ 100]	33,07,683
Long-term Capital Gains	**66,92,331**
Less: Exemption u/s 54EC [WN]	50,00,000
Taxable Capital Gains	**16,92,331**

Working Note : ***Exemption u/s 54EC*** = Investment in REC Bonds (acquired within 6 months from the date of transfer) + NHAI Bonds (acquired within 6 months from the date of transfer) = ₹ 40,00,000 + ₹ 30,00,000 = ₹ 70,00,000.

Section 54EC provides that the maximum limit of investment during the financial year in which asset is transferred and in subsequent financial year shall be ₹ 50 lakhs. Thus, the limit of ₹ 50 lakhs applies in aggregate for more than one financial year taken together. In this case, REC Bonds were acquired during the financial year 2022-23; while NHAI bonds were acquired during the financial year 2023-24. Hence, both the investments shall be eligible for exemption under section 54EC as the same have been made in different financial years but subject to maximum of ₹ 50 lakhs.

Illustration 38 – ***Exemption under Section 54EC :*** X transfers the following long-term capital assets –

Capital asset	Date of transfer	Full Value of Consideration	Indexed cost of acquisition	Investment in NHAI/REC bonds (date of investment)
Land	03-04-2022	₹ 95 lakhs	₹ 40 lakhs	₹ 40 lakh (01-09-2022)
Commercial House	05-11-2022	₹ 65 lakhs	₹ 20 lakhs	₹ 40 lakh (01-04-2023)

Find out exemption under section 54EC and taxable capital gain for AY 2023-24.

Solution: **Computation of Taxable Capital Gains Assessment year 2023-24 *(₹ in lakh):***

Long-term capital gain on transfer of Land and Commercial House (₹ 55 lakh + ₹ 45 lakh)	100
Less: Exemption u/s 54EC (Investment in NHAI/REC bonds : ₹ 40 lakh + ₹ 40 lakh, limited to ₹ 50 lakh)	50
Long-term capital gain chargeable to tax	**50**

Illustration 39 – ***Exemption under section 54 and its withdrawal :*** Mr. Selvan acquired a residential house in January, 2002 for ₹ 10,00,000 and made some improvements by way of additional construction to the house, incurring expenditure of ₹ 2,00,000 in October, 2004. He sold the house property in October, 2022 for ₹ 75,00,000. The value of property was adopted as ₹ 88,00,000 by the State stamp valuation authority for registration purpose. He acquired a residential house in January, 2022 for ₹ 25,00,000. He deposited ₹ 20,00,000 in capital gains bonds issued by National Highways Authority of India (NHAI) in June, 2023. Compute the capital gain chargeable to tax for the A.Y. 2023-24.

What would be the tax consequence and in which assessment year it would be taxable, if the house property acquired in January, 2022 is sold for ₹ 40,00,000 in December, 2023? ***(8 Marks, IPCC Nov. 2011)***

Cost inflation index for various financial year are as under : 2001-02 : 100, 2004-05 : 113 and 2022-23: 331

Solution:

(1) Computation of Capital Gains *(amounts in ₹) -*

Full Value of Consideration (*i.e.* Stamp Duty Value)	[WN-1]		88,00,000
Less: *Cost being :* Indexed Cost of Acquisition (₹ 10,00,000 × 331 ÷ 100)		33,10,000	
Indexed Cost of Improvement (₹ 2,00,000 × 331 ÷ 113)		5,85,841	38,95,841
Long Term Capital Gains			**49,04,159**
Less: Exemption u/s 54	[WN-2]		25,00,000
Exemption u/s 54EC in respect of bonds of NHAI	[WN-3]		NIL
Taxable Long Term Capital Gains			**24,04,159**

Working Notes :

(1) As per the provisions of Section 50C, in this case the value assessed by the stamp valuation authority exceed 110% of the consideration received therefore, the stamp duty value shall be deemed as the full value of consideration.

(2) Exemption under section 54 is available if a one/two residential house(s) is/are purchased within 1 year before or 2 years after the date of transfer. Here the new house is purchased within the said time limit, further the cost of new residential house is less than the capital gain, capital gain to the extent of cost of new asset is exempt under section 54.

(3) Exemption under section 54EC is available in respect of investment in bonds of National Highways Authority of India only if the investment is made within a period of 6 months after the date of such transfer. In this case, since the investment is made after 6 months, exemption under section 54EC would not be available.

(2) **Short Term capital gains for the A.Y. 2024-25 sale of house** = Full value of consideration – Cost of acquisition = ₹ 40,00,000 – NIL = ₹ 40,00,000.

Since exemption was claimed under section 54 in respect of the house and the same has been sold within 3 years from the date of its acquisition, therefore, the exemption will be withdrawn. Accordingly, cost of acquisition of house = Original Cost of purchase – Exemption claimed under section 54 = ₹ 25 lakhs– ₹ 25 lakhs = NIL.

Illustration 40 – ***Section 50C and Investment to be made in bonds of NHAI/REC :*** Mr. A who transfers land and building on 02-01-2023, furnishes the following information :

(i) Net consideration received ₹ 16 lakhs.
(ii) Value adopted by stamp valuation authority, which was not contested by Mr. A ₹ 21 lakhs.
(iii) Value ascertained by Valuation Officer on reference by the Assessing Officer ₹ 25 lakhs.
(iv) This land was distributed to Mr. A on the partial partition of his HUF on 1-4-2001. Fair market value of the land as on 1-4-2001 was ₹ 1,00,000.
(v) A residential building was constructed on the above land by Mr. A at a cost of ₹ 3,00,000 (construction completed on 1-12-2004) during the financial year 2004-05.
(vi) Short-term capital loss incurred on sale of shares during the financial year 2018-19 ₹ 2,05,000.

Mr. A seeks your advice as to the amount to be invested in NHAI bonds so as to be exempt from clutches of capital gain tax. ***(8 Marks, Modified May 2006) (8 Marks, IPCC May 2012)***

Cost inflation index for various financial year are as under : 2004-05 : 113 and 2022-23: 331

Solution: **Computation of Capital Gains of Mr. A** ***(amounts in ₹) -***

Full value of consideration	[WN-1]		21,00,000
Less: Indexed cost of land (₹ 1,00,000 × 331 ÷ 100)	[WN-2]	3,31,000	
Indexed cost of building (₹ 3,00,000 × 331 ÷ 113)		8,78,761	12,09,761
Long-term capital gains			**8,90,239**
Less: Brought forward short-term capital loss set off			2,05,000
Amount to be invested in NHAI/REC bonds to claim exemption u/s 54EC			**6,85,239**

Working Notes :

(1) As per Section 50C, where the value assessed by the stamp valuation authority exceeds 110% of the consideration received then the stamp duty value shall be deemed to be the full value of the consideration. Hence, in the given case – Sales consideration = ₹ 16,00,000, 110% of Sale Consideration = ₹ 17,60,000, Stamp duty value = ₹ 21,00,000, Valuation made by Valuation officer = ₹ 25,00,000. Therefore, full value of consideration = Higher of ₹ 16,00,000 and ₹ 25,00,000; subject to maximum of ₹ 21,00,000.

(2) Since acquisition of capital asset on partition of HUF is one of the modes specified in Section 49(1), hence, cost thereof shall be the cost to the previous owner. Hence, FMV as on 1-4-2001 shall be the cost of acquisition and shall be eligible for indexation.

31. Explain the exemption provided as per Section 54F in case capital gains arising on certain capital assets are invested in residential house.

Ans: **Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house [Section 54F]** :

(1) **Assessee eligible for exemption :** Individual or HUF.

(2) **Capital asset transferred :** Any long-term capital asset, not being a residential house.

(3) **Basic condition subject to which exemption available :** The assessee has, within a period of 1 year before or 2 years after the date on which the transfer took place, purchased, or within a period of 3 years after that date, constructed, one residential house in India.

(4) **Amount of Exemption :**

(i) If the cost of the new house is not less than the net consideration in respect of the original asset, the whole of such capital gain shall be exempt.

(ii) If the cost of the new house is less than the net consideration in respect of the original asset, then –

$$\text{Amount of exemption} = \frac{\text{Capital Gains} \times \text{Cost of the new asset}}{\text{Net consideration}}$$

Where –

Net Consideration = Full value of the consideration — Expenditure incurred wholly and exclusively in connection with such transfer.

(5) **Specified circumstances in which exemption not available:** Nothing contained in this section shall apply where –

(i) the assessee –

(a) owns more than 1 residential house, other than the new house, on the date of transfer of the original asset; or

(b) purchases any residential house, other than the new house, within a period of **1 year** after the date of transfer of the original asset; or

(c) constructs any residential house, other than the new house, within a period of **3 years** after the date of transfer of the original asset; and

(ii) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".

(6) Where the assessee purchases within a period of **2 years**, or constructs within a period of **3 years**, after the date of the transfer of the original asset, any residential house, other than the new asset, then the capital gain exempted earlier shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such residential house is purchased or constructed.

(7) **Lock-in-period : 3 years.**

Where the new asset is transferred within a period of **3 years** from the date of its purchase/ construction, the amount of capital gains exempt earlier shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such new asset is transferred.

(8) **Capital Gains Accounts Scheme, 1988 :** In case, the amount of net consideration could not be appropriated for the specified purposes before the due date of furnishing return of income, then, the same is to be deposited by him, before the due date of furnishing such return, in deposit account in any such bank or institution as may be specified. Such return shall be accompanied by proof of such deposit.

(9) **Withdrawal out of deposit account :** If the amount withdrawn from the Deposit A/c for specified purposes is not so utilised either wholly or partly, then the amount not so utilised shall be chargeable to tax as 'Capital gains' of previous year in which specified period expires as under:

$$\text{Taxable Capital Gains} = \frac{\text{Amount not so utilised} \times \text{Original Capital Gains (before claiming exemption)}}{\text{Net sale consideration in respect of transfer of original asset}}$$

Illustration 41 – *Exemption u/s 54F :* Mr. 'X' furnishes the following data for the previous year ending 31-3-2023 :

(a) Equity Shares of AB Ltd., 10,000 in number were sold on 31-5-2022, at ₹ 550 for each share.

