

## Framework of Capital Gains Tax

Capital Gains were charged to income-tax for the first time in India w.e.f. assessment year 1947-48 by the Income-tax and Excess Profit Tax (Amendment) Act, 1947, which inserted section 12B in the then Indian Income-tax Act, 1922. Section 12B provided for levy of tax on Capital Gains arising after 31.3.1946. This levy, however, was short lived as this provision existed only for capital gains arising before 1.4.1948. The Finance (No. 3) Act, 1956 revived section 12B in wider terms so as to bring within capital gains any profits or gains arising from the sale, exchange, relinquishment or transfer of capital asset effected after 31.3.1956. Since then, these tax on capital gains became a permanent feature of the old Act as well as the present Act, viz., the Income-tax Act, 1961.

The provisions relating to capital gains are contained in sections 45 to 55A. However, section 2 of the Income-tax Act, 1961 also contains many clauses relating to definitions of various terms used in the Chapter on Capital Gains. Further, there is special flat rate of tax in case of long-term capital gains and the provisions of the same are contained in sections 112, 112A 115AB, 115AC, 115ACA, 115AD and 115E. Similarly, a special rate of tax has been prescribed under section 111A in case of short-term capital gains from equity shares listed on a recognised stock exchange in India and units of equity oriented fund.

### 1.1 Definitions under section 2 of the Income-tax Act which are relevant for capital gains

The following clauses of section 2 containing the definitions are relevant for taxation of capital gains:

<i>Sections</i>	<i>Definitions</i>
2(1B)	Amalgamation
2(14)	Capital Assets
2(19AA)	Demerger
2(19AAA)	Demerged Company
2(22B)	Fair Market Value
2(29A)	Long-term Capital Asset
2(29B)	Long-term Capital Gain
2(41A)	Resulting Company
2(42A)	Short-term Capital Asset
2(42B)	Short-term Capital Gain

2(42C)	Slump Sale
2(47)	Transfer
2(48)	Zero Coupon Bond

### 1.2 Capital gains which are exempt under Sections 10, 11(1A) and 13A

The exemption of capital gains under the above sections may be divided into two categories:

- (A) Exemption of capital gain which are allowed only to a specified assessee.
- (B) Exemption of capital gain which are allowed either to all assessees or to more than one assessee.

(A) *Exemption of capital gain which are allowed only to a specified assessee:* Some of the specified assessees who are allowed exemption of capital gain under this category are given below:

- (1) Specified fund [Section 10(4D)]
- (2) Local authority [Section 10(20)]
- (3) Research association [Section 10(21)]
- (4) Notified news agencies [Section 10(22B)] **(Exemption not allowed w.e.f. AY 2024-25)**
- (5) Notified associations or institutions established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession [Section 10(23A)]
- (6) Any Regimental Fund or Non-public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants [Section 10(23AA)]
- (7) A fund established, for such purposes as may be notified by the Board in the Official Gazette, for the welfare of employees or their dependants and of which fund such employees are members if such fund fulfils certain conditions [Section 10(23AAA)]
- (8) Institutions existing solely for the development or kadhi or village industries or both [Section 10(23B)]
- (9) An authority (whether known as the Khadi and Village Industries Board or by any other name) established in a State by or under a State or Provincial Act for the development of khadi or village industries in the State [Section 10(23BB)]
- (10) Any body or authority constituted or appointed by or under any central, state or Provincial Act which provides for the administration of any public religious or charitable trust or endowments, etc. [Section 10(23BBA)]
- (11) European Economic Community [Section 10(23BBB)]
- (12) The secretariat of the Asian Organisation of the Supreme Audit Institutions [Section 10(23BBD)]
- (13) Insurance Regulatory and Development Authority [Section 10(23BBE)]
- (14) North-Eastern Development Finance Corporation Limited [Section 10(23BBF) omitted w.e.f. AY 2024-25]
- (15) Certain charitable funds and institutions [Section 10(23C)]

- (16) Mutual funds [Section 10(23D)]
- (17) Venture capital company or fund [Section 10(23FB)]
- (18) Investment fund [Section 10(23FBA)]
- (19) Specified person i.e. a wholly owned subsidiary of the Abu Dhabi Investment Authority, a sovereign wealth fund or a pension fund [Section 10(23FE)]
- (20) Funds established under section 10(25) and 10(25A)
- (21) A Sikkimese from any source in the State of Sikkim [Section 10(26AAA)]
- (22) Agricultural produce market committee or board [Section 26AAB]
- (23) New Pension Scheme Trust [Section 10(44)]
- (24) Body or Authority or Board etc. not being a company notified by the Central Government[ Section 10(46A)]
- (25) National Credit Guarantee Trustee Company Ltd., credit guarantee fund and Credit Guarantee Fund trust for Micro and Small Enterprises[ Section 10(46B)]
- (26) Infrastructure debt fund [Section 10(47)]
- (27) An institution established for financing the infrastructure and development, set up under an Act of Parliament and notified by the Central Government[Section 10(48D)]
- (28) Charitable or religious trust or institutions subject to certain conditions being satisfied [Section 11(1A)]
- (29) Political parties [Section 13A]

(B) *Exemption of capital gain which are allowed either to all assesseees or to more than one assessee:* The following sub-clauses of section 10 provide for exemption of capital gains.

Sections	Contents of the section
10(4E)	Capital gain accrued or arisen to or received by a non-resident from certain transactions referred to in section 10(4E) entered into with an offshore banking unit of an International Financial Service Center, which fulfills such conditions as may be prescribed.
10(4G)	Capital gain received by a non-resident from certain transactions referred to in section 10(4G) entered into with an offshore banking unit of an International Financial Service Center, which fulfills such conditions as may be prescribed.
10(4H)	Capital gain arising from transfer of equity shares of domestic company being a unit of International Financial Service Center, engaged primarily in the business of lease of an aircraft which has commenced operations on or before 31.03.2026.
10(33)	Capital gain on transfer of units of US 64 exempt if transfer takes place on or after 1.4.2002
10(36)	Long-term capital gain on eligible equity shares exempt if the shares are acquired within a certain period
10(37)	Exemption of capital gains to an individual or HUF on compensation received on compulsory acquisition of agricultural land situated within specified urban limits
10(37A) (Inserted w.r.e.f. A.Y. 2015-16)	Any income chargeable under the head “Capital gains” in respect of transfer of a specified capital asset arising to an assessee, being an individual or a Hindu undivided family, who was the owner of such specified capital asset as on the 2 <sup>nd</sup> day of June, 2014 and transfers that specified capital asset under the

