4. GENERAL PROVISIONS IN CAPITAL GAINS

CONCEPT WISE ANALYSIS OF PAST EXAM PAPERS OF IPCC AND CA INTER

Concept No.	ABC	M-09	N-09	M-10	N-10	M-11 TO M-12	N-12	M-13	N-13	M-14	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18(O)	M-18(N)	N-18(O)	N-18(N)
1	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	-	-	-
3	B	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
5	C	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6	A	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
10	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
12	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	B	-	-	-	-	5	-	8	-	8	-	-	-	-	-	-	-	-	-	-	-
16	B	-	-	-	-	8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17	B	-	-	-	-	4	8	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17.1	A	-	-	-	-	-	-	-	-	-	-	-	-	2	-	-	-	-	-	-	-
17.2	B	-	-	-	-	-	12	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17.3	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17.4	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17.5	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17.6	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17.7	A	-	6	-	-	16	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
19	B	-	-	-	5	-	-	-	-	-	-	-	-	-	-	-	-	-	10	-	-
20	A	-	-	6	-	-	-	-	-	-	-	8	-	-	-	-	5	-	-	-	6
21	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21.1	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	B	-	3	-	-	-	-	-	4	-	-	-	8	-	-	8	-	-	-	-	-
23	A	-	3	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-
24	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

SIGNIFICANCE OF EACH PROBLEM COVERED IN THIS MATERIAL

Problem No. in this Material	Problem No. in NEW SM	Problem No. in OLD SM	Problem No. in OLD PM	RTP	MTP	Previous Exams
CR 1	ILL 14	ILL 9	-	-	-	-
CR 2	-	-	-	-	M18 (N&O)	-
CR 3	ILL 15	-	PQ 17	-	-	-
CR 4	ILL 16	-	PQ 11	N 16	-	-
CR 5	-	-	PQ 40	-	-	-
CR 6	-	-	PQ 6	-	N18 (N&O)	N18 (N) - 6M (85%)
AS 1	EXAMPLE	EXAMPLE	-	-	-	-
AS 2	ILL 5	ILL 5	-	-	-	-
AS 3	ILL 13	ILL 8	-	-	-	-
AS 4	-	-	-	-	-	-
AS 5	PQ 1	-	-	-	-	-
AS 6	PQ 9 (90%)	-	PQ 23	-	-	-
AS 7	-	-	-	-	-	-
AS 8	-	-	-	-	-	-
AS 9	-	-	-	-	-	-
AS 10	ILL 19	ILL 15	-	-	-	-

AS 11	-	-	PQ 32	-	-	-
AS 12	ILL 7 (90%)	-	PQ 16	-	-	-
AS 13	ILL 17	-	PQ 41	-	-	-
AS 14	-	-	PQ 1	-	-	M 17-8M, M 16-2M
AS 15	-	-	PQ 7	-	-	-

Sec.'s to be remembered:

Sec.48	Computation of C.G. - Non depreciable capital assets.
Sec.49(1)	Concept of Previous owner.
Sec.51	Forfeiture of advance.
Sec.111A	Taxation of STCG
Sec.112	Taxation of LTCG
Sec.50	Computation of C.G. - Depreciable capital assets.
Sec.50A	Computation of C.G. - Depreciable C. A's (SLM)
Sec.50B	Slump Sale
Sec.50C	Computation of C. G's in case of Land & Buildings
Sec.55A	Reference to Valuationer.

Amendments in the Finance Act, 2018:

ADDITIONS	DELETIONS	MODIFICATIONS
Sec. 112A	Sec. 10 (38)	Sec. 2(42A), Sec. 50C

1. SEC.45 (1) - CHARGING SECTION

a) Any profit or gain arising from the transfer of a **capital asset** is chargeable under the head "Capital gains" in the previous year in which **transfer** takes place (i.e., the date of accrual of capital gain is the date when the transfer takes place) **unless** such capital gains are exempt from tax under Sec.54/54B/54D/54EC/54EE/54F.

In other words, "Year of **chargeability** = Year of **Transfer**".

b) **Receipt of consideration in installments:** Even in that case also the entire consideration has to be taken into account for computing the capital gains.

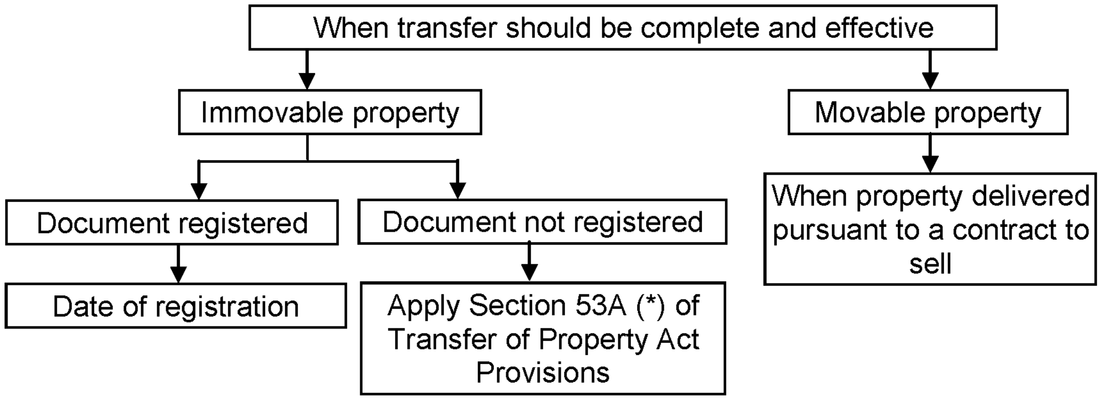
Note: ____

____

2. WHAT IS A TRANSFER? {Sec.2 (47)}

Transfer includes:

1. Sale, Exchange (Must be of two capital assets) (See Note).
2. Relinquishment of an Asset.
3. Extinguishment of right in an Asset.
4. Compulsory acquisition by Government.
5. Conversion of capital asset into Stock-in-trade.
6. Any transfer covered by Sec.53 A of the transfer of Property Act (*) (i.e. Part performance of a contract).
7. The maturity or redemption of zero coupon bonds.
8. Acquire share in co-operative society, company, AOP for enjoyment of immovable property.
9. "Transfer" includes disposing or parting with creating interest in asset whether agreement is in India or outside India notwithstanding that transfer is flowing from transfer of shares of co. incorporated outside.



(*) Sec.53A contract: Refer to House property chapter.

Illustration 1: *R owns a plot of land acquired for consideration of Rs.2 lakhs. He enters into an agreement to sell the property on 15-03-2019 for a consideration of Rs.5 lakhs. In part performance of the contract, he handed over the possession of land on 21-03-2019 on which date he received the full consideration. As on 31-03-2019, the sale was not registered. Discuss the tax liability.*

Solution: *According to Sec.2 (47) read with Sec.53A of the transfer of property Act, it amounts to transfer. (Registration was not affected). So it attracts capital gain in the year of transfer i.e., P.Y. 2018-19.*

Note: Exchange means a voluntary deed of 'property' in goods by one person to another for consideration in kind whereas the term sale demands the consideration in money.

3. Sec.47 - EXCEPTIONS TO TRANSFER

1. **Gift or will:** Transfer of a capital asset by way of gift or under a will.

   However, the transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly/ indirectly to its employees under ESOP or otherwise in accordance with the guidelines issued by the CG is **NOT** covered under exceptions.

2. **Partition:** Transfer of a capital asset on total / partial partition of a HUF.

3. **H to S/S to H:** Transfer of a capital asset (**) by holding company to its subsidiary company or vice versa provided that (i) the capital asset must be held by the transferor company and transferee company is an Indian company and (ii) the subsidiary company shall be wholly owned by the holding company.

   (**) this exception is not applicable in the case of transfer of a capital asset as stock in trade.

4. **Amalgamation-Assets:** Transfer of a capital asset in a scheme of amalgamation, if the amalgamated company is an Indian Company.

5. **Demerger-Assets:** Transfer of a capital asset by the demerged company in a scheme of demerger to the resulting company, if the resulting company is an Indian company.

6. **Conversion/Graduation of firm into company**

7. **Amalgamation of banking company with a banking institution:** Any transfer, in business reorganization, of a capital asset by the predecessor co-operative bank to the successor co-operative bank.

8. Transfer of capital asset being any **work of art, archeological or scientific or art collection, any book manuscript, painting, drawing, etc**., to the Government or University or notified Museums, Art Gallery or approved institutions.

9. **Amalgamation-Shares:** Exchange of shares held by the shareholder of the amalgamating company in lieu of the shares issued by the amalgamated company if the amalgamated company is an Indian Company.

Tit Bit 1:

M held 2,000 shares in a company ABC Ltd. This company amalgamated with another company during the previous year ending 31-03-2019.Under the scheme of amalgamation, M was allotted 1,000 shares in the new company. The market value of shares allotted is higher by Rs. 50,000 than the value of holding in ABC Ltd. The Assessing Officer proposes to treat the transaction as an exchange and to tax Rs. 50,000 as capital gain. Is he justified? ***(ANS: NOT JUSTIFIED)***

10. **Demerger - Shares:** Issue of shares by the resulting company to the shareholders of the demerged company in pursuance of a scheme of demerger.
11. **Conversion** of debentures and deposit certificates into shares.
12. 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 or securities, by a non-resident to another non-resident shall not be regarded as a transfer.
13. Any transfer of sovereign gold bonds issued by RBI under Sovereign Gold Bonds Scheme, 2015, by way of redemption, by an assessee being an individual would not constitute a transfer for the purpose of levy of capital gains tax.
14. Any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme or plan of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund is not regarded as a transfer and is, hence, not subject to capital gains tax.
15. 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.
16. Any transfer by way of conversion of preference shares of a company into equity shares of that company.
17. Any transfer of capital asset in a transaction of reverse mortgage.

(Solve Problem No.2 of Assignment problems as rework)

4. CAPITAL ASSET - Sec. 2(14)

Includes	Excludes
It means **a)** Property of **any kind** whether movable or immovable, tangible or intangible, **connected to business or not**. **b) Any securities held by foreign institutional investor (FII) which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992.**	**i)** Stock in Trade **(other than securities held by foreign institutional investor(FII))** **ii)** Personal Effects **iii)** Agricultural Land not situated in the Specified Area. **iv)** Specified gold bonds (*) issued by the CG. **v)** Special Bearer Bonds, 1991 (Not in existence now). **vi)** Gold Bonds issued under Gold Deposit Scheme, 1999. **vii)** Deposit certificates issued under Gold Monetization Scheme, 2015 notified by C.G

(*) 6.5% Gold bonds, 1977 or 7% Gold bonds, 1980 or National Defence Gold bonds, 1980.

MEANINGS FOR ABOVE PURPOSE:

1. **Stock in trade means:** Raw material (or) consumable stores used by assessee in his business or profession.

   Eg.: X is a dealer in house property. For him, house property is stock-in-trade. Any profit earned by him on sale of stock-in-trade (i.e., house property) would be taxable as Business income.

   It is the nature of business of the assessee that will decide whether an asset is held as stock in trade or not.

Examples:

i) In case of an assessee who deals in vehicles that were held by him for trading purposes, shall be treated as stock in trade. Hence it is not a capital asset.

ii) If an assessee uses vehicle for carrying out its trading activities, then such vehicles shall be treated as used for business purposes. Hence, it is a capital asset.