(b) The above shares of 10,000, were acquired by 'X' in the following manner:

(i) Received as gift from his father on 1-6-2000 (5,000 shares) the market price on 1-4-2001 ₹ 50 per share.

(ii) Bonus shares received from AB Ltd. on 21-7-2004 (2,000 shares).

(iii) Purchased on 1-2-2013 at the price of ₹ 125 per share (3,000 shares).

(c) Purchased one residential house at ₹ 25 lakhs, on 1-9-2023 from the sale proceeds of shares.

(d) 'X' is already owning a residential house, even before the purchase of above house.

You are required to compute the taxable capital gain. He has no other source of income chargeable to tax. ***(6 Marks, Modified Nov. 2004)***

Solution: **Computation of taxable capital gains of Mr. 'X' (*amounts in ₹*) -**

Sale consideration @ ₹ 550 per share on 10,000 shares	[A]	55,00,000
Less: **(1)** Shares received as gift on 1-6-2000 (Indexed cost = 5,000 × ₹ 50 × 331 ÷ 100)	*[WN-1]*	8,27,500
(2) Shares received as bonus on 21-7-2004	*[WN-2]*	Nil
(3) Shares purchased on 1-2-2013 (Indexed cost = 3,000 × ₹ 125 × 331 ÷ 200)		6,20,625
Long Term Capital Gain	[B]	**40,51,875**
Exemption u/s 54F = [₹ 40,51,875 × ₹ 25,00,000 ÷ ₹ 55,00,000] *[WN-3]*	[C]	18,41,761
Taxable Long-term Capital Gains = B – C		**22,10,114**

Working Notes :

(1) Cost of shares gifted by the father would be FMV as on 1-4-2001 *i.e.* ₹ 50 per share.

(2) The cost of bonus shares allotted on or after 1-04-2001 is always taken as NIL.

(3) Mr. X is eligible for exemption under section 54F since he owns only one house at the time of the transfer of the shares and the purchase of the new house takes places within 2 years from the date of transfer of the shares.

(4) It is assumed that Mr. X has complied with all the procedures like deposit of money under the capital gains account scheme by the due date, as may be applicable to him.

Illustration 42 – *Exemption u/s 54 and 54F :* Mr. X owns a residential house, which is self-occupied, and also a plot of land (he owns no other house). He sells the house on January 2, 2023 and the plot on February 11, 2023 for ₹ 15,00,000 and ₹ 12,00,000 respectively. The house was purchased on June, 2001 for ₹ 4,50,000 and the plot on March 31, 2002 for ₹ 3,00,000. X has purchased a new residential house on April 25, 2023 for ₹ 7,00,000 and claims exemption in respect of such house. On 1-1-2023, he transfers the said residential house for ₹ 8,25,000 and purchases a new house on 31-3-2024. for ₹ 12,00,000. Compute the capital gains for relevant years.

Cost inflation index for various financial year are as under : 2001-02: 100 and 2022-23: 331

Solution : X can claim exemption under section 54 in respect of capital gains on sale of residential house and exemption under section 54F in respect of capital gains on sale of plot. Since the exemption under section 54 is available on investment of capital gains, therefore, first of all, exemption under section 54 will be claimed. Thereafter, exemption under section 54F, which is available on investment of net consideration, shall be claimed. The exemption under section 54F will be available only in respect of balance cost of new house *i.e.* Original cost of new house – Exemption u/s 54.

➢ **Computation of Capital Gains for assessment year 2023-24 (*amounts in ₹*) -**

Particulars	Residential house	Plot
Full Value of consideration	15,00,000	12,00,000
Less: Indexed cost [(4,50,000 × 331 ÷ 100); (3,00,000 × 331 ÷ 100)]	14,89,500	9,93,000
Long term capital gains	**10,500**	**2,07,000**
Less: Exemption u/s 54	10,500	
Exemption u/s 54F [WN]		1,18,939
Taxable long term capital gains	**Nil**	**88,060**

Working Note : Exemption under section 54F –

$$\frac{\text{Capital gains} \times (\text{cost of new house} - \text{exemption u/s 54})}{\text{Net consideration of plot}} = \frac{₹\ 2{,}07{,}000 \times (₹\ 7{,}00{,}000 - ₹\ 10{,}500)}{₹\ 12{,}00{,}000} = ₹\ 1{,}18{,}939$$

➢ **Computation of capital gains on sale of residential house for assessment year 2024-25 (*amounts in ₹*) -**

Sale price of the residential house (acquired on 25-4-2023)	8,25,000
Less: Cost of Acquisition (₹ 7,00,000 – ₹ 10,500 *i.e.* exemption claimed u/s 54)	6,89,500
Short-term capital gains for assessment year 2024-25	**1,35,500**
Long-term capital gains (Exemption claimed u/s 54F shall be chargeable as long-term capital gains of the year in which the house is transferred *i.e.* assessment year 2024-25)	1,18,939

Note: No exemption u/s 54 or 54F will be available in respect of second new house acquired on 31-3-2024 since the house transferred on 1-1-2023 is a short-term capital asset.

32. Explain the provisions of Section 54H relating to extension of period in case of compulsory acquisition by law.

Ans: **Extension of time for acquiring new asset or depositing or investing amount of capital gain [Section 54H]:** Where the transfer of the original assets referred to in sections 54, 54B, 54D, 54EC and 54F is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, then the period for acquiring the new asset by the assessee referred to in those sections or, as the case may be, the period available to the assessee under those sections for depositing or investing the amount of capital gain in relation to such compensation as is not received on the date of the transfer, shall be reckoned from the date of receipt of such compensation.

33. Describe the procedure for computation of capital gains on transfer of shares of an Indian company by non-residents. *(CS Inter Dec. 2003)*

Ans: **Special provision for non-residents - First proviso to Section 48 and Rule 115A :** The capital gains on transfer of shares or debentures of an Indian company acquired by non-resident in convertible foreign exchange shall be computed in accordance with **1st Proviso to Section 48 and Rule 115A** as under –

Particulars	Amount (₹)
Full Value of consideration is converted into foreign currency by applying average exchange rate as on date of transfer.	×××
Less: Expenses incurred wholly and exclusively on transfer is converted into foreign currency by applying average exchange rate as on date of transfer.	×××
Less: Cost of acquisition is converted into foreign currency by applying average exchange rate as on date of acquisition. (No indexation benefit is available)	×××
Resultant Capital Gains in foreign currency to be reconverted into Indian Currency by applying telegraphic transfer buying rate on date of transfer.	×××
Note: **(1)** Average exchange rate = [Telegraphic transfer buying rate + Telegraphic transfer selling rate (as per SBI)] ÷ 2 **(2)** This manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares/debentures of an Indian company.	

34. What are the circumstances under which the Assessing Officer can make a reference to the Valuation Officer under section 55A of the Income-tax Act, 1961? ***(6 Marks, May 2008) (4 Marks, IPCC Nov. 2009)***

Ans: **Reference to Valuation Officer [Section 55A] :** With a view to ascertaining the fair market value of a capital asset, the Assessing Officer may refer the valuation of a capital asset to a Valuation Officer in following cases –

(1) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of opinion that the value so claimed is at variance with its fair market value.

(2) in any other case, if the Assessing Officer is of opinion –
- **(i)** that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by –
  - **(a)** ₹ 25,000; or
  - **(b)** 15% of the value claimed by the assessee;
- **(ii)** that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

35. Explain the concept of reverse mortgage & discuss its tax implications. ***(4 Marks, IPCC Nov. 2009)***

Ans: The concept of reverse mortgages and its tax implications are as under –

(1) **Applicability :** It applies only to a capital asset being a residential house property located in India, which is owned by an eligible person and is free from any encumbrances.

(2) **Eligible persons :** The persons eligible to avail of this scheme are -
- **(i)** an individual who is of age 60 years or more ; or
- **(ii)** a married couple, where either of the husband or wife is of age 60 years or more.

(3) **Reverse Mortgage :** It means a mortgage of a capital asset by an eligible person against a loan obtained by him from an approved lending institution (being National Housing Bank or any housing finance company registered with it or any scheduled bank). However, it does not include a transaction of sale, or disposal, of the property for settlement of the loan.

(4) **Procedure :** The loan may be disbursed either by way of periodic payments or upto 50% in lumpsum and balance by way of periodic payments. The loan period may be upto 20 years. At the time of foreclosure of the loan agreement, the reverse mortgagor or his legal heir or estate, shall be liable for repayment of the principal amount of loan along with the interest.

(5) **Tax consideration :** A transaction of reverse mortgage is not regarded as 'transfer' u/s 47(xvi) of the Act. Further, any sum received as loan under reverse mortgage transaction is exempt u/s 10(43). Therefore, a borrower, under a reverse mortgage scheme, will be liable to income tax (in the nature of tax on capital gains) only at the point of alienation of the mortgaged property by the mortgagee for the purposes of recovering the loan.

Illustration 43 – ***Reverse Mortgage :*** Mr. Abhik's father, who is a senior citizen, had pledged his residential house to a bank under a notified reverse mortgage scheme. He was getting loan from bank in monthly instalments. Mr. Abhik's father did not repay the loan on maturity and given possession of the house to the bank to discharge his loan. How will the treatment of the long-term capital gain be made on such reverse mortgage transaction ? ***(3 Marks, PCC June, 2009)***

Solution: As per Section 47(xvi), mortgage of residential house under a notified reverse mortgage scheme doesn't constitute 'transfer'. Also, the loan received under such scheme is exempt under section 10(43). However, when the bank alienates the property for the purpose of recovery of the loan on non-payment of the loan, then the same will constitute 'transfer' and the capital gains so computed will be taxed accordingly.

