

SEM IV
SUBJECT: TAXATION I
TOPIC: INCOME FROM CAPITAL GAIN
TEACHER: S. BHATTCHARYYA

Basis of Charge in case of Capital Gain

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 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA or 54GB.

Definition of Capital Gain

Any profit or gain that arises from the sale of a 'capital asset' is a capital gain. This gain or profit is comes under the category 'income', and to pay tax for that amount in the year in which the transfer of the capital asset takes place. This is called capital gains tax, which can be short-term or long-term.

Capital gains are not applicable to an inherited property as there is no sale, only a transfer of ownership. The Income Tax Act has specifically exempted assets received as gifts by way of an inheritance or will. However, if the person who inherited the asset decides to sell it, capital gains tax will be applicable.

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Definition of Capital Assets

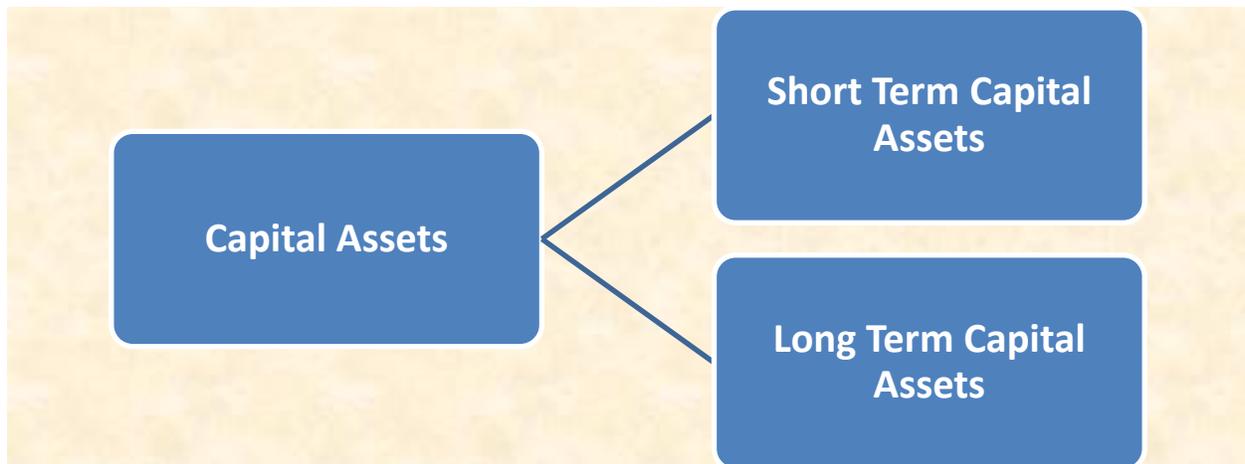
Land, building, house property, vehicles, patents, trademarks, leasehold rights, machinery, and Jewellery are a few examples of capital assets. This includes having rights in or in relation to an Indian company.

The following do not come under the category of capital asset:

- a. Any stock, consumables or raw material, held for the purpose of business or profession
- b. Personal goods such as clothes and furniture held for personal use
- c. Agricultural land in rural India
- d. 6½% gold bonds
- e. Gold deposit bond issued under the gold deposit scheme.

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Different Types of Capital Assets



1. Short-Term Capital Asset An asset held for a period of 36 months or less is a short-term capital asset. The criteria of 36 months have been reduced to 24 months for immovable properties such as land, building and house property from FY 2017-18. This means that if sell off the asset within 36 months of buying it the asset would be called a short term capital asset. However, in some cases, the period of holding is reduced to 24 months and 12 months. These cases include the following –

If the asset is an immovable property like land, building or house then the period of holding would be considered to be 24 months. This means that if you sell off an immovable property within 24 months of buying it, the property would be called a short term capital asset.

Similarly, equity shares of a company listed on the Recognized stock exchange, securities listed on the Recognized stock exchange, UTI units, Equity oriented mutual fund units and zero coupon bonds have a holding period of 12 months. If these assets are sold off before 12 months of their purchase, they would be called short-term capital assets.

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2. Long-Term Capital Asset An asset that is held for more than 36 months is a long-term capital asset. The reduced period of the aforementioned 24 months is not applicable to movable property such as Jewellery, debt-oriented mutual funds etc. They will be classified as a long-term capital asset if held for more than 36 months as earlier.

