



CHAPTER- 2.

**CAPITAL GAINS: STATUTORY
PROVISIONS.**

CHAPTER - II
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2.1 Introduction:

In the first Chapter, the objectives, scope, limitations, etc., of the study relating to the assessment of the capital gains have been discussed. In the present Chapter, an attempt is being made to examine the legal provisions, as these stand in the statute book. Therefore, it would not be out of place to extract these provisions from the legal text in this Chapter, so as to analyse them in the succeeding Chapter.

The statutory provisions reproduced hereunder have been extracted from Acharya Shuklendra's *Law of Income Tax*, 1989 Edition. The foot-note numbers appearing in the text illustrate as to how these provisions have undergone several changes over the time, through various Finance Acts.

2.2 Text of the Provisions:

45. *Capital Gains.* -

¹[(1)]Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in sections ²[53,54,54B, ³[***] ⁴[⁵[54D, ⁶[54E,54F and 54G]]], be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place.



- ⁷ [(2) Notwithstanding anything contained in sub-section (1), the profits or gains arising from the transfer by way of conversion by the owner of a capital asset into, or its treatment by him as, stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and, for the purpose of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset].
- ⁸ [(3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a cooperative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purpose of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.
- (4) The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other association of persons or body of individuals (not being a company or a cooperative society) or otherwise, shall be chargeable to tax as the income of the firm, association or body, of the previous year in which the said transfer takes place and, for the purposes of section 48, the fair market value of the asset on the date of such transfer shall be deemed to be the full value of the consideration received or accruing as a result of the transfer.
- (5) Notwithstanding anything contained in sub-section (1), where the capital gain arises from the transfer of a

capital asset, being a transfer by way of compulsory acquisition under any law, or a transfer the consideration for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation or the consideration for such transfer is enhanced or further enhanced by any court, tribunal or other authority, the capital gain shall be dealt with in the following manner, namely:-

- (a) the capital gain computed with reference to the compensation awarded in the first instance or, as the case may be, the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India shall be chargeable as income under the head "Capital gains" of the previous year in which the transfer took place; and
- (b) the amount by which the compensation or consideration is enhanced or further enhanced by the court, tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee.

Explanation - For the purpose of this sub-section, -

- (i) in relation to the amount referred to in clause (b), the cost of acquisition and the cost of improvement shall be taken to be nil;
- (ii) the provisions of this sub-section shall apply also in a case where the transfer took place prior to the 1st day of April, 1988;
- (iii) where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person.]

46. Capital gains on distribution of assets by companies in liquidation.

- (1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.
- (2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

47. Transactions not regarded as transfer.

Nothing contained in section 45 shall apply to the following transfers:-

- (i) any distribution of capital assets on the total or partial partition of a Hindu undivided family;
- (ii) ⁹ [***]
- (iii) any transfer of a capital asset under a gift or will or an irrevocable trust;
- (iv) any transfer of a capital asset by a company to its subsidiary company, if -
- (a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
- (b) the subsidiary company is an Indian company;
- ¹⁰ (v) any transfer of a capital asset by a subsidiary company to the holding company, if -
- (a) the whole of the share capital of the subsidiary company is held by the holding company, and
- (b) the holding company is an Indian company;
- ¹¹ [Provided that nothing contained in clause (iv) or clause (v) shall apply to the transfer of a capital

asset made after the 29th day of February, 1988, as stock-in-trade;]

¹²(vi) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;]

(vii) any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if -

(a) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company, and

(b) the amalgamated company is an Indian company;

¹³[(viii) any transfer of agricultural land in India effected before the 1st day of March, 1970;]

¹⁴[(ix) any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Government in the Official Gazette to be of national importance or to be of renown throughout any State or States.

Explanation - For the purposes of this clause, "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956), to be a University for the purposes of that Act.]

¹⁵48. **Mode of computation and deductions.**

(1) The income chargeable under the head "Capital gains" shall be computed -

(a) by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely:-

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
 - (ii) the cost of acquisition of the asset and the cost of any improvement thereto;
- (b) where the capital gain arises from the transfer of a long-term capital asset (hereafter in this section referred to, respectively, as long-term capital gain and long-term capital asset) by making the further deductions specified in sub-section (2).
- (2) The deductions referred to in clause (b) of sub-section (1) are the following, namely:-
- (a) where the amount of long-term capital gain arrived at after making the deductions under clause (a) of sub-section (1) does not exceed ten thousand rupees, the whole of such amount;
 - (b) in any other case, ten thousand rupees as increased by a sum equal to, -
 - (i) in respect of long-term capital gain so arrived at relating to capital assets, being buildings or lands or any rights in buildings or lands or gold, bullion or jewellery, -
 - (A) in the case of a company, ten per cent of the amount of such gain in excess of ten thousand rupees;
 - (B) in the case of any other assessee, fifty per cent of the amount of such gain in excess of ten thousand rupees;
 - (ii) in respect of long-term capital gain so arrived at relating to other capital assets, -
 - (A) in the case of a company, thirty per cent of the amount of such gain in excess of ten thousand rupees;
 - (B) in any other case, sixty per cent of the amount of such gain in excess of ten thousand rupees;
- Provided that where the long-term capital gain relates to both categories of capital assets referred

to in sub-clauses (i) and (ii), the deduction of ten thousand rupees shall be allowed in the following order, namely:-

- (1) the deduction shall first be allowed against long-term capital gain relating to the assets mentioned in sub-clause (i);
- (2) thereafter, the balance, if any, of the said ten thousand rupees shall be allowed as deduction against long-term capital gain relating to the assets mentioned in sub-clause (ii),

and the provisions of sub-clause (ii) shall apply as if references to ten thousand rupees therein were references to the amount of deduction allowed in accordance with clauses (1) and (2) of this proviso:

Provided further that, in relation to the amount referred to in clause (b) of sub-section (5) of section 45, the initial deduction of ten thousand rupees under clause (a) of this sub-section shall be reduced by the deduction already allowed under clause (a) of section 80T in the assessment for the assessment year commencing on the 1st day of April, 1987, or any earlier assessment year or, as the case may be, by the deduction allowed under clause (a) of this sub-section in relation to the amount of compensation or consideration referred to in clause (a) of sub-section (5) of section 45 and references to ten thousand rupees in clauses (a) and (b) of this sub-section shall be construed as references to such reduced amount, if any.

- (3) The deductions specified in sub-section (2) shall be made also for the purposes of computing any loss under the head "Capital gains" in so far as it pertains to any long-term capital asset and, for this purpose, any reference in that sub-section to the amount of long-term capital gain arrived at after making the deductions under clause (a) of sub-section (1) shall be construed as reference to the

amount of loss arrived at after making the said deductions.

