

RANKERS' COMMERCE (KANKARBAGH PATNA)

call:9386035411, 7870266699, 9709443092

Any profits arising from the transfer of a Capital Asset in the previous year shall be chargeable to tax under the head of 'Income from Capital Gains' and shall be deemed to be the income of the previous year in which transfer took place, unless such Capital Gains are exempt under Sections 54, 54B, 54D, 54EC, 54EE and 54F.

BASIS OF CHARGE - SECTION 45

1. There should be a Capital Asset.
2. It should be transferred by the assessee.
3. Such transfer should take place during the PY.
4. Any Profit/Gains should arise from such transfer.
5. Such Capital Gain should NOT be exempted under Section 54 series.

If all the above conditions are satisfied, Capital Gain shall arise & shall be deemed to be the income of the **PY in which transfer took place** & taxed accordingly.

DEFINITION OF CAPITAL ASSET - SECTION 2(14)

Capital Asset means:

- (a) **Any Property** (Movable/immovable), connected with assessee's business/profession or not.
- (b) Any Securities held by **FII**s (invested as per SEBI regulations) [**Always CA → Even if held as SIT**]
- (c) Any Rights in Indian Company including Right of Management or control.

EXCEPTIONS: [Following are NOT CAPITAL ASSETS]

1. **SIT/RM/Consumables stores** held for business/profession; (**Except** Securities held by FII as SIT).

Note: Securities held by FII will be Capital Asset even if they are held as SIT.

2. **Movable Personal effects** (including wearing apparel & furniture) held for his/his family member's personal use **but excludes** ↓

- | | |
|---|--|
| <ol style="list-style-type: none">(a) Jewellery,(b) Archaeological collections;(c) Drawings;(d) Paints;(e) Sculptures(f) Any other work of Art | } Capital Assets even if held for personal use |
|---|--|

Note: To constitute Personal Effect, Asset should be **used by** the assessee. **Daily use is not necessary.**

- ❖ **Definition of Jewellery:** Jewellery is a capital asset & the profits/gains arising from the transfer of jewellery held for personal use are taxable u/h "capital gains".
- ❖ If **Precious stones/metals are sewn/worked/set into Wearing Apparel/ furniture**, it is classified into the category of jewellery & thus it is a **Capital Asset**.

Ex: Throne made of Gold/Platinum/Diamonds; Shirt with diamond buttons sewn into it.

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3. **Rural Agricultural Land in INDIA** [Urban Agricultural land → Capital Asset]

❖ **Rural Land** means land outside the following Specified limits:

Population	Distance from Municipality/Cantonment Board
≤ 10,000	0 Kms
> 10,000 & ≤ 1,00,000	2 Kms
> 1,00,000 & ≤ 10,00,000	6 Kms
Above 10,00,000	8 Kms

❖ **Agricultural Land:** Land must be used for agricultural purposes for 2 yrs prior to transfer.

What about Urban Land? Capital Gain on Transfer of Urban Agricultural Land → **Not** treated as Agricultural Income & thus it is **not exempt** u/s 10(1). Capital Gains arising from such transfer would be taxable u/s 45.

4. **Gold Deposit bonds/Certificates** issued under Gold Deposit Scheme, 1999 or Gold Monetization Scheme, 2015.

TYPES OF CAPITAL ASSET – SECTION 2(42A)

(A) Long-term capital asset:-An asset that is held for more than 36 months immediately prior to the date of transfer is a long-term capital asset. However

1. In respect of certain assets like shares (equity or preference) which are listed in a recognised stock exchange in India (listing of shares is not mandatory if transfer of such shares took place on or before July 10, 2014), units of equity oriented mutual funds, listed securities like debentures and Government securities, Units of UTI and Zero Coupon Bonds, the period of holding to be considered is 12 months instead of 36 months.
2. In case of unlisted shares, period of holding is to be considered as 24 months instead of 36 months.
3. An immovable property being land or building or both, period of holding is to be considered as 24 months from AY 2018-19. Before AY 2018-19, the holding period is 36 months

(B) Short Term Capital Asset

Capital asset held for not more than 36 months immediately prior to the date of transfer shall be deemed as short-term capital asset. However, following assets held for not more than 12 months shall be treated as short-term capital assets:

- a) Equity or preference shares in a company which are listed in any recognized stock exchange in India;
- b) Other listed securities;
- c) Units of UTI;
- d) Units of equity oriented funds; or
- e) Zero Coupon Bonds.

