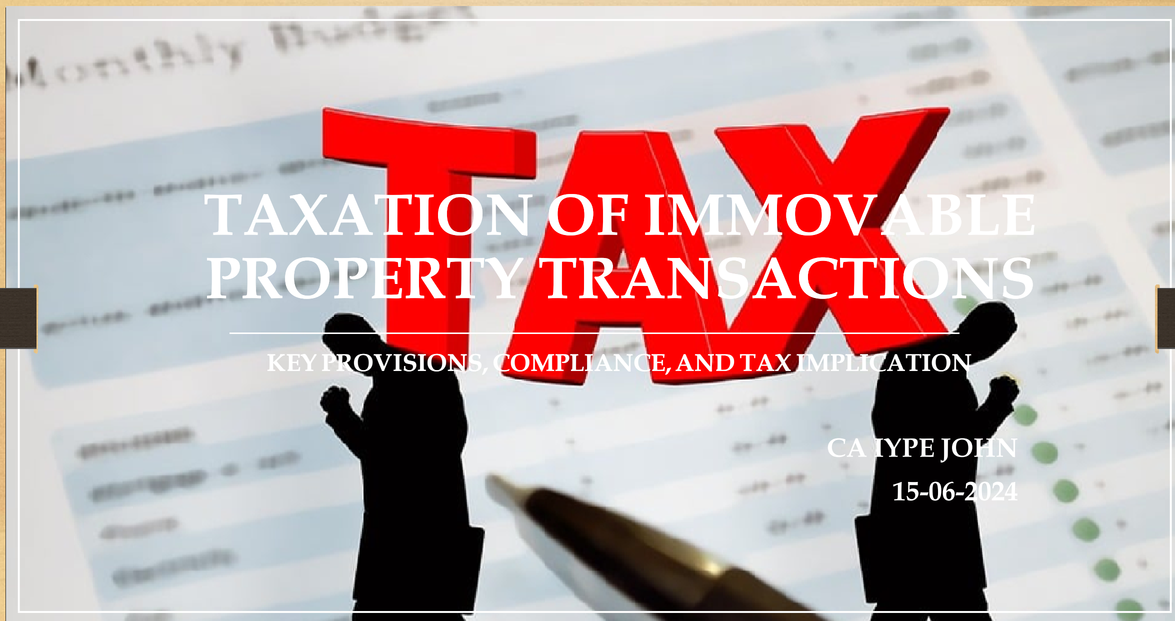


TAXATION OF IMMOVABLE PROPERTY TRANSACTIONS

KEY PROVISIONS, COMPLIANCE, AND TAX IMPLICATION

CA IYPE JOHN

15-06-2024

OVERVIEW OF IMMOVABLE PROPERTY TRANSACTIONS

TYPES OF IMMOVABLE PROPERTY

Immovable Property includes:

- **Land:** Includes Plots, Agricultural land, and other types of land.
- **Buildings**: Residential, Commercial, Industrial and other structures.
- **Attached Rights:** Rights that are inherently linked to the building or land, such as easements and leases.

IMPORTANCE IN THE INDIAN CONTEXT

ECONOMIC SIGNIFICANCE:
- Immovable Property constitutes a substantial portion of national wealth and individual investments
- Real estate sectors contribution to GDP and Employment

INVESTMENT PERSPECTIVE:
- Preferred investment for long term financial security
- Significant for wealth creation and inheritance planning

MARKET TRENDS:
- Urbanization and growth of metropolitan areas
- Government initiatives like Smart cities and affordable housing schemes

TRANSFER [SECTION 2(47)]:

Transfer in relation to a Capital Asset includes the following types of transactions

1. Sale, Exchange or Relinquishment of the asset or
2. The Extinguishment of any rights therein or
3. The compulsory acquisition thereof under any law or
4. The owner of the capital asset may convert the same into the stock-in-trade of a business carried on by him.
5. The maturity or redemption of a zero coupon bond
6. Part performance of the contract.