	Land Pooling Scheme (herein referred to as “the scheme”) covered under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014 (Andhra Pradesh Act 11 of 2014.) and the rules, regulations and Schemes made under the said Act.
10(38)	Exemption of long-term capital gain arising from sale of equity shares and units of the equity oriented fund or business trust ( <b>No exemption is allowed under this section w.e.f. A.Y. 2019-20</b> )

### 1.3 Provisions relating to charge of capital gain, computation of capital gain and exemption of capital gains

The provisions relating to charge of capital gain, computation of capital gain and exemption of capital gains in certain cases can be comprehended as under:

Sections	Contents of the section
9B	Income on receipt of capital asset or stock in trade by specific person from specified entity
45(1)	It is a charging section as it gives the basis of charge of capital gain and the year of taxability of such capital gain. Section 45(1) is a general provision applicable to all transactions other than those covered under section 45(1A) to 45(6).
45(1A)	Section 45(1A) to 45(6) are deeming sections. Section 45(1A) states that profit or gains arising from receipt of money or other asset from an insurance company on account of damage or destruction of any capital asset shall be chargeable as capital gain.
45(1B)	It states that the amount received under a unit linked insurance policy to which exemption under section 10(10D) does not apply shall be chargeable as capital gain.
45(2)	It states that conversion or treatment of a capital asset into stock-in-trade shall be deemed transfer and subject to capital gain.
45(2A)	It states that transfer made by a depository, etc., shall be treated as transfer on behalf of a person holding the beneficial interest.
45(3)	It states that transfer of capital asset by a partner/member to firm/AOP by way of capital contribution or otherwise shall be chargeable to capital gain.
45(4)	It states that the receipt of money or any capital asset or both by a specified person from the specified entity in connection with reconstitution of such specified entity shall be chargeable to capital gain .
45(5)	It states that compulsory acquisition under any law shall be deemed transfer and thus subject to capital gain.
45(5A)	It states that capital gain from the transfer of a capital asset being land or building or both under a specified agreement arising to an individual or HUF shall be chargeable to income tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by competent authority.
45(6)	It states that difference between the repurchase price of units referred to section 80CCB(2) and the capital value of such units shall be deemed to be capital gain.
46(1)	It lays down that distribution of capital asset by a company to its shareholder on its liquidation shall not be regarded as a transfer and hence there is no capital gain to the company.
46(2)	Its lays down that distribution as per section 46(1) is not a transfer in the hands of a company, but it will be regarded as transfer in the hands of shareholders and thus subject to capital gain.



<i>Sections</i>	<i>Contents of the section</i>
46A	It states the buy back of share by the company shall be deemed transfer in the hands of the shareholder and thus chargeable to capital gain.
47	It lists out transactions which will not be regarded as transfer and thus section 45 shall not come into operation.
47A	It provides for withdrawal of exemption in respect of certain cases of section 47.
48	It lays down the mode of computation of capital gain in case of non-depreciable assets.
49	It lays down the method of assessment of cost with reference certain modes of acquisition.
50	It provides the special provisions for computation of capital gains in case of depreciable assets where depreciation is provided on block of assets.
50A	It provides for special provisions for computing capital gain in case of depreciable assets of an electricity undertaking where straight line method of depreciation is provided.
50AA	It provides for special provisions for computation of capital gains in case of market linked debenture.
50B	It provides for a special provision for computation of capital gain in case of slump sale.
50C	It provides for a special provision for computation of capital gain in case of real estate transactions.
50CA	It provides for special provision for full value of consideration for transfer of share other than quoted share.
50D	It states that where consideration is not ascertainable or cannot be determined, the <i>fair market value</i> shall be deemed to be full value of consideration.
51	It provides for ascertainment of cost of acquisition where advance or other money received is retained or forfeited by the assessee.
54	It provides for exemption of capital gain in respect of profit on sale house of property used for residence.
54B	It provides for exemption of capital gain in respect of transfer of land used for agricultural purposes.
54D	It provides for exemption of capital gain in respect of compulsory acquisition of lands and buildings forming part of an industrial undertaking.
54EA	It provides for exemption of capital gain in respect of long-term capital asset transferred before 1.4.2000 if the part or whole of the net consideration price is invested in specified securities. (Not relevant now)
54EB	It provides for exemption of capital gains in respect of long-term capital asset transferred before 1.4.2000 in the capital gain is invested in the specified assets. (Not relevant now)
54EC	It provides for exemption of capital gain in respect of transfer of long-term capital asset if such capital gain is invested in specified bonds.
54ED	It provides for exemption of capital gain in respect of transfer of certain listed securities or units if such capital gain is invested in equity share of eligible issue of capital.
54EE	It provides for exemption of capital gain in respect of transfer of any long-term capital asset if such capital gain is invested in units of a specified fund.
54F	It provides for exemption of capital gain in respect of transfer of any long-term capital asset other than a residential property if such capital gain is invested in a residential house.

