

CHAPTER - III

STATUTORY PROVISIONS IN NUTSELL

CHAPTER - IIISTATUTORY PROVISIONS IN NUTSHELL3.1 CAPITAL GAINS - CHARGEABILITY .Capital gains - (Section 45)

(1) Any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in section (53, 54, 54B, 54D, 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.

(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 purposes 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.)

(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 co-operative 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 purposes 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 asset on the dissolution of a firm or other association of persons or body of individuals (not being a company or co-operative 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 arise 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.

Capital gains are chargeable to the tax u/s 45 of the Income-tax Act, 1961. The finance act, 1987, inserted the new sub-sections 3, 4 and 5 to section 45 with effect from 1.4.1988.

The provisions contained therein indicate that a charge on 'Capital gain' arises only if following conditions are satisfied -

- 1) There should be a profit or gain.
- 2) Profit or gain should arise from transfer of a asset.
- 3) The asset transferred should be of capital nature.
- 4) The transfer should be effective in the previous year.
- 5) The profit or gain is to be deemed to be the income of that year i.e. said previous year.

The examination of the section 45 reveals the following -

- 1) Any profit or gains arising from transfer of a capital asset in the previous year is chargeable to tax under the 'Capital gains'.
- 2) Conversion of investment into stock-in-trade will be treated as 'transfer' u/s. 2(47).

3) The fair market value of the capital asset will be deemed the full value of consideration received or accruing on the date on which it was converted or treated as a stock-in-trade.

4) Profit and gains arising from the transfer of capital asset by a partner to a firm, or by a member to association of persons or body of individuals or vice-versa will be chargeable to tax and amount recorded in the books of account of the firm, association of persons or body of individuals will be deemed to be the full value of consideration.

5) Compensation awarded or determined or approved on compulsory acquisition of a property will be deemed as assessee's income of the previous year.

Capital gains on distribution of assets by Companies in liquidation. (Section 46)

(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 divided 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.

From the above, it reveals that -

- 1) Section 46(1) provides that provisions of section 45 shall not be application where assets of company are distributed on its liquidation, such distribution is not regarded as a 'transfer'.
- 2) Section 46(2) provides that shareholder shall be chargeable to Income-tax under the head 'Capital gains' in respect of money so received or market value of the other assets, if full value of consideration exceeds cost of acquisition, on the date of distribution.

3.2 TRANSACTIONS NOT REGARDED AS TRANSFER -
Transactions not regarded as transfer- (Section 47)

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) (* * *)
- (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 ;
- (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:)
(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 :)
- (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;

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

(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 renowned throughout any state or states,

Section 47 of the Income-tax Act, 1961, provides a list of transfers to which provisions of section 45 are

not applicable. It lays down certain transactions which are not regarded as transfers for the purpose of section 45 and specifically excludes them from the scope of capital gains. Accordingly, these transactions are as under -

- 1) Any distribution of capital asset on the total or partial partition of Hindu Undivided Family.
- 2) Transfer of a capital asset under gift, will or irrevocable trust.
- 3) Transfer of a capital asset to a subsidiary company.
- 4) Transfer of a capital asset by a subsidiary company to a Holding company.
- 5) Transfer by a shareholder of a capital asset being share or shares in the amalgamating company.
- 6) Transfer in the scheme of amalgamation by amalgamating company to the amalgamated company.
- 7) Transfer of agricultural land in India effected before the 1st day of March, 1970.
- 8) Transfer of work-of-art, archaeological, scientific or art collection, book, manuscript, drawing, painting, 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 renowned throughout any state or states.

Withdrawal of exemption in certain cases-(Section 47A)

Where at any time before the expiry of a period of eight years from the date of the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47,-

- (i) such capital asset is converted by the transferee company into, or is treated by it as, stock-in-trade of its business ; or
- (ii) the parent company or its nominees or, as the case may be, the holding company ceases or ceases to hold the whole of the share capital of the subsidiary company.

the amount of profits and gains arising from the transfer of such capital asset not charged under section 45 by virtue of the provisions contained in clause (iv) or, as the case may be, clause (v) of section 47 shall, notwithstanding anything contained in the said clauses, be deemed to be income chargeable under the head "Capital gains" of the previous year in which such transfer took place.

This section deals with withdrawals of exemption, if the capital asset is not converted by the transferee company into, or treated by it as, stock-in-trade of its business before the expiry of a period of 8 years from the date of transfer. By virtue of section 47A, cost of acquisition to transferee company is chargeable to the tax under the head "Capital gains."

3.3 COMPUTATION OF CAPITAL GAINS AND DEDUCTIONS FROM CAPITAL GAINS -

Mode of computation and deductions -(Section 48)

(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 -

clause (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.

