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# CHAPTER- 1.

## INTRODUCTION & RESEARCH DESIGN.

**CHAPTER - I**  
**INTRODUCTION AND RESEARCH DESIGN**



**1.1 Introduction:**

Indian people became familiar with the law of income-tax in 1886 when the enactment, namely, the Income-tax Act, 1886, was introduced in India for the first time.

Subsequently, the needs of time made it necessary to repeal:

- i) Income-tax Act, 1886, by the introduction of the  
Income-tax Act, 1918;
- ii) Income-tax Act, 1918, by the introduction of the  
Income-tax Act, 1922; and
- iii) Income-tax Act, 1922, by the introduction of the  
Income-tax Act, 1961.

Presently, the Income-tax Act, 1961, is in operation in the whole of India, with effect from 1st April, 1962, that is to say, with effect from the assessment year 1962-63.

When any taxing statute is introduced by the Government, the prime object is not only to collect the revenue, but there are also many other objectives, like:

- i) giving a direction to the economy,
- ii) channelising the investment pattern and boosting the savings,
- iii) simplification and rationalization of taxing laws,
- iv) reducing economic disparities, etc.

Therefore, it becomes inevitable to introduce frequent changes in the law to keep pace with the demands of the changing times. As a result, the Act has become very complicated and voluminous, containing 298 sections, accompanied by 11 schedules and 124 rules, which are not easy to interrelate for grasping the meanings at a glance.

### **1.2 Legislative History of "Capital Gains":**

The legislative history with regard to the imposition of tax on capital gains is being briefly outlined below, first in respect to the Indian Income-tax Act, 1922, and later, the Income-tax Act, 1961.

#### **The Indian Income-tax Act, 1922:**

Section 6 of the 1922 Act provided that, save as otherwise provided by the Act, certain heads of income, profits and gains were to be chargeable to income-tax. Prior to the year 1947, this section mentioned only five heads under which the income, profits and gains were to be chargeable to tax. By Section 5 of the Income-tax and Excess Profits Tax (Amendment) Act, 1947 (Act 22 of 1947), a sixth head of income, namely "Capital Gains", was also included in Section 6. By the same Act, the Legislature added a new section 12B, providing that income-tax shall be payable by an assessee under the head "Capital Gains" in respect of any profits or gains arising from the sale, exchange or transfer of a capital asset effected after the 31st March, 1946, and that such profits and gains were deemed to be the income of the previous year in which the sale, exchange or transfer took place. New Sections 24(2A) and 24(2B) were added. These sections provided that where the loss sustained as a loss falling under the head 'capital gains', such

loss was not to be set-off, except against any profits and gains falling under that head and where such loss could not be wholly set-off, it had to be carried forward to the following year and set-off against the capital gains for that year, and if it could not be set-off, the amount thereof not so set-off could be carried forward to the following year and so on for a period of six years.

By the Finance Act of 1949, Section 12B, as introduced in the year 1947, was amended. According to the amendment, Income-tax was to be payable under the head 'capital gains' in respect of any profits or gains arising from the sale, exchange or transfer of capital assets effected after the 31st March, 1946, and before the 1st April, 1948. The provisions of Sections 24(2A) and 24(2B), however, remained unchanged. The result was that no tax under the head 'capital gains' was payable in respect of transactions entered into after the 31st March, 1948. Section 12B was substituted by a new section with effect from 1st April, 1957, and it was provided that tax was to be paid by an assessee under the head "capital gains" in respect of any profits and gains arising from the sale, exchange, relinquishment or other transfer, taking place after March 31, 1956. This was based upon the recommendations of Mr. Nicholas Kaldor in his Report of a Survey of Indian Tax Reform. This history reveals that there was no liability to pay tax under the head "capital gains" in respect of transactions entered into between 1st of April, 1948, and 31st of March, 1956. The provisions of sections 24(2A) and 24(2B), which provided for the set-off and carry-forward of loss falling under the head 'capital gains' remained on the statute book throughout.

All the aforesaid provisions of the 1922 Act in regard to the taxation of capital gains are being continued to be followed under the Income-tax Act, 1961, with modifications made from time to time, to enlarge the scope of tax on capital gains. The relevant provisions are contained in Sections 2(14), 2(47), 45 to 55A and 139(1).

### 1.3 Basic Requirements of the "Capital Gains":

The "Capital Gains" means any profit or gain arising from the transfer of a capital asset.

