

# Chapter 7 : Income from Capital Gains (Section 45 to 55)

Advance Direct Tax and Service Tax  
[Sub code : 441]

# Learning Objectives

- What is Capital Asset
- Short Term Capital Gain
- Long Term Capital Gain
- Transactions Not regarded as Transfer
- Capital Gain in some specific cases
- Mode of Computation of Capital Gains
- Cost Inflation Index
- Cost with Reference to Certain Modes of Acquisition
- Rebates on Capital Gains

# Introduction

- Section 45 provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall be chargeable to tax under the head “Capital Gains” and shall be deemed to be the income of the previous year in which the transfer took place.
- So the followings are very pre-requisites of a charge to income tax, of capital gains under section 45-
  - ✓ There must be a Capital Asset
  - ✓ The capital asset must have been transferred,
  - ✓ The transfer must have been effected in the previous year,
  - ✓ There must be a gain arising on such transfer of a capital asset.

# What is Capital Asset

- "Capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, **but does not include-**
  - ❖ Any stock-in-trade, consumable stores or raw materials held for the purposes of his business or profession
  - ❖ Personal effects but excluding jewellery, archaeological collections, drawings, paintings, sculptures etc.
  - ❖ Agricultural land in India
  - ❖ 6<sup>1</sup>/<sub>2</sub> per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defense Gold Bonds, 1980, issued by the Central Government
  - ❖ Special Bearer Bonds, 1991, issued by the Central Government
  - ❖ Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government

# Some Important Terms

- **Short-term capital asset [Section 2(42A)]:**
- A capital asset held by an assessee for **not more than** –
  - ❑ In case of share held in a company, any other security listed in a recognized stock exchange in India, units of a Mutual Fund or a zero coupon bond - **12 Months**
  - ❑ In case of other assets held - **36 Months**
- **Long-term capital asset [Section 2(29A)]:**
- A capital asset which is not a short-term capital asset
- **Short-term capital gain [Section 2(42B)]:**
- "Short-term capital gain" means capital gain arising from the transfer of a short-term capital asset.

# Transfer

- Transfer, in relation to a capital asset, includes, -
  - the sale, exchange or relinquishment of the asset, or
  - the extinguishment of any rights therein, or
  - the compulsory acquisition thereof under any law; or
  - when capital asset is converted into ( or treated as ) stock-in-trade by the owner thereof, in respect of a business carried on by him, such act of conversion or treatment, or
  - the maturity or redemption of zero coupon bond; or
  - any transaction involving the allowing of the possession of any immovable property; or
  - any transaction which has the effect of transferring, or enabling the enjoyment of, any immovable property
- This definition of Transfer is applicable only in relation to a capital asset.

# CAPITAL GAINS [Section 45]

- Section 45 is a charging section for capital gains.
- The basic tenets of chargeability of Capital Gains are as under –
  - There should be a capital asset.
  - The capital asset is transferred by the assessee.
  - Such transfer takes place during the previous year.
  - Any profit or gain arises as a result of such transfer.
  - Such profit or gain is not exempt from tax u/s 54, 54B, 54D, 54EA, 54F, 54G, 54H.

# Insurance claim received for damage or destruction of a capital asset

- It is provided that the profits and gains arising from the receipts of an insurance claim on account of destruction or damage of a capital asset as a result of fire, flood, earthquake, civil disturbance, war etc. shall be deemed to be capital gains for the purpose of section 45 and taxed in the year or receipt.



# Converting a capital asset in to stock-in-trade

- Often a person holds an asset as his capital asset. This is at times converted in to his stock-in-trade. This may be done in order to carry out business in such asset.
- For example, Converting a piece of land in to stock-in-trade
- Conversion by the owner of a capital asset into stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him.
- The fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

# Demat Transactions - through Depository

- Neither Depository nor DP (Depository Participant) but the Beneficiary/Shareholder is liable to pay Capital Gains on sale of dematerialized shares - Shares to be treated on FIFO basis.
- It shall be chargeable as Capital Gain of the previous year in which such transfer took place. It shall not be regarded as income of the depository who is deemed to be the registered owner of securities.
- The cost of acquisition and the period of holding of any securities shall be determined on the basis of the first-in-first-out method. This would mean that the security which was acquired first shall be deemed to have been sold first.