COST OF ACQUISITION:

Cost of Acquisition (COA) means any capital expense at the time of acquiring capital asset under transfer, i,.e., to include the purchase price, expenses incurred up to acquiring date in the registration form etc.., expenses incurred on completing transfer.

Cost of acquisition of the asset shall be the cost for which the previous owner of the property acquired it in the following cases:

1. On any distribution of asset on the total or partial partition of a HUF
2. Under a gift or will
3. By succession, inheritance or devolution
4. Under a transfer to a revocable or an irrevocable trust etc.

❑ **COST OF IMPROVEMENT:**

Cost of improvement (COI) is the capital expenditure incurred by an assessee for making any addition or improvement in the capital asset. It also includes any expenditure incurred in protecting or acquiring the title.

Cost of improvement includes all those expenditure which are incurred to increase the value of the capital asset.

***Note:** Cost of acquisition of the asset or the cost of improvement thereto shall not include the deductions claimed on the amount of interest under clause (b) of section 24 or under the provisions of Chapter VIA.(w.e.f. 01-04-2024)*

❑ **EXPENSES INCURRED ON TRANSFER:**

These expenses include additional costs like brokerage charges, commission, registration fees, stamp duty, lawyers fees etc..

CALCULATION OF CAPITAL GAINS

Steps for Calculation:

1. Determine Sale Consideration
   - The actual sale price of the property
2. Deduct Cost of Acquisition
   - The purchase price or market value as of April 1, 2001(whichever is higher) for properties acquired before that date.
3. Deduct cost of improvement:
   - Expenses incurred on improvements made to the property.
4. Deduct Expenses Incurred on Transfer:
   - Brokerage, legal fees etc.

Formula for Short term Capital Gains(STCG)
STCG=Sale consideration –(Cost of acquisition +Cost of improvement+ Expenses on Transfer)

Formula for Long term Capital Gains(LTCG)
LTCG=Sale consideration –(Indexed cost of acquisition +Indexed cost of improvement+ Expenses on Transfer)

HOLDING PERIOD

Short-term Capital Gains:

- Holding period: Less than 24 months.
- Taxation : Added to the taxpayer's income and taxed as per individual income tax slab rate.

Long-term Capital Gains:

- Holding period: More than 24 months.
- Taxation : Taxed at a flat rate of 20% after indexation.

INDEXATION

Purpose: To adjust the purchase price of the property according to inflation
Cost Inflation Index(CII): Notified by the government annually
Indexed Cost Calculation:

- Indexed cost of acquisition = Cost of Acquisition * $\frac{\text{CII of the year of transfer}}{\text{CII of the year of acquisition}}$

- Indexed cost of Improvement = Cost of Improvement * $\frac{\text{CII of the year of transfer}}{\text{CII of the year of improvement}}$

EXAMPLE:

- Purchase price : INR 50 Lakhs (in FY 2005-06)
- Sale price : INR 1.5 Crores (in FY 2023-24)
- CII for FY 2005-06 :117
- CII for FY 2023-24 :348
- Indexed cost of acquisition = 50,00,000*348/117
  =1,48,71,795/-
- Long term capital gain = 1,50,00,000- 1,48,71,795
  =1,28,205

RELEVANT SECTIONS OF THE INCOME TAX ACT

Computation of Capital Gain on Sale of Land or Building or Both (Section 50C)

Sl No.	Condition	Deemed Sale Consideration
1	Stamp Duty Value > Actual Consideration • If Stamp Duty Value > 110% of Actual Consideration • If Stamp Duty Value ≤ 110% of Actual Consideration	 Stamp Duty Value Actual Sale Consideration
2	Actual Consideration > Stamp Duty Value	Actual Sale Consideration
3	Value ascertained by Valuation Officer > Stamp Duty Value	Stamp Duty Value
4	Value ascertained by Valuation Officer < Stamp Duty Value	Value ascertained by Valuation Officer

