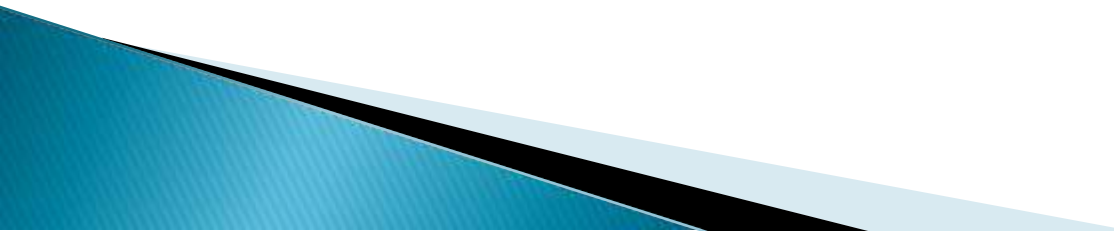


Capital gains taxation on Immovable Properties

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Section 2(47) TRANSFER Relinquishment

- ▶ Relinquishment of a capital asset arises when the owner surrenders his rights in property in favour of another person.
 - ▶ For example the transfer of rights to subscribe the shares in a company under a Rights issue to a third person.
 - ▶ Relinquishment implies that the property continues to exist after the owner surrenders his rights or withdraws himself from the property.
 - ▶ The co-owner of the property relinquishes his ascertained rights in the property.
 - ▶ Relinquishment is transfer which is taxable as Capital Gains,
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EXTINGUISHMENT

- ▶ This covers every possible transaction which results in destruction, annihilation, extinction, termination , cessation or cancellation of all or any bundle of rights in a capital asset.
- ▶ Example: The assessee, an advocate was allotted a flat vide an allotment letter. He paid advance amounting to Rs. 50,00,000 on the allotment of said flat. By virtue of the said allotment, the assessee has acquired the right to the proposed flats. The construction of the building was yet to commence on the date of allotment. Due to various delay in regulatory approvals, the builder could not obtain permission to construct the building up to the 17th floor. Under such circumstances, the assessee surrendered the right to receive the flats and the builder cancelled the allotment of the above flats and agreed to pay the compensation for an amount of Rs. 1,10,00,000/- on account of the surrender of such flats. This is extinguishment.
- ▶ This is also transfer and taxable as Capital gains.

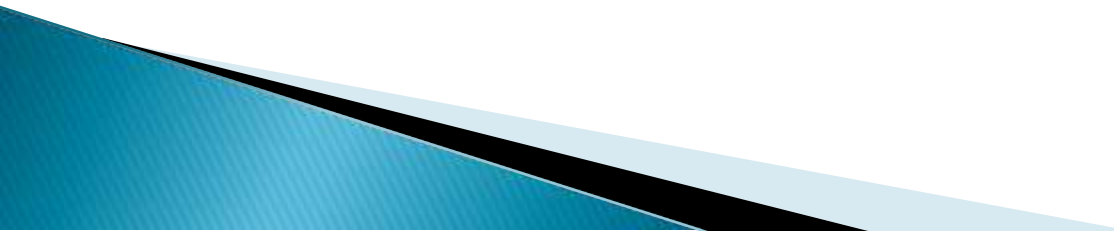
- ▶ The following case laws will be useful to understand the concept of Extinguishment.
- ▶ CIT vs Grace Collis (2001) 115 Taxman 326 (SC) – The right in the assets
- ▶ Neelamalai Agro Industries Ltd – Mad.HC
- ▶ K.V. Vijayaraghavan vs DCIT(2017) 78 taxmann.com 177 Che Tri.– Where the assessee demolished newly acquired residential building for the purpose of construction of a shopping complex deduction u/s 54 cannot be claimed. Demolition amounts to transfer. But the property was demolished immediately after the purchase of the residential building.