# Section 45(3)

- Transfer of a capital asset by a person to a firm or other association of persons or body of individuals in which he is or becomes a partner or member, by way of capital contribution or otherwise.
- Shall be Chargeable to tax as his income of the previous year in which such transfer takes place.
- The amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

## Transfer on the dissolution of a firm, AOP, BOI etc.

- The profits or gains arising from - Transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a co-operative society) or otherwise,
- shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place
- the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.
- Capital gains will thus be fair market value on date of distribution less cost of asset to the partnership.

# Transfer by way of Compulsory Acquisition

- Where Transfer of a capital asset by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government, and the compensation or the consideration for such transfer is enhanced or further enhanced the capital gain shall be dealt with in the following manner –
  - the consideration determined or approved in the first instance by the Central Government shall be chargeable as income under the head "Capital gains" of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received

# Contd...

- the amount by which the compensation or consideration is enhanced or further enhanced by the court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee.
- where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation or consideration or, enhanced compensation or consideration and afterwards such consideration or enhance consideration is reduced by any court, such assessed capital gain of that year shall be recomputed by taking the compensation or consideration as so reduced by such court, Tribunal or other authority to be the full value of the consideration.

# Capital gains on distribution of assets by companies in liquidation

- In such circumstances Gain is Taxable not in the hands of the Company under liquidation but in the hands of Shareholders.
- Where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.
- 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 distribution.

# Buyback of Shares

- Buy back of shares by a Company - Shareholders shall have to pay the tax on Cap Gains.
- Where a shareholder or a holder of other specified securities receives any consideration from any company for purchase of its own shares then the difference between the cost of acquisition and the value of consideration received by the shareholder shall be deemed to be the capital gains arising to such shareholder in the year in which such shares were purchased by the company.
- Capital gains will be value of consideration received less cost of acquisition.



# TRANSACTIONS NOT REGARDED AS TRANSFER

## [Section 47]

- any distribution of capital assets on partition of a HUF
- any transfer of a capital asset under a gift or will or an irrevocable trust
- any transfer of a capital asset by a company to its 100% Indian subsidiary company
- any transfer of a capital asset by a 100% subsidiary company to its holding company
- 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

# Contd...

- Any transfer in a scheme of Amalgamation of a banking company with a banking institution sanctioned and brought into force by Central Government
- 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
- Transfer of bonds or GDR by a non-resident to another non-resident
- any transfer of agricultural land in India effected before the 1st day of March, 1970
- 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 notified

# Contd...

- any transfer by way of conversion of bonds referred to in section 115AC into shares or debentures of any company
- Any transfer of a capital asset, being land of a sick industrial company, where such sick industrial company is being managed by its workers' co-operative in an approved scheme
- 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
- Any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company
- Transfer of membership right by member of a recognised stock exchange in a scheme for demutualisation or corporatisation of that Exchange

# Contd...

- ❖ Any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership.
- ❖ Sole proprietary concern - succeeded by a company - SIP transfers capital asset or intangible asset to the company
- ❖ Transfer in a scheme for lending of securities - made under agreement / arrangement - scheme/agreement with the borrower - which is subject to the guidelines issued by the SEBI or RBI
- ❖ Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government

# Withdrawal of exemption in certain cases

- if before the expiry of a period of 8 years from the date of transfer of the capital asset referred to in Section 47 (iv) or (v) such a capital asset is converted by the transferee company into by it as, stock-in-trade of its business or the parent company ceases to hold the whole of the share capital of the subsidiary company
- Section 47 A(ii) is inserted by the Finance Act 1997 with effect from 1.4.1998 whereby capital assets referred by clause (xi) [i.e. membership of recognised stock exchange] is transferred before expiry of 3 years from the date of the transfer of a capital asset referred to in the amount received on transfer is deemed to be capital gain in the year in which such transfer text place.

# Contd...

- if the condition stipulated regarding the succession of proprietary concern of firm by the company whereby capital gains tax is not levied are not complied with, the amount of profits and gains arising from the transfer of such capital asset or intangible asset not charged under section 47 (xiii) or (xiv), shall be deemed to be profits and gains of the successor company chargeable to tax in the year in which the infringement takes place.
- Where any of the conditions laid down in the proviso to clause (xiiib) of [section 47](#) are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible assets or share or shares not charged under [section 45](#) by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company

# MODE OF COMPUTATION OF CAPITAL GAINS

## [Section 48]

- The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely –
  - expenditure incurred wholly and exclusively in connection with such transfer;
  - the cost of acquisition (or indexed cost of acquisition) of the asset; and
  - the cost of any improvement (or indexed cost of improvement) thereto