<i>Sections</i>	<i>Contents of the section</i>
54G	It provides for exemption of capital gain in respect of transfer of certain capital assets in pursuance of shifting of industrial undertaking from urban area if such capital gain is invested/ expenditure incurred in a certain manner.
54GA	It provides for exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area to any Special Economic Zone.
54GB	It provides for exemption of capital gain on transfer of residential property if invested in a new manufacturing SME company.
54H	It provides for extension of time limit for acquiring new asset or depositing or investing amount of capital gain, in case of compulsory acquisition.
55	It defines cost of improvement, cost of acquisition in relation to capital assets.
55A	It provides for reference to a Valuation Officer for ascertaining the fair market value of capital asset in certain cases.
70	It provides for intra-head set off of losses.
71	It provides for inter-head set off of losses.
74	It provides for carry forward and set off of capital losses.
94(7)	Measures to curb creation of losses via dividend stripping.
94(8)	Measures to curb creation of losses via bonus stripping.
111A	It provides for special rate of tax in case of short-term capital gain on equity shares and units of equity oriented fund.
112	It provides for special rate of tax in case of long-term capital gain.
112A	Taxation of long-term capital gains on sale of listed equity shares or units of equity oriented fund or units of business trust (w.e.f. A.Y. 2019-20)
115AB	It provides for special rate if tax in case of long-term capital arising from the transfer of units purchased in foreign currency by Overseas Financial Organisation (Offshore Fund).
115AC	It provides for special rate of tax in case of long-term capital gain arising to a non-resident from the transfer of bonds or GDRs of an Indian company purchased in foreign currency under a notified scheme.
115ACA	It provides for special rate of tax in case of long-term capital gain arising from the transfer GDRs of specified Indian Companies issued as per Employees' Stock Option Scheme (ESOS).
115AD	It provides for special rate of tax in case of income of foreign institutional investors from securities or capital gains arising from their transfer.
115D	It provides for special rate of tax in case of short-term/long-term capital gain arising to foreign institutional investors from the transfer of securities other than units.
115E	It provides for special rate of tax in case of long-term capital gain arising to a non-resident Indian from the transfer of specified assets as well as other assets.
115F	It provides for exemption of capital gains on transfer of foreign exchange assets if the net sale consideration is invested in specified assets.
115VN	It provides for chargeable capital gains on transfer of tonnage tax assets.

# 2

## Chargeability of Capital Gains

*[Section 45(1) read with sections 2(14) and 2(47)]*

### Synopsis

Relevant statutory provisions.....	7
Section 45(1).....	7
Section 2(14).....	7
2.1 Basis of Charge [Section 45(1)].....	10
2.2 There must be a capital asset .....	10
2.2a What is a capital asset [Section 2(14)] .....	10
(1) Property of any kind .....	13
(2) Securities held by the FII to be treated as capital asset.....	14
(3) Property held to be capital assets.....	15
(4) Property held not to be capital assets.....	17
(5) Property transferred must be capital asset on the date of transfer .....	17
(6) Held by an assessee .....	18
(7) Capital gain on asset transferred to the spouse without adequate consideration .....	19
(8) Exclusions from the definition of capital asset.....	19
(i) Stock-in-trade.....	19
(ii) Capital gain v Business income .....	19
2.3 Income from transfer of Unlisted Shares shall be deemed as “Capital Gain”, irrespective of holding period .....	30
(i) CBDT Order dated 2.5.2016.....	30
(ii) Personal effects.....	36
(iii) Agricultural land in India .....	37
2.4 Residential status and capital gain .....	46

### Relevant statutory provisions

**1. 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 sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H, 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. Section 2(14):** “Capital asset” means—

- (a) property of any kind held by an assessee, whether or not connected with his business or profession;
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992,



**The following sub-clause (b) has been substituted by Finance Act, 2025 (w.e.f. 1-4-2026):**

"(b) any securities held by—

- (i) a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992; or
- (ii) an investment fund specified in clause (a) of *Explanation 1* to section 115UB which has invested such securities in accordance with the provisions of the regulations made under the Securities and Exchange Board of India Act, 1992 or under the International Financial Services Centres Authority Act, 2019;"

<sup>1</sup>[(c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply <sup>2</sup>[on account of the applicability of the fourth and fifth provisos thereof];]

but does not include—

- (i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession;
- (ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—
  - (a) jewellery;
  - (b) archaeological collections;
  - (c) drawings;
  - (d) paintings;
  - (e) sculptures; or
  - (f) any work of art.

*Explanation.*—For the purposes of this sub-clause, "jewellery" includes—

- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;

(iii) agricultural land in India, not being land situate—

<sup>1</sup> Ins. by Finance Act, 2021 (w.e.f. 1-4-2021).

<sup>2</sup> Words "on account of the applicability of the fourth and fifth provisos thereof" shall be omitted by Finance Act, 2025 (w.e.f. 1-4-2026).

- (a) in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand  
or

<sup>1</sup>[(b) in any area within the distance, measured aurally,—

- (I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten thousand but not exceeding one lakh; or
- (II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than one lakh but not exceeding ten lakh; or
- (III) not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to in item (a) and which has a population of more than ten lakh.

**Explanation.**—For the purposes of this sub-clause, “population” means the population according to the last preceding census of which the relevant figures have been published before the first day of the previous year;]

- (iv) 6½ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- (v) Special Bearer Bonds, 1991, issued by the Central Government;
- (vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

**Explanation 1.**—For the removal of doubts, it is hereby clarified that “property” includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever;

**Explanation 2.**—For the purposes of this clause—

- (a) the expression “Foreign Institutional Investor” shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;
- (b) the expression “securities” shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

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<sup>1</sup> Substituted by the Finance Act, 2013, w.e.f. 1.4.2014.

## 2.1 Basis of Charge [Section 45(1)]

Any profits or gains arising from the transfer of a capital asset effected in the previous year shall 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 unless such capital gain is exempt under section/s 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA or 54GB.

The following are the essential conditions for taxing capital gains:

- (A) there must be a capital asset which is owned/held by the assessee;
- (B) the capital asset must have been transferred during the previous year;
- (C) there must be profits or gains on such transfer, which will be known as capital gain;
- (D) such capital gain should not be exempt under section 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA or 54GB.

If the above conditions are satisfied, the capital gain shall arise and taxed in *the previous year in which the asset is transferred*, subject to certain exceptions mentioned in para 4.7.

1. Section 45(1A) provides that in case of profit or gain from insurance claim, due to damage or destruction of property, there will be capital gain, although no asset has been actually transferred in such case. Refer Chapter 6.
2. Similarly, where a specified person (i.e. partner of a firm or a member of AOP/BOI) **receives** any stock in trade or a capital asset from the specified entity (i.e from a firm or AOP or BOI) in connection with dissolution or reconstitution of the specified entity, the profit or gain from the receipt of stock in trade or capital asset in connection with the dissolution /reconstitution will be treated as deemed transfer and liable to tax in the hands of the specified entity as business income in case of stock in trade and capital gain in case of capital asset. Further in the case of reconstitution of a specified entity, section 45(4) may also get attracted in the hands of the specified entity. For details see Chapter 9.