Example : If SDV > 110% of Sale Consideration, then such SDV shall be FVOC

Particulars	Case I	Case II	Case III	Case IV
Selling Price	1,00,000	1,00,000	1,00,000	50,00,000
Stamp Duty Value (SDV)	1,08,000	1,14,000	1,10,000	57,00,000
Full Value of Consideration (FVOC)	1,00,000	1,14,000	1,00,000	57,00,000

NOTES

1. If assessee is not satisfied with SDV, and claims that SDV is more than market value, then his case may be referred to a Valuation Officer by the Assessing Officer [Section 142A]
2. If the value determined by the Valuation Officer is more than SDV, then value of Valuation Officer shall be ignored, and SDV is treated as FVOC.
3. If value determined by the Valuation Officer is less than SDV, then value of Valuation Officer shall be treated as FVOC.
4. If value determined by Valuation Officer is less than the value claimed by the assessee, then also, value of Valuation Officer shall be ignored, and the value claimed by the assessee shall be treated as FVOC.

SECTION 51 : ADVANCE MONEY RECEIVED

If any advance money is received and retained, it shall be deducted from cost of the asset in computing cost of acquisition provided that if such advance was included in the total income in any previous year as per section 56(2)(ix) then such sum shall not be deducted from the cost.

SECTION 50D : Capital Gain if consideration is not ascertainable

FVOC = FMV of asset on date of transfer

OTHER RELEVANT SECTIONS:

Normally, Capital Gain is taxable in the year of transfer, but exception in the following 4 cases

Section	Particulars	Year of Transfer	Year of Tax
45 (1A)	Insurance on destruction of capital asset	Year of destruction	Year in which insurance claim is received.
45 (2)	Conversion of capital asset into stock in trade	Year of conversion	Year in which stock is sold
45 (5)	Compulsory acquisition of capital asset	Year of compulsory acquisition	Year in which Compensation is received
45 (5A)	Asset transferred in joint development agreement.	Year in which possession is transferred	Year in which completion certificate is received.

SECTION 45(1A) – INSURANCE ON DESTRUCTION OF CAPITAL ASSET

1. **Insurance Receipt (Section 45(1A)):** Where any person receives at any time during any previous year any money or other assets under an insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of
   - Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature or
   - Riot or civil disturbance or
   - Accidental fire or explosion.

then any profits or gains arising from receipt of such money or other asset shall be chargeable to income tax under the head 'Capital Gain'.

Money or other asset received under an insurance on account of damage / destruction of any capital result → Will be chargeable to tax in the previous year in which such money or other asset is received → Deemed full value of consideration for calculating capital gain = The value of money or the FMV of other asset on the date of receipt

SECTION 45(2) - CONVERSION OF CAPITAL ASSET INTO STOCK IN TRADE

Conversion of a capital asset as stock in trade (Section 45(2)): → Capital Gains
- → FMV on the date of conversion – cost /Indexed cost of acquisition/ improvement
- → Indexation benefit would be considered in relation to the year of conversion of capital asset into stock in trade

Sale of stock in trade (Section 45(2)): → Business Income → Sale price of stock in trade –FMV on the date of conversion

SECTION 45 (5) – COMPULSORY ACQUISITION OF CAPITAL ASSET

Where the capital gain arises from the transfer of a capital asset, being a transfer by way of compulsory acquisition under any law, 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

Computation of Capital Gain

Part A : Initial Compensation		Part B : Enhanced Compensation	
Particulars	Rs.	Particulars	Rs.
FVOC : Less: COA / ICOA Less: COI / ICOI	Initial Consideration xxx xxx	FVOC: Less:	Additional Compensation Legal / Litigation Charges
STCG / LTCG	xxx	STCG / LTCG	xxx

Compensation Received in Instalments

1. **Initial Compensation** : If it is received in instalments, **then total initial compensation** is taxable in the year in which the 1st instalment is received.
2. **Additional Compensation / Enhanced Compensation**: If it is received in instalment, then it is taxable as and when received.

SECTION 45 (5A) - ASSET TRANSFERRED IN JOINT DEVELOPMENT AGREEMENT.