For the Assessment Year 1988-89 and onwards, deduction u/s. 80T and u/s 115 will not be allowed as these deductions are incorporated in the section 48 of Income-tax Act.

Section 48, provides a mode of computation and deduction in respect of capital gains chargeable to tax-computation of capital gains resulting from the transfer of capital asset, is made by deducting the cost of acquisition, the cost of improvement and the expenditure incurred in connection with transfer of capital asset concerned, from the consideration received on such transfer.

Deductions u/s 48 should be analysed as under :-

Deduction u/s 48(2) from the long-term capital gains should be analysed.

Deduction u/s 48 (A.Y. 1988 - 89)

A) Deduction u/s 48(1)

| Section | Nature of Deduction | Who can claim |
|--------------|--|---------------|
| 48(1)(a)(i) | Expenditure incurred wholly and exclusively in connection with transfer of Capital asset | All assessees |
| 48(1)(a)(ii) | Cost acquisition of capital asset and of any improvement thereto . | All assessees |

B) Deduction u/s 48(2)

| Section | Amount of Capital gain | In the case of corporate assessee | In the case of non corporate assessee |
|--------------|---|---|--|
| 48(2) (a) | a) Where the amount of long-term capital gains does not exceed Rs. 10,000. | Whole of the capital gain is deductible . | Whole of the capital gain is deductible |
| 48(2) (b) | b) In any other case - | | |
| | i) in respect of capital gain relating to land or any rights therein or gold, bullion or jewellery. | First Rs. 10,000 of capital gain + 10 percent of the balance | First Rs. 10,000 of capital gain + 50 percent of the Balance |
| | ii) in respect of long term capital gain relating to other assets. | First Rs. 10,000 of capital gains (to the extent such deduction has not been availed under (b)(i) above + 30% of balance. | First Rs. 10,000 of capital gains (to the extent such deduction has not been availed under (b)(i) above + 60 % of balance. |

3.4 COST OF ACQUISITION

Cost with reference to certain modes of acquisition- (Section 49)

- (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
(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 is referred to in clause (iv) or clause (v) or clause (iv) of section 47 ;
 - (iv) such assessee being a Hindu undivided family, by the mode referred to in sub-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.

(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.

(3) Notwithstanding anything contained in subsection (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.)

Speciation provision for computation of capital gain in case of depreciable assets -(Section 50)

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 the 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.)

Advance money received - (Section 51)

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.

The cost of acquisition of the capital asset in certain cases would be determined u/s. 49, 50, 51 and others. The examination of these sections reveals the following -

(1) Cost to the previous owner - (Section 49)

The cost to the previous owner is deemed to be the cost of acquisition to the assessee in cases where capital asset became the property of the assessee under any mode of transfer stated below -

- 1) Any distribution of assets on the total or partial partition of Hindu Undivided Family.
- 2) Under a gift or will ,



- 3)
 - a) by succession, in hesitance or devolution.
 - b) distribution of assets on the dissolution of a firm, body of individuals or other association of persons which taken place before 1.4.1987.
 - c) distribution of assets on the liquidation of company.
 - d) transfer to revocable or irrevocable trust.
 - e) transfer u/s. 47(iv), 47(v), 47(vi).
- 4) acquisition of property by Hindu Undivided Family.

(2) Cost of acquisition of shares in an amalgamated company - Section 49)

Cost of acquisition of share or shares in amalgamated company would be deemed to be the cost to assessee of the share or shares in the amalgamating company.

(3) Cost of acquisition of a capital asset to a transferee company -(Section 49)

This section 49(3) have explained earlier .

(4) Cost of acquisition in the case of depreciable asset - (Section 50)

The new section substituted for existing section from 1-4-1988 with a view to accommodate new system of providing depreciation on the 'block of assets' and compute the capital gains arising on sale or transfer of depreciable asset.

When the aggregate amount of the consideration received on sale of asset falling within that block of assets exceeds a) expenditure incurred in connection with transfer. b) written down value of block of assets c) actual cost of asset, such excess will be deemed to be the short-term capital gain.

Section 50(2) provides that where all assets in the block of assets are sold, the cost of acquisition in such a case shall be the aggregate of following -

- (1) Written Down Value of Block of Assets.
- (2) actual cost of any asset
- (3) Income received or accruing as a result of such transfer.

If consideration received exceeds the cost of acquisition, excess will be chargeable to tax as short-term capital gain.

(5) Advance money received - (Section 51)

Where any advance or other money received subject to negotiations for transfer of capital asset and forfeited by the assessee is deducted from the cost for which asset acquired or written down value or fair market value of asset. This will be the amount so arrived will be cost of acquisition.