## 2.2 There must be a capital asset

Capital gain arises only when a capital asset is transferred. If the asset transferred is not a capital asset, it will not be covered under the head “Capital Gains”.

### 2.2a What is a capital asset [Section 2(14)]

“Capital asset” means—

- (a) property of any kind held by an assessee, whether or not connected with his business or profession;
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (inserted by the Finance (No. 2) Act, 2014, w.e.f. A.Y. 2015-16),

**Amendment made by the Finance Act, 2025 w.e.f. A.Y. 2026-27**

**Securities held by Alternative Investment Fund of Category I or Category II also to be treated as Capital Asset**

#### (A) Reasons for making Amendment

W.e.f. A.Y. 2015-16, the securities held by a Foreign Institutional Investor (FII) which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 were also defined as capital assets and the same were excluded from stock-in-trade, even if the FII were regularly trading in these securities.



There is some uncertainty in characterization of income arising from transaction in securities as to whether it is capital gain or business income **for investment funds** (specified in clause (a) of Explanation 1 to section 115UB).

**(B) Amendment made**

With a view of providing certainty in respect of the above, the Act has substituted the existing sub-clause (b) of section 2(14) by the following:

"(b) any securities held by—

- (i) a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992; or
  - (ii) an investment fund specified in clause (a) of *Explanation 1* to section 115UB which has invested such securities in accordance with the provisions of the regulations made under the Securities and Exchange Board of India Act, 1992 or under the International Financial Services Centres Authority Act, 2019;"
- (c) any unit linked insurance policy to which exemption under section 10(10D) does not apply on account of the applicability of the <sup>1</sup>fourth and fifth proviso thereof. **(Inserted by the Finance Act, 2021 W.e.f A.Y. 2021-2022)**

**Amendment made by the Finance Act, 2025 w.e.f. A.Y. 2026-27**

**Income from redemption of Unit Linked Policy**

**(A) Reasons for making Amendments**

It is noted that ULIP is a capital asset only when the exemption under section 10(10D) does not apply on such policies on account of the applicability of the 4th and 5th provisos and accordingly, the amount received from redemption is taxable as capital gains in case of only such ULIPs.

As per 4th and 5th provisos, if premium payable in any previous year for one or more ULIPs exceeds ₹2,50,000 in any previous year, the amount received on redemption shall be taxable under capital gain by treating the ULIP as capital asset.

Further, as provided in clauses (a) to (d) of section 10(10D), any sum received under an insurance policy issued on or after 1.4.2021 in respect of which the premium payable for any of the years during the terms of the policy exceeds 10% of the actual capital sum assured read with the provisos to section 10(10D) is not eligible for exemption under section 10(10D) and hence taxable on redemption. Such sub-clauses are applicable to unit-linked insurance policy as well. However, it was not clear whether such amount received on redemption in case of such ULIP, where the premium payable for any of the years during the terms of the policy exceeds 10% of the actual capital sum assured was taxable as capital gain or income from other sources.

**(B) Amendments made**

<sup>1</sup> Fourth and fifth proviso of section 10(10D) relate to payment or aggregate payments of premium exceeding Rs. 2,50,000 in case of ULIP issued on or after 1-2-2021.

The Act has rationalised the provisions for unit-linked insurance policies, so as to provide that,—

ULIPs to which exemption under section 10(10D) does not apply, is a capital asset as per section 2(14) **in all cases** and hence in clause (c) of section 2(14) the words “on account of applicability of the fourth and fifth provisos thereof” shall be omitted w.e.f. 1.4.2026;

but does not include—

- (i) any stock-in-trade [other than the securities referred to in sub-clause (b) above], consumable stores or raw materials held for the purposes of his business or profession;
- (ii) *personal effects*, that is to say, movable property (including wearing apparel and furniture), held for personal use by the assessee or any member of his family dependent on him. However, the following assets shall not be treated as personal effects though these assets are moveable and may be held for personal use:
  - (a) jewellery;
  - (b) archaeological collections;
  - (c) drawings;
  - (d) paintings;
  - (e) sculptures; or
  - (f) any work of art.

1. The house property, in which the assessee lives, is though intimately used by him for personal purposes, but it will not be a personal effect as it is an immovable property.
2. Personal effects are no doubt “assets” but they are not called capital assets for capital gain purposes. Similarly, stock in trade, etc., are assets but these are not capital assets for capital gain purposes.

- (iii) *agricultural land in India*, which is not an urban agricultural land. In other words, it must be a rural agricultural land.
- (iv) 6½% Gold Bonds, 1977, 7 per cent Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government.
- (v) Special Bearer Bonds, 1991, issued by the Central Government.
- (vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999, or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

The items covered under clauses (iv) and (v) are only of academic significance, as these instruments do not exist now.

*Explanation 1.*—For the removal of doubts, it is hereby clarified that “property” includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever;

*Explanation 2.*—For the purposes of this clause—

- (a) the expression “Foreign Institutional Investor” shall have the meaning assigned to it in Explanation to section 115AD clause (a);



- (b) the expression “securities” shall have the meaning assigned to it in section 2(h) of the Securities Contracts (Regulation) Act, 1956;

As per *Explanation 1* to Section 2(14), right to purchase shares would fall within purview of definition of capital assets and consideration received upon termination of call option agreement resulting into relinquishment of right to purchase shares would amount to transfer under section 2(47) exigible to tax under section 45. It was held that view taken by Assessing Officer considering amendment to section 2(14), was one of possible view and could not be said that same was prejudicial to interest of revenue. [*Sindya Securities & Investments (P.) Ltd. v ACIT*, (2023) 157 taxmann.com 591 (Chennai-Trib.)]

### (1) Property of any kind

As can be seen, the definition of capital asset is very sweeping nature and covers the *property of any kind* barring the exceptions mentioned above.

Property of any kind used in section 2(14) are of widest amplitude and include not only tangible assets but also intangible rights. It may be either corporeal or incorporeal. Right to manage one's business is not only a property but is also an asset which is in the nature of fixed asset. [*CIT v National Insurance Co. Ltd.* (1978) 113 ITR 37 (Cal)]

Corporeal means of a material nature, *i.e.*, physical things like land, building, jewellery, shares, cars, scooter, etc. Not only these assets but non-corporeal assets like route permits for buses, tenancy rights, lease hold rights, copyrights, etc., will also be covered under the definition of capital assets.

