

# ISSUES IN CAPITAL GAINS PROVISIONS UNDER INCOME TAX ACT

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Capital Gains are a contextual taxation concept. Interpretation forms the blood line of the tax computation. Thorough analysis of the transaction and comprehensive understanding of the situation of transfer helps in understanding and arriving at the correct tax implications.

The Concept of Capital gains needs a thorough study and interpretation to understand and apply them practically. The Issues on capital gains are mostly concept oriented and often vary on the interpretation between different cases. The Following basic questions are to be answered before applying the provisions related to the capital gains:

- a. Whether the asset transferred was a capital asset?
- b. Whether the transfer was actually a transfer hit by provisions of Section 2(47) of the Income Tax Act, 1961 and not a transfer exempted U/s 47.
- c. What was the period of Holding?
- d. What was the value of cost of acquisition?
- e. What kind of transfers can be exempted from capital gains?

The provisions relating to the Capital Gains are covered under Section 45 to 55A of the Income Tax Act, 1961. This paper attempts to discuss some of the significant issues in light of the landmark decisions and statute.

- 1) **What would be date of holding to determine period of holding in case of Flat/Plot allotted by Housing Board (like DDA, HUDA etc), date of Allotment, Date of Registration or date of Possession?**

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- 2) **What will be Cost in case of Depreciable assets having WDV of Rs. Say one 100000/- including value of assets purchased for Rs. 21000/- in cash in year ended on 31-03-2018 sold during the year.**

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3) **An assessee has Rs. 10000/- as block in depreciable assets, which is sold for Rs. 30000/- he has purchased new assets of same block for Rs. 25000/- which has not been put to use till year end. The AO want to levy tax Us. 50 on Rs. 20000/- as short term gain as new assets in not put to use, whether AO is correct.**

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4) **What will be Capital Gain Us 45(4) when one of the partner retire from the Firm having Capital Assets and the business is continued as a going concern by the remaining partners.**

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5) **Investment of land or sale of land after plotting - Whether Business income or Capital Gain?**

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6) **What would be the nature of corporate membership fee paid to the golf club, considering that the membership was for a period of five years - revenue or Capital expenditure?**

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7) **The Assessee-firm (having 3 partners) has purchased property under a registered sale deed. Later on, it is reconstituted and 5 New partners bring share contributed by cheque. Nearly a year thereafter, erstwhile 3 partners take their share in partnership asst by cheque and go out of partnership. What would be tax implication?**

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**8) An assessee sold his property for Rs. 100000/- duly stamped and registered. Stamp duty has been paid as per value adopted by Stamp duty officer which was Rs. 135000/-. The Assessee has invested sum to claim benefits of Gain based on Rs. 100000/-. The AO allowed deduction only in proportion of Rs. 135000/- and his income also assessed based on Stampduty Valuation of Rs. 135000/- Us 50C.What would be your advise to Assessee, whether AO is Justified or Assessee should be advised to file Appeal.**

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**9) What would be tax treatment in case of Capital reduction by the companies and the amounts received by the share holder**

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**10) Does Amount received in the case of “Reverse Mortgage” attract Capital Gain?**

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**11) Whether exemption under section 54F be denied solely on the ground that new residential house is purchased by the assessee exclusively in the name of his Wife?**

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12) **An assessee purchased land in 2005 and constructed building thereon in 2014. Building along with land is transferred in 2015. He wants to claim benefit of exemption Us 54 in respect of entire capital gain, please advise him.**

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13) **Assessee commits a default in payment of call money and consequently the share application money is forfeited by the company, whether the loss can be treated as short term capital loss?**

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14) **Can power subsidy received by the assessee from the state Government, year after year, on the basis of actual power consumption be treated as a capital receipt?**

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15) **Can waiver of loan (and not subsidy, grant or reimbursement) given to the assessee by the Government of India to meet the capital cost of asset be reduced to arrive at the actual cost as per section 43(1) for computing depreciation under section 32?**

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16) **An Assessee chooses to purchase a house to claim benefit of exemption Us. 54, he also incurs bonafide expenditure on improvement for making it habitable. Whether expenditure so incurred would also qualify for exemption Us. 54?**

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**Does the expenses incurred on modification of the existing house eligible for claiming deduction u/s 54?**

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**17) Does the amount misappropriated by the Power of attorney holder out of the sale consideration deductible as “expenses on Transfer”?**

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**18) The Assessee earned long term capital gain on sale of shares. His two minor children being beneficial owners also earned LTCG on sale of beneficial shares. The assessee along with his minor children invested amount of long term gain in REC bonds and claimed deduction Us. 54EC. The AO clubbed the income of the minor children in the hands of the assessee but disallowed the claim of deduction on account of investments from gain of minor children being excess of limit. Whether AO justified in disallowing the same?**

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**19) An assessee having agricultural land on which he could not cultivate any product due to vagaries of nature and non-availability of resources, sold his land with gain of Rs. 10 Lakhs and claimed exemption Us. 54B which is denied by AO in view that no agriculture activities was carried on by assessee on land. Whether AO justified?**