49. Cost with reference to certain modes of acquisition.

¹⁶[(1)] Where the capital asset became the property of the assessee -

(i) on any distribution of assets on the total or partial partition of a Hindu undivided family;

(ii) under a gift or will;

(iii) (a) by succession, inheritance or devolution, or;

¹⁷(b) on any distribution of assets on the dissolution of a firm, body of individuals, or other association of persons, where such dissolution had taken place at any time before the 1st day of April, 1987, or]

(c) on any distribution of assets on the liquidation of a company, or

(d) under a transfer to a revocable or an irrevocable trust, or

(e) under any such transfer as referred to in clause (iv) ¹⁸[or clause (v)] ¹⁹[or clause (vi)] of section 47;

²⁰(iv) such assessee being a Hindu undivided family, by the mode referred to in sub-section (2) of section (2) of section 64 at any time after the 31st day of December, 1969,]

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

²¹[Explanation - In this ²²[sub-section], the expression "previous owner of the property" in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than referred to in clause (i) or ²³[clause (ii) or clause (iii) or clause (iv) of this ²²[sub-section].]

²⁴ [(2) Where the capital asset being a share or shares in an amalgamated company which is an Indian company became the property of the assessee in consideration of a transfer referred to in clause (vii) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the amalgamating company.]

²⁵ [(3) Notwithstanding anything contained in sub-section (1), where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee company shall be the cost for which such asset was acquired by it.]

²⁶ [50. **Special provision for computation of capital gains in case of depreciable assets.**

Notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49 shall be subject to the following modifications:

(1) where the full value of the consideration received or accruing as a result of the transfer of the asset together with the full value of such consideration received or accruing as a result of the transfer of any other capital asset falling within the block of assets during the previous year, exceeds the aggregate of the following amounts, namely:-

- (i) expenditure incurred wholly and exclusively in connection with such transfer or transfers;
- (ii) the written down value of the block of assets at the beginning of the previous year, and
- (iii) the actual cost of any asset falling within the block

of assets acquired during the previous year, such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets;

- (2) where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

51. Advance money received.

Where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

52. ²⁷[*]**

²⁸[53. Exemption of capital gains from a residential house.

Notwithstanding anything contained in section 45, where in the case of an assessee being an individual ²⁹[or a Hindu undivided family], the capital gain arises from the transfer of a ³⁰[long-term capital asset], being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property", the capital gain arising from such transfer shall be dealt with in accordance with the following provisions of this section, that is to say -

- (a) in a case where the full value of the consideration received or accruing as a result of the transfer of such capital asset does not exceed two hundred thousand rupees, the whole of the capital gain shall not be charged under section 45;
- (b) in a case where the full value of such consideration exceeds two hundred thousand rupees, so much of the capital gain as bears to the whole of the capital gain the same proportion as the amount of two hundred thousand rupees bears to such consideration shall not be charged under section 45;

Provided that nothing contained in this section shall apply to a case where the assessee owns on the date of such transfer any other residential house.

³¹[Explanation - In this section and in sections 54, 54B, 54D and 54E, 54F and 54G, references to capital gain shall be construed as references to the amount of capital gain as computed under clause (a) of sub-section (1) of section 48.]]

54. Profit on sale of property used for residence.

³²[(1)] ³³[Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of a long-term capital asset ³⁴[***], being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of ³⁵[one year before or two years after the date on which the transfer took place purchased], or has within a period of three years after that date constructed, a residential house, then], instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions

of this section, that is to say -

- (i) if the amount of the capital gain ³⁶ [is greater than the cost of ³⁷ [the residential house] so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.

³⁸ [***]

³⁹ [(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of

such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset;

Provided that if the amount deposited under this sub-section is not utilized wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then -

- (i) the amount not so utilized shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation - Where any amount becomes chargeable under section 45 in accordance with the proviso to this sub-section, then, -

- (a) for the purposes of the deductions to be made under clause (b) of sub-section (1) of section 48, the initial deduction of ten thousand rupees under sub-section (2) of that section shall not be admissible; and
- (b) nothing contained in section 53 shall apply in relation to such amount.]

***54A. Relief of tax on capital gains on transfer of property held under trust for charitable or religious purposes or by certain institutions.**

- (1) Where the capital gain arises from the transfer of a long term capital asset, being property specified in sub-section (2) (the capital asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, during the previous year in which the transfer took place or within a period of six months after the close of such previous year, acquired another capital asset (such asset being hereafter in this section referred

*The original section inserted by the Finance Act, 1965, w.e.f. 1.4.1965 was omitted by the Finance (No.2) Act, 1971, w.e.f. 1.4.1972. The Direct Tax Laws (Amendment) Act, 1987, inserted this as a new s.54A, w.e.f. 1.4.1989; but this insertion was omitted w.e.f. the same date by cl.95(g) of the Direct Tax Laws(Amendment)Bill, 1988.

to as the new asset), to be held for the same purposes as those for which original asset was held, then, the capital gain arising from the transfer shall be dealt with in accordance with the following provisions, that is to say -

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the net consideration shall not be charged under section 45;

Provided that in a case where the transfer of the original asset is by ways of compulsory acquisition under any law and the full amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer but is received after the expiry of the previous year, the period of six months referred to in this section shall, in relation to so much of such compensation as is not received before such expiry, be reckoned from the date immediately following the date on which such compensation is received by the assessee.

- (2) The property referred to in sub-section (1) shall be the following, namely, -
 - (a) property held under trust wholly for charitable or religious purposes in India or by an institution established wholly for such purposes in India;
 - (b) property held under trust in part only for charitable or religious purposes in India, the trust having been created before the commencement of this Act;
 - (c) property held under a trust created on or after the 1st day of April, 1952, or by an institution established on or after that date, for a charitable purposes which is for the benefit of citizens of

India abroad or which tends to promote international welfare in which India is interested;

(d) property held by a trust or institution of national importance referred to in clause (d) of sub-section (1) of section 80F.

(3) in the case of a capital asset being property falling under clause (b) of sub-section (2), the provisions of sub-section (1) shall apply only to that fraction of the capital gain arising from the transfer of such capital asset which represents the extent to which the income derived from the capital asset transferred was, immediately before such transfer, applicable to charitable or religious purposes.

Explanation - In this section, "net consideration" shall have the meaning assigned to it in Explanation 5 below sub-section (1) of section 54E.

⁴⁰ [54B. Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.