Some assets are considered short-term capital assets when these are held for 12 months or less.

The assets are:

- a. Equity or preference shares in a company listed on a recognized stock exchange in India
- b. Securities (like debentures, bonds, govt securities etc.) listed on a recognized stock exchange in India
- c. Units of UTI, whether quoted or not
- d. Units of equity oriented mutual fund, whether quoted or not
- e. Zero coupon bonds, whether quoted or not

When the abovementioned assets are held for a period of more than 12 months, they are considered as long-term capital asset.

Transfer of Capital Assets

Transfer, in relation to capital asset, includes:

- The sale, exchange or relinquishment of the asset; or
- The extinguishment of any rights therein; or
- The compulsory acquisition thereof under any law; or
- In a case where the asset is converted by the owner thereof into, or is treated by him, as stock-in-trade of a business carried on by him, such conversion or treatment; or

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- The maturity or redemption of zero coupon bonds; or
- Any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882; or
- Any transaction (whether by way of becoming a member of, or acquiring shares in a cooperative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of any immovable property.

Transactions Not regarded as Transfer of Capital Assets:

The meaning of transfer is given in section 2(47), whereas transactions not regarded as transfer are covered u/ss 46 and 47. In many transactions although there is a transfer, but these are not considered to be transfer for purposes of capital gains.

Some of the relevant transactions which are not regarded as transfer are:

- Where the assets of a company are distributed to its shareholders on liquidation of a company, such distribution shall not be regarded as transfer in the hands of the company
- Any distribution of capital assets on the total or partial partition of Hindu undivided family
- Any transfer of a capital asset under a gift or will or an irrevocable trust
- Any transfer of a capital asset by a company to its 100% subsidiary company provided the subsidiary company is an Indian company
- Any transfer of a capital asset by a 100% subsidiary company to its holding company, if the holding company is an Indian company
- Any transfer in a scheme of amalgamation of a capital asset by the amalgamating company to the amalgamated company, if the amalgamated company is an Indian company
- Any transfer in a scheme of amalgamation of shares held in an Indian company by the amalgamating foreign company to the amalgamated foreign company if certain conditions are satisfied.
- Any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company

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- Any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if certain conditions are satisfied.
- Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking
- Any transfer by a shareholder, in a scheme of amalgamation, of shares held by him in the amalgamating company if certain conditions are satisfied:
- Any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident

Transfer in case of Immovable and Movable Property

Different rules are applicable in case of movable/immovable assets to find out when a capital asset is “transferred”.

1. Transfer in case of Immovable property when documents are registered -

Title to immovable assets will not pass till the conveyance deed is executed or registered.

2. Transfer in case of Immovable Property when documents are not registered -

Even if the documents are not registered but the following conditions of section 53A of the Transfer of Property Act are satisfied, ownership in an immovable property is “transferred” —

- a. There should be a contract in writing;
- b. The transferee has paid consideration or is willing to perform his part of the contract
- c. The transferee should have taken possession of the property.

When these conditions are satisfied, the transaction will constitute “transfer” for the purpose of capital gains.

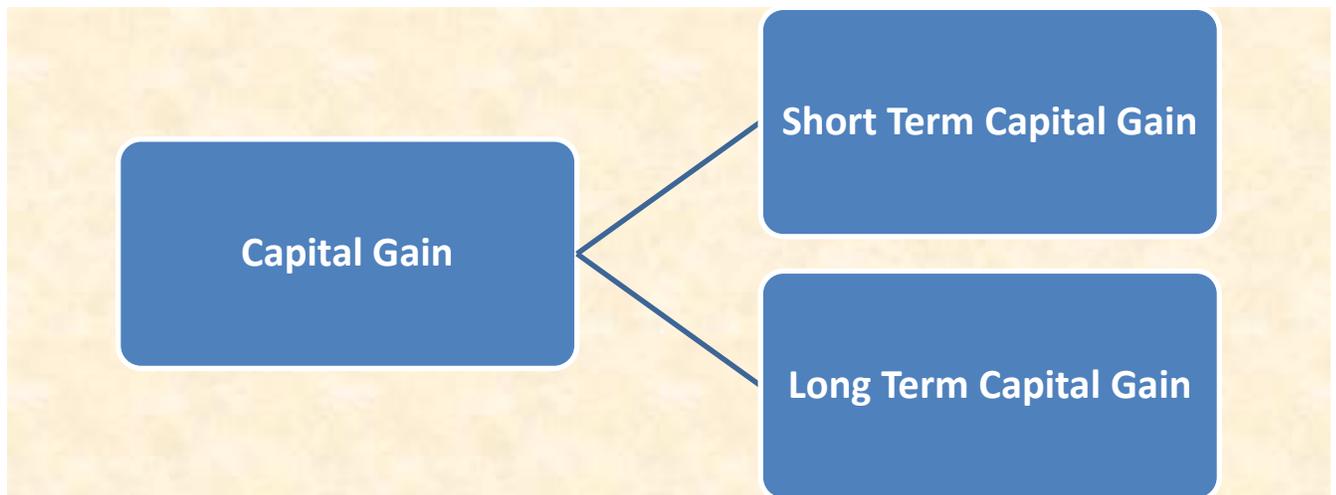
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3. Transfer in case of Movable Property -