2. **Personal effects mean:** Movable property, (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him.

To be treated as personal effect following **two conditions** must be satisfied:

i) Asset must be movable in nature; and

ii) It must be held for personal use.

But excludes:

a) Jewellery (even held for personal purpose)

b) Archaeological collections

c) Drawings

d) Paintings

e) Sculptures (or)

f) Any work of art

3. **Specified area:**

No.	Shortest aerial distance from the local limits of a municipality or cantonment board	Population according to the last Preceding census of which the relevant figures have been published before the first day of the previous year.
i)	≤ 2 kilometers	> 10,000 ≤ 1,00,000
ii)	≤ 6 kilometers	> 1,00,000 ≤ 10,00,000
iii)	≤ 8 kilometers	> 10,00,000

The transfer of an agricultural land situated in the above specified limits attracts the tax liability under the head capital gains and the income arising from such was not exempted as agricultural income (Sec.10(1)).

4. In order to levy capital gain on transfer of an asset, the important criteria is that whether such asset is a capital asset as on the date of transfer or not. It is not material whether such asset was a capital asset as on the date of its acquisition.

<u>Tit Bit 2:</u> State whether the following statements are correct with respect to the definition of Capital asset under Sec.2 (14).

1. Land situated in rural area is capital asset - T/F- **True**
2. Agricultural land situated in urban area is capital asset - T/F- **True**
3. Agricultural land situated outside India in a rural area is treated as capital asset- T/F- **True**
4. Rolls royals car held for personal purpose is treated as capital asset - T/F- **False**
5. Benz car held for business purpose is treated as capital asset- T/F- **True**
6. Nano car held by Tata Motors Ltd. Is treated as capital asset - T/F- **False**
7. Gold held for personal use is treated as capital asset - T/F- **True**
8. Shares held as investments is treated as capital asset - T/F- **True**
9. Shares held as stock in trade is treated as capital asset - T/F- **False**
10. Ravi Varma paintings purchased for personal use for Rs.1 Crore and sold for Rs.10000 is treated as capital asset - T/F- **True** ***(SOLVE PROBLEM NO.1 OF ASSIGNMENT PROBLEMS AS REWORK)***

5. PERIOD OF HOLDING

1. **For normal cases:** From the date of acquisition to the date of transfer.

   Note: For calculation of period of holding, the date of transfer of the asset shall be excluded.
2. **For Sec.49(1) [Points 1 to 10 of sec.47] modes:** If any asset acquired under any modes specified u/s 49(1), then P.O.H of previous owner shall also be included to assessee.
3. **For special cases:**

1. **Amalgamation - shares**	Period of holding (P.O.H) of an asset of the transferor shall also be considered.
2. **Demerger- shares**	Period of holding of an asset of the transferor shall also be considered.
3. A Unit of a business trust allotted pursuant to transfer of share or shares of **special purpose vehicle**	P.O.H. shall include the period for which the share or shares were held by the assessee in special purpose vehicle.(domestic company)
4. **Flat in co-operative society**	P.O.H shall be reckoned from the date of allotment of shares in the society and will end with the date of transfer.
5. **Where inventory of business is converted into or treated as a capital asset by the assessee**	Period from the date of conversion or treatment as a capital asset shall be considered.
6. **Primary market**	In case the assessee purchased any shares etc. in primary market, the period of holding shall be calculate from the date of allotment of such shares etc. and not from the date of apply for shares etc. was made.
7. **Right Renouncement**	If the right to subscribe to shares is renounced to any other person the period of holding of the asset (Right Renouncement) shall be calculated from the date of the offer of such right by the company up to the date of renouncement.
8. Allotment of a **financial asset** without consideration **and** on the basis of holding any other financial asset	If a financial asset was allotted without consideration because of holding any other financial asset, the P.O.H. shall be computed from the date of allotment of such financial asset.
9. **Liquidation**	In case the company in which shares are held by the assessee gets liquidated, while computing the period of holding of such shares, the period of holding subsequent to the date of liquidation shall not be taken into account (i.e. excluded).
10. **Unit(s)** becomes the property of the assessee in consideration of transfer of unit/s in **the consolidated scheme of the mutual fund (Sec.47(xviii)) or consolidated plan (Sec.47(xix))**	The P.O.H. shall include the period for which the units in the consolidating scheme of the mutual fund or consolidating plan were held by the assessee.
11. Acquisition of equity shares upon **conversion of preference shares** into equity shares	The P.O.H. shall Include the period for which the preference shares were held by the assessee
12. Specified Security / Sweat equity shares	The period of holding for any specified security or sweat equity shares allotted or transferred, by the employer free of cost or at concessional rate to his employees shall be reckoned from the date of allotment or transfer of such specified security or sweat equity shares.

Illustration 2: *Amin is the holder of 1,000 debentures of Amin Ltd. having a face value of Rs.1,000 each. The company has offered an option to the debenture-holders either to redeem the debentures at Rs.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 Rs.1,200 per share (face value Rs.1,000). What will be the tax consequences of the two options in the hands of the debenture-holder Amin?*

Solution:

Option1	*Option 2*
Conversion of debentures into shares: *Nothing is taxable in hands of debenture holder as this transaction is specifically exempted u/s 47 to be called as transfer.*	***Redemption by payment:*** *Redemption of debentures amounts to extinguishment of an asset treated as transfer u/s.2 (47). Therefore, it is subject to taxation under the head capital gains.* *Consideration 1,200* *(-) Cost of acquisition (1,000)* *LTCG 200* ***Note:*** *Indexation is not available in case of debentures under proviso 3 to Sec.48.*

S.No	*Type of Capital Assets*	*Date of Acquisition*	*Date of Sale*	*Solutions*
1.	*House property*	*01.10.2013*	*02.10.2018*	***LTCA***
2.	*Equity shares held in Reliance Industries Ltd.*	*05.04.2018*	*31.03.2019*	***STCA***
3.	*Listed debentures in a recognized stock exchange of India*	*06.11.2017*	*04.12.2018*	***LTCA***
4.	*Unlisted debentures*	*01.01.2016*	*02.01.2019*	***LTCA***

(Solve Problem No.1, 5 of Assignment problems as rework)

6. TYPES OF CAPITAL ASSETS

Type of capital asset	STCA [SEC.2 (42A)]	LTCA [SEC.2 (29A)]
a) Securities (Other Than Unit) **listed** in a recognized stock exchange in India **b)** Unit of UTI **c)** Units of Equity oriented fund units **d)** Zero coupon bonds	Held for not more than 12 months	Held for more than 12 months
a) Unlisted shares of a company **b)** **an immovable property**, being **land/ building/ both**	Held for not more than 24 months	Held for more than 24 months
Any other asset	Held for not more than 36 months	Held for more than 36 months

Illustration 3: *Determine whether the asset held was short term or long-term capital asset.*

a) *R holds 1000 shares in G ltd., which goes into liquidation on.31-10-2018 R purchased these shares on.31-01-2018. The company made the payment to R on 31-03-2019.*

Solution: *Period of holding = 31-01-2018 to 31-10-2018=9 months (<12 months) so, it is STCA*

Note: *holding period after liquidation is to be excluded*

b) *R got a diamond ring by way of gift from his uncle on 1-1-2017. This ring was purchased by his uncle on 29-12-2015. R sold this ring on.31-12-2018.*

Solution: *Period of holding = 29-12-2015 to31-12-2018= 3 years 2 days (> 36 months) so, it is LTCA*

Note: *Gift is covered by sec 49(1). In such case the holding period of the previous owner should also be included.*

c) *R acquires 1000 shares in G Ltd., on 28-02-2018 He surrenders these shares to the company on 31-08-2018 in pursuance of scheme of amalgamation. He is allotted 500 shares in S Ltd., the amalgamated company in lieu of such shares surrendered. R sells these shares on 31-03-2019.*

Solution: *Period of holding = 28/02/2018 to 31/03/2019 =13 months (appropriate) > 12 months so, it is LTCA*

d) *R acquires 1000 shares in G Ltd., on 29-03-2018. He is allotted 500 shares of a resulting company S Ltd. on1-04-2018. He transferred these on 31-03-2019.*

Solution: *Period of holding = 29.03.2018 to 30.03.2019 = 1 year 1 day>12 months so, it is LTCA.*

7. COMPUTATION OF CAPITAL GAINS [Sec.48]

STCG: Capital gains arising on transfer of a short-term capital asset are called STCG.

Manner of Computation - Sec.48 (For Non-depreciable assets):

Full value of Consideration		XXX
Less: Transfer Expenses		XXX
Net Consideration		XXX
Less:		
Cost of Acquisition	XXX	
Cost of Improvement	XXX	XXX
Gross Capital Gains/Loss		XXX
Less: Exemption U/s.54B,54D		XXX
Net STCG/L		XXX

LTCG: Capital gains arising on transfer of a Long-term capital asset are called LTCG.

Manner of computation of LTCG: Replace Indexed Cost of acquisition and Indexed Cost of Improvement for Cost of Acquisition and Cost of Improvement.

Note: No deduction shall be allowed in respect of any sum paid on account of **Securities Transaction Tax.**

8. SEC.48 - PROVISO'S

1. **Proviso 2:** Indexation facility is available in computation of LTCG. It is not available to Non-resident.
2. **Proviso 3:** Indexation is not available to bonds or debentures. But it is available to capital indexed bonds issued by the Government.
3. **Proviso 4:** Benefit of indexation would be available in respect of long-term capital gains arising from transfer of such sovereign gold bonds.
4. **Proviso 5:** In case of non-resident assessees, any gains arising on account of rupee appreciation against foreign currency at the time of redemption of rupee denominated bond of an Indian company held by him shall not be included in computation of full value of consideration. This would provide relief to the non-resident investor who bears the risk of currency fluctuation.

   Note: In the case of non-residents, capital gains arising from the transfer of shares or debentures of an Indian company shall be computed as follows

   a) Convert the cost of acquisition, expenditure incurred in relation to such transfer and full value of consideration in to the same currency in which the asset was purchased.

   b) Compute and convert the resultant capital gains in step (a) into Indian currency.

9. TRANSFER EXPENSES

1. It includes any expenditure incurred wholly and exclusively for the purpose of transfer of capital assets. It means the expenditure, which is necessary to affect transfer.

   Examples: Brokerage, Stamp duty, Registration fees.

2. Expenses on transfer are different from expenses on acquisition. Acquisition expenses are added to actual cost of the asset whereas transfer expenses are deducted from sale consideration.

   Securities Transaction Tax (STT) is not allowed as deduction.

10. COST OF ACQUISITION

FOR NORMAL CASES: The cost incurred by the assessee for acquisition of the asset and includes the expenses incurred in connection with the acquisition of the asset.