Note: Unlisted shares and immovable property (being land or building or both) held for not more than 24 months immediately prior to the date of transfer shall be treated as short-term capital asset.

Why CAPITAL ASSETS are divided into STCA & LTCA?[To be read once]

- Tax incidence under Capital Gains depends upon whether asset is LTCA or STCA.
- If asset is STCA, capital gain will be Short- term capital gains.
- If asset is LTCA, capital gain will be Long- term capital gains.
- In **case of DEPRECIABLE ASSET, always STCG will arise irrespective of POH.**

Meaning of Capital Gain: - Any profits arising from the transfer of a Capital Asset to be called capital gain

Types of Capital Gain

There are two types of capital Gain

(a) Long Term Capital Gain

(b) Short-term Capital Gain

- 1. Long Term Capital Gain:** The profit/gain earned through the sale of Long term capital Assets during the relevant previous year to be called Long term capital assets
- 2. Short term capital Gain:-** The profit/gain earned through the sale of Short term capital Assets during the relevant previous year to be called Short term capital assets

DEFINITION OF TRANSFER OF CAPITAL ASSET - [SEC 2(47)]

- | |
|--|
| 1. Sale, exchange or relinquishment of the asset. |
| 2. Extinguishment of any rights in the asset. |
| 3. Compulsory Acquisition of any Capital Asset under any law. |
| 4. Conversion of Capital Asset into Stock in trade. |
| 5. Maturity/Redemption of ZCB. |
| 6. Giving possession of IMMOVABLE PROPERTY under Part performance of a contract. |

Ex: A enters into an agreement for the sale of his house. The purchaser gives the entire sale consideration to A. 'A' hand over complete rights of possession to the purchaser since he has realised the entire sale consideration. However some legal formalities are left to be done.

Under Income Tax Act, the above transaction is considered as transfer by applying 'substance over form'.

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7. Transactions which have the effect of transferring the enjoyment of Immovable property.

Ex: A person may become a member of a co-operative society which may be a house/flat. When he pays an agreed amount, the society etc. hands over possession of the house to the person concerned. No conveyance is registered. Such transaction is a transfer under Income Tax Act.

Even power of attorney transactions are regarded as transfer.

DATE OF COMPLETION OF TRANSFER

MOVABLE PROPERTY	<ul style="list-style-type: none">▪ Date on which property is delivered after the contract of sell.▪ Entries in Books of A/c → Irrelevant for determining date of transfer.
IMMOVABLE PROPERTY	<p>(i) Documents are registered → Date on which deed is executed or registered.</p> <p>(ii) Documents are not registered → If the following conditions are satisfied:</p> <ul style="list-style-type: none">▪ There should be a contract in writing;▪ Transferee has paid consideration/is willing to perform his part of the contract;▪ Transferee should have taken the possession of the property.

HOW TO COMPUTE CAPITAL GAINS – SECTION 48

FULL VALUE OF CONSIDERATION (FVC) [SECTION 48]

- **Meaning:** Consideration received/receivable by the transferor for the transferred capital asset.
- It may be in **cash/ kind**. [If the consideration is received in kind, then FMV = Full value of consideration].
- **Adequacy of Consideration & Receipt of Consideration** → **IRRELEVANT** for determining FVC.

Note: Where **ESOP Shares**, debentures or warrants (allotted by a company directly/indirectly to its employees) are **transferred under a gift or irrecoverable trust** → **FVC = FMV on date of transfer**.

EXPENSES OF TRANSFER

- Expenditure incurred wholly & exclusively in connection with transfer of capital asset.
- Such expenses of transfer are **deductible from FVC**.

Ex: Brokerage, stamp fees, registration fees, legal expenses, commission paid for securing a purchaser, cost of stamp, litigation expenditure etc.

Note: **STT** paid on purchase/sale of Equity shares & units of EOMF → **Not deductible u/h CG**.

