

# **CAPITAL GAIN** on **Real Estate**

by

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# Basic Provisions

- Chapter IV E – Sections 45 to 55A
- Rule 111AA and 111AB
- Capital Asset – 2(14); STCA – 2(29A); LTCA – 2(29B); Transfer – 2(47)
- Exemption on Capital gain – Agricultural land 10(37); Shares – 10 (36); 10(38)
- Carry forward and set off of losses – 74
- Tax on STCA – 111A
- Tax on LTCA - 112
- Capital Gain Account Scheme 1988

# Capital Asset - property

- Building and land both capital asset, however rural agricultural land exempt i.e. land not situate
  - In a municipality or a cantonment board and which has a population of not less than 10,000
  - In any area within a distance of not more than 8 km. from the local limits of any municipality or cantonment board

# Agricultural Land

- Mr. A acquires a agricultural land in Mundka, New Delhi on 1.1.2008 for Rs. 5 Lacs. His father has been using this land for agricultural purposes since acquisition.
- On 28.2.2010 A sells this land for Rs. 10 Lacs. What is the CG and whether it is ST or LT?
- On 15.3. 2010 he purchases another agricultural land in Bawana, New Delhi for Rs. 8 Lacs. Does it changes the taxation?

**Section 54B**

# Compulsory Acquisition

- The Industrial undertaking of A is compulsorily acquired by the government for Rs. 10 Lac on 1-3-2006.
- A had purchased/constructed the undertaking on 15.2.2004 for Rs. 2 lac. and has been using since then for industrial purpose.
- The compensation is received on 15-3-2009. How much is the CG? When is it charged to tax?
- A received enhanced compensation of Rs. 2 lacs on 15.4.2010
- A acquires a industrial plot for Rs. 9 lacs on 15.6.2010.

**Section 54D**

# CG Provisions – Resi. Property

<i>Sale made of</i>	<i>Assessee</i>	<i>Investment in</i>	<i>Relevant section</i>	<i>Amount to be invested</i>
LTCA being Res. Propty.	Ind or HUF	Res. House	54	CG
LTCA other than Res. Property	Ind or HUF	Res. House	54F	Net Consideration
Any LTCA	Any	LTSA – Bonds	54EC	CG

# CG Povisions – Other than Resi Property

<i>Sale made of</i>	<i>Asse ssee</i>	<i>Investme nt in</i>	<i>Relevan t section</i>	<i>Amount to be invested</i>
Agri Land	Ind	Agri land	54B	CG
Indl. undertaking compulsory acquired	Any	Land, build for Indl Pur	54D	CG
Shifting of Indl undertaking from urban area to rural	Any	Land, building, Plt, Mach	54G	CG
Shifting of Indl undertaking from urban area to SEZ	Any	Land, building, Plt, Mach	54GA	CG

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# Case Study -1

- M/s ABC sold Building whose WDV was Rs. 49 Lacs in AY 2010-11. Cost in AY 2002-03 was Rs. 89 Lacs.
  - Is it STCG or LTCG?
  - Is indexation allowable?
  - Is any deduction/investment option available?
- S. 50 is restricted only to mode of computation of CG. It does not convert LTCA into STCA –  
*CIT vs. Ace Builders P. Ltd. (2006) 281 ITR 210 (Bom)*



# Case Study - 2

- R acquired a house property on 1-1-1969 for Rs. 2.50 lacs.
- He forfeited Rs. 50,000 on the said asset on 21-10-1980.
- R again forfeits Rs. 50,000 on the said asset on 16-7-1998.
- The asset is finally sold on 15-5-2009 for Rs. 34 Lacs.
- The fair market value of the asset as on 1-4-1981 is Rs. 5Lacs. How much is the capital gain?

# Case Study - 3

- Mrs. R purchased a residential house on 15-5-1988 for Rs. 3 lacs.
- She entered into an agreement to sell the house to G on 10-8-1997 for Rs. 18 lacs. G paid an earnest money of Rs. 5 Lacs which was later forfeited.
- Mrs. R subsequently sold the house to S on 21-10-2009 for Rs. 25 lacs. How much is the capital gain?