Illustration 44 – *Reverse Mortgage :* Sachin received ₹ 15,00,000 on 23-01-2023 on transfer of his residential building in a transaction of reverse mortgage under a scheme notified by the Central Government. The building was acquired in March 1991 for ₹ 8,00,000. Is the amount received on reverse mortgage chargeable to tax in the hands of Sachin under the head 'Capital Gains' ? ***(4 Marks, PCC Nov. 2010)***

Solution: As per section 47(xvi), any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government will not be regarded as a transfer. Therefore, capital gains tax liability is not attracted. Section 10(43) provides that the amount received by a senior citizen as a loan, either in lump sum or in installments, in a transaction of reverse mortgage would be exempt from income-tax. Therefore, the amount received by Sachin in a transaction of reverse mortgage of his residential building is exempt under section 10(43).

TAXABILITY OF CAPITAL GAINS

36. Discuss the computation of tax on short term capital gains as per Section 111A.

Ans: The computation of tax on short term capital gains is as under –

(1) **Short-term capital gains (STCG) on transfer of an equity share of a company or a unit of an equity-oriented fund or a unit of a business trust on which securities transaction tax has been charged [Section 111A] :** Tax is computed on STCG on transfer of an equity share of a company or a unit of an equity-oriented fund or a unit of a business trust on which securities transaction tax has been charged capital gains at a flat rate of **15%.**

The above concessional rate of tax shall apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency even if securities transaction tax in not applicable.

However, in case of resident individual or resident HUF, if –

- other income is less than 'basic exemption limit',
- then, such STCG shall be reduced by such shortfall, and
- tax on balance of STCG shall be computed @ 15%.
- Accordingly, tax on such STCG = 15% × [Such STCG – (basic exemption limit – Other Income)].

Further, where Gross total income of an assessee includes any such short-term capital gains, the deduction under Chapter VI-A shall be allowed from the Gross total income as reduced by such gains.

(2) **Other Short-term capital gains :** They are taxed at the normal rates applicable to the assessee.

37. Discuss the computation of tax on long-term capital gains.

Ans: **Computation of tax on long term capital gains [Section 112] :**

(1) **Individual/ HUF :** In the case of an individual or a Hindu undivided family, being a resident, tax on long-term capital gains is payable @ 20%.

However, in case of *resident individual or resident HUF,* if –

- other income is less than 'basic exemption limit',
- then, such LTCG shall be reduced by such shortfall, and
- tax on balance of LTCG shall be computed @ 20%.
- Accordingly, tax on such LTCG = 20% × [Such LTCG – (basic exemption limit – Other Income)].

(2) **Domestic Company :** Long-term capital gains shall be taxed @ 20%.

(3) **Non-resident (not being a company) or a foreign company :**

(a) **Unlisted Securities :** The amount of tax on long-term capital gains arising from the transfer of a capital asset, being unlisted securities or shares of a company not being a company in which the public are substantially interested, shall be calculated at the rate of 10% without giving effect to the 1st proviso (Converting capital gains into foreign currency and reconverting it into Indian currency) and 2nd proviso to Section 48 (Indexation Benefit).

(b) In case of other capital assets, the tax shall be computed @ 20%.

(4) **In any other case :** Long-term capital gains shall be taxed @ 20%.

Notes :

(a) Tax on listed securities not to exceed 10% [Proviso to section 112] : Where the tax payable in respect of any income arising from the transfer of long term capital asset being listed securities (other than a unit) or zero coupon bonds, exceeds 10% of the amount of capital gains before indexation, then such excess shall be ignored while computing the tax payable by the assessee.

Thus, tax payable in case of **listed securities** (other than a unit) or zero coupon bonds, shall be lower of :

(i) 10% of gross capital gains *i.e.* (Net consideration – Cost of acquisition without indexation)

(ii) 20% of Long term capital gains *i.e.* (Net Consideration – Indexed cost of acquisition)

(b) No deduction under Chapter VI-A on LTCG : The deductions under chapter VI-A cannot be availed in respect of the long-term capital gains included in the total income of the assessee.

38. Explain the provisions relating to taxation of long term capital gains arising from transfer of listed equity shares or units of equity oriented fund or units of business trust.

Ans: **Tax on long-term capital gains in certain cases [Section 112A] :**

(1) Conditions for invoking Section 112A : This section is applicable only if the following conditions are satisfied :

(i) the total income includes any income chargeable under the head "Capital gains";

(ii) the capital gains arise from the transfer of a long-term capital asset being

(a) an equity share in a company or

(b) a unit of an equity oriented fund or

(c) a unit of a business trust;

(iii) securities transaction tax has,—

(a) in a case where the long-term capital asset is in the nature of an equity share in a company, been paid on acquisition and transfer of such capital asset; or

(b) in a case where the long-term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, been paid on transfer of such capital asset.

Non applicability : This condition shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.

Non applicability of condition (iii)(a) in notified cases : The Central Government may, by notification in the Official Gazette, specify the nature of acquisition in respect of which condition no. (iii)(a) shall not apply.

(2) Tax computation under Section 112A : If the above conditions are fulfilled the tax on long term capital gains shall be calculated on the basis of following parameters :

(i) LTCG in excess of ₹ 1,00,000 shall be chargeable @ 10% : Such long-term capital gains exceeding ₹ 1,00,000 shall be chargeable to tax @ 10% plus surcharge as applicable plus Health Education Cess.

Thus, if LTCG does not exceed ₹ 1,00,000 it shall not be chargeable to tax.

(ii) Benefit of exemption limit in certain cases : In the case of Resident individual or a Hindu undivided family, where the other income is below the maximum amount which is not chargeable to income-tax *i.e.* basic exemption limit, then, the long-term capital gains shall be reduced by the amount of such short fall and on balance LTCG tax shall be payable @ 10%.

(iii) First proviso and second proviso to Section 48 not applicable :

(a) Mode of computation of capital Gains in foreign currency in case of non residents as specified under First proviso to Section 48 shall not be applicable when tax is payable as per provisions of this section.

(b) Indexation benefit (Second proviso to Section 48) is not applicable while computing capital gains when tax is payable as per provisions of this section.

(iv) Tax rebate not admissible : The rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains. Thus, no tax rebate under Section 87A shall be allowed from tax payable under Section 112A.

(v) No deduction under Chapter VI-A from such LTCG : The deductions under chapter VI-A cannot be availed in respect of the long-term capital gains included in the total income of the assessee.

(3) Computation of Cost of Acquisition [Section 55(2)(ac)] : If tax is payable under this Section, the cost of acquisition of equity share in a company or a unit of an equity oriented fund or a unit of a business trust, acquired before 01-02-2018 shall be computed as under—

Step 1 : Find out cost of acquisition of such equity shares/ units

Step 2 : Find out

(a) the fair market value of such asset as on 31-01-2018; or

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

whichever is less.

Step 3 : Cost of acquisition shall be deemed to be the amount computed at **Step 1** or **Step 2** whichever is higher.

Meaning of Fair Market value :

	Circumstance	Fair Market Value
(i)	In a case where the capital asset is listed on any recognized stock exchange as on 31-01-2018	If there is trading in such asset on such exchange on 31-01-2018 The highest price of the capital asset quoted on such exchange on the said date If there is no trading in such asset on such exchange on 31-01-2018 The highest price of such asset on such exchange on a date immediately preceding 31-01-2018 when such asset was traded on such exchange.
(ii)	In a case where the capital asset is a unit which is not listed on any recognized stock exchange as on 31-01-2018	The net asset value of such unit as on the said date
(iii)	In a case where the capital asset is an equity share in a company which is ➢ not listed on a recognized stock exchange as on 31-01-2018 but listed on such exchange on the date of transfer ➢ listed on a recognized stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on 31-01-2018 by way of transaction not regarded as transfer under section 47	$\text{FMV} = \dfrac{\text{Cost of Acquisition} \times \text{CII of 2017-18 } \textit{i.e.} \text{ 272}}{\text{CII for the first year in which the asset was held by the assessee or 2001-02 whichever is later}}$

Subsequent to insertion of **Section 112A,** the **CBDT has issued clarification F. No. 370149/20/ 2018-TPL dated 04-02-2018** in the form of a Question and Answer format to clarify certain issues raised in different fora on various issues relating to the new tax regime for taxation of long-term capital gains. The relevant questions raised and answers to such questions as per the said Circular are given hereunder:

	Question	Answer
1.	**What is the meaning of long term capital gains under the new tax regime for long term capital gains?**	Long term capital gains mean gains arising from the transfer of long-term capital asset. It provides for a new long-term capital gains tax regime for the following assets– **(i)** Equity Shares in a company listed on a recognised stock exchange; **(ii)** Unit of an equity oriented fund; and **(iii)** Unit of a business trust. The new tax regime applies to the above assets, if– **(a)** the assets are held for a minimum period of twelve months from the date of acquisition; and **(b)** the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1-10-2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

2.	**What is the point of chargeability of the tax?**	The tax will be levied only upon transfer of the long-term capital asset on or after 1st April, 2018, as defined in section 2(47) of the Act.
3.	**What is the method for calculation of long-term capital gains?**	The long-term capital gains will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.
4.	**How do we determine the cost of acquisition for assets acquired on or before 31st January, 2018?**	The cost of acquisition for the long-term capital asset acquired on or before 31st of January, 2018 will be the actual cost. However, if the actual cost is less than the fair market value of such asset as on 31st of January, 2018, the fair market value will be deemed to be the cost of acquisition. Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.
5.	**Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answers to questions 4.**	The computation of long-term capital gains in different scenarios is illustrated as under— **Scenario 1 –** An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2018 at ₹ 250. As the actual cost of acquisition is less than the fair market value as on 31st of January, 2018, the fair market value of ₹ 200 will be taken as the cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 250 – ₹ 200). **Scenario 2 –** An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2018 at ₹ 150. In this case, the actual cost of acquisition is less than the fair market value as on 31st of January, 2018. However, the sale value is also less than the fair market value as on 31st of January, 2018. Accordingly, the sale value of ₹ 150 will be taken as the cost of acquisition and the long-term capital gain will be NIL (₹ 150 – ₹ 150). **Scenario 3 –** An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 50 on 31st of January, 2018 and it is sold on 1st of April, 2018 at ₹ 150. In this case, the fair market value as on 31st of January, 2018 is less than the actual cost of acquisition, and therefore, the actual cost of ₹ 100 will be taken as actual cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 150 – ₹ 100). **Scenario 4 –** An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2018 at ₹ 50. In this case, the actual cost of acquisition is less than the fair market value as on 31st January, 2018. The sale value is less than the fair market value as on 31st of January, 2018 and also the actual cost of acquisition. Therefore, the actual cost of ₹ 100 will be taken as the cost of acquisition in this case. Hence, the long-term capital loss will be ₹ 50 (₹ 50 – ₹ 100) in this case.
6.	**Whether the cost of acquisition will be inflation indexed?**	Third proviso to Section 48, provides that the long-term capital gain will be computed without giving effect to the provisions of the second provisos of section 48. Accordingly, it is clarified that the benefit of inflation indexation of the cost of acquisition would not be available for computing long-term capital gains under the new tax regime.
7.	**What will be the tax treatment of transfer made on or after 1st April 2018?**	The long-term capital gains exceeding ₹ 1 lakh arising from transfer of these assets made on or after 1st April, 2018 will be taxed at 10%. However, there will be no tax on gains accrued upto 31st January, 2018.
8.	**What is the date from which the holding period will be counted?**	The holding period will be counted from the date of acquisition.