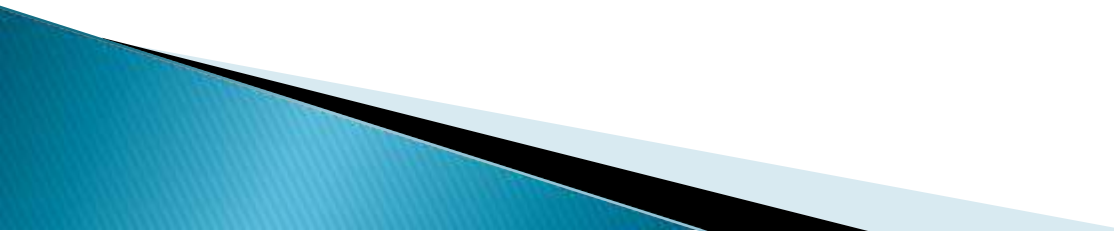
Part Performance

- ▶ Section 2(47)(v) read with Section 53A of the Transfer of Property Act
- ▶ Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty
- ▶ and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,
- ▶ and the transferee has performed or is willing to perform his part of the contract
- ▶

- ▶ Generally there is an impression that if the possession is given to the builder in case of JDA, it is part performance and accordingly the capital gain arises even though the real income has neither received nor accrued.
- ▶ The Courts have held that mere possession is not sufficient but there should be written agreement as required by the relevant laws besides handing over of the possession.
- ▶ CIT vs G. Saroja (2008) 301 ITR 124 MAD. Unless there is written agreement, Sec 53A of TP Act will not come into operation.
- ▶ CIT vs Balbir Singh Maini 2017 86 taxmann.com 94 94 SC. In order to qualify as a transfer of a capital asset under sub clause (v) of the Sec 2(47) of the Act, there must be a contract which can be enforced in law u/s 53A of the TP Act.
- ▶ ITO vs Shafiq Mahammed Shah 2017 Chennai Tribunal distinguished the case of Balbir Singh Maini.

Family arrangement

- ▶ There is no tax liability on the movement of assets in family arrangement.
 - ▶ There is no element of transfer as envisaged by Sec. 2(47) of the Income tax Act.
 - ▶ U/S 45 of the Act only profits and gains arising from the transfer of capital assets alone are taxable.
 - ▶ In family settlement there is only movement of assets.
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- ▶ Care should be exercised to draft the MOU on family arrangement.
 - ▶ It is applicable to all religions
 - ▶ Family to be construed in the broader sense, not only close relatives.
 - ▶ The assets of the firm and shares of the companies of the family members can be settled.
 - ▶ As per law no registration is required.
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Expenditure incurred wholly & exclusively – Section 48

- ▶ Interest paid on amount borrowed for the purpose of investment can be added to the cost of capital asset
--CIT Vs K.Rajagopala Rao (2002)125 Taxmann148/252.ITR.459 MAD
- ▶ The interest paid on the loan borrowed from the Directors of the company can be added while calculating the cost of acquisition
--CIT Vs Hariharan Hotels Pvt Ltd., 2010 325.ITR.136.KAR
- ▶ Any amount paid to the tenant to get vacant possession of land is allowable as deduction in u/s 48(i).
--CIT Vs A.Venkataraman 1982 137.ITR.846
-- Hardialla chemicals Pvt ltd Vs CIT 2006 289.ITR.598.Bombay
- ▶ Legal Expenses – Legal expenses incurred for obtaining the compensation for compulsory acquisition of the property is deductible
- ▶ Expenditure incurred to obtain probate of the Will is deductible
- ▶ The expenditure can be either before or after passing of title. The words in connection with are very wide in their ambit. Hence it is not necessary that the expenditure should have been incurred only before passing of the title.

- ▶ A mere Liability or obligation cannot be regarded as an item of expenditure and hence not deductible.
- ▶ CIT Vs A.Venkataraman 137.ITR.846.Madras – Liability created for sister's marriage at the time of partition. Not deductible.
- ▶ K.V.Idiculla CIT 1995.81.Taxmann.190. – Wife had invested money to acquire the property– Property was sold to the wife. Whether the investment of money wife can be deducted. Held not deductible
- ▶ Damages for mental agony and suffering not deductible
- ▶ Mortgage loan cannot be deducted.
- ▶ CIT Vs Kamalakar moghe 378.ITR.561.BOM. In the will a portion is apportioned for charities and executor is entitled for commission held to be deductible.