COST OF ACQUISITION

- The value for which the asset was acquired by the assessee.
- **Only capital expenditures** for completing/acquiring title to the property are **includible in COA**.
- Any Revenue expenditure incurred → will not form part of COA.

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- Amount paid for discharge of mortgage is part of 'COA' if mortgage was not created by transferor.

COST OF IMPROVEMENT

- **Capital expenditure** incurred in making any additions/improvements/protect capital asset.
- **Routine expenditure** on repairs or maintenance will **NOT** be included in Cost of improvement.

Points to Remember:

1. In case of **Goodwill of Business** (whether Self-generated/Purchased) → **COI = Nil**.
2. COI → Considered only if incurred **on/after** 1.4.2001.
3. COI incurred by **Previous Owner** → **Considered** if incurred on/after 1.4.2001.

Calculate Short-Term Capital Gains

Computation of Short term capital Gain of

For the Assessment Year 2020-21

Sale Consideration of the Assets		Xxx
Less: Expenses of Transfer(Brokerage , Commission Paid etc)	(xxx)	
Less: Cost of Acquisition of the Assets	(xxx)	
Less: Cost of Improvement of the Assets	(xxx)	(xxx)
SHORT- TERM CAPITAL GAIN		XXX

Calculate Long-Term Capital Gains

Computation of Long- term capital Gain of

For the Assessment Year 2020-21

Sale Consideration of the Assets		Xxx
Less: Expenses of Transfer(Brokerage , Commission Paid etc)	(xxx)	
Less: Indexed Cost of Acquisition of the Assets	(xxx)	
Less: Indexed Cost of Improvement of the Assets	(xxx)	(xxx)
Long- TERM CAPITAL GAIN		XXX

INDEXATION

- Sale consideration is the price at which the asset is sold in the PY. However asset may be purchased in some earlier year.
- The money spent years before & the sale consideration received in PY cannot be compared.

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- Thus deducting the cost of acquisition that has been incurred many years earlier from the sale consideration that has been received in this PY is unfair for the assessee.
- Thus Indexation is given for the Long-term capital assets.
- Thus Indexation of COA means bringing into line COA with that of Sale Consideration.

Meaning of Indexed COA(cost :

- As per Section 48, COA will be increased by applying the cost inflation Index (CII).
- Once the Cost Inflation Index is applied to COA, it becomes **Indexed COA**.

Steps to Calculate Indexed COA:

1. Find out the type of asset on the basis of POH (whether the asset is STCA/LTCA)
2. Apply Indexation to Cost of Acquisition only if asset is Long Term Capital Asset.

INDEXED COST OF ACQUISITION

Indexed Cost of Acquisition =

$$\frac{[(\text{Cost of Acquisition}) \times (\text{CII for the year of transfer})]}{(\text{CII for the year of acquisition or for the Financial Year 2001-02, whichever is later})}$$

**** Note: CII of year of acquisition of asset by Previous owner [For Transfer u/s 49(1)].**

COST INFLATION INDEX for Different FYs

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

OPTION TO TAKE FMV ON 1.4.2001 AS COST OF ACQUISITION

- If Capital Asset is acquired before 1.4.2001 → Assessee have the **option** to take FMV of the Asset on 1.4.2001 as COA of the Asset. [Exercised when FMV on 1.4.2001 > Original COA of asset].
- This option is **not** available in case of Depreciable Assets; Goodwill of Business/other like assets;

Indexed Cost of Acquisition =

$$\frac{[(\text{Cost of Acquisition}) \times (\text{CII for the year of transfer})]}{(\text{CII for the year of acquisition or for the Financial Year 2001-02, whichever is later})}$$

Generally cost of acquisition= Cost of Actual Assets Or The fair market value of the assets on 1/4/2001 whichever is higher

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INDEXED COST OF IMPROVEMENT

Cost of improvement, in relation to the capital assets shall include all capital expenditure incurred in making addition or alteration to the capital assets by the assessee or the previous owner. However, cost of improvement does not include any expenditure incurred prior to 01-04-2001. Cost of improvement shall be computed in the following manner:

$$\frac{\text{Cost of Improvement}}{\text{CII of the year of Improvement}} \times \text{CII of year of transfer of Asset}$$

Q. How to decide whether to take Indexation of Cost of Improvement or not?

- ❖ It should be decided from the nature of the asset.
- ❖ If Asset is LTCA → Take Indexed COI &
- ❖ If Asset is STCA → Take COI (**without Indexation**).