[Travancore Rubber & Tea Co. Ltd. v CIT (2000) 243 ITR 158 (SC)]

# Case Study - 4

- X acquired a land in 1977-78 for Rs. 2 lacs
- He gifted this property to his major son Y on 15.5.1995.
- The fair market value of that land as on 1-4-1981 was Rs. 3 Lacs.
- Y sold the land on 15-9-2009 for Rs. 25 Lacs. From when would the indexation be allowable and what would be the cost of acquisition?

[Mrs. Pushpa Sofat (2002) 81 ITD 1 (Chd) (SMC) ]

[Kamal Mishra v ITO (2008) 19 SOT 251 (Del) ]

# Case Study - 5

- R's father had acquired a property in the previous year 1983-84 for Rs. 2 lacs.
- He gifted this property to his son R in the previous year 1991-92 when its FMV was Rs. 3 Lacs.
- This property was introduced as capital contribution to a partnership firm in which R became a partner on 5-6-2009.
- The market Value of the asset as on 5-6-2009 was Rs. 10,00,000, but it was recorded in the books of account of the firm at Rs. 7,00,000.
- Is there any CG? If yes then how much?

# Case Study - 6

- A firm consists of 3 partners namely R, G and S. S retires from the firm on 15-10-2009.
- His capital balance and the profits till the date of retirement stood at Rs. 15 Lacs.
- The firm transferred its land to S in settlement of his account.
- The market value of the land as on that date was Rs. 25,00,000.
- The land was acquired of by the firm on 1-5-1994 for Rs. 5,00,000. Is there any CG?

CIT v A.N. Naik Associates (2004) 136 Taxman 107 (Bom)

# Case Study - 7

- The stamp value to be the full value of consideration if it is less than that – S. 50C
  - M/s ABC Relators sold 10 plots in its complex @ 10 lacs each. The Circle rate was Rs. 15 Lac for each plot. Is 50C applicable?
  - 50 C can be invoked only if income is taxable under head capital gain and not when it is taxable u/h business income
- Inderlok Hotels P. Ltd. v. ITO [(2009) SOT 419 (Mum)]
- W.e.f. 1.10.2009 even unregistered documents are covered

# Section 2(47)(v)

- **Transfer includes any transaction involving**
  - the allowing of the possession of any immovable property
  - to be taken or retained
  - in part performance of a contract
  - of the nature referred to in section 53A of the Transfer of Property Act, 1882.

# Part Performance

- **Section 53A of Transfer of Property Act**
  - There should be a contract for consideration
  - Contract should be in writing
  - It should be signed by the transferor
  - Should pertain to immovable property
  - Transferee should have taken the possession of the property
  - Transferee should be ready and willing to perform his part of the contract



# Case Study -8

- R owner of Land since 1958, could not retain the land due to Urban Land (Ceiling & Regulation) Act, 1976.
- She sold the plot to B to construct flats.
- POA given to builders for only booking of flats
- Sale deed executed by both.
- R got fixed amount of Rs. 20 Lacs as per agreement.
- Is it PGBP or CG?

*CIT vs. Smt. Radha Bai (2005) 272 ITR 264 (Del)*

## Case Study - 9

- A entered into builders agreement to erect multistory building at 21 Barakhamba Road.
- 50% constructed area to be kept by A and 50% by AP & Co. Space agreed.
- Rs. 10 Lacs to be paid as security to A.
- PGBP or CG?
- Agreement was on principle to principle basis – no partnership

*CIT vs. Ashok Kapur HUF (2007) 213 CTR (Del) 241*

# Case Study – 10

- S agrees with builder for construction.
- No written agreement.
- Date of construction and date of ultimate sale is different.
- **WHEN DOES CG ARISE?**
  - Date of construction?
  - Date of ultimate sale?
- 2(47)(v) comes into operation only if condition of S. 53A of Transfer of Property Act is satisfied & written agreement is there. – CG in year of sale.

*CIT vs. G. Saroja 301 CTR 124 (Mad)*

# Section 56

- If individual or HUF receives any immovable property without consideration, the stamp value of which exceeds Rs. 50000/- s. 56 (2)(vii)(b) is applicable.
- Inadequate consideration gone w.e.f. 1.10.2009 itself.

# Thank You

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