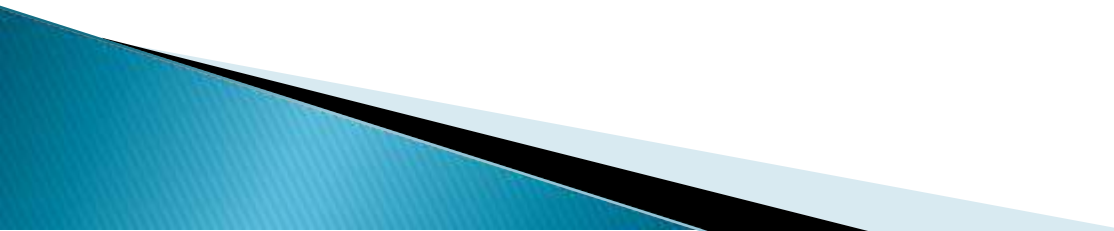
Cost of improvement

- ▶ Property inherited through mortgage which was incurred by the previous owner – deductible.
--RM.Arunachalam SC: 1997 2271.ITR.222
- ▶ If the mortgage is created by the assessee himself it cannot be said to be cost of improvement and cannot be deducted.
--CIT Vs Bradford Trading Company Pvt Ltd., 2002 201.ITR.222
- ▶ Compensation for eviction – Paid to hutment dwellers to evict – deductible
--CIT Vs Pooja C Patel (2000) 242.ITR.582.BOM
- ▶ If you choose the FMV as on 01.04.2001, Any improvement cost incurred before that date cannot be claimed Sec 55(1)(b)(2)(ii).

Indexation benefit

- ▶ Indexation benefit linked to period of holding of asset and not to its owner.
- ▶ Sec 55 says the indexed cost of acquisition has to be determined with reference to the cost of inflation index for the first year in which the capital asset was held by the assessee.
- ▶ U/S 49(1), the cost of acquisition, if the capital asset become the property of the assessee through Gift, Will, Succession or Inheritance, the cost to the previous owner to be taken.
- ▶ It is held by many courts that the cost to the previous owner should be considered. Not the value on which the assessee becomes the owner of the asset.
- ▶ CIT Vs Manjula.J.Shah (2011) 204 Taxmann 691. Bombay

Rollover deduction--Discussion points Under Section 54

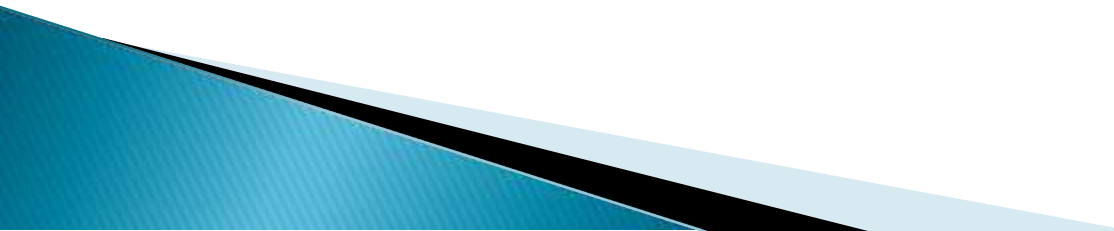
- ▶ The assessee can invest in a new residential house property of the sale proceeds of old residential house property any number of times as per the provisions of this section to avail the roll over deduction.
 - ▶ From the AY 2020-21, the number was increased to 2 residential properties, if the capital gain is upto Rs. 200 lakhs
 - ▶ This is an one time opportunity.
 - ▶ This is applicable to sale of residential house property
 - ▶ The house transferred can be in a foreign country, but reinvestment should be in India.
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- ▶ CIT Vs Ganesan 1996 84 Taxmann 105.MAD
- ▶ Transfer of property to spouse as Gift. There is no adequate consideration. The husband becomes the deemed owner. If the property is sold by wife the capital gains arises to the husband in the capacity of the deemed owner.
- ▶ If there is restriction that the roll over deduction cannot be availed if the assessee has more than one house, then the husband is prevented from availing the deduction.
- ▶ Please refer sections 54G/54EC Section 27(1), 56(2)(vii), 64(1)(iv) as these are interlinked.
- ▶ Lock in period – 3Years of loan is availed (3 + 2 = 5Years)

Time limit to reinvest

- ▶ It is not necessary that the reinvestment can be made within the due date u/s 139(1)
- ▶ New Property can be purchased even within 139(4)/(5) due date. To deposit in CG deposit scheme, timeline should be adhered.
- ▶ Also see the Venkata Dilip Kumar Vs CIT 2019. 289 Taxmann 111 MDS 54(1) & 54(2) should be read harmoniously. If the property is purchased or constructed within the time limit, there is no need to deposit the money in Capital Gains Deposit Scheme. It is only procedural.
- ▶ ITO Vs Rekha Shetty (2020) 184ITD 38 Che.Tri. If property is purchased within 2 Years, you need not deposit in CG scheme.