Where the capital gain arises to an assessee from the transfer of a capital asset, being land or building or both, under specified agreement, the capital gain shall be taxable 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 the competent authority.

- **Full Value of Consideration** : Share of the owner in the project on the date of issuing completion certificate + monetary consideration.

APPLICABILITY OF SECTION 56(2)(X)

APPLICABILITY

- Applies to any person, where immovable property is received without consideration (gift) or for inadequate consideration(w.e.f. 01-04-2017).

VALUATION

- If the property is received as a gift, and the stamp duty value exceeds INR 50,000/- then the SDV is treated as Income from Other Sources.
- If the property is acquired for inadequate consideration the difference between the stamp duty value and the consideration is taxable if such difference is more than the higher of INR 50,000/- and 10% of consideration.

EXEMPTIONS

- Transactions between specified relatives (Spouse, Siblings etc) are exempt.
- Transactions on the occasion of Marriage , inheritance, and certain other specified occasions are exempt.

EXAMPLE

- Stamp duty value : INR 1 Crore
- Purchase Consideration: INR 60 Lakhs
- Difference(INR 40 Lakhs) exceeds INR 50,000 and 10% of consideration, hence taxable under section 56(2)(x).

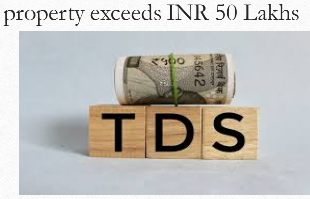
SECTION 194IA- TDS ON SALE OF IMMOVABLE PROPERTY

Applicability:

- Applicable to transactions where the sale consideration of immovable property exceeds INR 50 Lakhs

TDS Rate:

- 1% of the sale consideration must be deducted as TDS by the buyer.



Responsibilities:

- Buyer must deduct TDS and deposit it with the government
- TDS must be deposited using Form 26QB within 30 days from the end of the month in which TDS was deducted.
- Buyer must issue TDS certificate (Form 16B) to the seller.

Non -Compliance Consequences:

- Interest and penalty will be levied for failure to deduct or deposit TDS.

Examples:

- Sale consideration: INR 60 Lakhs
- TDS to be deducted: 1% of 60 Lakhs= INR 60,000/-

REPORTING AND COMPLIANCE IN PROPERTY TRANSACTIONS

INCOME TAX RETURN (ITR) FILING

MANDATORY REPORTING

Section 285BA- Reporting of high value transactions in Statement of Financial Transactions(SFT)

- Purchase or Sale of immovable property of Rs.30 Lakhs or more is required to be reported by the assesse or Registrar/Sub registrar is to furnish a statement of such SFT to the Income Tax Authority.
- SFT includes transaction of purchase , sale or exchange of goods or property or interest on a property.

ITR FORMS

- ITR -2 : For individuals and HUFs not having income from business or profession.
- ITR -3 : For individuals and HUFs having income from business or profession.
- ITR -4 : For individuals and HUFs opting for the presumptive taxation scheme under section 44AD,44ADA or 44AE.

PRACTICAL CONSIDERATIONS:

- ❑ **Accuracy in Reporting**:
  - ✓ Ensure all details related to the property transaction are accurately reported in the ITR.
  - ✓ Cross-verify the sale consideration, purchase price and capital gains calculations.
- ❑ **Timely Filing:**
  - ✓ File the income tax return within the due date to avoid late filing fees and penalties.
  - ✓ For individuals, the due date is July 31st (Non- audit cases) of the assessment year.

DOCUMENTATION REQUIREMENTS

Essential Documents:

- **Sale Deed/Agreement:** The primary document evidencing the sale of the property.
- **Purchase Deed:** Document evidencing the purchase of the property.
- **Proof of Cost of Improvement:** Invoices or receipts for any improvements made to the property.
- **TDS Certificates:** Form 16B issued by the buyer for TDS deducted under Section 194-IA
- **Capital Gains Account Scheme Proof:** If capital gain is deposited in the Capital Gains Account Scheme.