⁴¹ [(1)] ⁴² [Subject to the provisions of sub-section (2), where the capital gain arises] from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes ⁴³ [(hereinafter referred to as the original asset)], and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say -

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the

new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced by the amount of the capital gain.

⁴⁴ [(2) The amount of the capital gain which is not utilized by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilized by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset; **Provided** that if the amount deposited under this sub-section is not utilized wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then -

(i) the amount not so utilized shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation - Where any amount becomes chargeable under section 45 in accordance with the proviso too this sub-section, then, for the purposes of the deductions to be made under clause (b) of sub-section (1) of section 48, the initial deduction of ten thousand rupees under sub-section (2) of that section shall not be admissible.]

⁴⁵ [54D. Capital Gain on compulsory acquisition of lands and buildings not to be charged in certain cases.

⁴⁶ [(1)] ⁴⁷ [Subject to the provisions of sub-section (2)]. Where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking belonging to he assessee which in the two years immediately preceding the date on which the transfer took place, was being used by the assessee for the purposes of the business of the said undertaking ⁴⁸ [(hereinafter in this section referred to as the original asset)], and the assessee has within period of three years after that date purchased any other land or building or any right in any other land or building or constructed any other building for the purposes of shifting or re-establishing the said undertaking or setting up another industrial undertaking, then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say -

(i) if the amount of the capital gain is greater than the cost of the land, building or right so purchased or the building so constructed (such land, building or right being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new

asset shall be charged under section 45 as the income of the previous year; and for the purpose of its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or

- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain.]

⁴⁹ [(2) The amount of the capital gain which is not utilized by the assessee for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset;

Provided that if the amount deposited under this sub-section is not utilized wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then, -

- (i) the amount not so utilized shall be charged under section 45 as the income of the previous year in

- which the period of three years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation : Where any amount becomes so chargeable under section 45 in accordance with the proviso to this sub-section, then, for the purposes of the deductions to be made under clause (b) of sub-section (1) of section 48, the initial deduction of ten thousand rupees under sub-section (2) of that section shall not be admissible.]

⁵⁰ [54E. Capital gain on transfer of capital assets not to be charged in certain cases.

- (1) Where the capital gain arises from the transfer of a ⁵¹ [long-term capital asset], (the capital asset so transferred being hereafter in this section referred to as the original asset) and the assessee has, within a period of six months after the date of such transfer, invested or deposited the ⁵² [whole or any part of the net consideration] in any specified asset (such specified asset being hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say, -

- (a) if the cost of the new asset is not less than the ⁵³ (net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the new asset is less than ⁵³ [net consideration] in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the ⁵⁴ [net consideration] shall not be charged under section 45;

⁵⁵ **Provided** that in a case where the original asset is transferred after the 28th day of February, 1983, the provisions of this sub-section shall not apply unless the assessee

has invested or deposited the whole or, as the case may be, any part of the net consideration in the new asset by initially subscribing to such new asset;]

⁵⁶ **Provided further** that in a case where the transfer of the original asset is by way of compulsory acquisition under any law and the full amount of compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period of six months referred to in this sub-section shall in relation to so much of such compensation as is not received on the date of the transfer, be reckoned from the date immediately following the date on which such compensation is received by the assessee.]

Explanation 1⁵⁷ [For the purpose of this sub-section, "specified asset" means -

- (a) in a case where the original asset is transferred before the first day of March, 1979, any of the following assets, namely:-]
- (i) securities of the Central Government or a State Government;
 - (ii) savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959);
 - (iii) units in the Unit Trust of India established under the Unit Trust of India Act, 1963 (42 of 1963);
 - (iv) debentures specified by the Central Government for the purposes of clause (ii) of sub-section (1) of section 80L;
 - (v) shares in any Indian company which are issued to the public or are listed in a recognized stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder,⁵⁸ [where the investment in such shares is made before the 1st day of March, 1978];

- ⁵⁸ (va) equity shares forming part of any eligible issue of capital, where the investment in such shares is made after the 28th day of February, 1978;]
- (vi) deposits for a period of not less than three years with the State Bank of India established under the State Bank of India Act, 1955 (23 of 1955), or any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or any nationalized bank, that is to say, any corresponding new Bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or any cooperative society engaged in carrying on the business of banking (including a cooperative land mortgage bank or a cooperative land development bank);
- ⁵⁹ [(b) in a case where the original asset is transferred after the 28th day of February, 1979 ⁵⁹ [but before the 1st day of March, 1983], such National Rural Development Banks as the Central Government may notify in this behalf in the Official Gazette;]
- ⁶⁰ [(c)] in a case where the original asset is transferred after the 28th day of February, 1983 ⁶¹ [but before the 1st day of April, 1986], any of the following assets, namely:-
- (i) securities of the Central Government which that Government may, by notification in the Official Gazette, specify in this behalf;
 - (ii) special series of units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), which the Central Government may, by notification in the Official Gazette, specify in this behalf;
 - (iii) such National Rural Development Bonds as have been notified under clause (b) of Explanation 1 or as may be notified in this behalf under this clause by the Central Government;

(iv) such debentures issued by the Housing and Urban Development Corporation Limited [a Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956)], as the Central Government may, by notification in the Official Gazette, specify in this behalf;

[(d) in a case where the original asset is transferred after the 31st day of March, 1986, any of the assets specified in clause (c) and such bonds issued by any public sector company, as the Central Government may, by notification in the Official Gazette, specify in this behalf.

⁶²[***]]

⁶³[Explanation 2 - "Eligible issue of capital" shall have the meaning assigned to it in sub-section (3) of section 80CC.]

⁶³[Explanation 3 - An assessee shall not be deemed to have invested the ⁶⁴[whole or any part of the net consideration in any equity shares referred to in sub-clause (va) of clause (a)] of Explanation 1, unless the assessee has subscribed to or purchased the shares in the manner specified in sub-section (4) of section 80CC.]

Explanation ⁶⁵[4] - "Cost" in relation to any new asset, being a deposit referred to in ⁶⁶[sub-clause (vi) of clause (a)] of Explanation 1, means the amount of such deposit.

⁶⁷[Explanation 5 - "Net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.]