Title to a movable property passes at the time when property is delivered pursuant to a contract to sell. Entries in the books of account are not relevant for determining date of transfer.

Types of capital gains

Short term capital gains are profits which you earn when you sell off short term capital assets and long term capital gains are the profits which you earn when you sell of long term capital assets.



Calculation of Capital Gain

Full Value Consideration, Cost of acquisition and Cost of Improvement

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Full value of the consideration is, in simple terms, the money that you would receive when you transfer your capital asset. In technical terms, full value consideration is the consideration which the seller has received or would receive in exchange for transferring his capital asset. In addition to Full value consideration, other important terms Are:

- Cost of Acquisition and
- Cost of Improvement.

Cost of Acquisition is the cost price of the asset. It is the price at which you bought the capital asset.

Cost of Improvement is the money spent on the capital asset to improve it. Cost of improvement is added to the cost of acquisition to compute capital gains.

Calculation of Short Term Capital Gains

Step 1: Full value of consideration

Step 2: Subtract the following:

- Expenditure incurred wholly and exclusively in connection with such transfer
- Cost of acquisition
- Cost of improvement

Step 3: This amount is a short-term capital gain

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Short term capital gain = Full value consideration *Less* expenses incurred exclusively for such transfer *Less* cost of acquisition *Less* cost of improvement.

Full value of consideration
Less: expenses incurred on transferring the asset
Less: cost of acquisition
Less: cost of improvement	<u>.....</u>
Short term capital gains

Calculation of Long Term Capital Gains

Step 1: Full value of consideration

Step 2: Deduct the following:

- Expenditure incurred wholly and exclusively in connection with such transfer
- Indexed cost of acquisition
- Indexed cost of improvement

Step 3: From this resulting number, deduct exemptions provided under sections 54, 54EC, 54F, and 54B

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Full value of consideration
Less: Expenses incurred exclusively for such transfer
Less: Indexed cost of acquisition
Less: Indexed cost of improvement
Less: Expenses that can be deducted from full value for consideration
Less: Exemptions available under Sections 54	<u>.....</u>
Long term capital gains

Expenses from sale proceeds from a capital asset, that wholly and directly relate to the sale or transfer of the capital asset are allowed to be deducted. These are the expenses which are necessary for the transfer to take place.

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Indexed Cost calculations

- **Indexed cost of acquisition is computed with the help of following formula:**

$$\text{Cost of acquisition} \times \frac{\text{Cost inflation index of the year of transfer of capital asset}}{\text{Cost inflation index of the year of acquisition}}$$

- **Indexed cost of improvement is computed with the help of following formula:**

$$\text{Cost of improvement} \times \frac{\text{Cost inflation index of the year of transfer of capital asset}}{\text{Cost inflation index of the year of improvement}}$$

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The CII for different years are as follows –

<u>Financial year</u>	<u>Cost Inflation Index (CII)</u>
2001-02	100
2002-03	105
2003-04	109
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137
2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220
2014-15	240
2015-16	254
2016-17	264
2017-18	272
2018-19	280
2019-20	289

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Short-term capital gains (STCG) are divided into 2 types:

1. Short-term capital gains covered under section 111A.
2. Short-term capital gains other than covered under section 111A.