# Structure of working of Capital Gain

Particulars	Amount Rs.
Gross Consideration for Sale/Transfer of an Asset	XXXX
Less : Expenses incurred to effect the Transfer	
▪ Transfer Charges	X
▪ Brokerage / Commission	X
▪ Legal Fees etc.	X
<b>Net Consideration from Sale/Transfer of an Asset</b>	<b>XXXX</b>
LESS:	
A. Indexed Cost of Acquisition of the Asset	XXX
B. Indexed Cost of Improvement of the Asset	XXX
<b>Total Indexed Cost</b>	<b>XXXX</b>
<b>CAPITAL GAIN (Net Consideration – Total indexed cost)</b>	<b>XXXX</b>



# Capital Gain – Non Residents transferring shares of Indian Company

- For a non-resident assessee-capital gains from transfer of shares/debentures in an Indian company - shall be computed by converting –
  - ✓ Cost of Acquisition
  - ✓ Expenses incurred for such transfer
  - ✓ Full value of considerationinto the same foreign currency as was initially utilized in the purchase of the shares or debentures, and the Capital gains so computed in such foreign currency shall be reconverted into Indian currency.

## Notes:

- The benefit of deduction of indexed cost of acquisition is not available in the aforesaid case.
- The aforesaid procedure is applicable even in the case of short-term capital gain.

# Proviso (ii) to Section 48

- **Long-term capital asset** - when transferred - and Long-term capital gain arises - [other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company discussed above in the provisions of clause (ii)] - **for computing the long-term capital gain:**
- "Cost of acquisition" means "**indexed** cost of acquisition"  
And  
"Cost of any improvement" means "**indexed** cost of any improvement".
- Simply stated, for working of long-term capital gains, indexing shall be applied. In other word, indexing shall not be available for Short term Capital Gain.

# Indexation

## Indexed Cost of Acquisition –

$$\text{Cost of Acquisition} \times \frac{\text{Cost Inflation Index in the year of transfer}}{\text{Cost Inflation Index of the year of Purchase of asset or of A.Y. 1981-82, Whichever is later.}}$$

## Indexed Cost of Improvement –

$$\text{Cost of Improvement} \times \frac{\text{Cost Inflation Index in the year of transfer}}{\text{Cost Inflation Index of the year of Improvement}}$$

# Cost Inflation Index year wise

Financial Year	Cost Inflation index	Financial Year	Cost Inflation index	Financial Year	Cost Inflation index
1981-82	100	1992-93	223	2003-04	467
1982-83	109	1993-94	244	2004-05	480
1983-84	116	1994-95	259	2005-06	497
1984-85	125	1995-96	281	2006-07	519
1985-86	133	1996-97	305	2007-08	551
1986-87	140	1997-98	331	2008-09	582
1987-88	150	1998-99	351	2009-10	632
1988-89	161	1999-00	389	2010-11	711
1989-90	172	2000-01	406	2011-12	785
1990-91	182	2001-02	426		
1991-92	199	2002-03	447		

## Cost – for certain mode of Acquisition (Section 49)

**(1)** Where the capital asset became the property of the assessee –

- on any distribution of assets on the total or partial partition of a Hindu undivided family;
- under a gift or will;
- on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons
- on any distribution of assets on the liquidation of a company
- under a transfer to a revocable or an irrevocable trust
- such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section 64

## Contd...

- the **cost of acquisition** of the asset shall be deemed to be the **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, as the case may be.
- Explanation—In this sub-section the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset

## Contd...

**(2)**Where the capital asset being a share or shares in an amalgamated company which is an Indian company became the property of the assessee in consideration of a transfer referred to in clause (vii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the amalgamating company.

**(2A)**Where the capital asset, being a share or debenture in a company, became the property of the assessee in consideration of a transfer referred to in clause (x) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee.

# Contd...

- (2AAA)** Where the capital asset, being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 (6 of 2009), became the property of the assessee on conversion as referred to in clause (xiiib) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion.
- (2AB)** Where the capital gain arises from the transfer of specified security or sweat equity shares, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account while computing the value of fringe benefits under clause (ba) of sub-section (1) of section 115WC.
- (2C)** The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.



## Contd...

- (2E)** The provisions of sub-section (2), sub-section (2C) and sub-section (2D) shall, as far as may be, also apply in relation to business reorganization of a co-operative bank as referred to in section 44DB.
- (3)** Notwithstanding anything contained in sub-section (1), where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it.