9.	**Whether tax will be deducted at source in case of gains by resident tax payer?**	No. There will be no deduction of tax at source from the payment of long-term capital gains to a resident tax payer.
10.	**What will be the cost of acquisition in the case of bonus shares acquired before 1st February 2018?**	The cost of acquisition of bonus shares acquired before 31st January, 2018 will be determined as per Section 55(2)(ac). Therefore, the fair market value of the bonus shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt.
11.	**What will be the cost of acquisition in the case of right share acquired before 1st February 2018?**	The cost of acquisition of right share acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of right share as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt.
12.	**What will be the treatment of long-term capital loss arising from transfer made on or after 1st April, 2018?**	Long-term capital loss arising from transfer made on or after 1st April, 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.

Illustration 45 – *Computation of LTCG on sale of Equity shares :* From the following information determine taxable capital gains. Mr. X has acquired 1,000 equity shares on 01-04-2017 for ₹ 15,00,000 (STT paid @ 0.1%). The fair market value of shares as on 31-01-2018 was ₹ 15,25,000. He sold the shares on 25-08-2022 for ₹ 16,75,000 (STT paid @ 0.1%). Brokerage Expenses incurred on transfer : 0.5% of the Sales consideration.

Solution: **Computation of taxable capital gains *(amount in ₹)* :**

Full value of consideration	16,75,000
Less: Expenses on transfer (0.5% of the gross consideration)	8,375
Net consideration	**16,66,625**
Less: Cost of acquisition [WN]	15,25,000
Long-term capital gains	**1,41,625**

Working Note : The cost of acquisition of equity shares shall be determined as under—

- **Step 1 :** Cost of acquisition of such equity shares i.e. ₹ 15,00,000
- **Step 2 :** Lower of – ***(a)*** the fair market value of such asset as on 31-01-2018 *i.e.* 15,25,000; or ***(b)*** the full value of consideration received or accruing as a result of the transfer of the capital asset *i.e.* ₹ 16,75,000 = ₹ 15,25,000.
- **Step 3 :** Cost of acquisition shall be deemed to the amount computed at Step 1 or Step 2 whichever is higher *i.e.* ₹ 15,25,000.

Illustration 46 – *Computation of LTCG on sale of Equity shares :* From the following information determine taxable capital gains. Mr. X has acquired 1,000 equity shares on 1-04-2017 for ₹ 15,25,000 (STT paid @ 0.1%). The fair market value of shares as on 31-01-2018 was ₹ 15,00,000. He sold the shares on 25-08-2022 for ₹ 14,75,000 (STT paid @ 0.1%). Brokerage Expenses incurred on transfer : 0.5% of the Sales consideration.

Solution: **Computation of taxable capital gains *(amount in ₹)* :**

Full value of consideration	14,75,000
Less: Expenses on transfer (0.5% of the gross consideration)	7,375
Net consideration	**14,67,625**
Less: Cost of acquisition [WN]	15,25,000
Long-term capital loss	**-57,375**

Working Note : The cost of acquisition of equity shares shall be determined as under—

- **Step 1 :** Cost of acquisition of such equity shares *i.e.* ₹ 15,25,000.
- **Step 2 :** Lower of – ***(a)*** the fair market value of such asset as on 31-01-2018 *i.e.* 15,00,000; or (b) the full value of consideration received or accruing as a result of the transfer of the capital asset *i.e.* ₹ 14,75,000 = ₹ 14,75,000.
- **Step 3 :** Cost of acquisition shall be deemed to the amount computed at Step 1 or Step 2 whichever is higher *i.e.* ₹ 15,25,000

Illustration 47 – *Computation of LTCG on sale of Equity shares :* From the following information determine taxable capital gains. Mr. X has acquired 1,000 equity shares on 1-04-2017 for ₹ 15,25,000 (STT paid @ 0.1%). The fair market value of shares as on 31-01-2018 was ₹ 16,50,000. He sold the shares on 25-08-2022 for ₹ 16,00,000 (STT paid @ 0.1%).

***Solution:* Computation of taxable capital gains (*amount in ₹*) :**

Full value of consideration	16,00,000
Less: Expenses on transfer	Nil
Net consideration	**16,00,000**
Less: Cost of acquisition [WN]	16,00,000
Long-term capital gains	**Nil**

Working Note : The cost of acquisition of equity shares shall be determined as under—

- **Step 1 :** Cost of acquisition of such equity shares *i.e.* ₹ 15,25,000
- **Step 2 :** Lower of — ***(a)*** the fair market value of such asset as on 31-01-2018 *i.e.* 16,50,000; or ***(b)*** the full value of consideration received or accruing as a result of the transfer of the capital asset *i.e.* ₹ 16,00,000 = ₹ 16,00,000.
- **Step 3 :** Cost of acquisition shall be deemed to the amount computed at Step 1 or Step 2 whichever is higher *i.e.* ₹ 16,00,000.

Illustration 48 – *Computation of tax liability :* Mr. X (64 years) is a resident individual. For the A.Y. 2023-24, he has following income–

	(₹)
Long-term capital gain on transfer of equity shares as computed as per provisions of section 112A)	1,80,000
Other income	2,75,000

Compute his tax liability for A.Y. 2023-24 if he has not opted for the provisions of Section 115BAC.

***Solution:* Computation of tax liability (*amount in ₹*) :**

Tax on long-term capital gain u/s 112A [10% of (long-term capital gain exceeding ₹ 1,00,000)]	5,500
Add: Health and education cess @ 4%	220
Tax liability	**5,720**

Working Note : In this case, the other income falls short of maximum amount not chargeable to tax by ₹ 25,000 [₹ 3,00,000 - ₹ 2,75,000], hence long term capital gains will be reduced by such shortfall. Taxable LTCG under Section 112A = ₹ 1,55,000. No rebate under Section 87A shall be admissible from tax on long term capital gains computed as per the provisions of Section 112A of the Income tax Act, 1961.

Illustration 49 – *Computation of Capital Gains and Tax liability :* Mr. Rajan provides you the following details with regard to sale of certain securities by him during F.Y. 2022-23 :

(i) **Sold 10000 shares of A Ltd. on 05-04-2022 @ ₹ 650 per share :** A Ltd. is a listed company. These shares were acquired by Mr. Rajan on 05-04-2017 @ ₹ 100 per share. STT was paid both at the time of acquisition as well as at the time of transfer of such shares which was affected through a recognized stock exchange. On 31-01-2018, the shares of A Ltd. were traded on a recognized stock exchange as under :

Highest price – ₹ 300 per share

Average price – ₹ 290 per share

Lowest price – ₹ 280 per share

(ii) **Sold 1000 units of B Mutual Fund on 20-04-2022 @ ₹ 50 per unit :** B Mutal Fund is an equity oriented fund. These units were acquired by Mr. Rajan on 15-04-2017 @ ₹ 10 per unit. STT was paid only at the time of transfer of such units. On 31-01-2018, the Net Asset Value of the units of B Mutual Fund was ₹ 55 per unit.

(iii) **Sold 100 shares of C Ltd. on 25-04-2022 @ ₹ 250 per share :** C Ltd. is an un-listed company. These shares were issued by the company as bonus shares on 30-09-1997. The Fair Market Value of these shares as on 01-04-2001 was ₹ 50 per share.

Calculate the amount chargeable to tax under the head Capital Gains' and also calculate tax on such gains for assessment year 2023-24 assuming that the other incomes of Mr. Rajan exceeds the maximum amount not chargeable to tax. (ignore surcharge and cess).

Cost Inflation Index for various financial year are as under : 2001-02 : 100, 2016-17 : 264, 2017-18 : 272, 2021-22 : 301 and 2022-23 : 331. ***(6 Marks, Nov. 2019)***

Solution: **Computation of taxable capital gains and tax thereon** ***(amount in ₹)*** **:**

Long term Capital gains on sale of Shares of A Ltd. (listed in RSE)		
Full value of consideration	65,00,000	
Less: Expenses on transfer	Nil	
Net consideration	65,00,000	
Less: Cost of acquisition *(No benefit of indexation is available)* [WN-1]	30,00,000	35,00,000
Long term Capital gains on sale of units of B Mutual Fund		
Full value of consideration	50,000	
Less: Expenses on transfer	Nil	
Net consideration	50,000	
Less: Cost of acquisition *(No benefit of indexation is available)* [WN-2]	50,000	Nil
Long term Capital gains on sale of Shares of C Ltd. (unlisted company)		
Full value of consideration	25,000	
Less: Expenses on transfer	Nil	
Net consideration	25,000	
Less: Indexed Cost of acquisition [₹ 50 × 100 × 331 ÷ 100]	16,550	8,450
Total Taxable LTCG		**35,08,450**
Computation of tax on Capital gains		
Tax on long term capital gains on sale of Shares of A Ltd. (listed in RSE) taxable u/s 112A @ 10% in excess of ₹ 1,00,000		3,40,000
Tax on long term capital gains on sale of Shares of C Ltd. (unlisted company) @ 20%		1,690

Working Notes :

(1) The cost of acquisition of equity shares shall be determined as under—

Step 1 : Cost of acquisition of such equity shares (₹ 100 × 10,000) *i.e.* ₹ 10,00,000

Step 2 : Lower of – ***(a)*** the fair market value of such asset as on 31-01-2018 (being highest price *i.e.* ₹ 300 per shares) *i.e.* ₹ 300 × 10,000; or ***(b)*** the full value of consideration received or accruing as a result of the transfer of the capital asset *i.e.* ₹ 65,00,000 = ₹ 30,00,000.

