

CA / CMA -FINAL

FOR NOV / DEC. 2023 EXAMS

(AS AMENDED BY FINANCE ACT 2022 FOR A.Y. 23-24.)

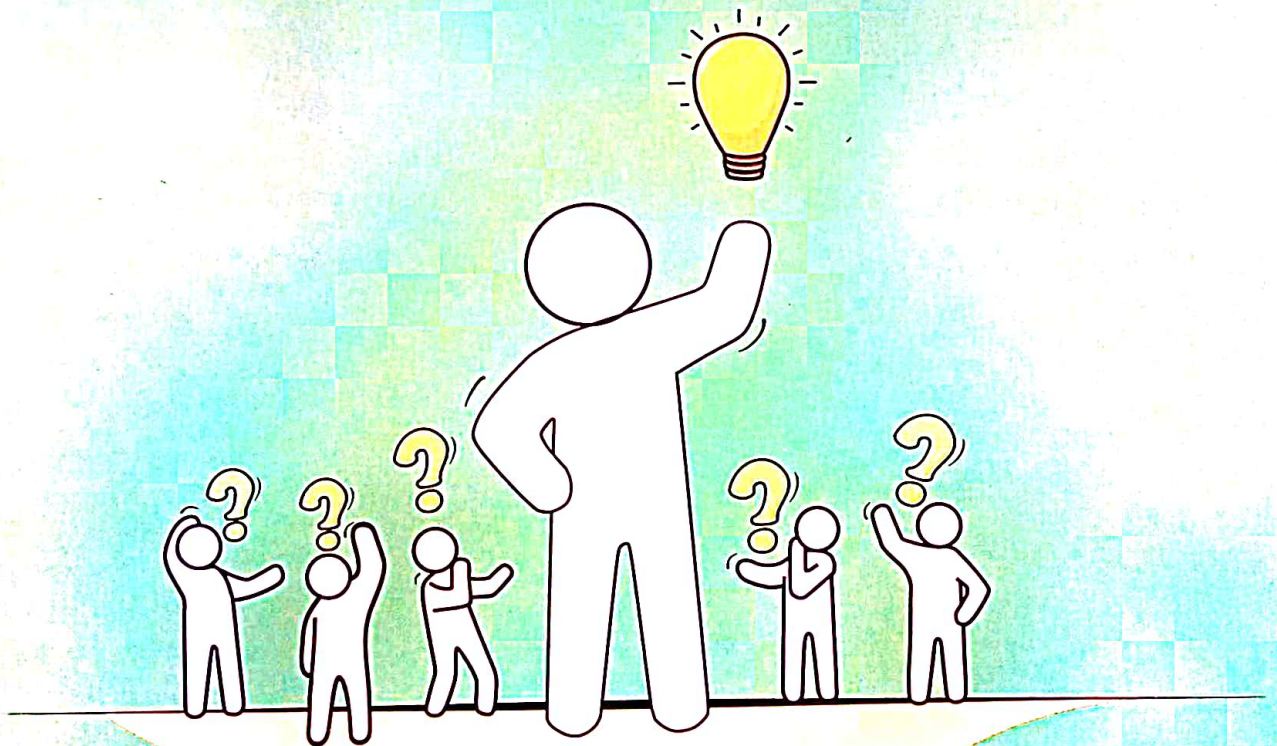
 **BB VIRTUALS**

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DIRECT TAX
QUESTION & ANSWER

COMPILER

As Per New Syllabus



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By **CA, BHANWAR BORANA**

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Income from Capital Gains

Q-1

X furnishes the following Information:

No. of Shares	Month and Year of Purchase	Shares Dematted Month and Year
1000	March 2004	December 2007
500	March 2005	November 2008
1000	December 2006	October 2007

He sold 1500 shares in January 2023 out of the dematted shares. He seeks your advice as to the taxability towards capital gains for the Assessment Year 2023-24.

A-1

Section 45(2A) of the Act provides that where any person has had at any time during Previous Year any beneficial interest in any securities, then any profits or gains arising from transfer made by the depository of such beneficial interest in respect of securities shall be chargeable to Income Tax as the Income of the beneficial owner of the previous year in which such transfer took place and for the purposes of Computation of Capital Gain the cost of acquisition and the period of holding of any securities shall be determined on the basis of FIRST-IN- FIRST-OUT method

CBDT vide its Circular No. 768 has clarified that if in an existing account of dematerialized and entered at a later date, under the FIFO method, the basis for determining the movement out of the account is the date of entry into account.

Therefore, in the present question, the period of holding of 1500 shares sold shall be as under:

- (1) 1000 Shares: December 2006 to January 2023 (Long Term). The cost of acquisition of these shares shall be taken from the broker's contract note.
- (2) 500 Shares: March 2004 to January 2023 (Long Term). The cost of acquisition of these shares shall be taken from the broker's contract note.

Q-2

Preeti purchased a Land at a cost of ₹10 Lakhs in the Financial Year 1982-83 and held the same as her Capital Asset till 31st March, 2010. Preeti started her real estate business on 01st April, 2010 and converted the said land into Stock-in-Trade of her business on the said date, when the fair market value of the land was ₹150 Lakhs. FMV of land as on 1/4/2001 is 9.3 lacs.

She constructed 20 Flats of equal size, quality and dimension. Cost of construction of each flat is ₹8 Lakhs. Construction was completed in December 2022. She sold 15 Flats at ₹20 Lakhs per Flat between January, 2023 and March 2023. The remaining 5 flats were held in stock as on 31st March, 2023.

She invested ₹50 Lakhs in bonds issued by Rural Electrification Corporation Ltd. On 31st March, 2023.

Compute the amount of chargeable Capital Gain and Business Income in the hands of Preeti arising from the transactions for A.Y. 2023-24 indication clearly the reasons for treatment for each item.