PENALTIES FOR NON-COMPLIANCE

- **Failure to report:**
  - Under- reporting or non-reporting of property transactions can lead to penalties under section 270A of the Income Tax Act.
  - Penalty for under- reporting of income can be 50% of the tax payable on the under- reported income.
  - For misreporting of income, the penalty can be 200% of the tax payable on the misreported income.
- **Non -deduction or Late Deduction of TDS:**
  - Interest @ 1% per month or part of the month for failure to deduct TDS
  - Interest @ 1.5% per month or part of the month for failure to deposit TDS after deduction.
  - Penalty under section 271H, which can range from INR 10,000 to INR 1,00,000 for non -deduction or late deduction of TDS

EXEMPTIONS OF CAPITAL GAIN (SECTION 54- 54F)

Section	Nature of Gain	Type of New Asset	Amount to be reinvested for full exemption	Time period for reinvestment	Lock in period for New Asset	Capital Gain Deposit Account Scheme
54	LTCG on transfer of Residential House Property	One residential House property in India (Amendment -2 House property)	Lower of i. Capital Gain ii. Cost of New Asset /Deposit Amount	Purchase of new property within 1 year before, or 2 years after date of transfer ,or completion of construction of new property within 3 years of date of transfer	3 years from purchase or construction, failing which cost of the new asset shall be reduced by the amount of exemption already claimed.	To be deposited before the date of filing or due date of filing the return of income.
54B	Capital Gain on transfer of Urban Agricultural Land (used for 2 Years)	Urban/Rural Agricultural Land	Lower of i. Capital Gain ii. Cost of New Asset /Deposit Amount	Purchase within a period of 2 years from the date of transfer.	3 Years(Exemption claimed should be reduced from cost)	To be deposited before the date of filing or due date of filing the return of income.

54D	Gain on (compulsory acquisition) land or building or right therein, forming part of industrial undertaking	Any other land or building or rights therein forming part of industrial undertaking	Lower of i. Capital Gain ii. Cost of New Asset /Deposit Amount	Purchase or construction within 3 years from date of transfer	3 Years from purchase or construction, failing which cost of the new asset shall be reduced by the amount of exemption already claimed.	To be deposited before the date of filing/due date of filing the return of income
54EC	LTCG on transfer of land or building or both	Specified Bonds issued by NHAI, RECL or as maybe notified by central government	Lower of i. Capital Gain ii. Cost of New Asset /Deposit Amount (Maximum Rs.50 Lakhs)	Within 6 months after the date of transfer	5 Years. Transfer of new asset or monetisation other than by way of transfer within the lock in period will result in revocation of exemption in the year of such transfer or monetisation	Not Applicable

54F	LTCG on transfer of any asset other than a residential property	One residential property in India	Cost of New Residential House ≥ Net Sale Consideration of original asset, entire Capital Gain is exempt. Cost of New Residential House < Net Sale Consideration of original asset, proportionate Capital Gain is exempt.	Purchase of new property within 1 year before, or 2 years after date of transfer or completion of construction of new property within 3 years after date of transfer	3 years from purchase or construction, failing which the amount of exemption already claimed shall be deemed to be LTCG in the year of transfer of new asset.	To be deposited before the date of filing/due date of filing the return of income

Note: ***Where the cost of new asset exceeds Rs.10 Crore, the amount exceeding 10 crore rupees shall not be taken into account for the purpose of sub section (1) of section 54 and section 54F.(w.e.f. 01-04-2024)***

IMMOVABLE PROPERTY NON RESIDENTS

- **Acquisition and Transfer** regulated under FEMA Sec 6(2a), 4 & 5 read with FEM (Non debt Instruments) Rules
- NRI's and OCI's have general permission to invest in Immovable property other than Agricultural land, Plantation or farm house
- Agricultural land, Plantation & farm house, can be acquired as gift or inheritance from a relative defined as per section 2 (17) of Companies Act
- Payment for acquisition through normal banking channels by inward remittance but not through travellers cheques or foreign currency.
- A NR spouse of an NRI or OCI (who is not an NRI/OCI) can acquire ONE immovable property jointly with NRI/OCI spouse subject to
  - (i) Marriage registered and continuously existing for at least 2 years prior to acquisition
  - (ii) Not an Agricultural land, Plantation or farm house

SALE & REPATRIATION

Sale:

- NRI or OCI can transfer immovable property **other than** agricultural land, plantation property or farmhouse to NRI or OCI or Resident. Agricultural land, plantation property or farmhouse can be transferred only to a resident.