Step 3 : Cost of acquisition shall be deemed to the amount computed at Step 1 or Step 2 whichever is higher *i.e.* ₹ 30,00,000.

(2) The cost of acquisition of mutual fund units shall be determined as under—

Step 1 : Cost of acquisition of such units (₹ 10 × 1,000) *i.e.* ₹ 10,000

Step 2 : Lower of – ***(a)*** the fair market value of such asset as on 31-01-2018 (₹ 55 per unit) *i.e.* ₹ 55 × 1,000; or ***(b)*** the full value of consideration received or accruing as a result of the transfer of the capital asset *i.e.* ₹ 50,000 = ₹ 50,000

Step 3 : Cost of acquisition shall be deemed to the amount computed at Step 1 or Step 2 whichever is higher *i.e.* ₹ 50,000.

Illustration 50 – ***Computation of capital gains in case of conversion of a capital asset into stock-in-trade:*** Mr. Govind purchased 600 shares of "Y" limited at ₹ 130 per share on 26-02-1979. "Y" limited issued him, 1,200 bonus shares on 20-02-1984. The fair market value of these share at Mumbai Stock Exchange as on 01-04-2001 was ₹ 900 per share and ₹ 2,000 per share as on 31-01-2018. On 31-01-2022 he converted 1000 shares as his stock in trade. The shares was traded at Mumbai Stock Exchange on that date at a high of ₹ 2,200 per share and closed for the day at ₹ 2,100 per share. On 07-07-2022 Mr. Govind sold all 1800 shares @ ₹ 2,400 per share at Mumbai Stock Exchange and securities transaction tax was paid. Compute total income of Mr. Govind for the A.Y. 2023-24. ***(5 Marks, Nov. 2020)***

Solution: **Computation of total income of Mr. Govind for the A.Y. 2023-24** ***(amount in ₹)*** **:**

I	**Profits and gains of business and profession :**		
	Full value of consideration [1000 shares × ₹ 2,400 per share]	24,00,000	
	Less: FMV on the date of conversion (₹ 2,100 × 1000 shares] ***[See Note below]***	21,00,000	
			3,00,000
II	**Capital Gains :**		
	In respect of 800 shares held as capital asset up-to the date of sale -		
	Full value of consideration [800 shares × ₹ 2,400 per share]	19,20,000	
	Less: Cost of acquisition [800 shares × ₹ 2,000] *(See Working Note below)*	16,00,000	
			3,20,000

	In respect of 1,000 shares converted into stock in trade on 31-1-2022 (Capital gains is taxable in the P.Y. 2022-23, when the stock in trade is sold)		
	Full value of consideration *[1000 shares × ₹ 2,100, being FMV on the date of conversion]*	21,00,000	
	Less: Cost of acquisition [1000 shares × ₹ 2,000] ***(See Working Note below)***	20,00,000	
			1,00,000
	Total Income		**7,20,000**

Working Note : Cost of acquisition (per share) ***(amount in ₹) -***

Higher of (i) and (ii), below		2,000	
(i)	₹ 900 per share, being - In case of shares purchased - Original cost of acquisition (₹130) or FMV as on 1-4-2001 (₹ 900), at the option of the assessee In case of bonus shares - FMV as on 1-4-2001 *(Nil or ₹ 900, at the option of the assessee)*		
(ii)	₹ 2,000 per share, being the lower of - FMV as on 31-1-2018 – ₹ 2,000 per share Sale consideration – ₹ 2,400 per share		

Working Note : Explanation to section 55(2)(ac) defines "fair market value" as the highest price of capital asset quoted on the stock exchange only for the purpose of the said clause (ac) *i.e.,* to arrive at the FMV as on 31-1-2018 for computing cost of acquisition of shares.

However, the question states two prices on 31-1-2022, being the date of conversion of capital asset into stock in trade for which we have to consider the definition of "fair market value" as per section 2(22B). As per this definition, FMV refers to the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date. In the question, two prices are given on the relevant date *i.e.,* the date of conversion of capital asset into stock in trade, namely, the highest price and the closing price. The above solution is given considering the closing price as the FMV as on 31-1-2022.

MISCELLANEOUS QUESTIONS

Illustration 51 – ***Computation of capital gains:*** Mr. Malik owns a factory building on which he had been claiming depreciation for the past few years. It is the only asset in the block. The factory building and land appurtenant thereto were sold during the year. The following details are available ***(amounts in ₹)*** :

Building completed in September, 2004 for	10,00,000
Land appurtenant thereto purchased in April, 2003 for	11,00,000
Advance received from a prospective buyer for land in May, 2004, forfeited in favour of assessee, as negotiations failed	50,000
WDV of the building block as on 1-4-2022	8,74,800
Sale value of factory building in November, 2022	8,00,000
Sale value of appurtenant land	40,00,000

The assessee is ready to invest in long-term specified assets under section 54EC within specified time.

Compute the amount of taxable capital gain for the assessment year 2023-24 and the amount to be invested under section 54EC for availing the maximum exemption. ***(10 Marks, Nov. 2006)***

Cost inflation index for various financial year are as under : 2003-04 : 109, 2004-05 : 113 and 2022-23: 331

Solution : **Computation of Capital Gain** ***(amount in₹) –***

Sale consideration of the block	8,00,000
Less: Cost of acquisition *i.e.* WDV of block	8,74,800
Short- term capital loss	**-74,800**
Full value of consideration of land	40,00,000
Less: Indexed cost of land (₹ 10,50,000 × 331 ÷ 109) [WN]	31,88,532
Long–term capital gains	**8,11,468**
Taxable long-term capital gains ***(after set-off of short-term capital loss)***	**7,36,668**

Working Note : ₹ 50,000 advance forfeited by Mr. Malik shall be deducted from cost of acquisition.

Exemption u/s 54EC : The aforesaid amount of taxable net long-term capital gains ₹ 7,36,668 should be invested within 6 months u/s 54EC for availing the maximum exemption.

Illustration 52 – *Computation of Capital Gains and tax liability :* Abhay purchased 1,000 listed equity shares of ₹ 10 each at ₹ 100 per share from a broker on 4th May, 2014. He paid ₹ 3,000 as brokerage. On 15th March, 2022, he was given bonus shares by the company on the basis of one share for every two shares held. On the same date, he was also given a right to acquire 1,000 rights shares @ ₹ 90 per share. He acquired 50% of the right shares offered and sold the balance 50% of the rights entitlement for a sum of ₹ 67,500 on 7th April 2022. The right shares were allotted to him on 30th April, 2022. All the shares held by him were sold on 24th September 2022 @ ₹ 280 per share through a recognised stock exchange.

Compute capital gain and tax assuming his income from other sources is ₹ 5,40,000. FMV as on 31-01-2018 is ₹ 150 per share.***(CS Inter June 2005)***

Solution : **Computation of capital gains on remaining shares *(amounts in ₹)* -**

Particulars	Original Shares	Right Entitlement	Right shares	Bonus shares
No. of shares	1,000	500	500	500
Full value of consideration (@ ₹ 280 per share)	2,80,000	67,500	1,40,000	1,40,000
Less: Cost of acquisition	1,50,000	NIL	45,000	NIL
Long term capital gains / Short-term capital gains	**1,30,000**	**67,500**	**95,000**	**1,40,000**
Total short-term capital gains falling u/s 111A *(from sale of right and bonus shares)*				2,35,000
Other short-term capital gains *(from right entitlement)*				67,500
Long term capital gains in excess of ₹ 1,00,000 as per Section 112A				30,000
Income from other sources				5,40,000
Total Income				**8,72,500**
Tax on LTCG under Section 112A [10% of ₹ 30,000]				3,000
Tax on STCG under Section 111A [15% of ₹ 2,35,000]				35,250
Tax on balance Income [Taxable at slab rates]				34,000
Total Tax				**72,250**
Less: Tax rebate u/s 87A [Since total income exceeds ₹ 5,00,000]				Nil
Balance tax				**72,250**
Add: Health and Education Cess @ 4%				2,890
Tax liability *(rounded off)*				**75,140**

Illustration 53 – *Computation of total income :* Mr. Y submits the following information pertaining to the year ended 31st March, 2023 :

(1) On 30-11-2022, when he attained the age of 60, his friends in India gave a flat at Surat as a gift, each contributing a sum of ₹ 20,000 in cash. The cost of flat purchased using various gifts was ₹ 3.4 lakhs.

(2) His close friend abroad sent him a cash gift of ₹ 75,000 through his relative, for the above occasion.

(3) Mr. Y sold the above flat on 30-1-2023 for ₹ 3.6 lakhs. The Registrar's valuation for stamp duty purposes was ₹ 4 lakhs. Neither Mr. Y nor the buyer, questioned the value fixed by the Registrar.

(4) He had purchased some equity shares in X Pvt. Ltd. on 5-2-2022 for ₹ 3.5 lakhs. These shares were sold on 15-3-2023 for ₹ 2.8 lakhs.

You are requested to calculate the total income of Mr. Y for the assessment year 2023-24. ***(6 Marks, May 2005)***

Solution: **Computation of total income of Mr. Y *(amounts in ₹)* -**

Particulars	Flat*	Equity shares
Full value of consideration *[Since stamp duty value exceeds 110% of actual consideration]*	4,00,000	2,80,000
Less: Cost of acquisition	3,40,000	3,50,000
Short-term capital gains/loss	**60,000**	**-70,000**
Short term capital *Loss* to be carried forward		**-10,000**
Income from other sources *(cash gift of ₹ 75,000 + Flat of ₹ 3.4 lakh)*		4,15,000
Total Income		**4,15,000**

Working Notes :

(1) Gift of flat in excess of ₹ 50,000 is taxable under section 56(2)(x). The cost of such gifted asset will be ₹ 3,40,000, being the fair market value taken for the purpose of taxability under section 56(2)(x).

