Capital gain valuation of Immovable Property as per Income-tax Act 1961

(Key words: 1.0: Dictionary meaning of capital gain, 1.1: long-term capital assets, 1.2: LTCG vis-a vis STCG, 1.3: LTCG computation Format, 1.4: Method of computation of Cost of acquisition prior to 1st April, 2001, 1.5: Meaning of transfer, 1.6: computation of capital gain in case of transfer of asset by way of "Gift, Will" etc,, 1.7: Benefit of reinvestment, 1.8: meaning of Stamp Duty Value as amended by Finance Act 2021, and 2.0: Conclusion – Development right and TDR FSI with reference Section 50C).

1.0: Capital gain is "the amount by which the selling price of an asset exceeds the purchase price; the gain is realized when the asset is sold". (Word web Dictionary).

1.1: Long term capital assets as per Income-tax Act, 1961 (hereinafter referred to as 'The Act').

Any capital asset held by a person for a period of more than 36 months immediately preceding the date of its transfer will be treated as long-term capital asset.

However, in respect of certain assets like shares (equity or preference) which are listed in a recognized stock exchange in India, 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.

In case of unlisted shares in a company, the period of holding to be considered is 24 months instead of 36 months.

●**With effect from Assessment Year 2018-19,** the period of holding of immovable property (being land or building or both), shall be considered to be 24 months instead of 36 months.●

1.2 Long term Capital gains vis-à-vis Short term Capital gains

Long-term capital gains (LTCG)	Short-term capital gains (STCG)
Gain arising on transfer of long-term capital asset is termed as long-term capital gain. However, there are a few exceptions to this rule, like gain on depreciable asset is always taxed as short-term capital gain.	Gain arising on transfer of short-term capital asset is termed as short-term capital gain.
The taxability of capital gain depends on the nature of gain, i.e. whether short-term or long-term. Hence to determine the taxability, capital gains are classified into short-term capital gain and long-term capital gain. In other words, the tax rates for long-term capital gain and short-term capital gain are different. Similarly, computation provisions are different for long-term capital gains and short-term capital gains.	

1.3: Long term capital gain arising on account of transfer of long-term capital asset will be computed as follows: ▼

Particulars	₹
Full value of consideration (*i.e.,* Sales consideration of asset) Say **"A"**	XXXXX
Less: Expenditure incurred wholly and exclusively in connection with transfer of capital asset (E.g., brokerage, commission, etc.) **Say "B"**	- (XXXXX)
Net sale consideration Say (A minus B) **Say "C"**	XXXXX
Less: Indexed cost of acquisition (*) **Say "D"**	(XXXXX)
Less: Indexed cost of improvement, if any (*) **Say "E"**	(XXXXX)
Long-Term Capital Gain [C minus (D plus E)	XXXXX

 Indexed cost of acquisition is computed with the help of following formula: ▼

Cost of acquisition × Cost inflation index of the year of transfer of capital asset
Cost inflation index of the year of acquisition ◄

 Indexed cost of improvement is computed with the help of following formula:▼

Cost of improvement × Cost inflation index of the year of transfer of capital asset
Cost inflation index of the year of improvement ◄

1.4: In respect of Capital assets acquired before 1st April, 2001, method of computation of cost of acquisition:

Generally, cost of acquisition of a capital asset is the cost incurred in acquiring the capital asset. It includes the purchase consideration plus any expenditure incurred exclusively for acquiring the capital asset. However, in respect of capital asset acquired before 1st April, 2001, the cost of acquisition will be higher of the actual cost of acquisition of the asset or fair market value of the asset as on 1st April, 2001. This option is not available in the case of a depreciable asset.

1.5: Meaning of "transfer" as per Income-tax law:

Generally, transfer means sale, however, for the purpose of Income-tax Law "transfer", in relation to a capital asset, includes:

i. Sale, exchange or relinquishment of the asset;
ii. Extinguishment of any rights in relation to a capital asset;

iii. Compulsory acquisition of an asset;
iv. Conversion of capital asset into stock-in-trade;
v. Maturity or redemption of a zero coupon bond;
vi. Allowing possession of immovable properties to the buyer in part performance of the contract;
vii. Any transaction which has the effect of transferring an (or enabling the enjoyment of) immovable property; or
viii. Disposing of or parting with an asset or any interest therein or creating any interest in any asset in any manner whatsoever.

1.6: Provision relating to computation of capital gain in case of transfer of asset by way of "Gift, Will" etc.:

Capital gain arises if a person transfers a capital asset. Section 47 excludes various transactions from the definition of 'transfer'. Thus, transactions covered under section 47 are not deemed as 'transfer' and, hence, these transactions will not give rise to any capital gain. Transfer of capital asset by way of gift, will, etc., are few major transactions covered in section 47. Thus, if a person gifts his capital asset to any other person, then no capital gain will arise in the hands of the person making the gift (*).

If the person receiving the capital asset by way of gift, will, etc. subsequently transfers such asset, capital gain will arise in his hands. Special provisions are designed to compute capital gains in the hands of the person receiving the asset by way of gift, will, etc. In such a case, the cost of acquisition of the capital asset will be the cost of acquisition to the previous owner and the period of holding of the capital asset will be computed from the date of acquisition of the capital asset by the previous owner.

(*) As regards the taxability of gift in the hands of person receiving the gift, separate provisions are designed under section 56. .

Capital gains exempt under Section 10:

Section 10 provides list of incomes which are exempt from tax amongst those the major exemptions relating to capital gain are as follows:

Section 10(33): Long-term or short-term capital gain arising on transfer of units of Unit Scheme, 1964 (US 64) referred to in Schedule I to the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002) and where the transfer of such asset takes place on or after 1-4-2002.