Note: Year in which Improvement is done in the Asset → **Not Relevant**.

SECTION 55: COST OF IMPROVEMENT, COST OF ACQUISITION

	EXPENDITURE DONE BEFORE 1/4/2001	EXPENDITURE DONE ON OR AFTER 1/4/2001
COST OF ACQUISITION	Assessee has the option to take either of a) Actual Cost of Acquisition (COA) b) Fair Market Value (FMV) of the Asset as on 1/4/2001 as COA for the purpose of computation of the Capital Gains	Assessee has to take Actual Cost of Acquisition (COA) to him as the COA for the calculation of capital gains
COST OF IMPROVEMENT	Actual cost of improvement incurred before 1/4/2001 has to be ignored in every case.	Actual cost of improvement incurred on or after 1/4/2001 , whether done by the assessee has to be considered while calculating Income from Capital Gains

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GOODWILL/TRADEMARK/BRAND NAME etc. [SEC 55(2)(A)]

Nature of Assets	(i) Goodwill of a business/ Tenancy Rights; (ii) Trademark or Brand name associated with a business; (iii) Right to manufacture/produce any article or thing; (iv) Right to carry any business.
Cost of Acquisition	1. Self-Generated Assets: Nil 2. Purchased: Actual COA (purchase price)

Points to Remember:

1. Option to take FMV on 1.4.2001 → Not Available in case of Above Assets.
2. If **COA** of asset is **NOT Ascertainable** → **No TAX**. [Ex: Self-generated Goodwill of a profession].
3. In case of **Goodwill** of a business (whether Self-generated/Purchased) → **COI** will always be **Nil**.

RIGHT SHARES/BONUS SHARES [SEC 55(2)(aa)]

Particulars	Cost of Acquisition
1. Bonus Shares <ul style="list-style-type: none">➤ If Bonus shares acquired before 1.4.2001➤ If Bonus shares acquired on/after 1.4.2001	FMV as on 1.4.2001 Nil since no option is available
2. Right Shares <ul style="list-style-type: none">➤ Purchased by Original Shareholder➤ Purchased by Purchaser of Right	Issue Price Issue price + Cost of Right
3. Right	Always Nil & always STCG

Indexation: Indexation is available from date of allotment of Right/Bonus Shares.

CAPITAL GAINS ON TRANSFER OF DEPRECIABLE ASSET [SEC 50]

- Capital gain arising on depreciable asset will **always be STCG** irrespective of POH.

Conditions for Claiming Depreciation u/s 32

1. There must be **at least one asset** in the block
2. There must be **some WDV for the block** on which prescribed rate of Depreciation can be applied.

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If any of the two conditions are not satisfied, Sec 32 ceases to apply & automatically Section 50 becomes applicable resulting in STCG.

Section 50: Capital Gain on Depreciable Assets will arise only in the following two cases:

- (1) **WDV of block is ZERO** on the last day of the PY
- (2) **Block is Empty** on the last day of PY (Even if there is WDV in the block).

1. STCG	<ul style="list-style-type: none">▪ If Sale Consideration received on transfer of one or more capital asset > WDV of Block, WDV of the block will be Zero & therefore no Depreciation can be claimed.▪ In such case, STCG = Sale consideration - WDV of the block.
2. STCL	<ul style="list-style-type: none">▪ If all the assets in the block are sold, Block is empty & thus no depreciation can be claimed even if there is WDV left in the block.▪ In such case, Short term capital loss will arise to the extent of remaining WDV.▪ CRUX: If Sale consideration of all the assets in Block < WDV of the Block, STCL = Sale consideration of all the assets - WDV of the block.