(2) Cash gift exceeding ₹ 50,000 from an unrelated person is taxable as Income from other sources.

(3) Equity shares of unlisted company held for more than 24 months from the date of purchase are long-term capital asset. Hence, the same shall be regarded as short term capital asset.

Illustration 54 – ***Computation of capital gains in case of conversion of debentures into shares :*** Amin is the holder of 1,000 debentures of Amin Ltd. having a face value of ₹ 1,000 each. The company has offered an option to the debenture-holders either to redeem the debentures at ₹ 1,200 each or to convert the debentures into equity shares of equivalent value. The market value of the shares on the date of exercising the option is ₹ 1,200 per share (face value ₹ 1,000). What will be the tax consequences of the two options in the hands of debenture-holder Amin? ***(May 1997)***

Solution : Option-I : **Redemption :** In case Amin opts for the redemption of debentures, then capital gains shall arise in his hands which shall be computed as follows = ₹ (1,200–1,000) × 1,000 debentures = ₹ 2 lakhs *(indexation benefit is not allowed).*

Option-II : **Conversion :** In case Amin opts for the conversion of debentures, then no capital gains shall arise as the conversion of debenture into shares is not regarded as 'transfer' according to Section 47(x).

Illustration 55 – ***Taxability of capital gains :*** Ms. Smriti purchased 40 capital indexed bonds issued by Government listed in RSE for ₹ 10,000 each on 01-04-2008. She sold all the bonds @ ₹ 40,500 per bond on 28th September 2022. She invested ₹ 80,000 in bonds of NABARD on 01-11-2022 and ₹ 70,000 in the bonds National Highway Authority of India on 31-03-2023. Compute the tax liability of Ms. Smriti assuming that she has no other income chargeable to tax.

Cost inflation index for various financial year are as under : 2008-09 : 137 and 2022-23: 331

Solution: **Computation of tax liability of Ms. Smriti *(amounts in ₹) -***

Full value of consideration (₹ 29,500 × 40)		16,20,000
Less: Indexed Cost of acquisition (40 × ₹ 10,000 × 331 ÷ 137)		9,66,423
Long-term capital gains		**6,53,577**
Less: Exemption u/s 54EC	[WN-1]	Nil
Taxable long-term capital gains		**6,53,577**
Total Income *(rounded off)*		**6,53,580**
Tax on LTCG (No rebate u/s 87A is admissible since, total income exceeds ₹ 5,00,000)	[WN-2]	80,716
Add: Health & Education cess @ 4%		3,229
Tax Liability *(rounded off to nearest ₹10)*		**83,940**

Working Notes :

(1) Benefit of Section 54EC is not available on LTCG arising from transfer of bonds.

(2) Tax on LTCG shall be lower of the following :

(a) 20% of (LTCG – basic exemption limit of ₹ 2,50,000) = 20% of (₹ 6,53,580 – ₹ 2,50,000) = ₹ 80,716

(b) 10% of LTCG without indexation & basic exemption = 10% of [(₹ 40,500 – ₹ 10,000) × 40] = ₹ 122,000.

Illustration 56 – ***Computation of Capital gains and Tax liability*** **:** Mukesh (aged 55 years) owned a residential house at Nagpur. It was acquired by Mukesh on 10-10-2004 for ₹ 14,50,000. It was sold for ₹ 55,00,000 on 04-11-2022. The State stamp valuation authority fixed the value of the property at ₹ 75,00,000. The assessee paid 2% of the sale consideration as brokerage for the sale of said property.

Mukesh acquired a residential house at Chennai on 10-12-2022 for ₹ 10,00,000 and deposited ₹ 10,00,000 on 10-04-2023 in the capital gain bond of Rural Electrification Corporation Ltd (REC). He deposited ₹ 5,00,000 on 06-07-2023 in the Capital Gain Deposit Scheme in a nationalised bank for construction of additional floor on the residential house property acquired at Chennai.

Compute the capital gain chargeable to tax in the hands of Mr. Mukesh. Calculate the income-tax payable on the assumption that he has no other income chargeable to tax. ***(7 Marks, PCC Nov. 2010)***

Cost inflation index for various financial year are as under : 2004-05 : 113 and 2022-23: 331

Solution: **Computation of capital gains and tax thereon in the hands of Mukesh *(amounts in ₹) -***

Full value of consideration	[WN-1]	75,00,000
Less: Brokerage @ 2% of actual sale consideration of ₹ 55,00,000		1,10,000
Net sale consideration		**73,90,000**
Less: Indexed cost of acquisition (₹ 14,50,000 × 331 ÷ 113)		42,47,345
Capital Gains		**33,22,331**
Less: Exemption under section 54	[WN-2]	15,00,000
Exemption under section 54EC	[WN-3]	10,00,000

Income by way of Long-term capital gain		**8,22,331**
Less: Basic Exemption Limit of ₹ 2,50,000	[WN-4]	2,50,000
LTCG on which tax imposable		**5,72,330**
Income Tax @ 20%		1,14,466
Add: Health & Education cess @ 4%		4,579
Total Tax (rounded off)		**1,19,040**

Working Notes :

(1) As per the provisions of Section 50C, in this case the value assessed by the stamp valuation authority exceed **110**% of the consideration received therefore, the stamp duty value shall be deemed as the full value of consideration.

(2) Exemption under section 54 = Cost of residential house acquired at Chennai on 10-12-2022 + amount deposited in Capital Gains Accounts Scheme on 6-7-2023 *(before the due date of filing of return of income)* for construction of additional floor on residential house property acquired at Chennai = ₹ 10 lakhs + 5 lakhs = ₹ 15 lakhs.

(3) Exemption under section 54EC = amount deposited in RECL bonds on 10-04-2023 (within 6 months from the date of transfer) = ₹ 10 lakhs.

(4) Since Mukesh is a resident individual having no other income, hence, he will be entitled to basic exemption limit in respect of the income from LTCG – Section 112.

Illustration 57 – ***Computation of Tax liability :*** The total income of Mrs. Z is ₹ 3,50,000, which includes the following:

Particulars	₹
Long-term capital gains	30,000
Winnings from lotteries	20,000
Short-term capital gains covered by Section 111A	10,000
	60,000

Agricultural income earned by her was ₹ 50,000. Compute the tax payable by Mrs. Z. ***(6 Marks, May 2006)***

Solution: **Computation of tax payable by Mrs. Z** ***(amounts in ₹) -***

Tax on incomes taxable at special rates :	
Tax on STCG u/s 111A @ 15% [₹ 10,000 × 15%]	1,500
Tax on LTCG u/s 112 @ 20% [₹ 30,000 × 20%]	6,000
Tax on Lottery income @ 30% [₹ 20,000 × 30%]	6,000
Tax on balance income : Balance income including agricultural income (₹ 50,000 + ₹ 2,90,000)	4,500
Less: Tax on agricultural income + basic exemption (₹ 2,50,000 + ₹ 50,000)	-2,500
Tax payable	**15,500**
Less: Tax rebate u/s 87A [100% of tax or ₹ 12,500 which ever is less]	12,500
Balance tax	**3,000**
Add: Health & Education cess @ 4%	120
Tax payable by Mrs. Z ***(rounded off)***	**3,120**

Illustration 58 – ***Computation of Total Income and Tax liability*** **:** Rajesh, a director at Young Pvt. Ltd., Mumbai, carrying on transport business has submitted the following particulars of his income for the assessment year 2023-24. Compute his taxable income and tax payable :

(1) Director's remuneration and perquisites :

- **(a)** Remuneration : ₹ 3,46,000.
- **(b)** Free use of car of engine capacity of 1,500 cc provided by the company.
- **(c)** The company has provided rent-free accommodation (unfurnished) to Rajesh at Mumbai. It is ascertained that for this purpose the company has obtained a flat on lease from Prem Ltd. for which the company pays a rent of ₹ 23,400 p.a., which is also the fair rental value.
- **(d)** Medical expenses met by the company on an ordinary treatment of Rajesh and the members of his family ₹ 4,500.

(2) Rajesh was occupying a bungalow on rent at New Delhi since November 1986. He agreed to transfer his tenancy right in the said bungalow in favour of Bala Ltd. for a sum of ₹ 2,00,000 payable as follows:

- **(a)** ₹ 50,000 in cash.
- **(b)** A flat valued at ₹ 1,50,000 (at cost) in the new building to be put up by Bala Ltd to be allotted free of cost. The cash payment was made on 5th April, 2022 and the flat was allotted to him on 5th October, 2022 which was kept for his own residence from that date. ***(CS Inter Dec. 2003)***

Solution: **Computation of taxable income** ***(amount in ₹) –***

Income from salaries :			
Remuneration		3,46,000	
Use of car	[WN-1]	32,400	
Value of residential accommodation	[WN-2]	23,400	
Medical expenses	[WN-3]	4,500	
Gross Salary		**4,06,300**	
Less: Standard deduction 16(ia)		50,000	3,56,300
Income under the head "Capital Gains" :			
Long-term capital gains from transfer of tenancy rights	[WN-4]	2,00,000	
Less: Exemption u/s 54F	[WN-5]	1,50,000	50,000
Total income			**4,06,300**
Tax on LTCG at special rates : ₹ 50,000 × 20%			10,000
Tax on normal income at normal rates			5,315
Total Income-tax			**15,315**
Less: Tax rebate under section 87A [100% of tax or ₹ 12,500 which ever is less]			12,500
Balance tax			**2,815**
Add: Health & Education cess @ 4%			113
Tax payable *(rounded off)*			**2,930**

Working Notes :

(1) It is assumed that the car is used partly for official and partly for personal purposes and chauffeur is provided, hence the taxable value shall be = (₹ 1,800 + ₹ 900) × 12 = ₹ 32,400.

(2) Value of RFA = Lower of –

(a) 15% of salary = 15% of ₹ 3,46,000 = ₹ 51,900 ;

(b) Lease rent = 23,400.