From the above, it is clear that the capital gain arises only if it fulfills the following conditions:

- 1) The transferred asset must be a capital asset within the meaning of Section 2(14) of the Income-tax Act, which reads as:

*"capital asset" means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include -*

- i) *any stock-in-trade, consumable stores or raw materials held for the purpose of his business or profession;*
- ii) *personal effects, that is to say, movable property (including wearing apparel and furniture, but excluding jewellery) held for personal use by the assessee or any member of his family dependent on him.*

Explanation: *For the purpose of this sub-clause, "jewellery" includes -*

- (a) *ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such semi-precious stone, and whether or not worked or sewn into any wearing apparel;*

- (b) *precious or semi-precious stones, whether or not set in any furniture, utensile or other article or worked or sewn into any wearing apparel;*
- iii) *agricultural land in India, not being land situate -*
- (a) *in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year; or*
- (b) *in any area within such distance, not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette;*
- iv) *6½ per cent Gold Bonds, 1977, (or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;*
- v) *Special Bearer Bonds, 1991, issued by the Central Government;*
- 2) There must be a transfer. The meaning of 'transfer' is defined under section 2(47), which reads as under:
- "transfer", in relation to a capital asset, includes -
- i) *the sale, exchange or relinquishment of the asset; or*
- ii) *the extinguishment of any rights therein; or*
- iii) *the compulsory acquisition thereof under any law; or*

- iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or
- v) 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 (4 of 1882); or
- vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a cooperative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation : For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA).

- 3) There must be profit or gain on such transfer of capital asset.

#### 1.4 Statement of the Problem:

The Income-tax Act, 1961, classifies all incomes under various heads under Section 14 and it also attempts to deal separately with the incomes arising from the capital gains. The assessment of capital gains assumes altogether different treatment, as it is a gain resulting from the transfer of capital assets. The distinct treatment given to the assessment of the capital gains is incorporated under the Act under Sections 45 to 55A under the head of 'Capital Gains'. The scope of the

terms 'capital gains', 'deductions' therefrom and 'exemptions' thereunder are all discussed in this Chapter of the Act. The present research work attempts to examine the provisions relating to the computation of capital gains. The statement of the problem thus could be expressed as: **An Examination of Provisions Relating to Assessment of Capital Gains under the Income-tax Act, 1961.**

### 1.5 Objectives of the Study:

As discussed earlier, the issue relating to the assessment of capital gains involves certain specific features insofar as they necessitate a study relating to the ascertainment of the cost of the capital assets transferred as well as determination of the fair market value of such capital assets. The computation of capital gain, ultimately, depends upon these two vital aspects.

Apart from this, since the deductions and exemptions provided in the law stand on an altogether different footing, there is a considerable difference of opinion so far as these provisions are concerned. Against this background, the preliminary objective of this study centres around illustrations of the working of the assessment of capital gains on specific basis, so as to throw light upon the procedural provisions contained in the law. Secondly, the study takes into account the illustrative aspect of the computation of the capital gains alongwith statutory provisions.



### 1.6 Methodology adopted for the Study:

The study is based purely on the **secondary data** only that is, published sources, and lays its thrust on the analysis of the statutory provisions governing assessment of capital gains with the help of illustrations. In order to help in this endeavour, the researcher has also resorted to other published sources as authoritative books and articles on the subject.

### 1.7 Scope of the Study:

An attempt is made in the present research work to examine the provisions relating to the computation of capital gains with the aid of various illustrations. The emphasis, therefore, is on the practical aspects, though a theoretical discussion pertaining to the capital gains has also been made in this design. Overall, the effort is to illustrate, with the help of examples, the mode of computation and also to examine the relevant provisions with the help of statutory framework.

### 1.8 Limitations of the Study:

The topic relating to the assessment of the capital gains is exhaustively discussed under the Statute and it is practically difficult to examine these provisions in accordance with each type of exemptions and/or deductions. However, an attempt is made to examine these provisions with the aid of some of the sections under the Act. Therefore, the relevant provisions pertaining to the Income-tax Act, 1961, so far as

the assessment of other incomes, are kept beyond the purview of this study and the discussion is solely confined to the computation and assessment of capital gains with the aid of illustrations. Some case law, as is relevant, has also been discussed in the course of the study, although it would be beyond the scope of this study to deal exhaustively with the various case laws as pronounced by the Supreme Court.

### 1.9 Chapter Scheme:

The dissertation is divided into four Chapters. **Chapter-I** deals with the introduction of income-tax and legislative history of capital gains and framework aspects as statement of problem, objectives, methodology, scope and limitations. **Chapter-II** deals with statutory provisions of capital gains. **Chapter-III** concentrates on illustrations of capital gains computation and finally, **Chapter-IV** presents the conclusions arrived at the end of the study and offers certain suggestions for the improvement of effective functioning of the statutory provisions pertaining to the capital gains. A table of cases relied upon for the analysis appears as an **Annexure** and a comprehensive **Bibliography** concludes the Dissertation.

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