In *Cooper (RC) v Union of India* AIR 1970 SC 564, the Supreme Court observed that in its normal connotation property means the highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy; it includes ownership, estates and interests in corporeal things, and also rights personem capable of transfer or transmission, such as debts, and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being insured.

In *A. Ahmed G H Ariff v CWT* (1970) 76 ITR 471, the Supreme Court observed that property is a term of widest import subject to any limitation which the context may require. It signifies every possible interest which a person can hold and enjoy.

The word property does not mean merely physical property but also means the right, title or interest in it. In the case of a mortgage or lease, different persons will have different rights in the same property. If a person is an absolute owner of the property, then it can be said that he has all the rights and interests in that property. If the property is mortgaged or leased, then the owner of the property would possess only those rights which are not transferred to the mortgagee or the lessee, as the case may be. When a person who has mortgaged the property transfers it to another person, what he transfers is only those rights which he possesses. The transferee would get the property subject to the rights created by the previous owner in favour of others. [*CIT v Daksha Ramanlal* (1992) 197 ITR 123 (Guj)]

*Right to obtain conveyance of immovable property is a "property"*: Generally, under the agreement to purchase immovable property, the buyer has the right to have the property conveyed to him. Under the law, he is entitled to exercise that right not only against his vendor but also against the transferee with notice or a gratuitous transferee. Such right could

also be assigned. What is acquired under such agreement is, therefore, "property" within the meaning of the Act. [*CIT v Vijay Flexible Containers* (1990) 186 ITR 693 (Bom)]

The right to obtain conveyance of an immovable property was held to be a capital asset. [*CIT v Tata Services Ltd.* (1980) 122 ITR 594 (Bom)]

Right to claim specific performance of an agreement was held to be a capital asset. [*K.R. Srinath v Asst. CIT* (2004) 268 ITR 436 (Mad)]

*Right in or in relation an Indian company, etc., is also a property* [Explanation to section 2(14)]: The Supreme Court in the case of *Vodafone International Holdings B.V. v Union of India* (2012) 204 Taxman 408 (SC) held that transfer of shares of foreign company which has an Indian company as its subsidiary to another foreign company does not amount to transfer of any capital asset situated in India within the meaning of 4th limb of section 9(1)(i). Further legal fiction in section 9(1)(i) does not mean that if a foreign company has a subsidiary in India, shares of foreign company are deemed to be situated in India. Hence, section 9 covers only income arising from a transfer of a capital asset situated in India and it does not purport to cover income arising from indirect transfer of capital asset in India.

To nullify the above judgement, an *Explanation* was inserted by the Finance Act, 2012, w.r.e.f. 1.4.1962 which clarifies as under:

For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Where assessee, a partnership firm of chartered accountants, transferred its client relationship and goodwill pertaining to its business of internal audit and risk consultancy (IARC) practice to an international firm for consideration of certain amount and invested said consideration in specified bond and claimed deduction under section 54EC, it was held that client relationships of assessee which included trade relationships, trade connections, referrals and future opportunities cultivated over years including client contacts and/or contracts entered into with any other person in relation to IARC practice and goodwill pertaining to IARC practice were property of assessee firm which was connected with profession of assessee and it would fall into definition of capital asset as per section 2(14). Thus assessee had transferred capital asset and invested its capital gains from sale of capital asset in specified bonds, assessee would be eligible to exemption under section 54EC. [*J.C. Bhalla & Co. v Additional CIT* (2019) 106 taxmann.com 13 (Delhi - Trib.): (2019) 177 ITD 1 (Delhi - Trib.)]

## **(2) Securities held by the FII to be treated as capital asset**

As per amendment made by the Finance (No. 2) Act, 2014, securities held by the FII will now be treated as capital asset and the transfer of such securities would always result into capital gain whether such FII has any permanent establishment in India or not. Under no circumstances, such transfer of securities held by FII can now be treated as business income.

Further, Explanation 2 was inserted to provide as under:

For the purposes of this clause—

- (a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the *Explanation* to section 115AD;
- (b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

**Note.**—It may be noted that the Finance Act, 2015 has inserted clause (iid) in Explanation 1 to section 115JB to provide that there will be no MAT liability on the capital gain arising on transactions in securities in the above case.

### Amendment made by the Finance Act, 2025 w.e.f. A.Y. 2026-27

W.e.f. A.Y. 2026-27, securities held by—

an investment fund specified in clause (a) of *Explanation 1* to section 115UB which has invested such securities in accordance with the provisions of the regulations made under the Securities and Exchange Board of India Act, 1992 or under the International Financial Services Centres Authority Act, 2019; shall also to be treated as Capital Asset.

**1. Meaning of "Foreign Institutional Investor":** The expression "Foreign Institutional Investor" means such investor as the Central Government may, by notification in the Official Gazette, specify in this behalf

#### 2. Meaning of securities:

As per section 2(h) of Securities Contracts (Regulation) Act, 1956, unless the context otherwise requires, "securities" include—

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ia) derivative;
- (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (id) units or any other such instrument issued to the investors under any mutual fund scheme;
- (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;
- (ii) Government securities;
- (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interest in securities.

### (3) Property held to be capital assets

- (i) Leasehold rights in mines [*Rajendra Mining Syndicate v CIT* (1961) 43 ITR 460 (AP)]
- (ii) Right to subscribe for shares in a company [*Hari Bros. P. Ltd. v ITO* (1964) 52 ITR 399 (Punj)]
- (iii) Route permits [*S. Vaidyanathaswami v CIT* (1979) 19 ITR 369 (Mad)]
- (iv) A right to obtain conveyance of an immovable property [*CIT v Tata Services Ltd.* (1980) 122 ITR 594 (Bom)]
- (v) Right of tenancy under a Tenancy Act [*A. Gasper v CIT* (1979) 117 ITR 581, 588 (Cal)]
- (vi) Foreign currency held by an Indian company in a foreign bank [*Kirloskar Asea Ltd. v CIT* (1979) 117 ITR 82 (Karn)]
- (vii) Old and unyielding rubber trees [*Gokul Rubber and Tea plantations Ltd. v CIT* (1988) 172 ITR 197 (Ker)]
- (viii) Precious stones [*Vimal Chand Hirawat v CIT* (1994) 208 ITR 839]