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- 20) **An Assessee claimed exemption Us. 54 EC on the basis of Investments in specified bonds immediately after re-opening of subscription but beyond the prescribed period of Six months, whether his claim is correct?**

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**In same case what will be effect if assessee knew that subscription is about to close and he purchased Bonds prior to date of sale of property**

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**To continue in same what if assessee wants to invest in REC Bonds which was close for subscription but NHAI Bonds were available during the prescribed time period of Six Months but assessee invested in REC Bonds only after its reopening for Subscription.**

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- 21) **In case of transfer of purchased goodwill prior to 01.04.2001, can fair market value as at 01.04.2001 be adopted as cost of acquisition?**

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**22) Whether payment received on dissolution of firm towards his capital contribution of the partner is taxable as Capital Gains?**

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**23) In case of a House property registered in joint names, whether the exemption under section 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?**

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**24) The Assessee earned capital gain from sale of ancestral property. The assessee claimed exemption u/s 54F in respect of amount invested towards purchases of four flats which were converted into one residential unit by builder. The AO allowed exemption only in respect of one flat by holding that flat were separate and independent residential units having separate kitchen and entrance and thus, according to him could not be said as adjacent flat even though builder had referred them as composite unit. The Assessee approaches you to give your advise whether the AO is correct or not? What would be your advise in such case.**

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**25) Can Fair Market Value be taken as the cost of acquisition of the Bonus Shares, if they are issued prior to 01.04.2001**

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**26) What would be the nature of the repair and maintenance expenditure incurred on a machine – Lead to increase in the economic life of Machinery, Revenue or Capital?**

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**27) What would be the nature of the repair and reconditioning expenditure incurred on a machine which broke down years ago – Revenue or Capital?**

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**28) Would the provisions of section 271 (1)(c) get attracted merely because the assessee treated a certain sum as business loss whereas revenue treated it as a capital loss in original proceedings, even if there is no independent findings by Assessing Officer that assessee concealed his income or furnished inaccurate particulars?**

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**29) An Assessee has long term capital gain and he has invested the same within time frame in construction of residential house on Agricultural land, wants to claim exemption Us. 54F. What would be your advise?**

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**30) Whether Flat sold after three years from date of allotment of Flat under construction but within three years from the date of possession, Long Term or Short Term?**

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**31) Whether Exemption Under Section can be denied if entire sale consideration invested in purchasing of land to construct residential house, residential house not constructed within 3 years as land owners filed petition in civil Court, which ordered status quo?**

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**32) Whether Compensation received on termination of Contract is Capital or Revenue Receipt?**

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**33) Whether interest earned on temporary deposits made out of surplus funds raised for financing expansion plans is taxable as revenue receipts or be viewed as capital receipts?**

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**27) Whether on the death of one of the two partners, if the firm was not dissolved as contemplated under section 2(47) of the Act, will there be capital gains chargeable to Tax ?**

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**28) A hold shares in Private Limited company since last 32 Months and sold the same with Profit, whether Gain would be taxable as Short term or as Long Term?**

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**29) Whether Insurance Claim received against destruction is liable to Capital Gain ?**

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**30) In case of Cost of acquisition is 5 Lac, Advance Recd. Rs. 25 Lakh and forfeited Whether Liable as Capital Gain?**

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**In this if Subsequently assets sold then what will be cost of Acquisition Whether Negative?**

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**31) Whether encashment of Indira Vikas Patras on their maturity is taxable under capital Gain, whether indexation is allowed?**

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**32) Whether redemption of mutual funds scheme on maturity constitutes transfer?**

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**33) Whether redemption of bonds constitute transfer?**

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**34) Will conversion of preference shares into equity shares constitute transfer ?**

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**35) Can the non availment of rights in having right shares by the existing shareholders be treated as renunciation or “extinguishment of Right”?**

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**36) Assessee, being a co-owner of land and building, sold out his right to construct three floors to different parties, Whether share of sale proceeds was liable for taxation as capital gains or as income from other sources?**

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**37) Whether amount credited in capital account of retired partner upon revaluation of assets of firm is liable to be taxed as capital gain?**

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**38) If assessee recd compensation in one year and enhanced compensation in next year whether AO can levy tax on enhanced compensation in the year of Compensation on accrual basis?**

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**39) An owner of a property hands over the property to a developer without a written agreement. The AO contends that the contract is in the nature of a contract referred to in section 53A of the Transfer of Property Act and taxes it as income. Is the owner likely to succeed in appeal.**

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**40) If a Society has constructed additional area on the existing building and allotted to the existing member by taking certain construction deposit and certain donation to the Common Amenity Fund on the principles of mutuality, whether there will be tax liability, if yes whether assessable as Capital Gain or Business or profession?.**

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\*\*\*\*\* Thanks\*\*\*\*\*