SECTION 49(1) : CONCEPT OF PREVIOUS OWNER

Applicability of concept	When Capital Asset is acquired by assessee by way of <ul style="list-style-type: none">• Gift or Will or• Inheritance or Succession or• On partition of HUF
Period of holding to determine if capital asset is a STCA or LTCA	The period for which the previous owner of asset held the asset and the period for which the current owner of asset held the asset shall be aggregated for the calculation of the period of holding, to determine whether an asset is LTCA or STCA
Cost of acquisition	The Cost of Acquisition of asset shall be deemed to be the cost for which the previous owner of the property acquired it. If it was acquired before 1/4/2001 then assessee has the option to take either of <ul style="list-style-type: none">a) Actual Cost of Acquisition (COA) of capital asset as incurred by previous ownerb) Fair Market Value (FMV) of the Asset as on 1/4/2001 as COA for the purpose of computation of the Capital Gains.
Cost of improvement	If cost of improvement was incurred before 1/4/2001 then it has to be ignored in every case whether improvement was done by current owner or by previous owner. But if improvement was done on or after 1/4/2001 whether done by current owner or by previous owner then such cost of improvement has to be considered for the calculation of capital gains.

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CII in case of cost of acquisition	CIT-12 v Manjula J. Shah [2012] 204 taxman 691 (Bom) : While calculating Indexed Cost of Acquisition the indexation factor of that will be taken (in denominator) in which asset was acquired by the previous owner or the Indexation factor of FY 1981-1982, whichever is later
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Case1: Indexed cost of acquisition of assets acquired by previous owner before 01/04/2001 by any mode u/s 49

Indexed Cost of Acquisition =

Cost of Acquisition of previous owner or Fmv as on 1/4/2001(more of both) xCII OF TRANSFER YEAR

(CII for the year 2001-02) ie 100

Case 2: Indexed cost of acquisition of assets acquired by previous owner After 01/04/2001 by any mode u/s 49

Indexed Cost of Acquisition =

Cost of Acquisition of previous owner xCII OF TRANSFER YEAR

(CII for the year in which the asset is first held by the assesses

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VARIOUS Deductions AVAILABLE FROM CAPITAL GAINS

Any person earning capital gains can avail exemptions under various sections, which are hereby discussed in detail. But to avail exemption the person has to buy some other asset within time prescribed under those sections or he can deposit money in capital gain account scheme.

Capital gain account is a special account which is opened in a bank where the amount of capital gain is temporarily kept before the use at some other point of time in future.

Thus, exemption is given even if asset is not purchased but money is deposited in this account. The amount in this account can be withdrawn and has to be used for purchasing asset within prescribed time. If it could not be used within that time then the amount, which has not been used, shall be deemed to be income, which is chargeable to capital gains.

SECTION 54: EXEMPTION FROM LTCG INCOME ON TRANSFER OF RESIDENTIAL HOUSE

- 1) **Exemption is available to Individual or HUF.**
- 2) **Exemption is available if asset transferred is residential house which is LTCA.**
- 3) **Exemption is available if assessee invests amount of capital gains and**
 - a) **Purchases one residential house within India within one year before the date of transfer of old house or**
 - b) **Purchases one residential house within India on or before the due date of filing of ITR**
- 4) **If Capital Gain is more than the amount invested in residential house then to claim exemption under this section difference can be deposited in capital gains account scheme (in any bank or financial institution) on or before the due date of filing of ITR.**
- 5) **The amount which has been invested in the capital gains account scheme must be withdrawn and shall be utilized to**
 - a) **Purchase one residential house within India within two years from the date on which transfer took place or**
 - b) **Complete the construction of one residential house within India within three years from the date on which transfer took place.**
- 6) **If such amount which is deposited with capital gain account scheme is not utilized within time period specified for purchase of asset then such unutilized amount shall be liable to capital gain tax in the previous year in which period of two or three years from date of transfer, expires. This Capital Gain shall always be LTCG.**
- 7) **If assessee who deposits the amount in capital account scheme expires before the expiry of period and amount is withdrawn from the said account then it can't be taxed either in hands of legal heirs or such deceased. (Circular No.743)**
- 8) **The date of commencement of construction is not at all relevant. What is relevant is the completion of construction. Thus exemption is still available if house is sold off after the construction of new house has begun.**
- 9) **Purchase means taking the possession of the house after the house has been**

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registered in the name of the assessee. If only title of house has been transferred then no exemption is available.