Section 10(37) : An individual or Hindu Undivided Family (HUF) can claim exemption in respect of capital gain arising from the transfer of agricultural land situated in an urban area by way of compulsory acquisition under any law or a consideration for such transfer is determined or approved by the Central Government or the Reserve Bank of India. This exemption is available if the land was used by the taxpayer (or by his parents in the case of an individual) for agricultural purposes for a period of 2 years immediately preceding the date of its transfer. Such income has arisen from the compensation or consideration for such transfer received by an assessee on or after the 1st day of April, 2004.

Section 10(37A): An individual or Hindu Undivided Family (HUF) can claim exemption in respect of capital gain arising from the transfer of land or building or both under Land Pooling Scheme under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014 (Andhra Pradesh Act 11 of 2014) and the rules, regulations and Schemes made under the said Act. This exemption is available if an individual or HUF was owner of such land or building as on 02-06-2014.

1.7: Benefits available in respect of re-investment of capital gain in any other capital assets:

A taxpayer can claim exemption from certain capital gains by re-investing the amount of capital gain into specified asset. The benefit of re-investment is available under Section 54,54B and 54F **(Individual/HUF ▲), [**Any **person:] ►**Section 54 EC. 54EE, 54G, and 54D.

In order to claim the exemption on account of re-investment in various situations as discussed above, other conditions specified in the respective sections should also be satisfied and the re-investment should be made within the period specified in the respective sections. As per Section 54 (E), it can be invested in "bonds" within a period of 6 months from the date of transfer of capital asset and such bonds should not be redeemed before 5 years from A.Y 2019-20 (3 years up to A.Y 2018-19) from the date of their acquisition.
This benefit cannot be availed in respect of short-term capital gain.
Maximum amount of investment in specified bonds cannot exceeds Rs. 50,00,000. Thus, deduction under section 54EC cannot be claimed for more than ₹. 50,00,000.

1.8: Meaning of "Stamp Duty Value":

1.8.1: "Stamp duty value means the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty. As per section 50C, while computing capital gain arising on transfer of land or building or both, if the actual sale consideration on transfer of such land and/or building is less than the stamp duty value, then the stamp duty value will be taken as full value of consideration, i.e., as deemed selling price and capital gain will be computed accordingly." (Not applicable from A.Y 2019-20).

1.8.2: From assessment year 2019-20 actual sales consideration will be treated as full value consideration if stamp duty value does not exceeds 105% of actual sales consideration. In case where stamp duty value exceeds 105%of actual sales consideration, then stamp duty value will be considered as full value of consideration for computing capital gain. (Source: https://incometaxindia.gov.in/Pages/faqs.aspx?k=FAQs+on+Capital+Gains ***As amended up to Finance Act 2021.*** **▲**

1.8.3: Section 45 (5A) (iii): "stamp duty value" means the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

1.8.4: Section 50C (2). Explanation (2): ► for the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

1.8.5: Section 50C (3): ► Subject to the provisions contained in sub-section (2), where the value ascertained under sub-section (2) exceeds the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

Word web Dictionary	Merriam-Webster Dictionary

Adopted: Acquired as your own by free choice	Adopted: To take an opinion, policy, or practice as one's own
Assessed: Estimate the value of (property) for taxation	**Assessed:** To impose (as a tax) according to an established rate.
Assessable: Capable of being assessed especially for the purpose of taxation	Assessable: To establish or apply as a charge or penalty. E.g. the utility company will assess a fee if your payment is late.

2.0: Conclusion:

2.1: The term "capital asset" is defined in S. 2(24) to mean property of any kind" held by the assesse whether or not connected with her/his business or profession. Therefore, the definition is very wide and any kind of property except those falling in excluded category is a capital asset.

2.2: (law web): Income-tax Act, 1961 is the only legislation of our country which contain reference to several Central Acts and numerous State Legislations. It becomes very essential therefore, to know the provisions of general law with special reference to Transfer of Property Act, Registration Act, Stamp Act, Development Control Regulations, etc.

In CIT vs. Tata Services Ltd. (1980) 122 ITR 594 (Bom) and CIT vs. Vijay Flexible Containers (1990) 186 ITR 693 (Bom), the Court has held that the right to obtain a conveyance of immovable property is a capital asset". Applying the same principle, the "Development Rights" would be capital asset. In CIT vs. Tata Services Ltd. (1980) 122 ITR 594 (Bom.) and CIT vs. Vijay Flexible .Containers (1990) 186 ITR 693 (Bom.), the court has held that the right to obtain conveyance of immovable property is a capital asset. Applying the same principle, the Development rights would be capital assets. "In the case of Arif Akhtar Husain vs ITO in ITA No.
541/Mum/2010 by order of Mumbai Tribunal dt. 22-12-2010 has held that transfer of development rights would attract provisions of s. 50C".

Bombay High Court in Chheda Housing Development Corpn., a Partnership firm vs. Bibijan Shaikh Farid & Ors. (2007) (3) MHLJ 402 (Bom.). Dealing with specific performance of Agreement for **use of TDR held that FSI/TDR are benefit arising from the land consequently must be held as immovable property.** The Court observed that an immovable property under the General Clauses Act, 1897 under section 3(26) has been defined as to include benefits arising out of land. Therefore, if there is any benefit which arises out of the land, then it is immovable property. Therefore, if TDR/FSI are considered as immovable property being part and parcel of land. However, still the issue for consideration will be whether can it be said that cost of TDR /FSI is nil? ***Courtesy***: https://www.lawweb.in/2014/03/basic-principles-for-taxation-of-real.html

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