⁶⁸[(1A) Where the assessee deposits after the 27th day of April, 1978, the ⁶⁹[whole or any part of the net consideration in respect] of the original asset in any new asset, being a deposit referred to in ⁷⁰[sub-clause (vi) of clause (a)] of Explanation 1 below sub-section (1), the cost of such

new asset shall not be taken into account for the purposes of that sub-section unless the following conditions are fulfilled, namely:-

- (a) the assessee furnishes, along with the deposit, a declaration in writing, to the bank or the cooperative society referred to in the said ⁷¹[sub-clause (vi)]; with which such deposit is made, to the effect that the assessee will not take any loan or advance on the security of such deposit during a period of three years from the date on which the deposit is made;
- (b) the assessee furnishes, along with the return of income for the assessment year relevant to the previous year in which the transfer of the original asset was effected or within such further time as may be allowed by the ⁷²[Assessing Officer], a copy of the declaration referred to in clause (a) duly attested by an officer not below the rank of sub-agent, agent or manager of such bank or an officer of corresponding rank of such cooperative society.]

^{73a} [(1B) Where on the fulfilment of the conditions specified in sub-section (1A), the cost of the new asset referred to in that sub-section is taken into account for the purposes of sub-section (1), the assessee shall, within a period of ninety days from the expiry of the period of three years reckoned from the date of such deposit, furnish to the ⁷²[Assessing Officer] a certificate from the officer referred to in clause (b) of sub-section (1A) to the effect that the assessee has not taken any loan or advance on the security of such deposit during the said period of three years.]

- (2) Where the new asset is transferred or converted (otherwise than by transfer) into money, within a period of three years from the date of its acquisition, the amount of capital gain arising from the transfer of the original

asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to ⁷⁴[long-term capital assets] of the previous year in which the new asset is transferred or converted (otherwise than by transfer) into money.

⁷⁵[Explanation 1 - Where the assessee deposits after the 27th day of April, 1978, the ⁷⁶[whole or any part of the net consideration in respect] of the original asset in any new asset, being a deposit referred to in ⁷⁷[sub-clause (vi) of clause (a) of Explanation 1 below sub-section (1), and such assessee takes any loan or advance on the security of such deposit, he shall be deemed to have converted (otherwise than by transfer) such deposit into money on the date on which such loan or advance is taken.]

⁷⁸[Explanation 2 - In a case where the original asset is transferred after the 28th day of February, 1983, and the assessee invests the whole or any part of the net consideration in respect of the original asset in any new asset and such assessee takes any loan or advance on the security of such new asset, he shall be deemed to have converted (otherwise than by transfer) such new asset on the date on which such loan or advance is taken.]

⁷⁹[(3) ***]

⁸⁰[(4) ***]

⁸¹[(5) ***]

⁸²[(3) Where the cost of the equity shares referred to in ⁸³[sub-clause (va) of clause (a)] of Explanation 1 below sub-section (1) is taken into account for the purposes of clause (a) or clause (b) of sub-section (1),

⁸⁴[***]

⁸⁵[54F. Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

(1) ⁸⁶[Subject to the provision of sub-sections (4), where in the

case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year before or ⁸⁷[two years] after the date on which the transfer took place, purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say -

- (a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
- (b) if the cost of the new asset is less than the net consideration in respect of original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45;

Provided that nothing contained in this sub-section shall apply where the assessee owns on the date of the transfer of the original asset, or purchases, within the period of one year after such date, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset.

⁸⁸Explanation - For the purpose of this section, -

⁸⁹[***] "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

- (2) Where the assessee purchases, within the period of ⁹⁰ [two year] after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.
- (3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.]
- ^{90a} [(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance, with, any scheme which the Central Government may, by notification in the Official Gazette,

frame, in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset;

Provided that if the amount deposited under this sub-section is not utilized wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), the, -

(i) the amount by which -

(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds

(b) the amount that would not have been so charged had the amount actually utilized by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilized amount in accordance with the scheme aforesaid.

Explanation - Where any amount becomes chargeable under section 45 in accordance with sub-section (2) or sub-section (3) or the proviso to this sub-section, then, for the purposes of the deductions to be made under clause (b) of sub-section (1) of section 48, the initial deduction of ten thousand rupees under sub-section (2) of that section shall not be admissible.]

⁹¹ [54G. Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area.

(1) Subject to the provisions of sub-section (2), where the capital gain arises from the transfer of a capital asset, being machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situate in an urban area, effected in the course of, or in consequence of, the shifting of such industrial undertaking (hereafter in this section referred to as the original asset) to any area (other than an urban area) and the assessee has within a period of one year before or three years after the date on which the transfer took place, -

- (a) purchased new machinery or plant for the purposes of business of the industrial undertaking in the area to which the said undertaking is shifted;
- (b) acquired building or land or constructed building for the purposes of his business in the said area;
- (c) shifted the original asset and transferred the establishment of such undertaking to such area; and
- (d) incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government for the purposes of this section.

then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say -

- (i) if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) (such cost and expenses being hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset

any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be nil; or

- (ii) if the amount of the capital gain is equal to, or less than, the cost of the new asset, the capital gain shall not be charged under section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its being purchased, acquired, constructed or transferred, as the case may be, the cost shall be reduced by the amount of the capital gain.

Explanation - In this sub-section, "urban area" means any such area within the limits of a municipal corporation or municipality as the Central Government may, having regard to the population, concentration of industries, need for proper planning of the area and other relevant factors, by general or special order, declare to be an urban area for the purposes of this sub-section.

- (2) The amount of capital gain which is not appropriated by the assessee towards the cost and expenses incurred in relation to all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1) within one year before the date on which the transfer of the original asset took place, or which is not utilized by him for all or any of the purposes aforesaid before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied

by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilized by the assessee for all or any of the purposes aforesaid together with the amount, so deposited shall be deemed to be the cost of the new asset;

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for all or any of the purposes mentioned in clauses (a) to (d) of sub-section (1) within the period specified in that sub-section, then, -

- (i) the amount not so utilized shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

Explanation - Where any amount becomes chargeable under section 45 in accordance with the proviso to this sub-section, then, for the purposes of the deductions to be made under clause (b) of sub-section (1) of section 48, the initial deduction of ten thousand rupees under sub-section (2) of that section shall not be admissible.]

55. Meaning of "adjusted", "cost of improvement" and "cost of acquisition".

(1) For the purposes of ⁹²(sections 48, and 49), -

⁹³[(a) ***]

⁹⁴(b) "cost of any improvement", -

- (1) in relation to a capital asset being goodwill of a business shall be taken to be nil; and
- (2) in relation to any other capital asset, -]
 - (i) where the capital asset became the property of the previous owner or the assessee before the ⁹⁵(1st day of April, 1974], and the fair market value of the asset on that day is taken as the cost of acquisition at the option of the assessee, means all expenditure



of a capital nature incurred in making any additions or alterations to the capital asset on or after the date by the previous owner or the assessee, and

- (ii) in any other case, means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the assessee after it became his property, and, where the capital asset became the property of the assessee by any of the modes specified in ⁹⁶(sub-section (1) of] section 49, by the previous owner, but does not include any expenditure which is deductible in computing the income chargeable under the head "Interest on securities", "Income from house property", "Profits and gains of business or profession", or "Income from other sources", and the expression "improvement" shall be construed accordingly.