STCG covered under section 111A

1. STCG arising on sale of equity shares listed in a recognised stock exchange, which is chargeable to STT.
2. STCG arising on sale of units of equity oriented mutual fund sold through a recognised stock exchange which is chargeable to STT.
3. STCG arising on sale of units of a business trust
4. STCG arising on sale of equity shares, units of equity oriented mutual fund or units of a business trust through recognised stock exchange located in any International Financial Services Centre and consideration is paid or payable in foreign currency even if transaction of sale is not chargeable to securities transaction tax (STT).

STCG other than covered under section 111A

1. STCG arising on sale of equity shares other than through a Recognised stock exchange.
2. STCG arising on sale of shares other than equity shares
3. STCG arising on sale of units of non-equity oriented mutual fund (debt oriented mutual funds).
4. STCG on debentures, bonds and Government securities.
5. STCG on sale of assets other than shares/units like STCG on sale of immovable property, gold, silver, etc.

Tax Rates on STCG:

1. Tax rates of STCG covered under section 111A is charged to tax @ 15% (plus surcharge and cess as applicable).
2. Normal STCG, i.e., STCG other than covered under section 111A is charged to tax at normal rate of tax which is determined on the basis of the total taxable income of the taxpayer.

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Tax Rates on Long term Capital Gain

Sale of equity shares and equity-oriented mutual funds held for more than one year, on or after April 1, 2018 will be chargeable to tax at 10% plus cess @ 4%. No indexation benefit will be allowed on such transactions. However, capital gains up to Rs.100000 in a single financial year will be exempt from tax FY 2018-19.

Apart from the sale of equity shares and equity-oriented mutual funds remaining all tax on long term asset is 20%.

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Tax on Short-Term and Long-Term Capital Gains

<u>Tax Type</u>	<u>Condition</u>	<u>Tax Applicable</u>
Long-Term Capital Gains Tax	Except On Sale Of Equity Shares/ Units Of Equity Oriented Fund	20%
Long-Term Capital Gains Tax	On Sale Of Equity Shares/ Units Of Equity Oriented Fund	10% Over And Above Rs 1 Lakh
Short-Term Capital Gains Tax	When Securities Transaction Tax Is Not Applicable	The Short-Term Capital Gain Is Added To Income Tax Return And The Taxpayer Is Taxed According To His Income Tax Slab.
Short-Term Capital Gains Tax	When Securities Transaction Tax Is Applicable	15%.

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Section 54 of Income Tax Act – Capital Gains Exemption:

Assessee can get an exemption from long term capital gains from the sale of house property by investing in up to two house properties against the earlier provision of one house property with same conditions.

The exemption under section 54 is available when the capital gains from the sale of house property are reinvested into buying or constructing two other house properties. The exemption on two house properties will be allowed once in the lifetime of a taxpayer, provided the capital gains do not exceed Rs. 2 crores. The taxpayer has to invest the amount of capital gains and not the entire sale proceeds. If the purchase price of the new property is higher than the amount of capital gains, the exemption shall be limited to the total capital gain on sale.

Conditions for availing this benefit

1. The new property can be purchased either 1 year before the sale or 2 years after the sale of the property.
2. The gains can also be invested in the construction of a property, but construction must be completed within three years from the date of sale.

Amount of Exemption:

Lower of the Below:

- 1 Capital Gain Generated Out of Transfer of Agricultural Land
- 2 Cost of The New Land Purchased (Including the Deposited Amount in Capital Gain Scheme).

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Section 54F: Exemption on capital gains on sale of any asset other than a house property:

Exemption under Section 54F is available when there are capital gains from the sale of a long-term asset other than a house property. You must invest the entire sale consideration and not only capital gain to buy a new residential house property to claim this exemption. Purchase the new property either one year before the sale or 2 years after the sale of the property. You can also use the gains to invest in the construction of a property. However, the construction must be completed within 3 years from the date of sale.

One house property can be purchased or constructed from the sale consideration to claim this exemption. This exemption can be taken back, if this new property is sold within 3 years of its purchase. If the entire sale proceeds are invested towards the new house, the entire capital gain will be exempt from taxes if you meet the above-said conditions.