<u>**For modes specified u/s.49 (1) [points 1 to 10 of sec.47]:**</u> In case where the capital assets became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will etc., **the cost of acquisition of such assets in the hands of transferee shall be the cost of acquisition to the previous owner i.e., transferor.**

<u>**Note**</u>:

1. A capital asset became the property of the assessee -

- **a)** by succession, inheritance or devaluation;
- **b)** on any distribution of assets on the liquidation of a company;
- **c)** under a transfer to revocable or an irrevocable trust;
- **d)** by conversion of an individual property of a member into a HUF property

Cost to the Previous owner = Cost to the assessee

2. Apart from point (1) above, the cost to the previous owner shall be the cost to the assessee in the following cases

Nature of the transfer	Conditions
In the scheme of **amalgamation**	**Transfer of a capital asset** by the amalgamating/ selling company to the Amalgamated Indian company
In the scheme of **demerger**	**Transfer of a capital asset** by the demerged company to the Resulting Indian company
Holding company to subsidiary company	**Transfer of a capital asset** by the Holding company to its 100% Indian subsidiary company
Subsidiary company to Holding company	**Transfer of a capital asset** by the subsidiary company to its 100% Indian Holding company

3. Previous owner means the last previous owner of the capital asset, who acquired it by a mode of acquisition other than the mode referred in Sec.49 (1).

4. In case the C.O.A. to the previous owner is not ascertainable, then C.O.A. = FMV on the date conversion.

<u>**Special Cases:**</u>

1. Demerger - Shares:

a) Cost of acquisition of the shares in the resulting company:

$$\text{Cost of acquisition of shares held by the assessee in the Demerged company} \times \frac{\text{Net worth transferred in a demerger}}{\text{Net worth of the demerged Co. immediately before demerger}}$$

b) Net Worth = Paid up share capital + General Reserves.

c) Cost of acquisition of the shares in demerged co. (Post demerger): Cost of acquisition of the original shares (in demerged co.) <u>minus</u> cost of shares as obtained in ‘a’ above (resulting co.).

<u>Illustration 4:</u> *R acquired 1000 shares in G Ltd. @ Rs.30 per share. G Ltd. was demerged on 19-11-2018 and the net book value of the assets transferred to X Ltd., (the resulting company) was Rs.25 lakhs. Compute the cost of acquisition of shares of R in demerged company as well as resulting company assuming the paid up capital & general reserves of G Ltd before demerger were Rs.1 crore*

<u>**Solution:**</u>

R - Assessee - Rs.30,000
- *Demerged Co. (Post Demerger)* — *30,000 – 7,500 = Rs.22,500*
- *Resulting Co.* — *30,000 x 25L / 1.cr = Rs.7,500*

2. **Shares (Original & Rights) (i.e. Financial Assets):**
   a) The **cost of acquisition (C.O.A.) of original shares** - Amount actually paid.
   b) The **C.O.A. of the right shares** - Amount actually paid.
   c) **Right Renouncements** - While computing capital gains C.O.A. to be taken as NIL.
   d) **Cost to the purchaser of right shares:** Amount paid to the company for acquiring the shares + the amount paid to the owner towards rights renouncement.
   e) **Bonus shares:** If the bonus shares were allotted before 01.04.2001, then the C.O.A. will be **FMV as on 01.04.2001 or NIL** at the option of the assessee, **OTHERWISE** the C.O.A. is **NIL.**

Illustration 5: *Mr. R holds 1000 shares in Star Minus Ltd., an unlisted company, acquired in the year 2001-02 at a cost of Rs.25,000. He has been offered right shares by the company in the month of August, 2018 at Rs.140 per share, in the ratio of 2 for every 5 held. He retains 50% of the rights and renounces the balance right shares in favour of Mr. Q for Rs.25 per share in September 2018. All the shares are sold by Mr. R for Rs.300 per share in January 2019 and Mr. Q sells his shares in December 2018 at Rs.280 per share. What are the capital gains taxable in the hands of Mr. R and Mr. Q?* ***(NEW SM, OLD SM)***

Solution:

Computation of capital gains in the hands of Mr. R for the A.Y. 2019-20

1000 Original shares:	
Sale proceeds (1000 × Rs.300)	3,00,000
Less: Indexed cost of acquisition [Rs.25,000 × 280/100]	70,000
Long term capital Gain (A)	2,30,000
200 Right shares:	
Sale proceeds (200 × Rs.300)	60,000
Less: Cost of acquisition [Rs.140 × 200] **[Note 1]**	28,000
Short term capital gain (B)	32,000
200 Right shares renounced in favour of Mr. Q	
Sale proceeds (200 × Rs.25)	5,000
Less: Cost of acquisition **[Note 2]**	-
Short term capital gain (C)	5,000

Note 1: Since the holding period of these shares is less than 2 years, they are short term capital assets and hence cost of acquisition will not be indexed.

Note 2: The cost of the rights renounced in favour of another person for a consideration is taken to be nil. The consideration so received is taxed as short-term capital gains in full. The period of holding is taken from the date of the rights offer to the date of the renouncement.

Computation of capital gains in the hands of Mr. Q for the A.Y.2019-20

Particulars	Amount (Rs.)
200 shares:	
Sale proceeds (200 × Rs.280)	56,000
Less: Cost of acquisition [200 shares × (Rs.25 + Rs.140)] **[Note]**	33,000
Short term capital gain	**23,000**

Note: The cost of the rights is the amount paid to Mr. R as well as the amount paid to the company. Since the holding period of these shares is less than 2 years, they are short term capital assets and hence, cost of acquisition should not be indexed.

3. **Others:**

Particulars and Nature of the transfer	Cost of acquisition
Unit(s) of a business trust allotted in exchange to the transfer of share	Cost of the share of the special purpose vehicle (i.e. share in Business trust)
Shares issued by way of **ESOP/ sweat equity** and subsequently transferred	FMV adopted for the purpose of calculation of perquisites U/S.17 (salaries)

Shares acquired as a result of an **amalgamation**	Cost of acquisition of the shares of the amalgamating company
Conversion of shares/ debentures into bonds	Cost of that part of the debenture, bond debenture stock or deposit certificate, FCEBs, which is so converted.
Equity shares acquired upon the **conversion of preference shares**	Cost of the convertible preference shares to the transferor
Unit(s) acquired under **consolidated plan of Mutual Fund / consolidated scheme of mutual fund**	Cost of acquisition of the original unit or units in the consolidated plan / scheme of mutual fund
Capital asset, being share in the project specified under Sec.45(5A), in the form of land or building or both was transferred **AFTER** the date of issuing of the completion certificate	Sum of SDV of his share in the project as on the date of issuing of the completion certificate **AND** Consideration received in cash, if any.
Consolidation, division conversion from shares to stock or vice versa., reconversion etc.	The cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived

SEC.55 - COST OF ACQUISITION IN CASE OF SPECIAL CATEGORY ASSETS

Supreme Court held (CIT Vs. B.C.Srinivasa Setty) that only if an asset costs something to the assessee in terms of money the provisions relating to levy of capital gains tax are applicable. To overcome/nullify this decision an amendment to Sec.55 has been brought.

Computation of capital gains in the case of -	
Case 1: Self-generated goodwill of a business **(not of a profession)**, right to manufacture / produce / process any article **or** right to carry on any business or profession	**Case 2:** Self-generated tenancy rights, route permits, loom hours, trademarks, brand name related with business.

Computation of capital gains	**Case 1**		**Case 2**	
Particulars	**Rs.**	**Rs.**	**Rs.**	**Rs.**
Sale consideration (Actual amount) **Less:** Expenses of transfer (Actual amount)		xxxx (xxx)		xxxx (xxx)
Net consideration **Less:** Cost of acquisition **Less:** Cost of improvement	 Nil Nil	xxxx Nil	 Nil xxx	xxxx Nil
Taxable capital gains		**xxxx**		**xxxx**

Note: For the purpose of Case 2 above, the actual cost improvement will be allowed. Further, if the assets are purchased the actual cost of those assets shall be allowed as COA. However, transfer of self-generated goodwill **of professio**n is **not taxable** because the cost of acquisition and its improvement is not ascertainable.

Illustration 6: *Compute the capital gain in the following cases:*

a) *P commenced a business on15-04-2003. The said business is sold by P on 18-04-2018 and he received Rs.6,00,000 towards goodwill.*

Solution:

Consideration	*6,00,000*
Less: *Cost of Acquisition*	*0*
LTCG	*6,00,000*

b) *What will be your answer in the above case, if P had acquired the goodwill for this business for a consideration of Rs.2,00,000?*

Solution:

Consideration	*6,00,000*
Less: *Indexed Cost of Acquisition 2,00,000X 280/ 109*	*5,13,761*
LTCG	*86,239*

c) *R has been living in a rented accommodation since May, 2006 and he is paying a rent of Rs.500 per month. The landlord got the house vacated from R on 16-07-2018 and paid a sum of Rs.5,00,000 for vacating the house.*

Solution:

Consideration	*5,00,000*
Less: *Cost of Acquisition*	*0*
LTCG	*5,00,000*

d) *S is a C.A. practicing in Delhi since January 1993. He transfers the practice to another Chartered Accountant Y on 15-07-2018 and charges Rs.5,00,000 towards goodwill.*

Solution: *As per CBDT Circular, it is exempted.*

e) *R purchased tenancy right on 01-04-2000 for Rs.1,60,000. The same was sold by him on 14-08-2018 for Rs.15,00,000. FMV of tenancy right as on 01-04-2001 was Rs.2,50,000*

Solution:

Consideration	*15,00,000*
Less: *Indexed Cost of Acquisition 1,60,000X 280/100*	*(4,48,000)*
LTCL	*10,52,000*

IF ASSET ACQUIRED BEFORE 01.04.2001

If the **assessee / previous owner (refer e.g. below)** acquired the asset **before 01.04.2001**, then the **F.M.V. i.e., fair market value as on 01-04-2001** may be adopted as the cost of acquisition.

(E.g.: X purchased a house property on 01.01.1998 for 30,000 and the property was passed on to his son Y on death of X on 15.06.2008, the FMV of it as on 01.04.2001 being 1,20,000. Y may opt 1,20,000 as the cost of acquisition).

Note:

a) This facility is not available in case of depreciable capital assets.

b) This facility is not available in case of Sec.55 assets.

11. COST OF IMPROVEMENT

a) It is the Capital Expenditure incurred for the improvement of capital asset such as additions / alterations to the capital asset -

i) made by the assessee after it became his property or

ii) made by the previous owner (in case of C.A. acquired by any modes specified in Sec.49(1)).

However, cost of improvement does not include any expenditure which was deductible under the head house property, PGBP / Other sources.

b) Any cost of improvement incurred by the assessee or by the previous owner, before 01-04-2001, shall be **NIL**.

c) In relation to Sec.55 assets,

CAPITAL ASSET	COST OF IMPROVEMENT
• Good will of business • Right to manufacture, produce or process any article or thing. • Right to carry on any business	Nil
Any other capital asset like tenancy rights, route permits, loom hours, trademarks, brand names etc.,	Actual capital expenditure

Tit Bit 3: Mr. X & sons, HUF, purchased a land for Rs. 40,000 in 2001-02. In 2005-06 a partition takes place when Mr. A, a coparcener, is allotted this plot valued at Rs. 80,000. In 2006-07 he had incurred expenses of Rs. 1,85,000 towards fencing of the plot. Mr. A sells this plot of land for Rs. 15,00,000 in 2018-19 after incurring expenses to the extent of Rs. 20,000. You are required to compute the capital gain for the A.Y.2019-20.