(3) No exemption is available for any sum paid by the employer in respect of expenditure incurred by an employee on his medical treatment.

(4) Tenancy right is a long-term capital asset. Its cost of acquisition is NIL. Thus, the amount of long-term capital gains shall be equal to the net consideration *i.e.* ₹ 2 lakhs.

(5) Since Rajesh has transferred long term capital asset being tenancy rights and invested the net consideration in purchase of flat, he will be entitled exemption under section 54F as under :

(Cost of flat × LTCG ÷ Net consideration from the transfer). Thus, the exemption will be ₹ 1.5 lakhs.

Illustration 59 – *Computation of Capital gains and tax liability :* Mr. C inherited from his father 8 plots of land in 1980. His father had purchased the plots in 1960 for ₹ 5 lakhs. The fair market value of the plots as on 1-4-2001 was ₹ 8 lakhs. (₹ 1 lakh for each plot)

On 1st June 2001, C started a business of dealer in plots and converted the 8 plots as stock-in-trade of his business. He recorded the plots in his books at ₹ 45 lakhs being the fair market value on that date. In June 2005, C sold the 8 plots for ₹ 50 lakhs.

In the same year, he acquired a residential house property for ₹ 45 lakhs. He invested an amount of ₹ 5 lakhs in construction of one more floor in his house in June 2006. The house was sold by him in June 2022 for ₹ 90,00,000.

The valuation adopted by the registration authorities for charge of stamp duty was ₹ 1,50,50,000. As per the assessee's request, the Assessing Officer made a reference to a Valuation Officer. The value determined by the Valuation Officer was ₹ 1,70,00,000.

Brokerage of 1% of sale consideration was paid by C. Give the tax computation for the relevant assessment years with reasoning. ***(Modified 8 Marks : Nov. 2012 & Similar Nov. 2016)***

Cost inflation index for various financial year are as under : 2005-06 : 117, 2006-07 : 122 and 2022-23: 331

Solution: **Computation of total income and tax liability of Mr. C** ***(amount in ₹)* :**

Capital Gains on sale of residential house property			
Full value of consideration	[WN-1]		1,50,50,000
Less: Brokerage @ 1% of sale consideration (1% of ₹ 90,00,000)			90,000
Net consideration			**1,49,60,000**

Less: Indexed cost of acquisition (₹ 45,00,000 × 331/117)	1,27,30,769	
Less: Indexed cost of improvement (₹ 5,00,000 × 331/122)	13,56,557	1,40,87,327
Long-term capital gains (Total Income) ***(rounded off)***		**8,72,670**
Tax on total income [WN-2]		
Long-term capital gain taxable @ 20% (₹ 8,72,670 – ₹ 2,50,000)		1,24,534
Add: Health & Education cess @ 4%		4,981
Total tax liability		**1,29,520**

Working Notes :

(1) As per the provisions of Section 50C, in this case the value assessed by the stamp valuation authority exceed 110% of the consideration received therefore, the stamp duty value shall be deemed as the full value of consideration.

(2) As per Section 112, the unexhausted basic exemption limit can be exhausted against the long-term capital gains. Since Mr. C does not have any other income in the current year, the whole of the basic exemption limit of ₹ 2,50,000 is exhausted against the long-term capital gains of ₹ 8,72,670 and the balance long-term capital gains shall be taxable @ 20%. It is assumed that Mr. C is a resident individual below the age of 60 years.

Illustration 60 – *Computation of Capital gain :* Ms. Neelima had purchased 500 equity shares in A Ltd. at a cost of ₹ 30 per share (brokerage 1%) in February 1995. She got 50 bonus shares in September 1999. She again got 550 bonus shares by virtue of her holding on March, 2005. Fair market value of the shares of A Ltd. on April, 2001 is ₹ 45. In January 2023, she transferred all her shares @ ₹ 280 per share (brokerage 2%). The FMV of shares as on 31-01-2018 is ₹ 150 per share. Compute the capital gains taxable in the hands of Ms. Neelima assuming –

(i) A Ltd. is an unlisted company and securities transaction tax was not applicable at the time of sale.

(ii) A Ltd. is a listed company and the shares are sold in a recognised stock exchange and securities transaction tax was paid at the time of purchase and sale. ***(8 Marks, IPCC May 2013)***

Solution:

(i) Computation of capital gains [unlisted shares] ***(amount in ₹) -***

Particulars	Original shares [A]	I^st^ Bonus shares [B]	II^nd^ Bonus shares [C]
No. of shares	500	50	550
Full value of consideration (@ ₹ 280 per share)	1,40,000	14,000	1,54,000
Less: Brokerage paid	2,800	280	3,080
Net sale consideration	**1,37,200**	**13,720**	**1,50,920**
Less: Indexed cost of acquisition (₹ 45 × 500 × 331/100)	74,475	7,448	Nil
Long term capital gain	**62,725**	**6,273**	**1,50,920**
Long term capital gains [A + B + C]			**2,19,920**

Notes: Cost of acquisition of bonus shares shall be NIL.

(ii) Computation of capital gains [Listed shares] ***(amount in ₹) -***

Particulars	Original shares [A]	I^st^ Bonus shares [B]	II^nd^ Bonus shares [C]
No. of shares	500	50	550
Full value of consideration (@ ₹ 280 per share)	1,40,000	14,000	1,54,000
Less: Brokerage paid	2,800	280	3,080
Net sale consideration	**1,37,200**	**13,720**	**1,50,920**
Less: Cost of acquisition *[No benefit of indexation will be available as per Section 112A]*	75,000	7,500	82,500
Long term capital gain	62,200	6,220	68,420
Long term capital gains [A + B + C]			**1,36,840**

Illustration 61 – *Computation of Capital Gains and Tax Liability :* Mr. Roy, aged 55 years owned a Residential House in Ghaziabad. It was acquired by Mr. Roy on 10-10-1986 for ₹ 6,00,000. The fair market value as on 01-04-2001 was ₹ 18,00,000. He sold it for ₹ 53,00,000 on 4-11-2022. The stamp valuation authority of the state fixed value of the property at ₹ 88,00,000. The Assessee paid 2% of the sale consideration as brokerage on the sale of the said property.

Mr. Roy Acquired a Residential House property at Kolkata on 10-12-2022 for ₹ 10,00,000 and deposited ₹ 7,00,000 on 10-04-2023 and ₹ 5,00,000 on 15-06-2023 in the capital gains bonds of Rural Electrification Corporation Ltd. He deposited ₹ 4,00,000 on 06-07-2023 and ₹ 3,00,000 on 01-11-2023 the capital gain deposit scheme in a Nationalized Bank for construction of an additional floor on the residential house property in Kolkata.

Compute the Capital Gain chargeable to Tax for the Assessment Year 2023-24 and Income Tax chargeable thereon assuming Mr. Roy has no other income. ***(8 Marks, May 2014) (Similar : 8 Marks, May 2017)***

Solution: **Computation of Capital Gains *(amounts in ₹) -***

Full Value of Consideration *(i.e. Stamp Duty Value)*	[WN-1]	88,00,000
Less: Expenses on transfer *(2% expenses on transfer of ₹53,00,000)*		1,06,000
Net consideration		**86,94,000**
Less: *Cost being:* Indexed Cost of Acquisition *(₹18,00,000 × 331 ÷ 100)*		59,58,000
Long Term Capital Gains		**27,36,000**
Less: Exemption u/s 54 *(₹10,00,000 + ₹4,00,000)*	[WN-2]	14,00,000
Exemption u/s 54EC in respect of bonds of REC	[WN-3]	7,00,000
Taxable Long Term Capital Gains		**6,36,000**
Total Income *(rounded off)*		**6,36,000**
Tax on long-term capital gains	[WN-4]	77,200
Add: HEC @ 4%		3,088
Tax payable *(rounded off)*		**80,290**

Working Notes :

(1) In case the stamp duty value fixed by the stamp valuation authority exceeds 110% of actual sale consideration, the stamp duty value shall be deemed as the full value of consideration.

(2) Exemption u/s 54 is available if one/two new residential house(s) is/are purchased within 1 year before or 2 years after the date of transfer. Here the new house is purchased within the said time limit, *further the cost of new residential house is less than the capital gain,* capital gain to the extent of cost of new asset is exempt u/s 54. Besides this the amount deposited in capital gains account scheme on or before the due date of furnishing the return of income shall also qualify for deduction even if it is deposited for construction of additional floor of the house.

(3) Exemption under section 54EC is available in respect of investment in bonds of Rural Electrification corporation only if the investment is made within a period of 6 months after the date of such transfer. In this case the investment made after 6 months amounting ₹ 5,00,000 shall not qualify for exemption under section 54EC.

(4) Tax on LTCG = 20% of (₹ 6,36,000 – basic exemption limit of ₹ 2,50,000 (assuming that the assessee is resident in India) = 20% of ₹ 5,88,000 = ₹ 77200.

(5) Since the total income of Mr Roy exceeds ₹ 5,00,000, he is not entitled for tax rebate under Section 87A.

Illustration 62 – *Computation of capital gains and tax liability :* Mr. Martin sold his residential house property on 08-06-2022 for ₹ 70 lakhs which was purchased by him for ₹ 20 lakhs on 05-05-2006.

(1) He paid ₹ 50,000 as brokerage for the sale of said property. The stamp duty valuation assessed by sub registrar was ₹ 97lakhs.

(2) He bought another house property on 25-12-2022 for ₹ 15 lakhs.

(3) He deposited ₹10 lakhs on 10-11-2022 in the capital gain bond of National Highway Authority of India (NHAI).

(4) He deposited another ₹ 10 lakhs on 10-07-2023 in the capital gain deposit scheme with SBI for construction of additional floor of house property.