3.5 EXEMPTIONS FROM CAPITAL GAINS-

Exemption of capital gain from a residential house
(Section 53)

Notwithstanding anything contained in section 45, 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, 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.

The Finance Act, 1987, amended the provisions of section 54 and the Taxation Laws (Amendment) Act, 1984 amended the Section 53 with effect from 1.4.1985.

The exemption can be availed if following condition are satisfied -

- 1) The asset is transferred by individual or Hindu Undivided Family.
- 2) The asset transferred is long term capital asset.
- 3) The asset is residential house property or lands appurtenant thereto, income of which is chargeable under the head "Income from house property".

- 4) On the date of transfer assessee does not own any other residential house.

Amount of exemption -

If asset transferred is not more than Rs. 2 lacks, entire capital gain is exempt from tax. If asset transferred is more than Rs. 2 lacks, capital gains would be exempted proportionately.

Profit on sale of property used for residence.

(Section 54)

(1) 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, 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 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 is greater than the cost of 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 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 u/s

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.

(***)

(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 utilised 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 utilised 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 utilised 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 utilised 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 utilised 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.

Section 54, provides exemption to capital gains arising from transfer of a residential house property. Along with the conditions referred in section 54 following two conditions are satisfied to avail exemption u/s. 54.

These are -

- 1) The individual has purchased residential house within the one year before date of transfer or 2 years

after date of transfer, or constructed a house within 3 years after the date of transfer.

- 2) The house so purchased or constructed has not been transferred within the period of 3 years from the date of construction or purchase.

Amount of exemption -

If the amount of capital gains is less than the cost of new house property, no tax would be attracted. If the amount of capital gains is greater than the cost of new house property, it will be chargeable to tax as capital gains.

New Scheme of Deposit-1988-89

From the assessment year 1988-89, New Scheme of Deposit has been introduced u/s. 54(2), Assessee has alternative to deposit amount received as a result of transfer of house property and the same will be utilised for construction or purchase of new house property.

Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases-(Section 54B)

- (1) 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 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.

(2) The amount of the capital gain which is not utilised 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 (4) of section 139) in an account in any such bank or institution as may be specified in, and utilised 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 utilised 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 utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,-

- (i) the amount not so utilised 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.
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Capital gains arising from transfer of land used for agricultural purposes is not charged in certain cases. The Finance Act, 1987 amended the provisions of section 54B with effect from 1.4.1988.

Capital gains arising from transfer of land used for agricultural purpose for the period of 2 years preceding the date of transfer, are exempt from the tax if assessee has purchased another land for agricultural purposes within a period of 2 years from the date of such transfer.

Amount of exemption -

If the amount of agricultural land is less than the cost of new agricultural land, entire amount of capital gains is exempt, otherwise if amount of capital gains is excess, it will be chargeable to tax. New scheme of Deposit-1988-89. This new scheme is applicable here. Under this scheme the amount so deposited shall be deemed to be the amount utilised for the purchase of agricultural land within stipulated period.

Capital gain on Compulsory acquisition of lands and buildings not to be charged in certain cases-(Section 54D)

(1) 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 the 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 (hereafter in this section referred to as the original asset), and the assessee has within a 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 reestablishing 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 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 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.

(2) The amount of the capital gain which is not utilised 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 utilised 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 utilised 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 utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then, -

- (1) the amount not so utilised 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.

The Finance Act, 1987 amended the provisions of section 54D with effect from 1.4.1988.

U/s. 54D, assessee is entitled to exemption if following conditions are satisfied -

- 1) such land or building should be owned by assessee during the period of 2 years.
- 2) assessee has purchased new land or building or constructed a new building within 3 years.
- 3) New land and building should be used for the purpose of industrial undertaking.

Amount of exemption -

If the amount of capital gain is equal or less than the cost of new building, it will not be chargeable to tax. If the amount of capital gain is greater than the cost of new land or building, the excess will be chargeable to tax as capital gains.

New scheme of Deposit -

This scheme is applicable here. The amount so deposited will be used to purchase or construction of new asset within the stipulated period.

Capital gain on transfer of capital asset not to be charged in certain cases - (Section 54E)

(1) Where the capital gain arises from the transfer of a 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 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 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 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 :)

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.

(1 A) Where the assessee deposits after the 27th day of April, 1978, the whole or any part of the new consideration in respect of the original asset in any new asset, being a deposit referred to in 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 co-operative society referred to in the said 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 (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 co-operative society.

(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 (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 long-term capital asset of the previous year in which the new asset is transferred or converted (otherwise than by transfer) into money.

(5) (* * *)

(6) Where the cost of the equity shares referred to in 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) (***) , a deduction with reference to such such cost shall not be allowed under section 80CC.

Section 54E which was inserted by Finance Act, 1977 was amended by finance of 1978, 1979, 1983, 1986 and 1987.