Repatriation –

- Where property acquired prior to becoming an NRI, RBI approval is required to remit the sale proceeds. However, in the case of NRI's and PIO's a ceiling of USD 1 million per year on aggregate sale as per FEM (Remittance of Assets) Regulations 2016
- In other cases, where property acquired FEM (Acquisition and transfer of Immovable property in India) Regulations 2000 can repatriate the sale proceeds on conditions

(i) Property was acquired by NRI / OCI / PIO as per laws existing at the time of acquisition

(ii) Payment for acquisition was through inward remittance through normal banking channels or out of NRE / FCNR account

(iii) Repatriation of sale proceeds of residential property is restricted to 2 properties.

	Citation & Court	Issue	Judgement
	Agricultural Land / Income		
1	**(ASR-TRIB.)** **2024 ITL 1926** **RAJPAL SINGH SANDHU V. INCOME TAX OFFICER, WARD-1, FARIDKOT (ITAT Amritsar Bench)** **I.T.A. No. 87/Asr/2024 Assessment Year: 2015-16**	• Assessee an agriculturist. • Assessment on Deposit in bank from sale of agricultural land and gift from relative. No return filed. • Appeal filed but dismissed as not maintainable under section 249(4)(b) stating that assessee has not paid advance tax, which is a condition for admitting appeal.	Since there was no taxable income there is no liability to advance tax and hence non admission of appeal is not justifiable.
2	**CIT VS. GEMINI PICTURES** **220 ITR 43 (SC)**	Agricultural land	The seller, in this case, acquired an urban land with buildings and raised some crops in the land lying vacant and adjacent to the building. This when sold could not be treated as agricultural land. Buyer's intention not agrl. Exemption denied.

3	**GOPAL C SHARMA VS. CIT** **209 ITR 946 (Bom. HC)**		The land in question was assessed to agricultural land revenue which was leased out to housing society with a stipulation for agricultural use. This was again sub leased to an industrial company. The Company converted it to non-agricultural purpose and used as such. This was later sold and on the date of sale no agriculture or agricultural activity was carried out. Exemption denied.
4	**SARIFABIBI MOHAMMED IBRAHIM & OTHRS. VS. CIT** **204 ITR 631 (SC)**	• Land situated within municipal limits and entered as agricultural land in official records. • Land sold to non-agriculturists for non-agricultural purpose • High sale price • No agricultural operation in the past 4 years but carried out in the past • Application to sell land for non-agricultural purpose on the date of sale	Supreme Court concurred with the 13 point guideline of the Gujarat High Court as an indicator, though not conclusive, for determining whether land is agricultural land or not. 1. Whether the land was classified in the revenue records as agricultural and whether it was subject to the payment of land revenue? 2. Whether the land was actually or ordinarily used for agricultural purposes at or about the relevant time?

			3. Whether such user of the land was for a long period or whether it was of a temporary character or by way of a stop-gap arrangement? 4. Whether the income derived from the agricultural operations carried on in the land bore any rational proportion to the investment made in purchasing the land? 5. Whether, the permission under section 65 of the Bombay Land Revenue Code was obtained for the non-agricultural use of the land? If so, when and by whom (the vendor or the vendee)? Whether such permission was in respect of the whole or a portion of the land? If the permission was in respect of a portion of the land and if it was obtained in the past, what was the nature of the user of the said portion of the land on the material date?