# Assets received under family settlement

- In a partition, the consideration for the partition is the mutual relinquishment of the rights of the parties in the joint family properties in which each has a share. The fact that the daughters have a right to maintenance and marriage expenses and would have been entitled to a share at a partition does not render the value of the shares allotted to them under a settlement deed, the price for which they had sold or relinquished their right over the properties of the family. The family settlement in this context is analogous to a partition. Therefore, where the assessee received certain shares under a settlement effected by her father, and subsequently sold the shares, it is the cost to the previous owner (father) that is to be taken into account as the cost of acquisition of the shares and not the amount mentioned in the family settlement deed by the settler.

# Sale of Asset – where Depreciation Claimed (Section 50)

- Where all the assets in the block are not sold/transferred during the year [Section 50(1)]:
- Where the full value of the consideration received as a result of the transfer of the asset together with the full value of such consideration received as a result of the transfer of any other capital asset falling within the block of the assets during the previous year, exceeds the aggregate of the following amounts, namely –
  - ✓ expenditure incurred wholly and exclusively in connection with such transfer or transfers;
  - ✓ the written down value of the block of assets at the beginning of the previous year; and
  - ✓ the actual cost of any asset falling within the block of assets acquired during the previous year,such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;

# Contd...

- **Where all the assets in the block are sold/transferred during the year [Section 50(2)]:**

Where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by

- ✓ the actual cost of any asset falling within that block of assets, acquired by the assessee during the previous year; And
- ✓ the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short-term capital assets.
- ❖ Selling price < cost of block of assets short term Capital Loss will be allowed.

# Slump Sale of Business [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 arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place
- In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48
- Assessee, in the case of slump sale, shall furnish in the prescribed form along with the return of income, a report of an accountant as defined u/s 288(2), indicating the computation of the net worth of the undertaking or division, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at in accordance with the provisions of this section.

# Contd...

- ❖ Explanation 1 - For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account
- ❖ Explanation 2 - For computing the net worth, the aggregate value of total assets shall be,—
  - in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained sub-clause (c) of clause (6) of section 43;
  - in case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD, nil; and
  - in the case of other assets, the book value of such assets.

## Contd...

- ❖ Any profits from the slump sale are chargeable long-term capital gain.
- ❖ If business held for less than 36 months then it shall be taxable as Short-term Capital Gain.
- ❖ A slump sale has been defined as a sale of one or more undertakings for a lumpsum consideration without values being assigned to individual assets and liabilities. Determination of value of any asset or liability for the purpose of stamp duty, registration fee or similar tax or fee would not be regarded as assignment of values to individual assets.
- ❖ The net worth of the undertaking transferred would be regarded as the cost of acquisition and improvement.
- ❖ No Indexation would be allowed in respect of such cost.

## Special provision for full value of consideration in certain cases (SECTION 50C)

- Section 50C is applicable if the following conditions are satisfied –
  - ✓ There is transfer of land or building or both. The asset may be long-term capital asset or short-term capital asset. It may be depreciable or non-depreciable asset.
  - ✓ The sale consideration is less than value adopted by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer.
- If the above conditions are satisfied, the value adopted by the Stamp duty authority shall be taken as full value of consideration for the purpose of computation of capital gains.



# Contd...

- The 'full value of consideration' in different situations will be –

Different Situations	Full Value of Consideration
Where the assessee accepts the value adopted by stamp duty authority.	Value adopted by stamp duty authority is taken as full value of consideration.
Where the assessee has disputed value adopted by stamp duty authority under Stamp Act (i.e., stamp duty proceedings).	The stamp duty valuation as finally accepted for stamp duty purpose is taken as full value of considerations.
Where the assessee claims that value adopted by stamp duty authority is more than the fair market value (but he has not disputed such valuation in stamp duty proceedings).	<ul style="list-style-type: none"> <li>➤ Fair market value determined by the Department Valuation Officer" (if it is less than stamp duty valuation) is taken as full value of consideration.</li> <li>➤ Stamp duty valuation (if fair market value determined by Department Valuation Officer is more than stamp duty valuation) is taken as full value of consideration.</li> </ul>

# FORFEITURE OF ADVANCE 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 negotiations shall 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.
- It may be observed that only when the advance money has been (a) received and (b) retained or forfeited by the assessee, then only it has to be deducted from the cost of the asset. If such an advance was received and retained by any previous owner, the same shall not be deducted from the cost of the asset.