Financial Year	Cost Inflation Index
2001-02	100
2005-06	117
2006-07	122
2017-18	272
2018-19	280

12. INDEXATION

Cost Inflation Index:

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

This benefit is available either from the year of acquisition of the asset by the Assessee or from the base year 2001-02, whichever is later.

13. INDEXED COST OF ACQUISITION = $\frac{1}{2} \times 3$

1 = Cost of Acquisition [or] FMV as on 01/04/2001 as the case may be.

2 = Indexed factor for the base year 2001-02 or for the first year in which the asset was held by the assessee, whichever is later. *

3 = Indexation factor for the year of transfer.

Treatment 1	Treatment 2
* The previous owner holding period is to be ***ignored*** for computing indexed cost of acquisition.	* The previous owner holding period is to be ***considered*** for computing indexed cost of acquisition. ***(Bombay High Court in CIT Vs. Manjula J. Shah)***

We are waiting for the ICAI clarification with regard to the treatment to be followed. ***As of now we are following the 1st treatment.***

Issue: B inherited a property from A on 01-07-2009. The property was acquired by A on 1-7-91. This was sold in the current year by B. Is it a Long Term Asset or Short Term Asset? From which year B can get the benefit of indexation?

14. INDEXED COST OF IMPROVEMENT = $\frac{1}{2} \times 3$

1 = Cost of Improvement incurred on or after 01/04/2001

2 = Indexation factor in the year such cost of Improvement was incurred

3 = Indexation factor for the year of transfer. **(Teach problem No 1 of classroom discussion)**

15. CAPITAL GAINS EXEMPT FROM TAX - U/S 10

Exemption of C.G. on transfer of a unit of Unit Scheme, 1964 (US 64) - Sec.10 (33):

Any income arising from the transfer (made on/ after 01.04.2002) of a capital asset being a unit of Unit Scheme 1964 of UTI, shall be exempt.

Exemption of C.G. on compulsory Acquisition of urban Agricultural land - Sec.10(37):

Eligible assessee:	Individual or a HUF
Asset transferred:	Agricultural land situated in specified area
Nature of transfer:	Compulsory acquisition by the CG

Consideration:	Compensation or enhanced compensation approved / determined by the CG and received on or after 01.04.2004.
Conditions:	The agricultural land should be - **a)** used by the assessee/ his parents at least 2 years prior to the date of transfer **b)** a long term capital asset or short term capital asset

(Solve Problem No. 4 of Assignment problems as rework)

<u>Illustration 7:</u> *Mr. Kumar has an agricultural Land (costing Rs.6 Lakh) in Lucknow and has been using it for agricultural purposes since 01.04.2000 till 01-08-2012 when the Government took over compulsory acquisition of this Land. A compensation of Rs.10 Lakh was settled. The compensation was received by Mr. Kumar on 01-07-2018.* ***(NEW SM)***

a) *Compute the amount of capital gains taxable in the hands of Mr. Kumar.*

b) *Will your answer be same if -*

- **i)** *Mr. Kumar had by his own will sold this Land to his friend Mr. Sharma?*
- **ii)** *Mr. Kumar had not used this Land for agricultural activities?*
- **iii)** *If the Land belonged to ABC Ltd. and not Mr. Kumar and compensation on compulsory acquisition was received by the company?*

<u>Solution:</u> *Section 10(37) exempts the capital gains arising to an individual or a Hindu Undivided Family from transfer of agricultural land by way of compulsory acquisition, or a transfer, the consideration for which is determined or approved by the RBI or the Central Government.*

a) *Mr. Kumar is entitled to exemption under section 10(37) of the entire capital gains arising on sale of agricultural land, since compulsory acquisition of an urban agricultural land has taken place and the compensation is received after 01.04.2004 and this land had also been used for at least 2 years by the assessee himself for agricultural purposes.*

b) *Mr. Kumar is not entitled to exemption under section 10(37) -*

- **i)** *Since the sale was made out of his own will, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of Mr. Kumar.*
- **ii)** *Since the assessee has not used it for agricultural activities, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of Mr. Kumar.*
- **iii)** *Since the land belongs to ABC Ltd., a company, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of ABC Ltd.*

<u>16. TAX ON CAPITAL GAINS</u>

1. **In general cases:** Taxable at normal slab rates at which the other income is chargeable to tax.
2. **<u>Other cases:</u>**

	Securities	LTCG	STCG
1.	If STT paid on the following securities which are transferred on or after 01.10.2004 **(See Note 1)** - **a)** Equity shares in a listed company **b)** Units of equity oriented mutual fund **c)** Units of business trust	Long term capital gains are taxable under Sec.112A (@10% on exceeding LTCG of Rs. 1,00,000)	Short term capital gains are taxable at the rate of 15% under Sec.111A
2.	In the case of **Specified securities**** (other than (1) above) ****Specified securities are** listed equity shares **(other than units), zero coupon bonds,** bonus shares	Flat 10% without indexation or Flat 20% with Indexation, which is more beneficial to the assessee (First proviso to Sec.112)	Short term capital gains are taxable at normal slab rates

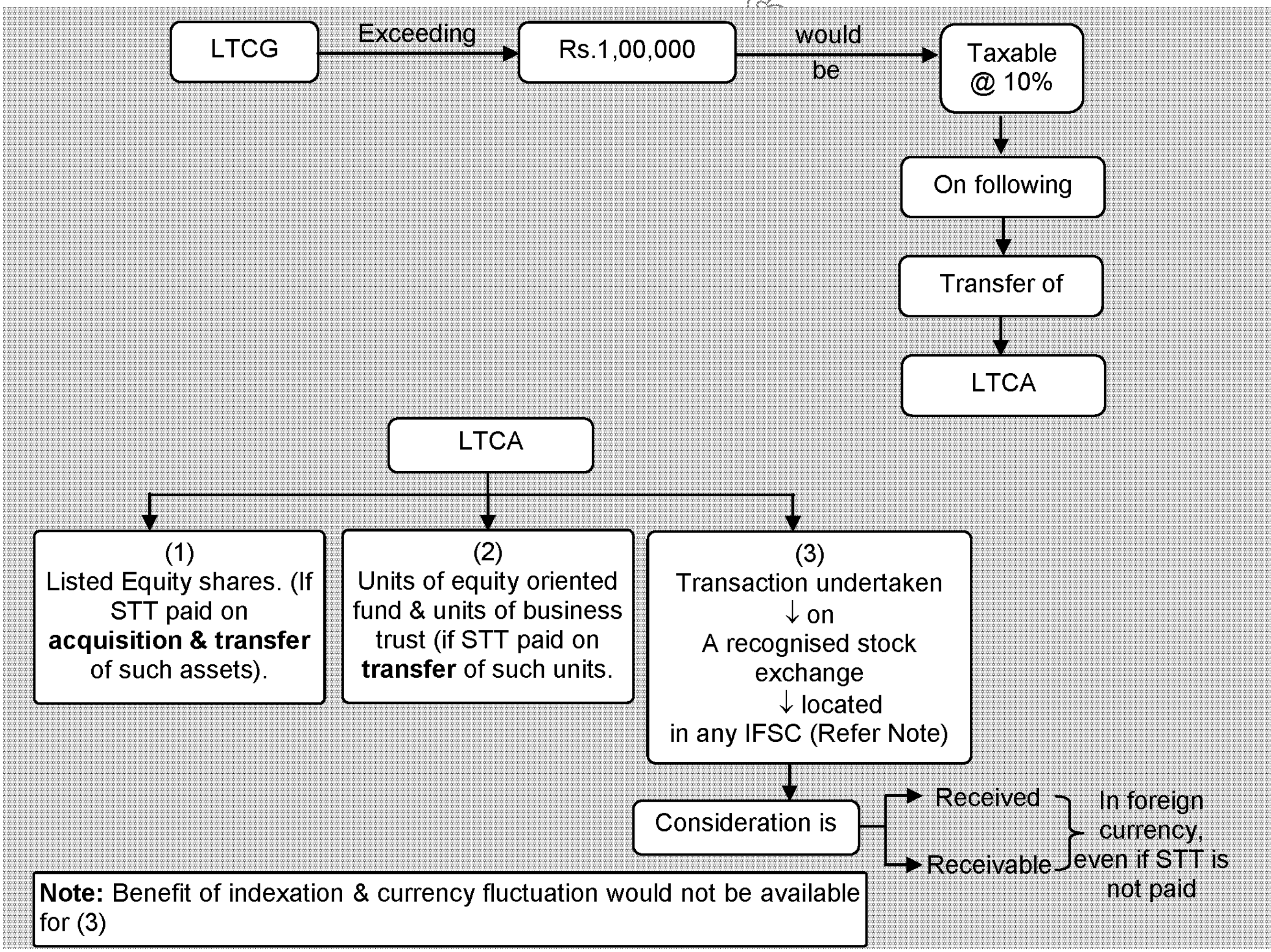
3.	**Others**	Flat 20% with Indexation under Sec.112	Short term capital gains are taxable at normal tax rate applicable

Unexhausted limit	
Meaning:	If the total income exceeds the basic exemption limit only because of the capital gains, then the difference between the basic exemption limit and other income (i.e. income excluding LTCG and STCG (Sec.111A) is called as the unexhausted limit
Applicability:	Resident assessees
Conditions:	Total income other than LTCG and STCG under Sec.111A shall be less than the Basic Exemption Limit
Treatment:	The unexhausted limit can be adjusted against LTCG and STCG (Sec.111A)

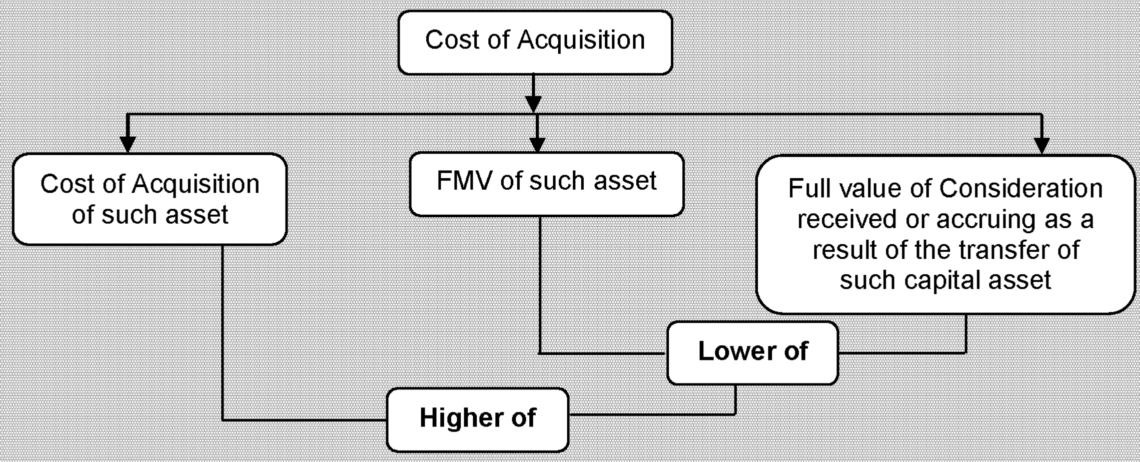
Note:

1. W.E.F. 01.04.2016, where a transaction is 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 though STT not paid**, the resulting LTCG are taxable u/s 112A **(benefit of indexation is not available)** and STCG are taxable at the rate of 15% under Sec.111A.
2. Chapter VIA deductions are not available in computation of taxable LTCG and STCG u/s 111A.