- 10) If new house is transferred within a period of three years from date of purchase, then capital gains exempt earlier shall be reduced from cost of purchase of asset and then capital gains shall be charged. On sale of such asset there shall be STCG.
- 11) Assessee will get exemption if he purchases a plot of land and then does construction on it. In such a case the aggregate cost shall be considered for exemption under this Section.

SECTION 54F : EXEMPTION ON TRANSFER OF ANY LTCA OTHER THAN RESIDENTIAL HOUSE PROPERTY BUT INVESTMENT IN RESIDENTIAL HOUSE

- 1) Exemption is available to Individual or HUF.
- 2) Exemption is available if asset transferred is any type of LTCA other than residential house.
- 3) Exemption is available, if amount of net sale consideration is invested in residential house or invested in capital gain account scheme. If full amount of net sale consideration is invested then full exemption is allowed but if full amount of net sale consideration is not invested then exemption shall be calculated as follows

$$\frac{\text{LTTCG X investment in residential house or investment in Capital Gain Account Scheme}}{\text{Net Sale consideration}}$$

- 4) Exemption is available if assessee invests amount of net sale consideration in
 - a) Purchasing one residential house within India within one year before the date of transfer of LTCA or
 - b) Purchasing one residential house within India on or before the due date of filing of ITR
- 5) If capital gain is more than the amount of net sale consideration invested in residential house then to claim exemption under this section difference can be deposited in capital gains account scheme (in any bank or financial institution) on or before the due date of filing of ITR.
- 6) The amount which has been invested in the capital gains account scheme must be withdrawn and shall be utilized to
 - a) Purchase one residential house within India within two years from the date on which transfer took place or
 - b) Complete the construction of one residential house within India within three years from the date on which transfer took place.
- 7) If such amount which is deposited with Capital Gain Account Scheme is not utilized within time period specified for purchase of new Asset then such unutilized amount shall be liable to capital gain tax in the previous year in which period of two or three years from date of transfer, expires. This Capital Gain shall always be LTTCG.
- 8) If assessee who deposits the amount in capital account scheme expires before the expiry of period and amount is withdrawn from the said account then it can't be taxed either in hands of legal heirs or such deceased. (Circular No.743)

- 9) Date of commencement of construction is not at all relevant. What is relevant is the completion of construction. Thus exemption is still available if house is sold off after the construction of new house has begun.
- 10) Purchase means taking the possession of the house after the house has been registered in the name of assessee. If only title of house has been transferred then no exemption is available.
- 11) If new house is also sold within a period of three years from date of purchase then exemption given earlier to capital gains shall be withdrawn. For this purpose exempted capital gains shall be charged to tax in the year of sale of new house and nature of capital gains shall be same as that of original capital gains.
- 12) Exemption under this section will be available if assessee owns only one residential house other than new house, which has been purchased under Section 54F. In other words, if assessee has two or more houses before such a new asset under section 54F, then exemption under section shall not be available.
- 13) Assessee will get exemption if he purchases a plot of land and then does construction on it. In such a case the aggregate cost shall be considered for exemption under this Section.
- 14) Exemption shall be allowed only for one residential house purchased or constructed in India.

SECTION 54D : EXEMPTION OF CAPITAL GAIN FROM COMPULSORY ACQUISITION BY GOVERNMENT OF LAND AND BUILDING OF INDUSTRIAL UNDERTAKING

- 1) Exemption is available to all assessee.
- 2) Exemption is available from capital gains emerging out of compulsory acquisition of land or building or both which is part of industrial undertaking.
- 3) Exemption is available from LTCG.
- 4) Exemption is available if land or building is used for two years for the industrial purposes immediately preceding the date of transfer.
- 5) Exemption is available if amount of capital gain is used for
 - a) Purchasing or constructing new land or building for industrial undertaking on or before the due date of filing ITR or
 - b) Investing the amount in capital gains account scheme (in any bank or financial institution) on or before due date of filing ITR
- 6) Amount invested in the capital gains account scheme must be withdrawn and amount should be used within 3 years after date of transfer of old assets for purchasing or constructing new land or building for industrial undertaking.
- 7) If such amount, which is deposited with capital gain account scheme is not utilized within time period specified for purchase of new asset then such unutilized amount shall be liable to capital gains tax in the previous year in which period of three years from date of transfer, expires.
- 8) If new asset is also sold within a period of three years from date of purchase then capital gains exempt earlier shall be reduced from cost of purchase of new asset and then capital gains shall be charged on such new asset.
- 9) Capital Gains on building shall always be STCG since it is liable for depreciation u/s 32.