Land appurtenant – Sec 54

- ▶ CIT Vs Kalpagam 1997 93 Taxmann 283 MAD
-- Land was 10 grounds and the building was in 2.5 grounds. Held it is the land appurtenant thereto.
 - ▶ S. Radhakrishnan v CIT 91984) 145 ITR 170 MAD
-- Of the available land some portion of the land was sold as plots and the remaining vacant site was sold with the building. The plots sold are not land appurtenant to the building.
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Whether same funds to be used

- ▶ To purchase the new property or construction of the new property the funds need not be from the sale proceeds of old property
- P.Thirumoorthy Vs 170 2012 Chennai Tri.717 R
- ▶ CIT Vs R.Srinivasan 2010 235. CTR.588.Madras

The assessee sold Goodwill for Rs. 56 lakhs to a company. No consideration was received by cash/cheque. Only book entry was passed debiting Goodwill and crediting his account. He purchased a new house property with some other funds that he had with him. He claimed deduction u/s 54F of the Act. The court held that the assessee is eligible for the said deduction.

There is contrary decision of Kerela high court in CIT v V.R. Desai.

Section 54F

- ▶ Section 54F stipulates that the reinvestment should be in the name of assessee to avail the rollover benefit.
- ▶ There are contrary decisions by different Tribunals.
- ▶ It is advised to go by the Act and not by the decisions of the Tribunals.
- ▶ S.Varadharajan's case Che.Tri – The husband purchased the property in the name of the wife and claimed as Benami for him. The tribunal accepted this view and held in favour of the assessee.
- ▶ Prakash v ITO Bombay HC disagreed this view. To avail deduction the investment should be in the name of the assessee.
- ▶ From the AY 2020-21 the assessee should file the return of income to avail the rollover benefits

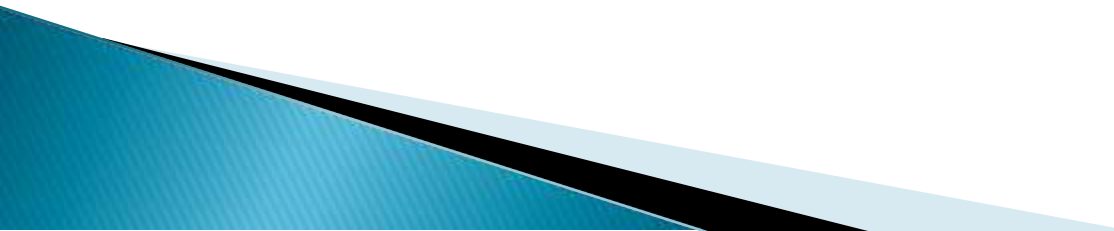
INTEREST ON COMPENSATION

- ▶ Compensation or enhanced compensation on acquisition of rural agri land is exempt in all cases
- ▶ Interest on enhanced compensation, if under section 28 of the Land Acquisition Act 1894 being in the nature of compensation, on acquisition of rural agri land is exempt bae on the decision of Ghanshyam (HUF) SC.
- ▶ Interest on enhanced compensation under section 34 of Land Acquisition Act 1894 is taxable under section 56(2)(vii) of the act after deduction of 50% towards expenditure u/s 57(4) of the act and such interest is taxable on receipt basis. Even if expenditure is not incurred this deduction is available.
- ▶ To understand the taxability of the compensation, it is pertinent to read Sections 145A, 56(2)(vii),
- ▶ These sections attempt to tax the interest. So far as the compensation is concerned first of all one should see whether such interest is taxable or not.

Fair market value from 1.4.21

- ▶ **Meaning of "adjusted", "cost of improvement" and "cost of acquisition".**
- ▶ **55.** (1) For the purposes of [sections 48](#) and [49](#),—
- ▶ a) "fair market value" means,— (b) in relation to any other capital asset,—
- ▶ Explanation.—*For the purposes of this proviso, "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.]*

Sale of Property by NRI

- ▶ Section 195 of the Act is applicable
 - ▶ For sale of long term assets applicable tax rate is 20% and for short term it is 30% on the sale value.
 - ▶ In order mitigate the higher tax amount, one can file Form 13 online to get lower deduction of tax.
 - ▶ On term capital gains, basic slab benefit and Chapter VI A benefits are not available
 - ▶ On short term gains these are available
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- ▶ For computation of tax on short term capital gain, slab rate of tax to be followed.
 - ▶ For long term gains flat 20% on capital gains.
 - ▶ The challenge is higher TDS rates.
 - ▶ For long term gains, the roll over benefits are available.
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