U/s. 54E capital gains is chargeable if following conditions are satisfied -

- 1) Capital asset should be "Capital asset, not being a short-term capital asset".
- 2) full consideration or any part thereof received as a part of transfer, is invested or deposited in the "specified asset" within 6 months from the date of transfer.
- 3) Newly acquired specified asset is held by the assessee for a period not less than 3 years.

Amount of exemption -

Capital gains is fully exempt if the consideration received or accruing as a result of transfer is invested or deposited in the specified asset. When part of consideration is invested, a proportionate part of capital gains, is exempt from tax.

Section 54E(1) (Explanation-1) describes "Specified assets" within the meaning of this section.

Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house - (Section 54F)

(1) Subject to the provisions of sub-section (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 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 the original asset, so much of the capital gain as bears to the whole 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 purchase, 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.

- (2) where the assessee purchases, within the period of (two years) 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.

(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 utilised 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)

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 utilised 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 utilised 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 utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,-

(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 utilised 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 unutilised amount in accordance with the scheme aforesaid.

To entitle the exemption u/s 54F, the following conditions are satisfied -

- 1) The assessee is an individual or Hindu undivided family.
- 2) Asset transferred is a long-term capital asset but not house property
- 3) The individual has purchased within one year or after

2 years after the date of transfer or constructed within 3 years after date of transfer a residential house.

- 4) Individual should not sell or transfer new house within 3 years from its purchase or construction.
- 5) The individual should not own any residential house property on the date of transfer of the original asset other than new house.

Amount of exemption -

- 1) If the consideration is less than the cost new house, entire amount of capital gain is exempt.
- 2) If the cost of new house is less than the consideration, proportionate exemption of capital gain is granted.

New Scheme of Deposit - 1988-89

This scheme is applicable here. The amount so deposited will be used to purchase or construction of new house within the stipulated period.

Exemption of capital gains on transfer of assets in case of shifting of industrial undertaking from urban area - (Section 54G)

(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.

(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 utilised 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 utilised 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 utilised 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 subsection is not utilised wholly or partly for all or any of the purposes mentioned in clauses(a) to (d) of subsection (1) within the period specified in that subsection, then,-

(i) the amount not so utilised 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.

From the assessment year 1988-89, section 54G provides exemption on transfer of asset in the case of shifting of industrial undertaking from the urban area.

Exemption can be availed if following conditions are satisfied -

- 1) Capital asset situated in urban area should be transferred.

- 2) Transfer of capital asset should be effected to any other area other than urban area.
- 3) The assessee has to utilise the amount so received within a period of one year or 3 years after the date on which the transfer took place.

Amount of exemption -

- 1) If the amount of capital gain is greater than the cost and expenses incurred, the excess will be charged to tax as capital gain.
- 2) If amount of capital gain is equal or less than cost of new asset, whole of the capital gains will be exempt from the tax.

New Scheme of Deposit - 1988-89

This scheme is applicable here. The amount so deposited will be used to purchase or construction of new asset within the stipulated period.

3.6 REFERENCE TO VALUATION OFFICER

Meaning of "adjusted", "cost of improvement" and "cost of acquisition". - (Section 55)

Section 55 deals with "Meaning of "adjusted", "cost of improvement", and "cost of acquisition". The detailed discussion of these terms is made in the next chapter of this study.

Reference to Valuation Officer - (Section 55A)

With a view to ascertaining the fair market value of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of 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 Assessing Officer is of opinion that the value so claimed is less than its fair market value ;
- (b) in any other case, if the Assessing Officer is of opinion -
 - (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 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-sections (2),(3),(4),(5) and (6) of section 16A,

clause (ha) and (1) 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 Wealth-tax Officer under sub-section (1) of section 16A of that Act.

This section enables the Income-tax Officer to refer the valuation of any capital asset to valuation officer with a view to ascertaining the market value of such asset. Under this section, where Income-tax officer is of the opinion that the value of asset as claimed by the assessee in accordance with the valuation done by a registered valuer, is less than the fair market value of asset, he refer the valuation of asset to valuation officer. The opinion of the Income-tax Officer is essential for making a reference for valuation u/s 55A to valuation officer appointed by the Income-tax Department. Following are the circumstances under which a reference can be made -

- 1) In the opinion of Income-tax officer, value of asset claimed by the assessee estimated by the registered valuer, is less than its fair market value.

- 2) In the opinion of Income-tax Officer Fair market value of asset exceeds the value of asset by more than Rs. 25,000 or 15 % of the value claimed by assessee which ever is less.

- 3) In the opinion of Income-tax officer, it is necessary to make a reference to the valuation officer according to the nature of an asset and relevant circumstances.

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