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- 10) If assessee who deposits the amount in capital account scheme expires before the expiry of period and amount is withdrawn from the said account then it can't be taxed either in hands of legal heirs or such deceased. (Circular No.743)

SECTION 54EC : EXEMPTION BY INVESTMENT IN SPECIFIED SECURITIES

- 1) Exemption is available to all assesses from Capital Gains on sale of any LTCA.
- 2) Exemption if amount of whole or any part of Capital Gains is invested in six months from the date of sale in Bonds of:
 - a. National Highway Authority of India Limited or
 - b. Rural Electrical Corporation of India Limited or
 - c. Power Finance Corporation Limited or
 - d. Indian Railway Finance Corporation Limited**
- 3) Bonds should be such that are redeemable after the period of three years.
- 4) Maximum investment in the Bonds can be `50 lakhs in aggregate in the year in which asset is transferred and in the subsequent financial year.
- 5) If any amount is not invested then it shall be chargeable to Tax and benefit of depositing amount in Capital Gain Account Scheme is not available.
- 6) If such new securities are sold/any loan is taken on its security within three years of acquisition, exempted Capital Gains get taxable as LTCG in the year of transfer or year of taking loan.

Section 2(14) : Agriculture land in rural area is not considered as a capital asset but agriculture land in the urban area shall be considered as a Capital Asset.

AGRICULTURE LAND SITUATED IN URBAN AREA	AGRICULTURE LAND SITUATED IN RURAL AREA
It is treated as a Capital Asset	It is not treated as a Capital Asset
On transfer of land Capital Gain is attracted but exemption can be availed under Section 54B.	On transfer of land no Capital Gain is attracted
Income from land is Agricultural Income.	Income from land is not Agricultural Income.
Income from the farmhouse, which is constructed on such land or is in immediate vicinity, is regarded as agriculture income.	Income from farmhouse is treated as agricultural income only if land is assessed to land revenue.

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SECTION 10(37): COMPULSORY ACQUISITION OF AGRICULTURAL LAND

- 1) This Section provides the exemption from capital gains if agricultural land is compulsorily acquired by the government
- 2) Exemption is available from LTCG.
- 3) Exemption is available to Individual and HUF.
- 4) Such land should have been used for two years or more by HUF or Individual or parents of such Individual before such acquisition.
- 5) Exemption is available for the compensation or enhanced compensation received on or after 1/4/2004. The date of transfer is not at all relevant.
- 6) Land should be compulsorily acquired by the government and for which compensation is approved by the Central Government or RBI.

SECTION 54B : EXEMPTION OF CAPITAL GAINS ON TRANSFER OF AGRICULTURE LAND

- 1) There shall be no capital gains on sale of rural agricultural land as it is not regarded as a capital asset under section 2(14). Thus this section is applicable only on the capital gain arising on sale of an urban agricultural land.
- 2) Exemption is available to Individual or HUF
- 3) Capital Gains can be LTCG.
- 4) Exemption is available if Individual or his parent uses land for agricultural purposes for two years immediately preceding the date of transfer. Thus, if land is not used for agricultural purposes or is used for less than two years then exemption shall not be available.
- 5) Exemption shall be given for the amount of capital gain invested in new agricultural land which can be in rural area or in urban area.
- 6) Exemption is available if amount of capital gain is used for
 - a) Purchasing new agricultural land on or before the due date of filing ITR or
 - b) Investing the amount in capital gains account scheme (in any bank or financial institution) on or before due date of filing ITR
- 7) Amount invested in the capital gains account scheme must be withdrawn and amount should be used within 2 years from the date of transfer of old land for purchasing new agricultural land.
- 8) If new agriculture land is also sold within a period of three years from date of purchase then capital gains exempt shall be reduced from its cost of purchase and then capital gains shall be calculated. On sale of such new asset there shall be STCG. But if new agriculture land is situated in rural area then there shall be no capital gains.
- 9) If such amount which is deposited with capital gain account scheme

15. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)

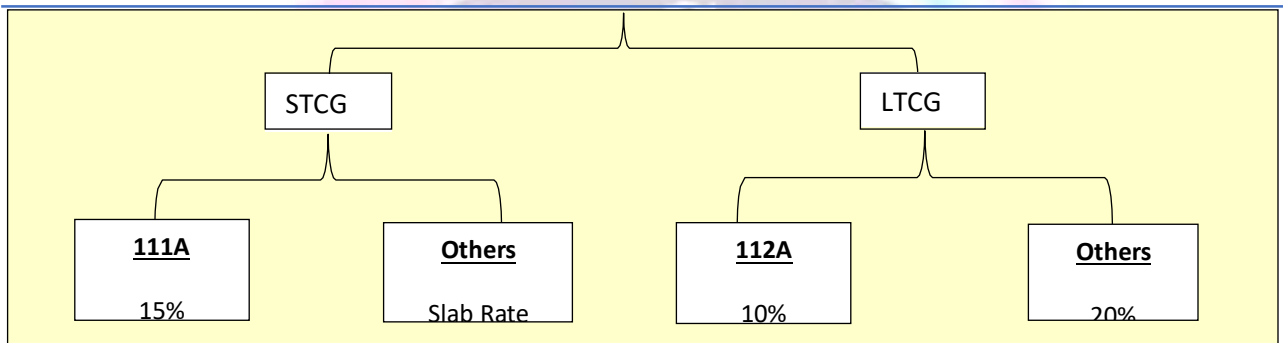
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is not utilized within the time period specified above for purchase of new asset then such unutilized amount shall be liable to capital gains tax in the previous year in which period of two years from the date of transfer, expires.

RATE OF TAX ON CAPITAL GAINS



A. SHORT- TERM CAPITAL GAINS [STCG] STCG u/s 111A: Taxable @ 15%

STCG on transfer of Equity shares/units of EOMF on which STT is paid → Taxed @ 15%

- **Benefit of UNEXHAUSTED BEL** will be **available** for **Resident Individual/HUF**.
- **No deduction under Chapter VI-A** against STCG taxable u/s 111A.
- *STCG arising from transactions undertaken in foreign currency on RSE located in an International Financial Services Centre (IFSC) is taxable @ 15% even if STT is not leviable on such transactions.*

Other STCG:

- STCG **other than Section 111A** are treated as **Normal Income** & will be taxed @ Slab Rate along with Other Incomes.

B. LONG - TERM CAPITAL GAINS [LTCG]

(I) LTCG u/s 112A: Taxable @ 10% on LTCG exceeding Rs. 1,00,000

- LTCG on transfer of Equity shares/units of EOMF on which STT is paid → Taxed @ 15%
- Benefit of UNEXHAUSTED BEL will be available for **Resident Individual/HUF**.

**16. (Ds-3 opp Doctors' colony P.N.B building kankarbagh patna)
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- No deduction under Chapter VI-A against STCG taxable u/s 112A.
- **Rebate u/s 87A → Not Available against LTCG taxable u/s 112A.**
- LTCG arising from transactions undertaken in foreign currency on RSE located in an International Financial Services Centre (IFSC) is taxable @ 10% even if STT is not leviable on such transactions.

Note:

1. Equity share → STT is to be paid on acquisition & transfer of such capital asset.
2. **Units of EOMF/Business Trust** → STT is to be paid on transfer of such capital asset. However, CG may specify the nature of acquisition of equity share on which STT is not payable on acquisition.

(II) OTHER LTCG: Taxable @ 20%

- No deduction under Chapter VI-A is available against LTCG.
 - ❖ **Resident Individual & HUF** → **20%**. Benefit of Unexhausted BEL is available.
 - ❖ **Other Person & Domestic Company** → **20%**. No Benefit of Unexhausted BEL.
 - ❖ **Foreign company/ Non-corporate Non-Resident:**

LTCG on unlisted securities/Shares in Private company	10% without Indexation & currency fluctuations under 1 st proviso to sec 48.
Other Assets	20%