			6. Whether the land, on the relevant date, had ceased to be put to agricultural use? If so, whether it was put to an alternative use? Whether such cesser and/or alternative user was of a permanent or temporary nature? 7. Whether the land, though entered in revenue records, had never been actually used for agriculture, that is, it had never been ploughed or tilled? Whether the owner meant or intended to use it for agricultural purposes? 8. Whether the land was situate in a developed area? Whether its physical characteristics, surrounding situation and use of the lands in the adjoining area were such as would indicate that the land was agricultural? 9. Whether the land itself was developed by plotting and providing roads and other facilities?

			10. Whether permission under section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, was obtained because the sale or intended sale was in favour of a non-agriculturist? If so, 11. whether the sale or intended sale to such non-agriculturist was for non-agricultural or agricultural user? 12. Whether the land was sold on yardage or on acreage basis? 13. Whether an agriculturist would purchase the land for agricultural purposes at the price at which the land was sold and whether the owner would have ever sold the land valuing it as a property yielding agricultural produce on the basis of its yield?

5	**CIT VS. RAJA BINOY KUMAR SAHAS ROY** **32 ITR 466**	What is agriculture?	
6	**ASHA GEORGE VS. ITA** **351 ITR 123**		The assessee was not an agriculturist. No records to show that the land was agricultural nor any agricultural operations were carried out.
<u>Deductions:</u>			
1	• **SIMRAN BAGGA VS. ACIT DEL. ITAT 2024** • **CIT VS. NATARAJAN 287 ITR 271 (MAD)** • **N. RAMKUMAR VS. ACIT [2012] 25 TAXMAN.COM 337 (HYD ITAT)** • **CIT VS KAMAL WAHAL 351 ITR 4 (DEL)**	Sec. 54F For the purpose of exemption u/s. 54 F, can the investment be made in the name of assessee spouse or children	Yes: allowable even when assesse purchased or constructed the residential house in the name of minor son/ daughter or spouse or jointly with these.

2	• ACIT VS. SUNDAR KAUR SUJAN SINGH GODH • MRS. SEETHA SUBRAMANIAM VS. ACIT (59 ITD 94) ITAT MADRAS SATISH CHANDRA GUPTA VS. ASSESSING OFFICER – [1995] 54 ITD 508 (DEL) • CIT VS. HILLA J.B. WACHA (1995) 216 ITR 376 (BOM) CIRCULAR • CIT VS. SARDARMAL KOTHARI [2008] 302 ITR 286 (MAD) CIRCULAR • ITO VS. K.C. GOPALAN [1999] 107 TAXMAN 591 (KER) – NOWHERE IN THE SECTION DOES IT MANDATE USE OF SALE CONSIDERATION ITSELF FOR PURCHASE. SIMILAR FINDINGS WERE ENTERED INTO BY (P&H) HIGH COURT.	Allowability of section 54 F if builder /construction does not complete construction of house within 3 years Specified period is 1 year before or 2 years after the sale for purchase and 3 years for construction	The Courts went on the logic that a purposive construction of the statute should be given over a literal construction. • While the plain reading would deny the benefit higher judicial authorities have given relief in cases where substantial part of the sales consideration has been invested but some portion still incomplete. CBDT Circular No. 471 / 15th Oct, 1986 – Allotment itself is sufficient compliance for getting the benefit of section 54 F CBDT Circular No. 672 dated 16/12/1993 clarified that an allotment is sufficient compliance. Therefore completion of construction is not but investment of whole or substantially whole is sufficient

3	**(BOM. HC) 2024 ITL 473 ASHOK GAGANLAL THAKKAR VS. NFAC**	Agricultural land as per section 2(14)(iii)	Where agricultural land falls squarely under section 2(14) (iii) does not require proof of agricultural operations carried out. So long as the conditions therein are satisfied.
4	**337 CTR 880 (SC) (2024) M/S. PAVILLE PROJECTS (P) LTD. VS. CIT**	Encumbrance charges claimed as cost of improvement.	Cost of Improvement/ Land sold to settle disputes. Encumbrance charges claimed as cost of improvement. Commissioner u/s.263 revised the order stating that it didn't qualify as a Capital Expenditure. Tribunal & High Court held in assessee's favour but Supreme Court restored the CIT's order - as prejudicial to revenue. Hence not allowable.
5	**JOGINDER SINGH VS. ACIT 205 ITD 600 (2024) AMRITSAR)**	Cost of improvement	Cost of construction of a bridge from the road to the shop over the drain / rivulet in cost of improvement since it enhances the value of the shop. Hence allowable.