16.1. TAX ON CAPITAL GAINS ON CERTAIN ASSETS U/S 112A



Cost of acquisition of LTCA u/s 112A (If acquired before 1st February, 2018):



Meaning of Fair Market value

S.No.	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, then 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, then 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	An amount which bears to the cost of acquisition the same proportion as CII for the financial year 2017-18 bears to the CII for the first year in which the asset was held by the assessee or on 01.04.2001, whichever is later.

Example:

S. No	Particulars	Case I	Case 2	Case 3	Case 4
1.	Investment Date	January 2, 2017	January 2, 2017	January 2, 2017	March 1, 2018
2.	Sale Date	March 1, 2018	April 1, 2018	March 31, 2019	March 20, 2019
3.	**Cost of Acquisition (CoA) (in Rs.)**				
	a) Actual Cost of Acquisition	7,50,000	7,50,000	7,50,000	7,50,000
	b) FMV as on January 31st 2018	8,50,000	6,50,000	10,50,000	Actual Cost of Acquisition to be

	c) Amount of Sale Consideration	10,50,000	10,00,000	8,50,000	taken since, shares Acquired after 1st February, 2018
	d) Lower of (b) and (C)	8,50,000	6,50,000	8,50,000	
	Cost of Acquisition [Higher of (a) and (d)]	8,50,000	7,50,000	8,50,000	
	Indexed Cost of Acquisition	8,75,758 (8,50,000 x 272/264)	7,95,455 (7,50,000 x 280/264)	9,01,515 (8,50,000 x 280/264)	7,72,059 (7,50,000 x 280/272)
4.	Sale Value (in Rs.)	10,50,000	10,00,000	8,50,000	16,00,000
5.	LTCG (in Rs.)	1,74,242	2,04,545	0	8,27,941
6.	LTCL (in Rs.)	-	-	51,515	-
7.	Exemption from Capital Gains (in Rs.)	**[Exemption u/s 10(38)]**	1,00,000 (u/s 112A)	0	1,00,000 (u/s 112A)
		-	1,04,545	-	7,27,941
8.	Tax @ 10% u/s 112A (in Rs.)	-	10,455	0	72,794

(Teach problem No.2 of classroom discussion)

Illustration 8: *Ms. Paulomi has transferred 1,000 shares of Hetal Ltd., (which she acquired at a cost of Rs. 10,000 in the financial year 2002-03 to Dhaval, her brother, at a consideration of Rs. 3,12,934 on 15-05-2018 privately (unlisted shares).*

During the financial year 2018-19 she has paid through e-banking Rs. 15,000 towards medical premium, Rs. 50,000 towards life insurance premium and Rs. 25,000 towards PPF.

Assuming she has no other source of income, compute her total income and tax payable for the Assessment Year 2019-20.

Cost Inflation Index: for F.Y.2002- 03: 105,F.Y 2018-19 : 280 ***(OLD PM)***

Solution:

Computation of total income and tax liability of Ms. Paulomi for A.Y. 2019-20

Particulars	***Rs.***
Sale consideration	*3,12,934*
Less: *Indexed cost of acquisition (Rs. 10,000 × 280 / 105)*	*26,667*
Long term capital gain	*2,86,267*
Total income	*2,86,270*
Tax liability	
Income-tax @ 20% on Rs. 36,270 (Rs. 2,86,270 - Rs. 2,50,000)	*7,254*
Less: *Rebate under section 87A*	*2,500*
	4,754
Add: *Health and Education cess @ 4%*	*190*
Total tax payable	*4,944*
Tax payable (rounded off)	*4,940*

Notes:

1. *As per section 112, deductions under Chapter VI-A are not allowable against long term capital gain. Therefore, Paulomi is not entitled to deduction under section 80C in respect of payment of life insurance premium and contribution to PPF. She is also not entitled to deduction under section 80D in respect of medical insurance premium paid by her.*
2. *However, she is entitled to reduce the long-term capital gain by the unexhausted basic exemption limit and pay tax on the balance @ 20% as per section 112. In this case, since she has no other source of income, the entire basic exemption limit of Rs. 2,50,000 to the extent of long-term capital gain can be reduced from the long-term capital gain.*

Note:____

Illustration 9: *Ms. Usha purchases 1,000 equity shares in X Ltd. at a cost of Rs. 15 per share (brokerage 1%) in January 1978. She gets 100 bonus shares in August 1980. She again gets 1100 bonus shares by virtue of her holding on February* 2005. *Fair market value of the shares of X Ltd. on April 1, 2001 is Rs. 25. In January 2019, she transfers all her shares @ Rs. 150 per share (brokerage 2%).*

Compute the capital gains taxable in the hands of Ms. Usha for the A.Y. 2019-20 assuming: Cost Inflation Index for F.Y. 2001-02: 100, F.Y.2004-05: 113 & *F.Y.2018-19: 280.* ***(NEW SM, OLD SM)***

a) *X Ltd is an unlisted company and securities transaction tax was not applicable at the time of sale.*

Solution:

Particulars	*1000 Original shares(A)*	*100 Bonus shares(B)*	*1100 Bonus shares(C)*
Sale proceeds	*1000 X 150 = 1,50,000*	*100 X 150 = 15,000*	*1100 X 150 = 1,65,000*
Less: *Brokerage paid @ 2%*	*3,000*	*300*	*3,300*
Net sale consideration	*1,47,000*	*14,700*	*1,61,700*
Less: *Indexed COA*	*70,000 (25x1000x280/100)*	*7,000 (25x100x280/100)*	*Nil*
(LTCL) / LTCG	*77,000*	*7,700*	*1,61,700*
Total LTCG (A+B+C)			***2,46,400***

b) *X 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 sale.*

Solution: *The long-term capital gains on transfer of equity shares through a recognized stock exchange on which securities transaction tax is paid is exempt from tax under section 10(38). Hence, the taxable capital gain for A.Y. 2019-20 is Nil.*

17. SEC.50 - COMPUTATION OF C. G'S IN CASE OF DEPRECIABLE ASSET'S

Capital Gains
- On Sale of **Non-Depreciable Asset** — **Sec.48**
- On Sale of **Depreciable Asset** — **Sec.50**

Conditions for claiming depreciation: Depreciation U/s. 32 can be claimed provided as on the last day of the Previous Year, the following two requirements are fulfilled:

a) There must be at least one asset in the block **&**

b) There must be some value for the block on which prescribed percentage can be applied.

SEC.50 COMES INTO PICTURE:

1. Where any one or both of the above mentioned requirements are not satisfied, Sec.32 will not apply and automatically the provisions of Sec.50 become applicable resulting in the STCG or STCL.

2. Sec. 50 thus gets attracted under the following circumstances:

a) When one or some of the assets in the block were sold for a consideration which is more than the value of the block (STCG).

b) When all the assets are transferred for a consideration which is more than (STCG) or less than the value of the block (STCL). **(Teach problem No.3 of classroom discussion)**

18. SEC.50 A - SALE OF ASSETS BY POWER SECTOR CO's

WHERE ANY ASSET IS SOLD IN SUCH A CASE, THE FOLLOWING THREE PROVISIONS EXCLUSIVELY APPLY:

1. Where sale value or money payable is less than WDV:

a) If SV < WDV then the difference is allowed as terminal depreciation.

b) If the asset is sold in the same PY in which it is purchased the difference will be treated as STCG or STCL

2. **Where sale value or money realisable is more than WDV:**
   - **a)** If SV > WDV then the difference will be treated as balancing charge under PGBP
   - **b)** If SV > Cost, then the difference between the SV & WDV will be treated as balancing charge under PGBP **&**
   - **c)** The amount over and above the cost will be treated as STCG.
3. **Capital Gains:** For the computation of capital gains in respect of the above mentioned depreciable assets, the actual cost shall be taken as cost of acquisition.

Illustration 13: *A Ltd., engaged in the business of generation and distribution of power has claimed depreciation on straight-line method for income-tax purposes. You are informed that Diesel Electric and Gas Plant was acquired for Rs.60,00,000 and depreciation at 8.24% was claimed for 2 years on straight line method. Assuming that the said Plant is sold for a consideration of (i) Rs.48,00,000; or (ii) Rs.55,00,000; or (iii) Rs.62,00,000 during the previous year 2017-18 examine the treatment under tax law.*

Solution:

Particulars	***Case I***	***Case II***	***Case III***	
Sale consideration	*48,00,000*	*55,00,000*	*62,00,000*	
Less: *WDV(Note)*	*50,11,200*	*50,11,200*	*50,11,200*	
	2,11,200	*4,88,800*	*11,88,800*	
	Terminal depreciation	***PGBP income***	***9,88,800 PGBP income***	***2,00,000 Capital Gain***

Note: *Calculation of WDV*

Actual cost	=	*60,00,000*
Less: *Depreciation @ 8.24% for 2 years*	=	*9,88,800*
WDV	=	*50,11,200*

19. SEC.50B - SLUMP SALE

Meaning: Transfer of one or more undertaking as a result of lump sum consideration without values being assigned to assets and liabilities and if any value is assigned, then it is only for determining the payment for stamp duty.

Section 50B:

1. Capital gain is taxable when slump sale is affected.
2. Nature of capital gain depends on period of holding of undertaking transferred. If undertaking held for more than 36 months, capital gain is LTCG, else STCG.
3. Nothing shall be taxable under head PGBP.
4. COA and COI = Net worth of Undertaking.
5. Net worth = Value of total assets **(**)** (-) Value of total liabilities
6. Revaluation of assets shall not be considered while computing Net Worth
7. Benefit of Indexation is not possible.
8. Value of non-depreciable asset shall be taken at book value
9. Value of depreciable asset shall be taken at WDV as per Sec.43(6)
10. Transferor can carry forward unabsorbed depreciation and losses.

(**) The Value of the assets on which 100% deduction was allowed under Sec.35AD is **NIL**

Note: In the case of slump sale, every assessee shall furnish a report of a chartered accountant indicating the computation of Net worth which was certified by the assessee, along with the ROI.

(Teach problem No.4 of classroom discussion)

20. SEC.50C - SPECIAL PROVISIONS FOR COMPUTATION OF CONSIDERATION

a) When sales consideration is less than stamp duty value (SDV) of land and building, SDV shall be deemed as Sales Consideration for the purpose of computation of capital gain.

b) Assessee claims SDV exceeds FMV and value is not disputed, AO may refer computation of value to Valuation Officer.

Where value ascertained by Valuation Officer
- Exceeds the stamp duty value → Stamp duty value shall be taken as sales price
- Is lower than stamp duty value → Value ascertained by Valuation officer shall be taken as sales price

First proviso to sec 50C(1):

Where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the **stamp duty value** on the date of the agreement **may be** taken for the purposes of computing the full value of consideration. (Subject to condition- refer below point)

Second proviso to sec 50C(1):

However, the stamp duty value on the date of agreement can be adopted **only** in a case where the amount of consideration, or a part thereof, has been paid by way of an **account payee cheque or account payee bank draft or use of electronic clearing system through a bank account,** on or before the date of the agreement for the transfer of such immovable property.