(2) ⁹⁷[For the purposes of sections 48 and 49, "cost of acquisition".

- (a) in relation to a capital asset, being goodwill of a business, -]
- (i) in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and
- (ii) in any other case, shall be taken to be nil.
- (b) in relation to any other capital asset, -]
- (i) where the capital asset became the property of the assessee before the ⁹⁸[1st day of April, 1974], means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the ⁹⁹[1st day of April, 1974], at the option of the assessee;
- (ii) where the capital asset became the property of the assessee by any of the modes specified in sub-section (1) of section 49, and the

capital asset became the property of the previous owner before the ¹⁰⁰ [1st day of April, 1974], means the cost of the capital asset to the previous owner or the fair market value of the asset on the ¹⁰⁰ [1st day of April, 1974], at the option of the assessee;

(iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution;

(iv) ¹⁰¹ [***]

¹⁰² (v) where the capital asset, being a share or a stock of a company, became the property of the assessee on -

(a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares,

(b) the conversion of any shares of the company into stock,

(c) the re-conversion of any stock of the company into shares,

(d) the sub-division of any of the shares of the company into shares of smaller amount, or

(e) the conversion of one kind of shares of the company into another kind,

means the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.]

(3) Where the cost for which the previous owner acquired the property cannot be ascertained, the cost of acquisition

to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

¹⁰³[55A. Reference to Valuation Officer.

With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the ¹⁰⁴[Assessing Officer] may refer the valuation of the capital asset to a Valuation Officer -

(a) in a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the ¹⁰⁴[Assessing Officer] is of opinion that the value so claimed is less than its fair market value;

(b) in any other case, if the ¹⁰⁴[Assessing Officer] is of opinion -

¹⁰⁵(i) that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than such percentage of the value of the asset as so claimed or by more than such amount as may be prescribed ¹⁰⁵ in this behalf; or

(ii) that having regard to the nature of the asset and other relevant circumstances, it is necessary so to do.

and where any such reference is made, the provisions of sub-section (2), (3), (4), (5) and (6) of section 16A, clauses (ha) and (i) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the ¹⁰⁶[Assessing Officer] under sub-section (1) of section 16A of that Act.

Explanation - In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).]

2.3 Summary:

The statutory provisions as reproduced hereabove incorporated in the Statute contain several provisions relating to the assessment of the capital gains, deductions and exemptions. Even a cursory look at these provisions would reveal to the reader that the portion relating to these provisions involve considerable technical, legal and accounting issues. Apart from this, these also involve methodical calculations. Frequent changes have been made on the basis of various necessities, but the overall review of these provisions presents a very technical, complicated and legal framework, which poses vast areas for litigations before the highest judicial forums.

An attempt is made in the succeeding Chapter to illustrate with the aid of examples, the operational and functional aspects of these provisions, although it is must be stated that no attempt is made to analyse in detail these provisions.

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References contd. on next page.

REFERENCES

1. Renumbered by the Finance Act, 1964, w.e.f. 1.4.1964.
2. "53,54 and 54B" substituted for "53 and 54" by the Finance Act, w.e.f. 1.4.1970; "53,54,54B and 54C" substituted for "53,54 and 54B" by the Finance Act, 1972, w.e.f. 1.4.1973 and "53,54,54B,54C and 54D" substituted for "53,54,54B and 54C" by the Finance Act, 1973, w.e.f. 1.4.1974.
3. "54C" omitted by the Finance Act, 1976, w.e.f. 1.4.1976.
4. Substituted for "and 54D" by the Finance (No.2) Act, 1977, w.e.f. 1.4.1978.
5. Substituted for "54D and 54E" by the Finance Act, 1982, w.e.f. 1.4.1983.
6. Substituted for "54E and 54F" by the Finance Act, 1987, w.e.f. 1.4.1988.
7. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.4.1985. Original sub-section (2) was inserted by the Finance Act, 1964, w.e.f. 1.4.1964 and later on omitted by the Finance Act, 1966, w.e.f. 1.4.1966.
8. Sub-ss.(3) to (5) inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
9. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. Before its omission, cl.(ii) read as under:

any distribution of capital assets on the dissolution of a firm, body of individuals or other association of persons.
10. Inserted by the Finance Act, 1965, w.e.f. 1.4.1965.
11. Inserted by the Finance Act, 1988, w.e.f. 1.4.1988.
12. Inserted by the Finance (No.2) Act, 1967, w.e.f. 1.4.1987.
13. Inserted by the Finance Act, 1970, w.e.f. 1.4.1970.
14. Inserted by the Finance Act, 1976, w.e.f. 1.4.1977.
15. Substituted by the Finance Act, 1987, w.e.f. 1.4.1988 for the following:

48. Mode of computation and deductions - *The income chargeable under the head "Capital gains" shall be computed by deducting from the full value of the consideration*

received or accruing as a result of the transfer of the capital asset the following amounts, namely -

- (i) expenditure incurred wholly and exclusively in connection with such transfer;
 - (ii) the cost of acquisition of the capital asset and the cost of any improvement thereto.
16. Renumbered by the Finance (No.2) Act, 1967, w.e.f. 1.4.1967.
 17. Substituted for the following sub-cl.(b) by the Finance Act, 1987, w.e.f. 1.4.1988:
 - (b) on any distribution of assets on the dissolution of a firm, body of individuals or other association or persons, or
 18. Inserted by the Finance Act, 1965, w.e.f. 1.4.1965.
 19. Inserted by the Finance (No.2) Act, 1967, w.e.f. 1.4.1967.
 20. Inserted by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
 21. Inserted by the Finance Act, 1965, w.e.f. 1.4.1965.
 22. Substituted for "section" by the Finance (No.2) Act, 1967, w.e.f. 1.4.1967.
 23. Substituted for "clause (ii) or clause (iii) by the Taxation Laws (Amendment) Act, 1975, w.e.f. 1.4.1976.
 24. Inserted by the Finance (No.2) Act, 1967, w.e.f. 1.4.1967.
 25. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.4.1985.
 26. Substituted by the Taxation Laws (Amendment & Miscellaneous Provisions) Act, 1986, w.e.f. 1.4.1988, for the following section:

50. Special provision for computing cost of acquisition in the case of depreciable assets - Where the capital asset is an asset in respect of which a deduction on account of depreciation has been obtained by the assessee in any previous year either under this Act or under the Indian Income-tax Act, 1922 (11 of 1922) or any Act repealed by that Act or under executive orders issued when the Indian Income-tax Act, 1886 (2 of 1886) was in force, the

provisions of sections 48 and 49 shall be subject to the following modifications:-

- (1) The written down value, as defined in clause (6) of section 43, of the asset, as adjusted, shall be taken as the cost of acquisition of the asset.
- (2) Where under any provision of section 49, read with sub-section (2) of section 55, the fair market value of the asset on the 1st day of April, 1974, is to be taken into account at the option of the assessee, then, the cost of acquisition of the asset shall, at the option of the assessee, be the fair market value of the asset on the said date, as reduced by the amount of depreciation, if any, allowed to the assessee after the said date, and as adjusted.

27. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. Before its omission, section 52 was as under:

52. Consideration for transfer in cases of understatement:

- (1) Where the person who acquired a capital asset from an assessee is directly or indirectly connected with the assessee and the Income-tax Officer has reason to believe that the transfer was effected with the object of avoidance or eduction of the liability of the assessee under section 45, the full value of the consideration for the transfer shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be the fair market value of the capital asset on the date of the transfer.
- (2) Without prejudice to the provisions of sub-section (1), if in the opinion of the Income-tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than fifteen per cent of the value so declared, the full value of the consideration for such capital asset shall, with the

previous approval of the Inspecting Assistant Commissioner, be taken to be its fair market value on the date of its transfer.

Provided that this sub-section shall not apply in any case -

- (a) where the capital asset is transferred to the Government, or
- (b) where the full value of the consideration for the transfer of the capital asset is determined or approved by the Central Government or the Reserve Bank of India.

28. Substituted for the following by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.4.1985:

Capital gains exempt from tax - Notwithstanding anything contained in section 45, where a capital gain arises from the transfer of one or more capital assets, being buildings or lands appurtenant thereto, the income of which is chargeable under the head "Income from house property", and the full aggregate value of the consideration for which the transfer is made does not exceed twentyfive thousand rupees, the capital gain shall not be included in the total income of the assessee;

Provided that this section shall not apply in any case where the aggregate of the fair market values of all capital assets, being buildings or lands appurtenant thereto the income of which is chargeable under the head "Income from house property", owned by the assessee immediately before the transfer aforesaid is made, exceeds the sum of rupees fifty thousand.

- 29. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
- 30. Substituted for "capital asset" (other than a short-term capital asset)", ibid.
- 31. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
- 32. Renumbered by the Finance Act, 1978, with retrospective effect from 1.4.1974.
- 33. Substituted for "Where, in the case of an assessee being an individual" by the Finance Act, 1987, w.e.f. 1.4.1988.

34. The words and figures "to which the provisions of section 53 are not applicable" omitted by the Finance Act, 1985, w.e.f. 1.4.1985.
35. Substituted for "one year before or after the date on which the transfer took place purchased" by the Finance Act, 1986, w.e.f. 1..4.1987.
36. Substituted for "is greater than the cost of the new asset" by the Finance Act, 1978, with retrospective effect from 1.4.1974.
37. Substituted for "the house property" by the Finance Act, 1982, w.e.f. 1.4.1983.
38. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. The omitted Explanation was as under:
Explanation : For the purposes of this sub-section, "long-term capital asset" means a capital asset which is not a short term capital asset".
39. Substituted by the Finance Act, 1987, w.e.f. 1.4.1988. Before its substitution, sub-s.(2) read as under:
(2) Where the transfer of the original asset is by way of compulsory acquisition under any law and the compensation awarded for such acquisition is enhanced by any court, tribunal or other authority, then:
(a) so much of the capital gains computed under section 48 by taking the compensation as so enhanced as the full value of the consideration received or accruing as a result of such transfer, as is not excluded under sub-section (1) from being charged to tax under section 45, or
(b) the capital gain attributable to the enhancement of the compensation,
whichever is less (that which is less being hereafter in this sub-section referred to as the unadjusted capital gain), shall, if the assessee has within a period of one year before or two years after the date of receipt of the additional compensation purchased or has within a period of three years after that date constructed, a residential

house (hereafter in this sub-section referred to as the relevant asset), be dealt with in the following manner, that is to say -

- (i) if the amount of the unadjusted capital gain is greater than the cost of the relevant asset, the difference between the amount of the unadjusted capital gain and the cost of the relevant asset shall be charged under section 45 as the income of the previous year in which the transfer took place; and for the purpose of computing in respect of the relevant asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; or
- (ii) if the amount of the unadjusted capital gain is equal to or less than the cost of the relevant asset, the unadjusted capital gain shall not be charged under section 45; and for the purpose of computing in respect of the relevant asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the unadjusted capital gain.

Explanation - For the purposes of this sub-section (2) of section 54B and sub-section (2) of section 54D:-

- (1) "additional compensation", in relation to the transfer of any capital asset by way of compulsory acquisition under any law, means the difference between the compensation for the acquisition of such asset as enhanced by any court, tribunal or other authority and the compensation which would have been payable if such enhancement had not been made.
- (2) the capital gain attributable to the enhancement by any court, tribunal or other authority of the compensation for the compulsory acquisition of any capital asset shall be -

(a) where the computation of the capital gain under section 48 by taking the compensation which would have been payable if such enhancement had not been made as the full value of the consideration received or accruing as a result of the transfer results in a loss or does not result in any profits or gains chargeable to income-tax under the head "capital gains", the capital gain computed under section 48 by taking the compensation as so enhanced as the full value of the consideration received or accruing as a result of the transfer; and

(b) in any other case, the difference between -

(i) the capital gain computed under section 48 by taking the compensation as so enhanced as the full value of the consideration so received or accruing, and

(ii) the capital gain computed under section 48 by taking the compensation which would have been payable if such enhancement had not been made as the full value of the consideration so received or accruing;

40. Inserted by the Finance Act, 1970, w.e.f. 1.4.1970.

41. Renumbered by the Finance Act, 1978, with retrospective effect from 1.4.1974.

42. Substituted for "where the capital gain arises" by the Finance Act, 1987, w.e.f. 1.4.1988.

43. Inserted by the Finance Act, 1978, with retrospective effect from 1.4.1974..

44. Substituted by the Finance Act, 1987, w.e.f. 1.4.1988, for the following:

(2) Where the transfer of the original asset is by way of compulsory acquisition under any law and the compensation awarded for such acquisition is enhanced by any court, tribunal or other authority, then,