Amount of Exemption =

$$\frac{\text{Capital Gains X Cost Of New House}}{\text{Net Consideration}}$$

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Difference between Section 54 and Section 54F

There Is A Major Difference Between Both The Exemptions Of The Tax.

<u>Section54</u>	<u>Section 54F</u>
Section 54 Of The Income Tax Act Includes Exemption On Long Term Capital Gains For The Sale Of A Residential Property.	Section 54F Can Be Claimed On Long Term Capital Gains For Sale Of Any Asset Other Than A Residential Property.
Entire Capital Gains Needs To Be Invested To Claim Full Exemption.	Entire Sale Proceeds Needs To Be Invested To Claim Full Exemption.
When Entire Capital Gains Is Not Invested The Leftover Amount Is Charged For Taxation As Long Term Capital Gains.	If Entire Sale Proceeds Is Not Invested The Exemption Is Allowed Proportionally. In This Case Exemption Will Be As Follows:
If The Individual Sells The New House Property Within The Period Of Three Years From Purchase The Exemption Will Be Reversed And The Capital Gains From Such Property Will Be Taxed As Short Term Capital Gains.	If The Individual Sells The New Property Within The Period Of Three Years From Purchase Of New Property Or Purchase Another Property Within Two Years Of Sale Of The Original Asset Other Than The New House Or Construct A New House Within Three Years Of Sale Of Original Property The Exemption Will Be Reversed. The Capital Gains In Such A Case Will Be Taxed As Long Term Capital Gains.

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**Section 54B: Exemption on Capital Gains From Transfer of Land
Used for Agricultural Purpose:**

When short-term or long-term capital gains from transfer of land used for agricultural purposes – by an individual or the individual's parents or Hindu Undivided Family (HUF) – for 2 years before the sale, exemption is available under Section 54B. The exempted amount is for the investment in a new asset or capital gain, whichever is lower. The Amount Re-invest into a new agricultural land within 2 years from the date of transfer.

The new agricultural land, which is purchased to claim capital gains exemption, should not be sold within a period of 3 years from the date of its purchase.

Exemption can be claimed for the amount which is deposited. If the amount which was deposited as per Capital Gains Account Scheme was not used for the purchase of agricultural land, it shall be treated as capital gains of the year in which the period of 2 years from the date of sale of land expires.

Amount of Exemption:

Lower of the Below:

- 1 Capital Gain Generated Out of Transfer of Agricultural Land
- 2 Cost of The New Land Purchased (Including the Deposited Amount in Capital Gain Scheme).

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Section 54EC: Exemption on Transfer of Long Term Capital Assets, Being land or Building or Both the Assets.

The Capital Gain Must Arise From the Transfer of the Long Term Capital Assets, Being Land Or Building Or Both And The Investment in Long Term specific Assets By the Assesse During the Financial Year Shall Not Exceed Rs.50 Lakh.

Amount of Exemption:

Lower of the Below:

- 1 Capital Gain Generated Out of Transfer of the Long Term Capital Assets Being Land Or Building Or Both.
- 2 Amount Invested in specific Assets.

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Example 1:

Mr Assessee Furnishes the Following Information in Respect of the Residential House Property:

- House Property Purchased: Rs. 350000 (As on 09-09-2014)
- House Sold On 12-06-2019: Rs. 1225000
- Expenses of Transfer: Rs.5700
- New Residential House in India Purchased: Rs.185000 (As on 05-02-2020)

Calculation of Capital Gain for the AY 2020-21.

Ans:

Calculation of the Capital Gain for the AY 2020-21

<u>Particulars</u>	<u>Amount (Rs)</u>	<u>Amount (Rs)</u>
Sale Consideration		1225000
Less: Index Cost of Acquisition (Rs.350000 X 289/240)	421458	
Less: Expanses on Transfer	<u>5700</u>	<u>427158</u>
		797842
Less: Exemption Section 54 (Cost of Residential House i.e. Rs.1850000 Or Amount of Capital Gain Whicheckever is Lower)		<u>797842</u>
Capital gain		<u>Nil.</u>

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Calculation of Tax Liability of Assessee When Gross Total Income Included Capital gain Different types:

1 Calculation of Gross total Income:

<u>Particulars</u>	<u>Amount (Rs.)</u>
Income Chargeable to tax Other Than capital Gain
Long term capital Gain section 112A
Long Term capital Gain Section 112
Short Term Capital Gain Section 111A
Other Taxable Short Term Capital Gain
Gross Total Income
Less: Deduction under Section (80 C To 80 U)
Net Taxable Income