However, where the stamp duty value does not exceed 105% of the sale consideration received or accruing as a result of the transfer, the consideration so received or accruing shall be deemed to be the full value of the consideration. **(Teach problem No.5 of classroom discussion)**

20.1. SEC.50CA - FMV TO BE FULL VALUE OF CONSIDERATION IN RESPECT OF UNQUOTED SHARES

a) Capital asset to be transferred: Unlisted/ unquoted shares

b) Applicability: an **assessee** being a transferor of the unlisted shares, transfers such asset for **a consideration received or to be received** as a result of such transfer which is **less than** the **FMV** of such share determined in the prescribed manner.

c) Deemed value of consideration: FMV of such share determined in the prescribed manner.

21. SEC.50D -FMV TO BE FULL VALUE OF CONSIDERATION

In a case where **consideration received cannot be determined**, then **FMV** of the said asset shall be **deemed as consideration** received for the purpose of computation of capital gains.

22. SEC.51 - FORFEITURE OF ADVANCE (NOT APPLICABLE FROM 01.04.2014)

1. In the due course of negotiations for the transfer of a capital asset, the assessee may receive an advance which was forfeited later due to negotiations. In such cases, the advance amount so received shall be reduced from the cost of acquisition or FMV as on-01.04.2001 where FMV is taken as COA or WDV while computing the capital gains and such capital gains shall be taxable in the year of actual transfer of the capital asset.

(**Forfeiture up to 31.03.2014 shall be deducted from cost of acquisition**).

2. For forfeiture on or after 01.04.2014, Then such amount **shall not be deducted** from the cost of acquisition or the FMV or the WDV as the case may be for the purpose of computation of capital gains when such asset is transferred and this will be taxed as income from other sources (Sec. 56(2)(ix)) in the year of forfeiture of advance.

(Teach problem No.6 of classroom discussion)

23. SEC.55A - REFERENCE TO VALUATIONER

For the purpose of ascertaining the FMV, the Assessing Officer may refer the valuation of a Capital Asset to a valuation officer under the following circumstances**:**

a) **Already valued:** Where the assessee already referred the matter to a registered valuer and the value as claimed by him is as per that valuation report - if the Assessing Officer is of the opinion that the value so claimed is at variance with its FMV / FMV as on 01.04.2001 if it is taken as cost.

b) **If not so**, if the Assessing Officer is of the opinion:

   i) That the FMV of the asset exceeds the value of the asset as claimed by the Assessee by more than 15 % of the value claimed Or by more than 25,000 **Or**

   ii) That having regard to the nature of the Asset & relevant circumstances it is necessary to make the reference.

The valuation report of the Valuation Officer **shall be binding** on the Assessing Officer.

24. SALE OF LAND AND BUILDINGS PURCHASED SEPARATELY

Land and building are two separate capital assets for the purpose of computation of capital gains. So, the composite consideration received for land and building should be apportioned between the land and superstructure.

PROBLEMS FOR CLASSROOM DISCUSSION

PROBLEM 1: Mr. C purchases a house property for Rs.1,06,000 on May 15, 1975. The following expenses are incurred by him for making addition/ alternation to the house property:

S.NO.	Particulars	Amount (Rs.)
a)	Cost of construction of first floor in 1982-83	3,10,000
b)	Cost of construction of the second floor in 2003-04	7,35,000
c)	Reconstruction of the property in 2013-14	5,50,000

Fair market value of the property on April 1, 2001 is Rs.8,50,000. The house property is sold by Mr. C on August 10, 2018 for Rs.68,00,000 (expenses incurred on transfer: Rs. 50,000).

Compute the capital gain for the assessment year 2019-20. ***(NEW SM, OLD SM) (ANS.: LTCL: RS. 17,81,927)***

(SOLVE PROBLEM NO. 3, 6 OF ASSIGNMENT PROBLEM AS REWORK)

Note:____

PROBLEM 2: R bought 500 listed shares in 1979 for Rs.15 per share. The market value of these shares on 01.04.2001 was Rs.20 per share.

a) Compute the tax payable by R if the above shares were sold 15.11.2018 to the relatives without routing through the stock exchange, for Rs.1,00,000.

b) What shall be your answer if these shares have been sold through a recognised stock exchange and it is subject to Securities transaction tax?

(SIMILAR: MTP2 M18 (N&O)) (ANS.: A) TAX LIABILITY: RS.9,360, B) NOT TAXABLE U/S 112A)

Note:____

PROBLEM 3: (PRINTED SOLUTION AVAILABLE) Singhania & Co. own six machines, put in use for business in March, 2018. The depreciation on these machines is charged @ 15%. The written down value of these machines as on 1st April 2018 was Rs. 8,50,000. Three of the old machines were sold on 10th June 2018 for Rs. 11,00,000. A new plant was bought for Rs. 8,50,000 on 30th November 2018.

You are required to:

a) Determine the claim of depreciation for Assessment Year 2019-20.

b) Compute the capital gains liable to tax for Assessment Year 2019-20.

c) If Singhania & Co. had sold the three machines in June, 2018 for Rs. 21,00,000, will there be any difference in your above workings? Explain. ***(NEW SM, OLD PM)***

(ANS: (I) RS. 45,000 (II) CAPITAL GAIN WILL NOT ARISE (III) STCG RS.4,00,000)

(SOLVE PROBLEM NO. 7 OF ASSIGNMENT PROBLEMS AS REWORK)

Note:____

PROBLEM 4: Mr. A is a proprietor of Akash Enterprises having 2 units. He transferred on 01.04.2018 his Unit 1 by way of slump sale for a total consideration of Rs.25 lacs. Unit 1 was started in the year 2005-06. The expenses incurred for this transfer were Rs.28,000. His Balance Sheet as on 31.03.2018 is as under:

Liabilities	Total (Rs.)	Assets	Unit 1 (Rs.)	Unit 2 (Rs.)	Total (Rs.)
Own Capital	15,00,000	Building	12,00,000	2,00,000	14,00,000
Revaluation Reserve (for building of unit 1)	3,00,000	Machinery	3,00,000	1,00,000	4,00,000
Bank loan (70% for unit 1)	2,00,000	Debtors	1,00,000	40,000	1,40,000
Trade creditors (25% for unit 1)	1,50,000	Other assets	1,50,000	60,000	2,10,000
Total	**21,50,000**	**Total**	**17,50,000**	**4,00,000**	**21,50,000**

Other information:

a) Revaluation reserve is created by revising upward the value of the building of Unit 1.

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

c) Other assets of Unit 1 include patents acquired on 1.7.2016 for Rs.50,000 on which no depreciation has been charged.

Compute the capital gain for the assessment year 2019-20. ***(ANS.: LTCG: RS. 12,21,375)***

(NEW SM, OLD PM, RTP N16, SIMILAR: M18 (N) - 10M)

Note:____

PROBLEM 5: Ms. Mohini transferred a house to her friend Ms. Ragini for Rs.35,00,000 on 01-10-2018. The Sub Registrar valued the land at Rs.48,00,000. Ms. Mohini contested the valuation and the matter was referred to Divisional Revenue Officer, who valued the house at Rs.41,00,000. Accepting the said value, differential stamp duty was also paid and the transfer was completed.

The total income of Mohini and Ragini for the assessment year 2019-20, before considering the transfer of said house are Rs. 2,80,000 and Rs. 3,45,000, respectively. Ms. Mohini had purchased the house on 15th May 2012 for Rs. 25,00,000 and registration expenses were Rs. 1,50,000.

You are required to explain provisions of Income-tax Act, 1961 applicable to present case and also determine the total income of both Ms. Mohini and Ms. Ragini taking into account the above said transactions. Cost inflation indices for:

i) Financial Year 2012-13 : 200 and

ii) Financial Year 2018-19 : 280 ***(OLD PM, N18 (N) - 6M)***

(ANS.: TOTAL INCOME OF MS. MOHINI: RS. 6,70,000; TOTAL INCOME OF MS. RAGINI: RS. 9,45,000)

(SOLVE PROBLEM NO. 8, 9, 11, 13, 15 OF ASSIGNMENT PROBLEMS AS REWORK)

Note:____

PROBLEM 6: Mr. Rakesh purchased a house property on 14^{th} April, 1979 for Rs.1,05,000. He entered into an agreement with Mr. B for the sale of house on 15^{th} September, 2003 and received an advance of Rs.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 friend Mr. A on 15^{th} June, 2007.

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

	Rs.
By Mr. Rakesh during FY 1979-80	10,000
By Mr. Rakesh during FY 2004-05	50,000
By Mr. A during FY 2014-15	1,90,000

The fair market value of the property as on 01-04-2001 is Rs.1,50,000

Mr. A entered into an agreement with Mr. C for sale of the house on 1^{st} June, 2016 and received an advance of Rs.80,000. The said amount was forfeited by Mr. A, since Mr. C could not fulfill the terms of the agreement

Finally, the house was sold by Mr. A to Mr. Sanjay on 2^{nd} January, 2019 for a consideration of Rs.12,00,000.

Compute the capital gains chargeable to tax in the hands of Mr. A for the assessment year 2019-20.

(OLD PM, SIMILAR: MTP1 N18 (N&O)) (ANS.: LTCL: RS. 5,28,859)

(SOLVE PROBLEM NO. 10, 12, 14 OF ASSIGNMENT PROBLEMS AS REWORK)

Note:____

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ASSIGNMENT PROBLEMS

PROBLEM 1: Specified Area: ***(NEW SM, OLD SM)***

No.	**Area**	**Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)**	**Population according to the list preceding census of which the relevant figures have been published before the first day of the previous year**	**Is the land situated in this area a capital asset?**
1.	A	1 km	9,000	No
2.	B	1.5 kms	12,000	Yes
3.	C	2 kms	11,00,000	Yes
4.	D	3 kms	80,000	No
5.	E	4 kms	3,00,000	Yes
6.	F	5 kms	12,00,000	Yes
7.	G	6 kms	8,000	No
8.	H	7 kms	4,00,000	No
9.	I	8 kms	10,50,000	Yes
10.	J	9 kms	15,00,000	No

PROBLEM 2: In which of the following situations capital gains tax liability does not arise?

a) Mr. A purchased gold in 1970 for Rs. 25,000. In the P.Y. 2018-19, he gifted it to his son at the time of marriage. Fair market value (FMV) of the gold on the day the gift was made was Rs. 1,00,000.

b) A house property is purchased by a Hindu undivided family in 1945 for Rs. 20,000. It is given to one of the family members in the P.Y. 2018-2019 at the time of partition of the family. FMV on the day of partition was Rs. 12,00,000.

c) Mr. B purchased 50 convertible debentures for Rs. 40,000 in 1995 which are converted into 500 shares worth Rs. 85,000 in November 2018 by the company.

(NEW SM, OLD SM) (SEC.47) (ANS.: IN ALL THE ABOVE CASES CAPITAL GAINS DOES NOT ARISE)

PROBLEM 3: Mr. B purchased convertible debentures for Rs. 5,00,000 during August 2003. The debentures were converted into shares in September 2013. These shares were sold for Rs.15,00,000 in August, 2018. The brokerage expenses are Rs. 50,000. You are required to compute the capital gains in case of Mr. B for the assessment year 2019-20. ***(NEW SM, OLD SM) (ANS.: LTCG RS.1,65,596)***

PROBLEM 4: Cheeku is in possession of agricultural land situated within urban limits, which is used for agricultural purposes during the preceeding 3 years by his father. On 01.05.2018, this land is compulsorily acquired by the Central Government of India on a compensation fixed and paid by it for Rs. 25 lakhs. Advise Cheeku as to the tax consequences, assuming that the entire amount is invested in purchase of shares. ***(ANS.: EXEMPTION AVAILABLE U/S 10(37))***

PROBLEM 5: Mr. Mithun purchased 100 shares of M/s Good money Co. Ltd. on 01-04-2006 at rate of Rs.1,000 per share, public issue of the company by paying securities transaction tax.