- (ix) Business undertaking [*Cooper (RC) v Union of India* AIR 1970 SC 564]
- (x) Goodwill of a Business [*Jogta Coal Co. v CIT* (1959) 36 ITR 521]
- (xi) Lease hold and tenancy rights [*Traders and Miners Ltd. v CIT* (1955) 27 ITR 341 (Pat)]
- (xii) Interest in partnership [*Rangaswami Naidu (V) v CIT* (1957) 31 ITR 711 (Mad)]
- (xiii) Licenses [*Seshasayee Brothers Ltd. v CIT* (1961) 42 ITR 568 (Mad)]
- (xiv) National Saving Certificates are no doubt capital assets but they are not transferable except through gifts though they can be pledged. The question of profit or loss falling under the head capital gains does not arise on encashment of the certificate because of the non-transferability. Encashment does not amount to transfer within the meaning of transfer. [*Rugmani Varma v CIT* (1996) 222 ITR 357 (Mad)]
- (xv) Units of U.T.I. and other Mutual Funds are capital assets
- (xvi) Fixed deposits in banks are capital assets. But the question would arise whether at the time of ultimate realisation of the deposit from the bank by the holder there is any transfer involved giving rise to capital gains.
- (xvii) The management right of a business. [*CIT v New India Assurance Co. Ltd.* (1980) 122 ITR 633 (Bom)]
- (xix) *Right debentures issued on basis of shares held as stock-in-trade are capital assets:* Where rights debentures were issued to the assessee as the assessee was holding shares of a company and the shares were held as stock-in-trade, it was held that the debentures shall be capital assets and any loss arising from the transfer of such debentures will be treated as capital loss. [*CIT v Motichand Construction Co. Pvt. Ltd.* (2003) 261 ITR 71 (Bom)]
- (xx) Profit on sale of land (though not registered in his name) received by the assessee from the owner of land in pursuance of an agreement to develop his land and for spending certain amount for developing it for the owner was taxable as Capital Gain. [*CIT v S. Rajamannar* (2010) 40 DTR 282 (Kar)]
- (xxi) Where assessee gave his agricultural land on lease, compensation received by him on account of cutting and removing trees from said land was to be brought to tax under head "Capital Gains". [*ITO, Rampur Bushahr v Lalish Chander Negi* (2011) 16 taxmann.com 412 (Chd)]
- (xxii) Standing trees if they are cut and sold constitute capital assets giving rise to capital gains. [*Prasad Mathew v DCIT* (2011) 130 ITD 11 (Cochin)]
- (xxiii) All items of intangible assets like goodwill, patents, trademarks, brand name, copyrights in journal and publications, etc. [*CIT v Mediworld Publication Pvt. Ltd.* (2011) 337 ITR 178 (Del)]
- (xxiv) Loan given by assessee to its subsidiary company would be covered by meaning of 'capital asset' under section 2(14) and where such debt was sold and the assessee claimed difference in amount invested and consideration received as short-term capital loss, it was held that such short term loss shall be allowed. [*CIT v Siemens Nixdorf Information Systemse GmbH* (2020) 114 taxmann.com 531 (Bom)]
- (xxv) Where detachable warrant had an existence on its own along with debenture purchased by assessee, a part of cost was attributable to warrant and realisation thereof would be a sale consideration arising out of transfer of capital asset and as





such, liable to capital gain [*Deepak Nitrite Ltd. v Deputy Commissioner of Income-tax* (2023) 148 taxmann.com 450 (Gujarat)/(2023) 452 ITR 10 (Guj)]

- (xxvi) Assessee, a foreign company lent certain amount to its subsidiary company SNISL and as SNISL ran into financial trouble assessee sold debt and claimed difference in amount invested and consideration received as short-term capital loss. Assessing Officer disallowed same on ground that amount lent by assessee to its subsidiary company was not a capital asset under section 2(14) and also no transfer in terms of section 2(47) took place on assignment of a loss. High Court by impugned order held that loan given by assessee to SNISL would be covered by meaning of capital asset under section 2(14). SLP against impugned order of High Court was to be dismissed. [*CIT(IT) v Siemens Nixdorf Information Systems GmbH*, (2023) 150 taxmann.com 383 (SC)]

#### (4) Property held not to be capital assets

**(i) Right to receive damages for breach of contract:** Where in a breach of contract, the assessee gives up claim to specific performance of the contract by the defaulting party, but retains right to receive damages, it was held that the right to receive damages was non-transferable under section 6(e) of the Transfer of Property Act and, therefore, the damages received would not be chargeable to tax as capital gains. [*CIT v Dalmia (J.)* (1984) 149 ITR 215 (Del). **See also** *CIT v Abbasbhoy A. Dehgamwalla* (1992) 195 ITR 28 (Bom)]

**(ii) Liquidated damages received on delay in supply of capital asset:** Where the supplier failed to supply the capital asset being plant and machinery within scheduled time and the assessee received liquidated damages, it was held that such damages received shall be a capital receipt. [*CIT v Saurashtra Cement Ltd.* (2010) 325 ITR 422 (SC)]

Similarly, if a builder or developer of a property under a development agreement delays the possession of the property and liquidated damages as per the agreement were paid by the builder or the developer, the same shall also be treated as capital receipt not taxable.

**(iii) No capital gain on carbon credits:** Carbon credits are entitlements which are transferrable but there is no capital gain on transfer of such carbon credit as these are self-generated. [*CIT v My Home Power Ltd.* (2014) 365 ITR 82 (AP)]. However, in view of insertion of section 115BBG by the Finance Act, 2017, w.e.f. A.Y. 2018-19 income from transfer of carbon credit will now be taxable at the special rate of 10%.