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2 Calculation of Tax Liability:

Particulars	Amount (Rs)
Tax On Long term capital Gain section 112A (10% of Capital gain Amount Exceeding Rs.1 Lakh)
Tax On Long Term capital Gain Section 112 (20% of Respective Gain)
Tax on Short Term Capital Gain Section 111A (15% Respective Gain)
Tax on Balance total Income As the Normal Rate of Tax
Tax on Total Income
Less: Rebate Section 87A (If Applicable)
Tax Liability Before Surcharge And Cess
Add: Surcharge (If Applicable)
Tax And surcharge
Add: Cess @ 4%
Total Tax Liability (Rounded off)

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Example:

Particulars	Building	Shares (Unlisted)
Date of Acquisition	03-05-2013	21-07-2012
Date of Sale	21-08-2019	02-09-2019
Cost of Acquisition (Rs.)	350000	50000
Sale Proceeds (Rs.)	625000	212000

Computation of Income From Capital Gain.

Ans:

Calculation of Income From Capital Gain:

<u>Particulars</u>	<u>Amount (Rs)</u>	<u>Amount (Rs)</u>
Long term capital Gain: On Sale of Building		
Sale Considerations	625000	
Less: Index Cost of Acquisition (Rs.350000 X 289/240)	<u>(459773)</u>	165227
On Sale of Shares Sale Considerations	212000	
Less: Index Cost of Acquisition (Rs.50000 X 289/200)	<u>(72250)</u>	<u>139750</u>
Income From Capital Gain		<u>304977</u>

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Example:

The Information Are Give Below:

Asset Type: Machinery (Depreciable)

Rate of Depreciation: 15%

W.D.V of the Block As on 01-04-2019 Rs. 200000

Asset Purchased on 01-10-2019 Rs. 150000

Sale Proceeds of Old Machinery Rs. 400000

(Book Value As on 01-04-2019 Rs.120000)

Asset Type: Land

Date of Acquisition 27-01-2015

Date of Sale 22-03-2020

Cost of Acquisition Rs.600000

Sale Proceeds Rs. 2000000

Ans:

Calculation of Income From Capital Gain:

Particulars	Amount (Rs)	Amount (Rs)
Short Term Capital Gain on sale of Machinery		
W.D.V of the Block As on 01-04-2019	200000	
Add: Asset Purchased on 01-10-2019	<u>150000</u>	
	350000	
Less: Sale Proceeds of Old Machinery	<u>(400000)</u>	50000
Long term capital Gain On the Sale of Land		
Sale Proceeds	2000000	
Less: Index Cost of Acquisition (Rs.600000 X 289/113)	<u>(1534513)</u>	<u>465487</u>
Income From Capital Gain		<u>515487</u>

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Example:

The Information Are Given Below:

- Taxable Income From Salaries Rs. 540000
- Sale of Equity Share (Not Listed) on 22-08-2019 for Rs.320000 (Purchased on 15-07-2004) for Rs.60000
- Invested Rs.30000 in NSC.

Computation of Tax Liability.

Ans:

Calculation of Income And Tax Liability for the AY 2020-21.

<u>Particulars</u>	<u>Amount (Rs)</u>	<u>Amount (Rs)</u>
Taxable Income From Salaries		540000
Long Term Capital Gain on Sale of Shares: Sale Consideration	320000	
Less: Index Cost of Acquisition (Rs.60000 X 289/113)	<u>(153451)</u>	166549
Gross Total Income		706549
Less: Deduction Section 80C		<u>(30000)</u>
Taxable Income		676550

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Calculation of Income And Tax Liability for the AY 2020-21:

<u>Particulars</u>	<u>Amount (Rs)</u>	<u>Amount (Rs)</u>
Tax On Total Income Excluding Long term capital Gain As per Income Tax Slab Rate for PY 2019-20 And AY 2020-21)		14500
Add: Tax on Long term Capital gain (Rs. 166549 X 20%)		<u>33310</u>
Tax Liability on Total Income		47810
Add: Cess @4%		<u>1912</u>
Total tax Liability of Assesse		<u>49720</u>