# CONCESSIONAL TAX TREATMENT

## [SECTION 54]

Section	Asset	Assessee	Holding Period of Assets	Whether Reinvestment Necessary Time Limit	Quantum
54	Residential House Property	Individual/ HUF	3 years	Yes — In Residential House, within 1 year before, or 2 years after the date of transfer (if purchased) or 3 years after the date of transfer (if constructed).	The amount of gains, or the cost of new asset, whichever is lower
54B	Agricultural Land	Individual/ HUF	Use for 2 years	Yes — In Agricultural Land, within 2 years after the date of transfer.	As above
54D	Industrial Land or Building or any right therein	Any Assessee	Use for 2 years	Yes — In Industrial Land, Building, or any right therein within 3 years after the date of transfer.	As above
54EC	Any Long-term Capital Asset (LTCA)	Any Assessee	Shares, Securities Units of UTI/Mutual Fund : 1 year Others : 3 years	Yes — Whole or any part of capital gain in bonds redeemable after 3 years and issued on or after 1-4-2006 by NHAI or REC and notified by the Govt.– within 6 months from the date of transfer	The amount of gain or the cost of new asset whichever is lower subject to Rs. 50,00,000 per assessee

# Contd...

Section	Asset	Assessee	Holding Period of Assets	Whether Reinvestment Necessary Time Limit	Quantum
54F	Any Capital Asset (not being a residential house)	Individual, HUF	Shares, Securities Units of UTI/Mutual Fund : 1 year Others : 3 years	Yes — In Residential House, within 1 year before, or 2 years after the date of transfer (if purchased), or 3 years after the date of transfer (if constructed).	If the cost of the specified asset is not less than Net Consideration of the original asset, the whole of the gains. If the cost of the specified asset is less than the Net Consideration, the proportionate amount of the gains
115F	Foreign Exchange Asset	Non-Resident Indian (Individual)	Shares, Securities Units of UTI/Mutual Fund : 1 year Others : 3 years	Yes— In 'Specified Assets' or Specified Savings Certificates of Central Government, within 6 months after the date of transfer	Same as u/s. 54F above.
54G	Industrial land or building or plant or machinery	Any Assessee	—	Yes — In similar assets and expenses on shifting of original asset, within 1 year before, or 3 years after the date of transfer.	The amount of gains, or the aggregate cost of new asset and shifting expenses, whichever is lower

# Contd...

Section	Asset	Assessee	Holding Period of Assets	Whether Reinvestment Necessary Time Limit	Quantum
54GB	Residential property being a house or a plot of land	Individual/ HUF	5 years	Yes — In subscription of equity shares before due date of filing return of an <i>eligible company</i> and the company within 1 year utilize the amount for purchase of <i>new asset</i>	If the cost of the specified asset is not less than Net Consideration of the original asset, the whole of the gains. If the cost of the specified asset is less than the Net Consideration, the proportionate amount of the gains.
54GA	Industrial land or building or plant or machinery	Any Assessee	—	Yes — In similar assets and expenses on shifting of original assets to a Special Economic Zone – within 1 year before or 3 years after the date of transfer.	The amount of gains, or the aggregate cost of new asset and shifting expenses, whichever is lower

- The above concession / exemptions are available only certain conditions are fulfilled as may specified under the provisions of Act.

# Intangible/Self generated assets

- The following are the instances of Intangible/Self generated assets –
  - + Goodwill of a business, or
  - + A trade mark, or
  - + Brand name associated with a business, or
  - + A right to manufacture, produce or process any article or thing, or
  - + Right to carry on any business, or
  - + Tenancy rights, or
  - + Stage carriage permits or loom hours etc.

## Cost of acquisition - Intangible/Self-generated assets :

- in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and
- in any other case, shall be taken to be “NIL”, Capital Gains to be worked out accordingly.

# Cost of acquisition is what previous owner paid for

- where the Assessee did not pay for acquiring an asset but his previous owner paid for this. In such cases, the cost of acquisition is what the previous owner paid for the asset.
- Such situation would arise in following cases –
  - on any distribution of assets on partition of a Hindu undivided family
  - under a gift or will
  - by succession, inheritance or devolution or
  - on any distribution of assets on the dissolution of a firm, BOI/AOP
  - on any distribution of assets on the liquidation of a company, or
  - under a transfer to a revocable or an irrevocable trust etc.

# MEANING OF THE COST OF IMPROVEMENT

- Only capital expenditure is considered as a Cost improvement.
- Routine expenses on repairs and maintenance do not form a part of cost of improvement.
- Expenses incurred to complete the title of the property are also regarded as a part of cost of improvement.