**(iv) Illegally encroached property:** Property illegally encroached by assessee would not be considered as “Capital asset” under section 2(14) and, consequently, gain arising from transfer of such property could not be assessed as capital gain but as income from other sources. [*ITO v Bhagwan T. Fatnani* (2015) 58 taxmann.com 227 (Mum) (Trib)]

Therefore, all assets like goodwill, leasehold rights, manufacturing licence, route permits, and shares of companies, residential or commercial houses, patents and trade marks, jewellery, land are called capital assets. However, assets meant purely for personal use and which are movable like household utensils, appliances, furniture, carpets, paintings, TV set, refrigerators, musical instruments for personal use, vehicles like cycle, scooter, car only for personal use are not to be treated as capital assets as these will be covered under personal effects.

**(5) Property transferred must be capital asset on the date of transfer**

To attract charge of capital gain, the property transferred must be a capital asset on the date of transfer and it is not necessary that it should have been a capital asset also on the date of the acquisition by the assessee. [*Nachiappan (M.) v CIT* (1998) 230 ITR 98 (Mad). **Also see** *Alexander George v CIT* (2003) 262 ITR 367 (Ker) and *Arun Sunny v CIT* (2009) 184 Taxman 498 (Ker)] In view that if the concerned asset does not fall within the definition of capital asset on the date of transfer, no capital gain can be levied. [*CIT v Jitender Ram Mittal* (1980) 162 ITR 371 (Guj)]

The property transferred must be a capital asset on the date of transfer and it is not necessary that it should have been capital asset also on date of its acquisition by the assessee. Further cost of acquisition of such property should be taken as fair market value as on 1.4.1981 (now 1.4.2001) even if such property was not notified as capital asset before 1.4.1981 (now 1.4.2001). [*Arun Sunny v Dy CIT* (2009) 184 Taxman 498 (Ker)]

**(6) Held by an assessee**

(i) The definition of capital asset refers to property of any kind “held” by an assessee in contra-diction to be word “owner” or “owned”. [*Madathil Brothers v DCIT* (2008) 301 ITR 345 (Mad)] This situation applies to all assets including immovable property. Therefore, there can be a case where the assessee is only the registered title owner of the property while its possession is with other person or *vice versa*.

**Examples**

(1) Long-term lease.

(2) Possession of property handed over against payments or promise to make payment but registration remain in the name of transferor.

(3) There could be a situation where a property is settled upon one person to be enjoyed during his life time while thereafter it is settled upon another person to be enjoyed absolutely. In this case, the person upon whom it is settled for enjoyment during his life time is called “Life Tenant” and his interest in the property is called “Life Interest”, while the person upon whom it is settled after the life time of the first named person is called “Remainder Man” and his interest in the property is called “Remainder Man’s Interest”. Both these types of interest in the property are falling short of entire interest in the property and they are fractional interest in the property and it is well known species of property. [*CWT v K. Ramachandra Chettiar* (1983) 141 ITR 771 (Mad)]. If such a property is sold during the life time of the life tenant, it can be sold only by both the owners and separate amount of consideration will be payable for each person for his respective rights over the property. In this case, if the life tenant surrenders or relinquishes his rights in favour of the Remainder Man either with or without consideration, then the Remainder man’s interest over the property will become absolute.

(ii) The words held by the assessee in section 2(14) include physical, actual, constructive and also symbolic possession of property of any kind. [*CIT v All India Tea and Trading Co. Ltd.* (1979) 117 ITR 525 (Cal)]

(iii) 'G' and one 'M' who was father of assessee had entered into an agreement to buy certain property in auction by contributing auction amount in equal proportion - Bid given by 'G' was accepted and property was registered in name of 'G' only but as per agreement 'M' was 50% owner of said property - Subsequently, 'G' and 'M' died and upon their deaths,



entire property was sold - Sale deed was executed in name of legal heirs of 'G' who recognised assessee as co-owner of half portion of property and, accordingly, they paid amount 50% of sale consideration to assessee - Assessee filed his return and declared said amount under head "long-term capital gains" - Assessing Officer held that mere agreement entered into between 'M' and 'G' would not confer legal title of ownership of asset and, thus, assessed amount received by assessee as income from other sources. It was held that even if property in question had not been registered in name of father of assessee, but because of agreement, ownership rights to extent of one-half of property vested with father of assessee and his legal heir, *i.e.*, assessee inasmuch as he had right to possession and enjoyment of property and such rights were in nature of capital assets for purposes of section 45 and therefore, consideration received by assessee for transfer of his rights in property was liable to be treated as long-term capital gains. [*ITO v Balram Bhasim* (2006) 154 Taxman (118) (Del)(Tri)]

(iv) However, where the assessee holding GPA for certain persons sold certain immovable property belonging to them during relevant assessment year and he did not offer capital gains tax on said transaction contending that he had executed sale deed as a GPA holder only, and that he had not received any amount from transaction, it was held that since assessee was not owner of property, capital gain could not be brought to tax in his hand. [*Veerannagiri Gopal Reddy v ITO* (2019) 110 taxmann.com 117 (Hyderabad - Trib.)/ (2019) 72 ITR(T) 578 (Hyderabad - Trib.)/(2019) 179 ITD 305 (Hyderabad - Trib.)]

#### **(7) Capital gain on asset transferred to the spouse without adequate consideration**

Where a property has been transferred to the spouse under section 64(1), any capital gain arising to the spouse from such asset would be includible in the total income of the transferor. [*Sevantilal Maneklal Sheth v CIT* (1968) 68 ITR 503 (SC)] In this case, even though the property is not held by the assessee, still there shall be a capital gain in the hands of the transferor.

#### **(8) Exclusions from the definition of capital asset**

Following are excluded from the definition of capital asset

##### **(i) Stock-in-trade**

This includes all those goods or commodities which are dealt with, in the sense of buying and selling in the course of business activity, but it cannot be said to include a commodity which is acquired for the purpose of being let to hire. [*H. Mohmed & Co v CIT* (1977) 107 ITR 637 (Guj)]

##### **(ii) Capital gain v Business income**

Whether a particular asset is stock-in-trade or capital asset does not depend upon the nature of the article, but the manner in which it is held. The same item may be stock-in-trade in the hands of the assessee who deals in that item. But it will be capital asset in the case of an assessee who uses it for earning income or holds as an investment.

For example, a dealer in real estate holds a piece of land or house property as stock-in-trade. But it will be a capital asset in the hands of a person who holds it as an investment and derives income from leasing or renting of the property.