(a) so much of the capital gain, computed under section

48 by taking the compensation as so enhanced as the full value of the consideration received or accruing as a result of such transfer, as is not excluded under sub-section (1) from being charged to tax under section 45, or

(b) the capital gain attributable to the enhancement of the compensation,

whichever is less (that which is less being hereinafter referred to as the unadjusted capital gain), shall, if the assessee has within a period of two years after the date of receipt of the additional compensation purchased any land for being used for agricultural purposes (hereinafter referred to as the relevant asset), be dealt with in the following manner, that is to say -

(i) if the amount of the unadjusted capital gain is greater than the cost of the relevant asset the difference between the amount of the unadjusted capital gain and the cost of the relevant asset shall be charged under section 45 as the income of the previous year in which the transfer took place; and for the purpose of computing in respect of the relevant asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) if the amount of the unadjusted capital gain shall not be charged under section 45; and for the purpose of computing in respect of the relevant asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced by the amount of the unadjusted capital gain.

45. Inserted by the Finance Act, 1973, w.e.f. 1.4.1974.
46. Renumbered by the Finance Act, 1978, with retrospective effect from 1.4.1974.
47. Submitted for "Where the capital gain arises" by the Finance Act, 1987, w.e.f. 1.4.1988.

48. Inserted by the Finance Act, 1978, with retrospective effect from 1.4.1974.

49. Substituted by the Finance Act, 1987, w.e.f. 1.4.1988, for the following:

2. Where the compensation awarded for the compulsory acquisition of the original asset is enhanced by any court, tribunal or other authority, then,

(a) so much of the capital gain, computed under section 48 by taking the compensation as so enhanced as the full value of the consideration received or accruing as a result of such transfer, as is not excluded under sub-section (1) from being charged to tax under section 45, or

(b) the capital gain attributable to the enhancement of the compensation,

whichever is less (that which is less being hereafter in this sub-section referred to as the unadjusted capital gain) shall, if the assessee has within a period of three years after the date of receipt of the additional compensation purchased any land or building or any right in any land or building or constructed any building for the purposes of shifting or re-establishing the undertaking referred to in sub-section (1) or setting up another industrial undertaking (such land, building or right being hereafter in this sub-section referred to as the relevant asset), be dealt with in the following manner, that is to say:

(i) if the amount of the unadjusted capital gain is greater than the cost of the relevant asset, the difference between the amount of the unadjusted capital gain and the cost of the relevant asset shall be charged under section 45 as the income of the previous year in which the transfer took place; and for the purpose of computing in respect of the relevant asset any capital gain arising from its transfer within a period of three years of its purchase or

construction, as the case may be, the cost shall be nil; or

(ii) if the amount of the unadjusted capital gain is equal to or less than the cost of the relevant asset, the unadjusted capital gain shall not be charged under section 45; and for the purpose of computing in respect of the relevant asset, any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the unadjusted capital gain.

50. Inserted by the Finance (No.2) Act, 1977, w.e.f. 1.4.1978.
51. Substituted for "capital asset, not being a short-term capital asset" by the Finance Act, 1987, w.e.f. 1.4.1988.
52. Substituted for "full value of the consideration or any part thereof received or accruing as a result of such transfer" by the Finance Act, 1979, w.e.f. 1.4.1979.
53. Substituted for "full value of consideration", ibid.
54. Substituted for "full value of such consideration", ibid.
55. Inserted by the Finance Act, 1983, w.e.f. 1.4.1983.
56. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1.4.1984.
57. Substituted for "For the purposes of this sub-section (3)". "specified asset" means any of the following assets, namely:-", by the Finance Act, 1979, w.e.f. 1.4.1979.
58. Inserted by the Finance Act, 1978, w.e.f. 1.4.1978.
59. Inserted by the Finance Act, 1979, w.e.f. 1.4.1979.
60. Inserted by the Finance Act, 1983, w.e.f. 1.4.1983.
61. Inserted by the Finance Act, 1986, w.e.f. 1.4.1987.
62. Omitted by the Finance Act, 1987, w.e.f. 1.4.1987. Omitted

Explanation stood as under:

Explanation - For the purposes of this clause, "public sector company" means any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

63. Inserted by the Finance Act, 1978, w.e.f. 1.4.1978.
64. Substituted for "full value of the consideration or any part thereof in any equity shares referred to in clause (va)" by the Finance Act, 1979, w.e.f. 1.4.1979.
65. Substituted for "2" by the Finance Act, 1978, w.e.f. 1.4.1978.
66. Substituted for "clause (vi)" by the Finance Act, 1979, w.e.f. 1.4.1979.
67. Inserted, ibid.
68. Inserted by the Finance Act, 1978, w.e.f. 1.4.1978.
69. Substituted for "full value of the consideration or any part thereof received or accruing as a result of the transfer" by the Finance Act, 1979, w.e.f. 1.4.1979.
70. Substituted for "clause (vi)" by the Finance Act, 1979, w.e.f. 1.4.1979.
71. Substituted, ibid.
72. Substituted for "Income-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
73. Inserted by the Finance Act, 1978, w.e.f. 1.4.1978.
74. Substituted for "capital assets other than short-term capital assets" by the Finance Act, 1987, w.e.f. 1.4.1988.
75. Numbered as Explanation 1 by the Finance Act, 1983, w.e.f. 1.4.1983.
76. Substituted for "full value of the consideration or any part thereof received or accruing as a result of the transfer", by the Finance Act, 1979, w.e.f. 1.4.1979.
77. Substituted for "clause (vi)" by the Finance Act, 1979, w.e.f. 1.4.1979.
78. Inserted by the Finance Act, 1983, w.e.f. 1.4.1983.
79. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. Earlier, it was inserted by the Finance Act, 1978, w.e.f. 1.4.1978 and before its omission, it read as under:
(3) Where the transfer of the original assets is by way of compulsory acquisition under any law or where the full value of the consideration for the transfer of the capital asset is determined or approved by the Central Government or

the Reserve Bank of India, and the compensation awarded for such acquisition or, as the case may be, the full value of the consideration so determined or approved is enhanced by any court, tribunal or other authority, then, so much of the capital gain, computed under section 48 by taking the compensation or consideration so enhanced as the full value of the consideration received or accruing as a result of such transfer, as is attributable to the enhancement of the compensation or consideration (hereafter in this sub-section referred to as the unadjusted capital gain) shall, if the assessee has, within a period of six months after the date of receipt of the additional compensation or, as the case may be, the additional consideration, invested or deposited the whole or any part of such additional compensation or consideration in any specified asset (hereafter in this section referred to as the relevant asset), be dealt with in the following manner, that is to say -

- (a) if the cost of the relevant asset is not less than the additional compensation or consideration, the whole of the unadjusted capital gain shall not be charged under section 45;
- (b) if the cost of the relevant asset is less than the additional compensation or consideration, so much of the unadjusted capital gain as bears to the whole of the unadjusted capital gain the same proportion as the cost of acquisition of the relevant asset bears to the additional compensation or consideration shall not be charged under section 45.