6	**KAUSHALYA DEVI VS. CIT 404 ITR 136 (DELHI HC)**	Expenses in connection with transfer	Initial agreement to sell did not materialise. Property sold to another buyer. Liquidated damages, against advance received, paid to original buyer. Held there was close nexus between the transfer of property and it is an expense in connection with the transfer.
7	**ASST. CIT VS. SRI KAMLAKAR MOGHE (BOM. HC) 378 ITR 561**	Expenses in connection with transfer	Amount paid to sisters as family settlement to avoid any claim or dispute in future is considered as an expenses in connection with the transfer.
8	**JATINDER SINGH MARVAHA VS. DDIT 2018 ITL 5466 ITAT, KOLKATA BENCH**		Rs.4,50,000/- claimed as Brokerage and other expenses in connection with sale. Assessee not able to produce any documentary evidence. Tribunal upheld the decision of CIT(A) who allowed Rs.1,50,000/- as brokerage stating 2% is normal brokerage charge and another Rs.1,50,000/- being 50% of balance Rs.3,00,000/- towards travelling expenses in connection with transfer.

KEY POINTS

COMPLEXITY OF TRANSACTIONS:

- Immovable property transaction in India involve multiple tax implications, including capital gain tax, TDS requirement, and potential exemption.
- Each transaction must be carefully evaluated to ensure compliance with the Income Tax Act and to optimize tax outcomes.

SECTION 50C IMPLICATIONS:

- Recognize the impact of section 50C, where the stamp duty value is considered if it exceeds the actual sale price.
- Proper documentation and professional valuation can help in justifying the sale price.

CAPITAL GAINS TAX:

- Understanding the difference between short-term and long-term capital gains is crucial.
- Accurate calculation of gains, considering indexed costs, and appropriate reporting in ITR forms are essential to avoid penalties.

TDS COMPLIANCE:

- Ensure compliance with section 194IA, mandating 1% TDS on property transaction above INR 50Lakhs
- Timely deposit of TDS and issuance of Form 16B are critical to avoid interest and penalties.

EXEMPTIONS AND DEDUCTIONS:

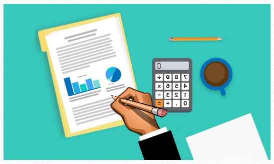
- ❑ Utilise available exemption under section 54 to 54 EC by reinvesting capital gain in residential property or specified bonds.
- ❑ Plan reinvestments within the stipulated timeframes to maximise tax benefits.

NRI TAX CONSIDERATIONS

- ❑ NRIs must adhere to specific tax rates and repatriation rules.
- ❑ Leverage DTAA benefits to avoid double taxation and ensure proper reporting of global income.

GIFTING OF PROPERTY:

- ❑ Be aware of tax implications under section 56(2)(x) for gifts exceeding INR Rs.50,000/- in value.
- ❑ Maintain accurate records and proof of relationships to claim exemptions for gifts from specified relatives .



TAX RATES

SHORT-TERM CAPITAL GAINS:

❑ Tax according to individuals' income tax slab:

- 0% for income up to INR 3,00,000
- 5% for income up to INR 6,00,000
- 10% for income up to INR 9,00,000
- 15% for income up to INR 12,00,000
- 20% for income up to INR 15,00,000
- 30% for income above INR 15,00,000

LONG TERM CAPITAL GAINS:

- Flat rate: 20% with indexation benefits
- Surcharge and Cess may apply

Whatever action a great man performs, common men follow. And whatever standards he sets by exemplary acts, all the world pursues.

Bhagavad-gita 3.21


Thank you