Company allotted bonus shares in the ratio of 1:1 on 01-12-2017. He has also received dividend of Rs.10 per share on 01-05-2018.

He has sold all the shares on 01-10-2018 at the rate of Rs.4,000 per share through a recognized stock exchange and paid brokerage of 1% and securities transaction tax of 0.02% to celebrate his 75^{th} birthday.

Compute his total income and tax liability for assessment year 2019-20 assuming that he is having no income other than given above. ***(NEW SM) (ANS.: TAX PAYABLE: RS. 32,290 (ROUNDED OFF))***

PROBLEM 6: Mr. Arnab 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 Rs. 7,30,000. Certain portion of the machinery could be salvaged. The opening WDV of the block as on 01-04-2018 was Rs. 12,35,000.

During the process of safeguarding machinery and in the fire fighting operations, Mr. Arnab lost his gold chain and a diamond ring, which he had purchased in July, 2005 for Rs. 1,45,000. The market value of these two items as on the date of fire accident was Rs. 2,05,000.

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

i) Towards loss of stock Rs. 5,15,000

ii) Towards damage of machinery Rs. 8,07,000

iii) Towards gold chain and diamond ring Rs. 2,05,000

The salvaged machinery was taken over by the Insurance Company and there was no fresh addition of machinery during the year.

You are requested to briefly comment on the tax treatment of the above three items under the provisions of the Income-tax Act, 1961. ***(NEW SM, OLD PM)***

(ANS.: I) RS.2,15,000 IS LOSS U/H PGBP II) RS.4,28,000 IS STCL III) RS.1,42,009 IS LTCL)

PROBLEM 7: Kishore Industries owned six machines which were in use in its business in March, 2018. Depreciation on these machines was available as "plant". The written down value of these machines at the end of previous year relevant to assessment year 2018-19 was Rs.6,50,000. A new plant was bought for Rs.6,50,000 on 30th November 2018. Three of the old machines were sold on 10th June, 2018 for Rs.9,00,000. Required: (Depreciation @ 15%)

a) Compute the claim of depreciation for assessment year 2019-20.

b) Capital gains liable to tax for the same assessment year, If Kishore Industries had sold the three machines in June, 2018 for Rs.14,00,000 will there be any difference in your above working? Explain. ***(ANS.: DEP.: RS. 30,000, STCG: RS. 1,00,000)***

PROBLEM 8: X purchased on 18.06.2009, house property for Rs.2,25,000 which was sold to A on 18.10.2018 for Rs.8,75,000. Sub-registrar at the time of registration of sale deed charged stamp duty on Rs.12,50,000 which was paid by the buyer. The A.O. while assessing for capital gain referred the matter to valuation officer who determined the value of property at Rs.15,00,000 on the date of transfer. X seeks your advice on the following:

a) Is the A.O. correct to charge capital gain on the value of Rs.15,00,000 as determined by valuation officer?

b) The amount of capital gain on which X is required to pay capital gain tax. ***(ANS.: LTCG - RS. 8,24,324)***

PROBLEM 9: Ms. Bala kumari sold his vacant site on 21.09.2018 for Rs. 7,00,000. It was acquired by her on 01.10.2006 for Rs. 1,50,000.

The State stamp valuation authority fixed the value of the site at the time of transfer @ Rs.13,00,000.

Compute capital gains in the hands of Bala kumari and give your reasons for computation.

(ANS.: LTCG: RS. 9,55,738)

PROBLEM 10: Mr. X purchases a house property in December 1993 for Rs. 5,25,000 and an amount of Rs. 1,75,000 was spent on the improvement and repairs of the property in March, 1997. The property was proposed to be sold to Mr. Z in the month of May, 2007 and an advance of Rs. 40,000 was taken from him. As the entire money was not paid in time, Mr. X forfeited the advance and subsequently sold the property to Mr. Y in the month of March, 2019 for Rs. 52,00,000. The fair value of the property on April 1, 2001 was Rs. 11,90,000. What is the capital gain chargeable in the hands of Mr. X for the A.Y. 2019-20 ***(NEW SM, OLD SM) (ANS.: LTCG: RS. 19,80,000)***

PROBLEM 11: Mr. Thomas inherited a house in Jaipur under will of his father in May, 2004. The house was purchased by his father in January, 1980 for Rs. 2,50,000. He invested an amount of Rs. 7,00,000 in construction of one more floor in this house in June, 2006. The house was sold by him in November, 2018 for Rs. 37,50,000. The valuation adopted by the registration authorities for charge of stamp duty was Rs. 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 the Valuation officer was Rs. 47,50,000. Brokerage @ 1% of sale consideration was paid by Mr. Thomas to Mr. Sunil. The fair market value of house as on 01.04.2002 was Rs. 2,70,000.

You are required to compute the amount of capital gain chargeable to tax for A.Y. 2019-20

(OLD PM) (ANS: LTCG RS. 24,11,916)

PROBLEM 12: State, with reasons, whether the following statements are True or False.

i) Alienation of a residential house in a transaction of reverse mortgage under a scheme made and notified by the Central Government is treated as "transfer" for the purpose of capital gains.

ii) Zero coupon bonds of Eligible Corporation, held for more than 12 months, will be long term capital assets.

iii) In the case of a dealer in shares, income by way of dividend is taxable under the head "Profits and gains of business or profession".

iv) Where an urban agricultural land owned by an individual, continuously used by him for agricultural purposes for a period of two years prior to the date of transfer, is compulsorily acquired under law and the compensation is fixed by the State Government, resultant capital gain is exempt.

v) Zero Coupon Bond means a bond on which no payment and benefits are received or receivable before maturity or redemption.

vi) Income from growing and manufacturing tea in India is treated as agricultural income wholly.

(NEW SM, OLD PM) (ANS.: (II), (V)-TRUE;(I),(III),(IV),(VI)-FALSE)

PROBLEM 13: Mr. Dinesh received a vacant site as gift from his friend in November 2003. The site was acquired by his friend for Rs.3,00,000 in April 2000. Dinesh constructed a residential building during the year 2005-06 in the said site for Rs.15,00,000. He carried out some further extension of the construction in the year 2008-09 for Rs.5,00,000.

Dinesh sold the residential building for Rs.55,00,000 in January 2019 but the State stamp valuation authority adopted Rs.65,00,000 as value for the purpose of stamp duty.

Compute his long term capital gain, for the assessment year 2019-20 based on the above information. The cost inflation indices are as follows:

Financial Year	Cost Inflation Index
2000-01	100
2003-04	109
2005-06	117
2008-09	137
2018-19	280

(NEW SM, OLD PM)(ANS.: TAXABLE LTCG: RS.10,57,974)

PROBLEM 14: X Co. (P) Ltd. converted into a Limited Liability Partnership (LLP) by name All Trade LLP, with effect from 01.04.2018.

The following details are given to you:

Asst. year 2010-11: Business loss brought forward Rs. 2,00,000

Asst. year 2018-19: Business loss brought forward Rs. 5,00,000

(These are related to erstwhile X Co. (P) Ltd.)

Total income of All Trade LLP, for the financial year 2018-19 is Rs. 6,00,000 (Before set off of brought forward business losses of erstwhile company i.e. X Co. (P) Ltd.)

Assume that all the conditions prescribed in section 47(xiiib) were satisfied by X Co. (P) Ltd. At the time of conversion to LLP.

i) Explain whether All Trade LLP can set off and carry forward the business loss of its predecessor i.e. X Co. (P) Ltd.?

ii) State whether the change in the profit sharing ratio of the shareholders of the company in the LLP at later date would have any tax consequence. ***(OLD PM, M 17-8M, M 16-2M)***

(ANS.: (I) RS.6 LAKHS TO BE SET OFF IN AY 2018-19, RS.1 LAKH CAN BE C/F (II) NO SET-OFF OF LOSS PERMISSIBLE)

PROBLEM 15: Ms. Chhaya transferred a vacant site to Ms. Dayama for Rs. 4,25,000. The stamp valuation authority fixed the value of vacant site for stamp duty purpose at Rs. 6,00,000. The total income of Chhaya and Dayama before considering the transfer of vacant site are Rs. 50,000 and Rs. 2,05,000, respectively. The indexed cost of acquisition for Ms. Chhaya in respect of vacant site is Rs. 4,00,000 (computed).

Determine the total income of both Ms. Chhaya and Ms. Dayama taking into account the above said transaction. ***(OLD PM) (ANS.: CHHAYA - RS.2,50,000, DAYAMA - RS.3,80,000)***

LIST OF IMPORTANT CONCEPTS: 2, 4, 5, 6, 9, 10, 11, 12, 15, 16, 18, 21, 23
LIST OF IMPORTANT CLASSROOM DISCUSSION PROBLEMS: 1, 2, 3, 4, 5, 6
LIST OF IMPORTANT ASSIGNMENT PROBLEMS: 3, 4, 6, 8, 11, 12, 13, 14, 15

ADVANCED CONCEPTS FOR STUDENTS SELF STUDY

1. SEC.47 - EXCEPTIONS TO TRANSFER

Sec	Nature of transaction not regarded as transfer	Conditions to be fulfilled for the transaction not to be regarded as transfer between transferor and transferee (sec.47)	Holding period in the hands of the transferee	Cost in hands of transferee [sec.49]
47(xviii)	Transfer by a unit holder, made in consideration of the allotment to him of a capital asset, being unit (s), in the consolidated scheme of a mutual fund Assets Transferred: unit(s) held by him in the consolidating scheme of the mutual fund	Consolidation is of two or more schemes of equity oriented or of two or more schemes of a fund other than equity oriented fund	Holding period of earlier share(s) by the assessee is also included.	-

2. REVERSE MORTGAGE

Transfer of Capital asset in a transaction of reverse mortgage shall not be regarded as transfer. A reverse mortgage is a scheme for the benefit of senior citizens, under which banks could take on properties from such senior citizens and provide loans in lump-sum or installments. The intention of the reverse mortgage is to secure a stream of cash flows to senior citizens against the mortgage of a residential property. Further, the amount received by the senior citizen as loan, either is lump sum or in installments is exempt from tax u/s 10(43).

Illustration 1: 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 installments. 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 be treatment of Long-Term Capital Gain be made on such Reverse Mortgage transactions? ***(SIMILAR: M18 (O) - 5M, M09 - 3M)***

Ans.: Sec. 47(xvi) provides that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the central government shall not be considered as a transfer for the purpose of capital gain accordingly the pledging of residential house with bank by Mr. Abhik's father will not be regarded as a transfer. Therefore, no capital gain will be charged on such transaction

Further Sec.10 (43) provides that the amount received by the senior citizen as a loan, either in lump sum or in instalments, in a transaction of a reverse mortgage would be exempt from income tax. Therefore, the monthly installments amounts received by Mr. Abhik's father would not be taxable

However, capital gains tax liability would be attracted at the stage of alienation of the mortgaged property by the bank for the purposes of recovering the loan.