Explanation - For the purposes of this sub-section, -

- (i) "additional compensation" shall have the meaning assigned to it in clause (1) of the Explanation to sub-section (2) of section 54;
- (ii) "additional consideration", in relation to the transfer of any capital asset, the consideration for

which was determined or approved by the Central Government or the Reserve Bank of India, means the difference between the amount of consideration for such transfer as enhanced by any court, tribunal or other authority and the amount of consideration which would have been payable if such enhancement had not been made;

(iii) "cost" in relation to any relevant asset, being a deposit referred to in sub-clause (vi) of clause (a) of Explanation 1 below sub-section (1) means the amount of such deposit;

(iiia) "specified asset" means -

(a) in relation to any additional compensation or additional consideration received before the 1st day of March, 1979, any of the assets referred to in clause (a) of Explanation 1 below sub-section (1);

(b) in relation to any additional compensation or additional consideration received after the 28th day of February, 1979, the National Rural Development Bonds referred to in clause (b) of Explanation 1 below sub-section (1);]

(c) in relation to any additional compensation or additional consideration received after the 28th day of February, 1983, in any of the assets referred to in clause (c) of Explanation 1 below sub-section (1) by way of initial subscription thereto;

(iv) the capital gain attributable to the enhancement by any court, tribunal or other authority of the compensation for the compulsory acquisition of any capital asset or of the consideration for the transfer of any capital asset as determined or approved by the Central Government or the Reserve Bank of India shall be deemed to be so much of the capital gain arising from the transfer of the capital

asset as bears to the whole of the capital gain as computed under section 48 by taking the compensation or consideration as so enhanced as the full value of the consideration received or accruing as a result of the transfer, the same proportion as the amount of additional compensation or consideration bears to the compensation or consideration as so enhanced.

80. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. Earlier, it was inserted by the Finance Act, 1978, w.e.f. 1.4.1978 and before its omission, it read as under:

(4) Where the relevant asset is transferred, or converted (otherwise than by transfer) into money, within a period of three years from the date of its acquisition, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such relevant asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (3) shall be deemed to be income chargeable under the head "Capital gain" relating to capital assets other than short-term capital assets of the previous year in which the relevant asset is transferred or converted (otherwise than by transfer) into money.

Explanation - Where the assessee deposits after the 27th day of April, 1978, the whole or any part of the additional compensation or, as the case may be, the additional consideration referred to in sub-section (3) in any relevant asset, being a deposit referred to in sub-clause (vi) of clause (a) of Explanation 1 below sub-section (1), and such assessee takes any loan or advance on the security of such deposit, he shall be deemed to have converted (otherwise than by transfer) such deposit into money on the date on which such loan or advance is taken.

81. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. Earlier, it was inserted by the Finance Act, 1978, w.e.f. 1.4.1978 and it read as under before its omission:

(5) Where the assessee deposits the whole or any part of the additional compensation or, as the case may be, the additional consideration referred to in sub-section (3) in any relevant asset, being a deposit referred to in sub-clause (vi) of clause (a) of Explanation 1 below sub-section (1), the provisions of sub-sections (1A) and (1B) shall apply in relation to such deposit as they apply in relation to the deposit referred to in the said sub-sections.

82. Renumbered as sub-s.(3) by the Finance Act, 1987, w.e.f. 1.4.1988, consequent upon omission of sub-ss.(4) and (5) originally, it was sub-s.(6).
83. Substituted for "clause (va)" by the Finance Act, 1979, w.e.f. 1.4.1979.
84. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. Before its omission, it was as follows:
"a deduction with reference to such cost shall not be allowed under section 80CC".
85. Inserted by the Finance Act, 1982, w.e.f. 1.4.1983.
86. Substituted for the words "Where, in the case of an assessee being an individual" by the Finance Act, 1987, w.e.f. 1.4.1988.
87. Inserted, ibid.
88. Omitted by the Finance Act, 1987, w.e.f. 1.4.1988. Before omission, cl.(i) of Explanation stood as under:
"(i) 'long-term capital asset' means a capital asset which is not a short-term capital asset".
89. The figure '(ii)' omitted, ibid.
90. Substituted for "one year", ibid.
- 90a. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
91. Inserted by the Finance Act, 1987, w.e.f. 1.4.1988.
92. Submitted for "sections 48,49 and 50" by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986, w.e.f. 1.4.1988.
93. Omitted, ibid. Before omission, cl.(a) read as under:

(a) *adjusted*", in relation to written down value or fair market value, means diminished by any loss deducted or increased by any profit assessed, under the provisions of clause (iii) of sub-section (1) or clause (ii) of sub-section (1A) or section 32 or sub-section (2) or sub-section (2A) of section 41, as the case may be, the computation for this purpose being made with reference to the period commencing from the 1st day of April, 1974, in cases to which clause (2) of section 50 applies".

94. Substituted for "b" cost of any improvement", in relation to a capital asset, -, by the Finance Act, 1987, w.e.f. 1.4.1988.
95. Substituted for "1st day of January, *1964" by the Finance Act, w.e.f. 1.4.1987.
96. Inserted by the Finance (No.2) Act, 1967, w.e.f. 1.4.1967.
97. Substituted for "For the purposes of sections 48 and 49, "cost of acquisition", in relation to a capital asset, -, by the Finance Act, 1987, w.e.f. 1.4.1988.
98. Substituted for "1st day of January, 1954" by the Finance (No.2) Act, 1977, w.e.f. 1.4.1978.
99. Substituted, ibid.
100. Substituted, ibid.
101. Omitted by the Finance Act, 1966, w.e.f. 1.4.1966.
102. Inserted by the Finance Act, 1964, w.e.f. 1.4.1964.
103. Inserted by the Taxation Laws (Amendment) Act, 1972, w.e.f. 1.4.1973.
104. Substituted for "Income-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.
105. See rule 111AA.
106. Substituted for "Wealth-tax Officer" by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1.4.1988.