## Determination of Cost of improvement

- Where capital asset consists of goodwill of a business, or a right to a manufacture, product or process any article or thing then cost of improvement is taken as **Nil**.
- In case of any other assets -
  - ✓ where the capital asset became the property of the previous owner or the assessee before 1.4.1981.:- It will be all capital expenditure incurred in making any additions or alterations to the capital asset on or after 1.4.1981 by the assessee or the previous owner.
  - ✓ In other cases i.e. assets acquired after 1.4.1981 :- all capital expenditure incurred in making any additions or alterations to the capital asset by the assessee or the previous owner after it became his property, or the property of the previous owner.



## Cost of acquisition goodwill of business/right to manufacture, produce or process any article

- Cost of acquisition is the price which the assessee has paid, or the amount which the assessee has incurred, for acquisition of the assets. Expenses incurred for completing the title are a part of the cost of acquisition.
- where these assets are self-generated, cost of acquisition shall be taken to be nil.
- When these assets are purchased from someone, the cost of acquisition shall be the price paid for acquiring these assets.
- Cost of acquisition includes deemed cost of acquisition.

# Reference to Valuation Officer [Section 55A]

- With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer—
  - 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 less than its fair market value;
  - in any other case, if the Assessing Officer is of opinion—
    - that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed in this behalf; or
    - that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do,

# Tax on Short Term Capital Gains in certain cases [Section 111A]

- Short-term capital gains-on Equity Shares & unit of an equity oriented fund - Taxable @ **15%** AND Other Income including other Short-term capital gains taxable at normal rates
- Ch. VI-A Deductions allowed on Other Income but not on Short-term capital gains where the special rate of short term capital gain is applicable
- No deduction is available under sections 80C to 80U on such exempted short-term gains
- Surcharge and Education Cess are applicable at current rates.

# Tax on Long Term Capital Gains [Section 112]

- Where Long Term Capital Gain arises, income shall have to be segregated between –
  - Tax on Income other than long-term capital gains - @ Normal Rate of Tax
  - Tax on long-term capital gains as under –

On resident individual or a resident Hindu undivided family,	@ 20 %
Domestic Company	@ 20 %
Non-resident (not being a company) or a foreign company	@ 20 %
Any other case of a resident	@ 20 %

# Contd...

- Long-term capital gains on sale of listed shares/Units without given benefit of Indexation –
  - In case of long-term capital asset, being listed securities, Units or zero coupon bonds @ 10 %
  - Surcharge and Education Cess are applicable at current rates.
  - Where shares, securities or Units of Mutual Funds are sold, the long-term capital gains shall be computed at the option of the Assessee under any one of the two options –
    - ✓ Either he takes benefit of Indexation and pay tax @ 20%
    - ✓ Or he does not take benefit of Indexation and pay tax @ 10%

# Some Special Rates of Taxes for Capital Gain

Section	Who earns income	Nature of Income	Tax Rate
115ACA	A Resident Individual and employee of an Indian Company engaged in specified knowledge based industry of service	Long Term Capital Gain from transfer of Global Depository Receipts	10%
115AD	Income of Foreign Institutional Investors from capital gain arising from transfer of securities	Short Term Capital Gain	30%
		Long Term Capital Gain	10%
115D	Long Term Capital Gain to Non Resident	Long Term Capital Gain from Specified Asset	20%
		Long Term Capital Gain from Non-Specified Asset	10%
115E & 115F	Long Term Capital Gain to Non Resident	Long Term Capital Gain from Foreign Exchange Asset - Reinvested within 6 months - Lock-in period for 3 years	NO Gain NO Tax

# Set off & Carry Forward and Set off

LOSS	CAN BE SET-OFF AGAINST -
Loss under any Head of Income (other than “Capital Gain”) AND There is NO Income under the head “Capital Gain”	Such Loss can be Set-off against Income from any other head
Loss under any Head of Income (other than “Capital Gain”) AND There is Income under the head “Capital Gain”	Such Loss can be Set-off against Income from any other head including Income under the “Capital Gain”

## Contd...

- Losses from the head under capital gain can be set off again only against income from capital gain.
- The Unabsorbed Capital Loss Can be carried forward to next 8 years.
- Treatment of set-off is like –

Loss	Can be set-off against -
Unabsorbed Short Term Capital Loss	Short Term Capital Gain OR Long Term Capital Gain (of subsequent eight years)
Unabsorbed Long Term Capital Loss	Long Term Capital Gain (of subsequent eight years)