3. DISTRIBUTION OF ASSETS BY COMPANY IN LIQUIDATION (SEC.46)

1. **Tax treatment in company's hands:**

In case of	Sale by liquidator and distribution of sale proceeds to shareholders	Distribution of capital assets in specie (as it is)
Tax effect	Taxable in the company's hands as capital gains	Not a transfer. Hence not taxable [Sec 46 (1)]

2. **Tax treatment in shareholders hands:**

   a) Computation of capital gains on receipt of assets/cash from company

Step 1	Total value received = FMV of asset received on date of liquidation and amount received in cash
Step 2	Determine the shareholders interest in accumulated profits on the date of liquidation, i.e., deemed dividend u/s 2 (22) (c)
Step 3	Consideration for transfer for determining capital gain = Step 1 - Step 2
Step 4	Capital gain = consideration for transfer for determining capital gain (Step 3) **Less:** Cost of acquisition of shares (indexed cost, in suitable cases)

Capital gain on subsequent sale of asset receivable by shareholders on liquidation: Capital gain = net consideration less fair market value u/s 46 (2) and cost of improvement.

Illustration 2: Ms. Vasumathi purchased 10,000 equity shares of ABC Co. Pvt. Ltd. on 28-02-2005 for Rs.1,20,000. The company was wound up on 31.07.2019: ***(OLD PM, M08 - 8M)***

Liabilities	Rs.	Assets	Rs.
60,000 equity shares	6,00,000	Agricultural Lands	42,00,000
General reserve	40,00,000	Cash at bank	6,50,000
Provision for taxation	2,50,000		
	48,50,000		**48,50,000**

The tax liability (towards dividend distribution tax) was ascertained at Rs.3,00,000 after considering refund due to the company. The remaining assets were distributed to the shareholders in the proportion of their shareholding. The market value of 6 acres of agricultural land (in an urban area) as on 31.07.2019 is 10,00,000 per acre.

The agricultural land received above was sold by Ms. Vasumathi on 28-02-2020 for Rs.15,00,000

Discuss the tax consequences in the hands of the company and Ms. Vasumathi.

Solution:

I.

A. **In the hands of the company:** As per section 46(1), 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.

B. **In the hands of Ms. Vasumathi (shareholder):** Section 46(2) provides that such capital gains would be chargeable in the hands of the shareholder.

Particulars	Rs.
Ms. Vasumathi holds 1/6th of the shareholding of the company:	
Market value of agricultural land received (1 acre @ Rs.10 Lakhs)	10,00,000
Cash at bank [1/6th of (Rs.6,50,000 - Rs.3,00,000)]	58,333
	10,58,333
Less: Deemed dividend u/s 2(22)(e): 1/6th of (Rs.40,00,000-Rs. 50,000)	6,58,333
Consideration for computing Capital Gain	4,00,000
Less: Indexed cost of acquisition of Shares (Rs.1,20,000 x 280/113)	2,97,345
Long term capital gains	**1,02,655**

II. The short-term capital gains in the hands of Ms. Vasumathi (shareholder) at the time of sale of urban agricultural land should be computed as follows:

Particulars	Rs.
Sale consideration	15,00,000
Less: Fair market value of the agricultural land on the date of distribution	10,00,000
Short term capital gain	**5,00,000**

Note:

1. Dividend under section 2(22)(e) amounting to Rs.6,58,333 will be exempt under section 10(34).
2. Since the question states that there is refund due to the company, it is assumed that the provision for taxation of Rs.2,50,000 shown in Balance Sheet is in respect of dividend distribution tax. Therefore, the tax liability in respect of dividend distribution tax ascertained at Rs.3,00,000 has to be reduced from bank balance while computing full value of consideration under section 46(2). Rs.50,000, being the difference between Rs.3,00,000 and Rs.2,50,000, has to be reduced from General Reserve for calculating deemed dividend under section 2(22)(e).

4. BUY BACK OF SHARES [Sec .46A]

Sec.46A - Buyback of shares & capital gains:

1. Where a company purchases its own shares, the difference between the cost of acquisition & consideration received by the shareholder shall be taken as C.G.'s.
2. **Indexation:** If the shares are long term capital asset, indexation facility is available.
3. **Year of chargeability:** In the year in which such shares are purchased by the Co.

However, in case of buyback of unlisted shares by domestic companies, additional income tax @ 20% (plus surcharge @ 12% and Health and Education cess @ 4%) leviable in the hands of the company. Consequently, the income arising to the shareholders in respect of such buyback of unlisted shares by the domestic company would be exempt under section 10(34A), where the company is liable to pay additional income tax on the buyback of shares

(1)	(2)	(3)
Taxability in the hands of the -	**Buyback of unlisted shares by domestic companies**	**Buyback of shares other than shares referred to in column (2)**
i) Company	Subject to additional income tax @ 20% (plus surcharge @ 12% and Health and Education cess @ 4%)	Not subject to tax in the hands of the company.
ii) Shareholders	Income arising to shareholders exempt under section 10(34A)	Income arising to shareholders taxable as capital gains under section 46A

5. ZERO COUPON BONDS

1. **Meaning of zero coupon bonds:** "Zero coupon bond" means a bond:
   a) Issued by any infrastructure capital company or infrastructure capital fund or public sector company or a scheduled bank on or after 01.06.2005,
   b) In respect of which no payment is received before maturity and
   c) Which the central government by notification, specify in this behalf.
2. **Redemption of zero coupon bonds to be regarded as transfer:** The payment of zero coupon bonds shall be received from the issuing company/fund only at the time of maturity or redemption. Consequently, Sec.2 (47) is amended to take redemption of zero coupon as a transfer.
3. **Transfer of zero coupon bonds taxable as capital gains:**
   a) The profits arising on the transfer of such zero coupon bonds shall be chargeable under the head "capital gains".
   b) If zero coupon bonds are not held for more than 12 months, such capital asset shall be treated as short term capital asset and hence shall subject to short-term capital gain. On the other hand, where these bonds are held for more than 12 months, such capital gain shall be treated as long-term capital gain.
4. **Taxability of long-term capital gain:** Definition of specified security as given in Sec.112 is amended. Therefore the option scheme is also available (i.e. 20% tax with indexation or 10% tax without indexation).

5. **Tax treatment in the hands of company issuing such bonds:** Discount on issue of zero coupon bonds to be allowed as deduction on pro rata basis, having regard to the maturity period of the bonds, under Sec.36 while computing business income.

6. TRANSFER OF BENEFICIAL INTEREST IN SECURITIES - Sec.45(2A)

1. **Event:** Any profits or gains arising from the transfer of beneficial interest in securities by the Depository or a participant of such beneficial interest held by him at any time during the PY.

Period of Holding:	From the date on which the securities were credited to the DEMAT account to the date of transfer (sale) by adopting the FIFO method.
Year of Transfer & Chargeability:	PY in which such transfer of securities took place.

2. In case the transfer was made through a recognised stock exchange in India, the transfer will be made according to the below mentioned procedure:

   a) Stock broker enters into a contract with the counter party for purchase/ sale of securities.

   b) The transfer of securities will be completed after the credit of securities in the beneficiary DEMAT account which was accompanied by the transfer deed signed by the registered holders (i.e. sellers) of the securities.

   Note: The transfer will be made at the price specified in the contract and such price will be confirmed by the broker in the broker's note. The date of broker's note is the date of transfer.

INTERESTING PAST EXAM QUESTIONS

Q.No.1. Jain builders, a construction company, have sold 25 flats for a sum of Rs.25 crores. Discuss whether this sum is subjected to capital gains?

Q.No.2. Ms. Aishwarya Rai, has furnished the following details for computation of capital gains:

a. Sale proceeds on sale of BMW car for Rs.30 lakhs, which was used exclusively for personal purposes. This car was acquired for Rs.20 lakhs.

b. A sale proceeds of Benz car used for her profession was sold for Rs.10 lakhs. The WDV of the car as on the date of sale was Rs.7.5 lakhs.

c. Sale of personal jewels made of platinum and painting for Rs.1 crore, which were acquired for Rs.25 lakhs.

Q.No.3. Ms.Vasudha contends that sale of a work of art held by her is not eligible to capital gains tax is she correct? **(M10 - 2M)**

Q.No.4. Where an urban agricultural land owned by an individual, continuously used by him for agricultural purposes for a period of two years prior to the date of transfer, is compulsorily acquired under law and the compensation is fixed by the state government, resultant capital gain is exempt?

Q.No.5. State the situations under which the written down value of a 'block of assets' will be reduced to nil?

Q.No.6. A land was purchased in April 2006 and the building was constructed on it during 2011-12. the building was sold in June 2017. Is the Capital Gain arising out of sale, Long-Term or Short - Term Capital Gain?

Q.No.7. Sachin received Rs.15,00,000 on 23.01.2017 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 2005 for Rs.8,00,000. Is the amount received on reverse mortgage chargeable to tax in the hands of Sachin under the head 'Capital gains'?

Q.No.8. How will you calculate the period of holding in case (a) Shares held in a company in liquidation, (b) Bonus shares, (c) Flat in a co-operative society? ***(NEW SM)***

PRINTED SOLUTIONS TO SOME SELECTIVE PROBLEMS

PROBLEM NUMBERS TO WHICH SOLUTIONS ARE PROVIDED: 3

PROBLEM NO. 3

a) **Computation of depreciation for A.Y. 2019-20:**

Particulars	Rs.
W.D.V. of the block as on 01.04.2018	8,50,000
Add: Purchase of new plant during the year	8,50,000
	17,00,000
Less: Sale consideration of old machinery during the year	(11,00,000)
W.D.V of the block as on 31.03.2019	**6,00,000**

Note: Since the value of the block as on 31.03.2019 comprises of a new asset which has been put to use for less than 180 days, depreciation is restricted to 50% of the prescribed percentage of 15% i.e. depreciation is restricted to 7½%. Therefore, the depreciation allowable for the year is **Rs. 45,000**, being 7½% of Rs. 6,00,000.

b) The provisions under section 50 for computation of capital gains in the case of depreciable assets can be invoked only under the following circumstances:

i) When one or some of the assets in the block are sold for consideration more than the value of the block.

ii) When all the assets are transferred for a consideration more than the value of the block.

iii) When all the assets are transferred for a consideration less than the value of the block.

Since in the first two cases, the sale consideration is more than the written down value of the block, the computation would result in short term capital gains.

In the third case, since the written down value exceeds the sale consideration, the resultant figure would be a short term capital loss.

In the given case, **capital gains will not arise** as the block of asset continues to exist, and some of the assets are sold for a price which is lesser than the written down value of the block.

c) If the three machines are sold in June, 2018 for Rs. 21,00,000, then short term capital gains would arise, since the sale consideration is more than the aggregate of the written down value of the block at the beginning of the year and the additions made during the year.

Particulars	Rs.	Rs.
Sale consideration		21,00,000
Less:		
W.D.V. of the machines as on 01.04.2018	8,50,000	
Purchase of new plant during the year	8,50,000	(17,00,000)
Short term capital gains		**4,00,000**

THE END