Compute income under the head "Capital Gains" for A.Y. 2023-24 as per Income-tax Act, 1961 and also Income tax payable on the assumption that he has no other income chargeable to tax. ***(8 Marks, Nov. 2015)***

Cost inflation index for various financial year are as under : 2006-07: 122 and 2022-23: 331

Solution: **Computation of capital gains and tax thereon in the hands of Mr. Martin *(amounts in ₹) -***

Full value of consideration	[WN-1]	97,00,000
Less: Brokerage		50,000
Net sale consideration		**96,50,000**
Less: Indexed cost of acquisition (₹ 20,00,000 × 331 ÷ 122)		54,26,230
Capital Gains		**42,23,770**
Less: Exemption under section 54	[WN-2]	25,00,000
Exemption under section 54EC	[WN-3]	10,00,000
Income by way of Long-term capital gain/ Total Income *(rounded off)*		**7,23,770**
Less: Basic Exemption Limit of ₹ 2,50,000	[WN-4]	2,50,000
LTCG on which tax imposable		**4,73,770**
Income Tax @ 20%		94,754

Less: Tax rebate u/s 87A [100% of tax or ₹ 12,500 whichever is less]	12,500
Balance Income tax	**82,254**
Add: Health & Education cess @ 4%	3,290
Total Tax (rounded off)	**85,540**

Working Notes :

(1) Value assessed by the stamp valuation authority exceeds 110% of the consideration received, so the stamp duty value will be deemed as FVC = ₹ 97 lakhs.

(2) Exemption under section 54 = Cost of residential house acquired on 25-12-2022 + amount deposited in Capital Gains Accounts Scheme on 10-7-2023 *(before the due date of filing of return of income)* for construction of additional floor on residential house property = ₹ 15 lakhs + 10 lakhs = ₹ 25 lakhs.

(3) Exemption under section 54EC = amount deposited in NHAI bonds on 10-11-2022 (within 6 months from the date of transfer) = ₹ 10 lakhs.

(4) Since Mr. Martin is a resident individual having no other income, hence, he will be entitled to basic exemption limit in respect of the income from LTCG – Section 112.

Illustration 63 – *Conversion of Capital Asset into stock in trade :* Ms. Gunjan purchased a land at a cost of ₹ 50 lakh in the financial year 2001-02 and held the same as her capital asset till 31st August, 2013. She started her real estate business on 1st September, 2013 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of the land was ₹ 320 lakh.

She constructed 8 flats of equal size, quality and dimension. Cost of construction of each flat is ₹ 36 lakh. Construction was completed in January, 2023. She sold 5 flats at ₹ 90 lakh per flat in February, 2023.

She invested ₹ 70 lakh in bonds issued by National Highways Authority of India on 31st March, 2023.

Compute the capital gains and business income arising from the above transactions in the hands of Ms. Gunjan for Assessment Year 2023-24 indicating clearly the reasons for treatment for each item.

Cost inflation index for various financial year are as under : 2013-14 : 220 and 2022-23: 331

Solution : **Computation of capital gains and business income of Ms. Gunjan for A.Y. 2023-24 *(amount in ₹)* :**

Capital gains :	
Fair market value of land on the date of conversion deemed as the full value of consideration for the purposes of section 45(2)	3,20,00,000
Less: Indexed cost of acquisition [₹ 50,00,000 × 220/100]	1,10,00,000
	2,10,00,000
Proportionate capital gains arising during the A.Y. 2023-24 (₹ 2,10,00,000 × 5/8)	1,31,25,000
Less: Exemption under section 54EC (restricted to ₹ 50 lakh)	50,00,000
Capital gains chargeable to tax for A.Y. 2023-24	**81,25,000**
Business Income	
Sale price of flats [5 × ₹ 90 lakh]	4,50,00,000
Less: Cost of flats -	
Fair market value of land on the date of conversion (₹ 3,20,00,000 × 5/8)	2,00,00,000
Cost of construction of flats [5 × ₹ 36 lakh]	1,80,00,000
Profits and Gains of Business or Profession	**70,00,000**

Working Notes :

(1) The conversion of a capital asset into stock-in-trade is treated as a transfer under section 2(47). It would be treated as a transfer in the year in which the capital asset is converted into stock-in-trade.

(2) However, as per section 45(2), the capital gains arising from the transfer by way of conversion of capital assets into stock-in-trade will be chargeable to tax only in the year in which the stock-in-trade is sold.

(3) The indexation benefit for computing indexed cost of acquisition would be available only up to the year of conversion of capital asset to stock-in-trade and not up to the year of sale of stock-in-trade.

(4) For the purpose of computing capital gains in such cases, the fair market value of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset.

In this case, since only 5/8th of stock-in trade (5 flats out of 8 flats) is sold in the P.Y. 2022-23 only proportionate capital gains (*i.e.* 5/8th) would be chargeable to tax in the A.Y. 2023-24.

(5) On sale of such stock-in-trade (*i.e.,* flats, in this case), business income would arise. The business income chargeable to tax would be the price at which the flats are sold as reduced by the fair market value on the date of conversion of the capital asset (*i.e.,* land) into stock-in-trade and the cost of construction of flats.

(6) In case of conversion of capital asset into stock-in-trade and subsequent sale of stock-in-trade, the period of 6 months, for the purpose of exemption under section 54EC, is to be reckoned from the date of sale of stock-in-trade *[CBDT Circular No. 791 dated 02-6-2000].* In this case, since the investment in bonds of NHAI has been made within 6 months of sale of flats, the same qualifies for exemption under section 54EC, subject to a maximum of ₹ 50 lakh.

Illustration 64 – *Capital gains in case of Reverse Mortgage and Tax laibility :* Mrs. Mahalakshmi an individual, aged 68 years, mortgaged her Residential Property, purchased for ₹ 3 lakhs on 01-10-2002, with a bank, under a notified reverse mortgage scheme and was sanctioned a loan of ₹ 20 lakhs. As per the said scheme she was receiving the loan amount in equal monthly installments of ₹ 30,000 per month from the bank. Mrs. Mahalakshmi was not able to repay the loan on maturity and in lieu of settlement of the loan surrenders the residential property to the bank. Bank sold the property for ₹ 25 lakhs on 22-02-2023. She had no other income during the year.

Discuss the Tax consequences and compute tax for the Assessment Year 2023-24.

Cost Inflation Index : 2002-03 = 105 and 2022-23 = 331. ***(5 Marks, May 2018)***

Solution: The tax consequences in hands of Mrs. Mahalaksmi are as under:

(1) At the time of mortgage :

- As per section 47(xvi), any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government will not be regarded as a transfer. Therefore, capital gains tax liability is not attracted.
- Section 10(43) provides that the amount received by a senior citizen as a loan, either in lump sum or in installments, in a transaction of reverse mortgage would be exempt from income-tax. Therefore, the amount received by Mrs. Mahalakshmi in a transaction of reverse mortgage of her residential building is exempt under section 10(43).

(2) At the time of alienation of house property : When the bank alienates the property for the purpose of recovery of the loan on non-payment of the loan, then the same will constitute 'transfer' and the capital gains so computed will be taxed accordingly.

Thus, Capital Gains in hands of Mrs. Mahalakshmi is as under:

Full value of consideration	25,00,000
Less: Indexed cost of acquisition (₹ 3,00,000 × 331 ÷ 105)	9,45,714
Long-term capital gains/ Gross Total Income	**15,54,286**
Less: Deduction under Chapter VI-A	Nil
Total Income *(rounded off)*	**15,54,290**
Tax on long-term capital gains *[Tax on LTCG = 20% of (₹16,40,000 – Basic exemption limit of ₹ 3,00,000 (assuming that the assessee is resident in India)]*	2,50,858
Less: Tax rebate u/s 87A (Nil, since her Total Income exceeds ₹ 5,00,000)	Nil
Balance tax	**2,50,858**
Add: HEC @ 4%	10,034
Tax payable *(rounded off)*	**2,60,890**

Illustration 65 – *Computation of Capital Gains and tax liability :* Examine the taxability of Capital gains in the following scenarios for the Assessment Year 2023-24, determine the taxable amount and rate of tax applicable :

(i) On 28th February, 2023 10,000 shares of XY Ltd., a listed company are sold by Mr. B @ 550 per share and STT was paid at the time of sale of shares. These shares were acquired by him on 5th April, 2017 @ ₹ 395 per share by paying STT at the time of purchase. On 31st January, 2018, the shares of XY Ltd. were traded on a recognized stock exchange at the Fair Market Value of ₹ 390 per Share.

(ii) Mr. A is the owner of residential house which was purchased on 1st September, 2016 for ₹ 9,00,000. He sold the said house on 4th September, 2022 for ₹ 19,00,000. Valuation as per stamp valuation authorities was ₹ 45,00,000. He invested ₹ 19,00,000 in NHAI Bonds on 21st March, 2023.

Cost Inflation Index : F.Y. 2016-2017 : 264 and F.Y. 2020-2021 - 301 ***(2 × 2 = 4 Marks, July 2021)***

Solution:

(i) Long-term capital gain on transfer of 10,000 shares of XY Ltd. ***[taxable u/s 112A @ 10% on amount exceeding ₹ 1,00,000] :***

Full value of consideration [10,000 × ₹ 550]		55,00,000
Less: Cost of acquisition		
Higher of—		
Cost of acquisition [10,000 × ₹ 395]	39,50,000	
Lower of fair market value per share as on 31-1-2018 *i.e.,* ₹ 390 per share and sale consideration *i.e.,* ₹ 550 per share [10,000 × ₹ 390]	39,00,000	39,50,000
Long term capital gain taxable u/s 112A		**15,50,000**
Long-term capital gain exceeding ₹ 1 lakh *i.e.,* ₹ 14,50,000 would be taxable @ 10%		

(ii) Sale of residential house [long-term capital asset, since held for more than 24 months] :

Full value of consideration *[stamp duty value, since it exceeds 110% of actual sale consideration]*	45,00,000
Less: Indexed cost of acquisition [₹ 9,00,000 × 331/264]	11,28,409
	33,71,591
Less: **Deduction u/s 54EC** ***[****No deduction u/s 54EC would be allowed on investment of ₹ 19,00,000 in NHAI bonds, since such investment is made on 21^{st} March 2023 i.e., after six months from the date of transfer i.e., 4^{th} September, 2023]*	Nil
Long-term capital gain taxable u/s 112 @ 20%	**33,71,591**

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