Even stock-in-trade may become capital asset in certain circumstances and *vice versa*. If an assessee who deals in certain goods or commodities as trader, on closure of the business, retains the existing stocks as investment, the stocks will become capital asset in his hands

from the time of closure, notwithstanding that they were stock-in-trade earlier in his hands. Even in the course of a business, an assessee may try to transfer some of the stock-in-trade from his trading activity and decide to hold them as investment. The stocks so held would assume the character of capital asset from the date of such holding. This may usually happen in the case of dealer in shares and real estate. But in all these cases, the finding will be one of fact depending upon the intention and conduct of the assessee supported by direct and circumstantial evidence. Similarly, when a capital asset is converted into stock-in-trade, the same will no longer be capital asset. However, this situation is covered by section 45(2) and the same is discussed in detail later under Chapter 7.

***Investment in land or sale of land after plotting — whether business income or capital gain***

**Judicial decisions**

Where assessee purchased a rubber estate and converted said land by cutting trees into housing plots, and sold same to several people for construction of villas, said land had ceased to be an agricultural land, and, consequently, assessee could not claim exemption from levy of capital gains. [*Synthite Industrial Ltd. v CIT* (2017) 86 taxmann.com 138 (Ker)]

Where assessee purchased land for agricultural operations but on account of getting good price said land was sold and higher volume of agricultural land was purchased subsequently at different places, assessee could not be regarded as trader of land and, thus, profit arising on sale of land was not taxable as business income. [*Shailesh Gangaram Ramani v ITO, Ward-2, Bhuj* (2018) 89 taxmann.com 76 (Rajkot - Trib)]

Normally, the purchase of land represents investment of money in land. [*CIT v Jawahar Development Association* (1981) 127 ITR 431 (MP)]

A transaction of purchase and sale of land cannot be assumed, without more, to be a venture in the nature of a trade.

It is well settled that the mere fact that property was purchased with the intention of selling it at a profit is not conclusive on the question whether an isolated transaction of purchase and resale is an adventure in the nature of trade. If there are relevant facts beside the fact of purchase and resale, it is open to come to the conclusion that the transaction is one in the nature of trade. [*Gurdial Naraindas & Co. v CIT* (1963) 50 ITR 633 (Bom)]

The activity of an assessee in dividing the land into plots and not selling it as a single unit as he purchased goes to establish that he was carrying on business in real property and it is a business venture. [*Raja J. Rameshwar Rao v CIT* (1961) 42 ITR 179 (SC)]

Ordinarily, where a person acquired land with a view to selling it later after developing it and actually divided the land into plots and sold the same in parcels, the activity could only be described as a business adventure. Generally speaking, the original intention of the party in purchasing the property, the magnitude of the transaction of purchase, the nature of the property, the length of its ownership and holding, the conduct and subsequent dealings of the assessee in respect of the property, the manner of its disposal and the frequency and multiplicity of transactions afforded valuable guides in determining whether the assessee was carrying on a trading activity and whether a particular transaction should be stamped with the character of a trading adventure. [*CIT v Trivedi (V.A.)* (1988) 172 ITR 95 (Bom)]

On some different facts and circumstances, it was held that profit on the sale of land after plotting it out to secure better price cannot be taxed as profit from an adventure in the nature



of trade. It shall be taxed under the head "Capital Gains". [*CIT v Shashi Kumar Agrawal* (2003) 131 Taxman 823 (All)]

Assessee had purchased a plot of land in 1958. In view of the Urban Land (Ceiling and Regulation) Act, 1976, she applied for construction of group housing on the excess land and sold the land to a developer and builder. The Assessing Officer held that the instalments received from the builder is business income. The Tribunal held that it is not business income as there was no adventure in the nature of trade. On reference, the Delhi High Court upheld the decision of the Tribunal and held as under:

"The plot was purchased in the year 1958 and after the operation of law, namely, the Urban Land (Ceiling and Regulation) Act, 1976, it was not possible for the assessee to retain the land. It was very clear that on the assessee's part there was only an intention to transfer the land and not the portion that may be constructed by the builder on a future date. Clause 3 of the agreement merely provided the mode of payment. On the facts and in the circumstances of the case, the Tribunal was right in holding that there was no adventure in the nature of trade and thereby deleting business income of ₹11,87,387 from the income of the assessee." [*CIT v Radha Bai* (2005) 272 ITR 264 (Del). Also see *CIT v Sohan Khan & Mohan Khan* (2008) 304 ITR 194 (Raj)]

The assessee, after dividing the land into plots, sold the land situated in a village which was beyond 8 kms, of the municipal limit. Such land was sold pursuant to an agreement to sell executed earlier. It was held that land in question was rural agricultural not exigible to capital gain. [*CIT v Sanjeeda Begum* (2006) 154 Taxman 346 (All)]

Where some land, which was contributed by partners as capital and used as brick field and later given for development, upholding the finding of the Tribunal, it was held that the firm did not acquire the land, with a view to sell it at a profit. It was treated in the accounts as a fixed asset given to other for outright development without the assessee itself plotting it out so that it had continued to be a capital asset. There was no scope, it was found, for holding it either as business or even an adventure in the nature of trade. [*CIT v Mohakampur Ice & Cold Storage* (2006) 281 ITR 354 (All)]

What was necessary was to find out the intention of the assessee at the time of the purchase of land. Where the land was never purchased by the assessee. She acquired the same on the basis of a will on the death of her husband. She sold the same in parcels because the huge area could not be sold in one transaction. Such an activity could not amount to trade or business within the meaning of the Act. [*CIT v Sushila Devi Jain* (2003) 259 ITR 671 (P&H)]

Selling of own land after plotting it out in order to secure a better price is not in the nature of trade or business, more so when the land was gifted to the assessee. There is nothing on record to show that the land was purchased for the purpose of selling into plots. [*CIT v Suresh Chand Goyal* (2007) 209 CTR 410 (MP)]

Where land purchased by assessee was registered in land revenue records as agricultural land, and it was being used by assessee as such and later on, it was sold in small plots to different purchasers and further no development of land was made by assessee prior to its sale, it was held that assessee's activity could not be termed as an adventure in nature of trade and it shall be liable to capital gain. [*CIT v Harjit Singh Sangha* (2013) 217 Taxman 201 (P&H)(Mag)]