CII F.Y. 2001-02 - 100, F.Y. 2010-11 - 167, F.Y. 2022-23 - 331

A-2

Name of the Assessee: Preeti

Previous Year 2022-23

Assessment Year 2023-24

	Particulars		Amount (₹)
A	CAPITAL GAINS:		
	Full Value of Consideration [FMV of Land]		1,50,00,000
	Less: Transfer Expenses	—	NIL
	Net Consideration		1,50,00,000
	Less: Indexed Cost of Acquisition		16,70,000
	$10,00,000 \times \frac{167 \text{ [F.Y. 2010-11]}}{100 \text{ [F.Y. 2001-02]}}$	—	
	Total		1,33,30,000
	Proportionate Capital Gains arising during P.Y. 2022-23 [1,33,30,000 × 15/20]		99,97,500
	Less: Exemption under Section 54EC		
	Bonds of Rural Electrification Corp Ltd.	—	50,00,000
	Capital Gains Chargeable to Tax (A)		49,97,500

	Particulars		Amount (₹)
B	BUSINESS INCOME:		
	Sales Consideration of Flats. [15 x ₹20 Lakhs]		3,00,00,000
	Less: Cost of Flats		
	FMV of Land as on date of conversion [₹150 Lakhs x 3/4]	—	1,12,50,000
	Cost of Construction of Flats [15 Flats x ₹8 Lakhs]	—	1,20,00,000
	Business Income chargeable to Tax (B)		67,50,000

Notes:

- (1) The conversion of a Capital Asset into Stock-in-Trade is treated as a transfer under section 2(47). It would be treated as a transfer in the year in which the capital asset is converted into Stock-in-Trade.
- (2) However, as per Section 45(2), the Capital Gains arising from the transfer by way of Conversion of Capital Assets in Stock-in-Trade will be Chargeable to tax only in the year in which the Stock-in-Trade is sold.
- (3) For the purpose of computing Capital Gains in such cases the Fair Market Value (FMV) of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the Full Value of Consideration received or accruing as a result of the transfer of the Capital Asset. In this case, since only 75% of the Stock-in-Trade (15 Flats out of 20 Flats) is sold in F.Y. 2022-23 only proportionately Capital Gains (i.e. 75%) would be chargeable in the A.Y. 2023-24.
- (4) On sale of such Stock-in-Trade, business income would arise. The business income chargeable to tax would be the difference between the price at which the stock-in-trade is sold and the Fair market value on the date of conversion of capital asset into Stock-in-Trade.
- (5) In case of conversion of Capital Asset into Stock-in-Trade and subsequent sale of Stock-in-Trade, the period of 6 months is to be reckoned from the date of sale of Stock-in-Trade for the purpose of exemption u/s 54EC [CBDT Circular No. 791 dated 2.6.2000]. In this case, since the investment in bonds of RECL has been made within 6 months of sale of flats, the same qualifies for exemption u/s 54EC.

Q-3

The Assessee was a Company carrying on business of manufacture and sale of Art-Silk cloth. It purchased Machinery worth ₹4 Lakhs on 1.5.2007 and insured it with United India Assurance Ltd. against Fire, Flood, Earthquake, etc. The written down value of the asset as on 01.04.2022 was ₹2,08,800. The Insurance policy contained a re-instatement clause requiring the insurance company to pay the value of the machinery, as in the date of the fire, etc., in case of destruction of loss. A fire broke out in August 2022 causing extensive damage to the machinery of the Assessee rendering them totally useless. The Assessee company received a sum of ₹6 Lakhs from the Insurance Company on 15th March, 2023. Discuss the issue arising on account on the transactions and their treatment.

(Cost Inflation Index for F.Y. 2007-08 and 2022-23 is 129 and 331 respectively)

A-3

As per Section 45(1A), where any person receives any money or other assets under an insurance from an insurer on account of damage to or destruction of capital asset, then, any receipt of such money or other assets, shall be chargeable to income tax under the head "Capital Gains" and shall be deemed to be the income of such person of the previous year in which such money or asset was received. U/s 45(1A) any profits and gains arising from receipt of insurance money is chargeable under the head "Capital Gains". For the purpose of Section 48 the money received shall be deemed to be the Full Value of Consideration accruing or arising u/s 50, the capital gains in respect of depreciable assets had to be computed in the following manner (assuming it was the only asset in the block)

The computation of Capital Gain and tax implication is given below:

Particulars		Amount (₹)
Full Value of Consideration		6,00,000
Less: Written Down Value as on 01 st April, 2022	—	2,08,800
Short Term Capital Gains		3,91,200

Q-4

'X' purchased on 18.06.2003, house property for ₹20,00,000/- which was sold to 'A' On 18.10.2022 for ₹38,75,000/-. The sub registrar at the time of Registration of sale deed, charged stamp duty on ₹60,00,000/- which was paid by the buyer.

The Assessing officer while assessing for capital gain referred the matter to the valuation officer as per the request of vendor. The valuation officer determined the value of property at ₹55,00,000/- on the date of transfer. X seeks your advice on the following:

On what value the assessing officer could compute the Capital Gain Chargeable to tax?

The amount of capital gain on which 'X' is required to pay capital gains tax (The CII for F.Y. 2003-04 is 109 & of F.Y. 2022-23 is 331)

A-4

Name of Assessee: 'X'

Previous Year: 2022-23

Assessment Year: 2023-24

Computation of Capital Gain

Particulars		Amount ₹
Full Value of Consideration (Section 50C)		55,00,000
Less: Transfer Expenses	—	NIL
Net Consideration		55,00,000

Particulars		Amount ₹
Less: Indexed Cost of Acquisition	—	(60,73,394)
20,00,000 × $\frac{331}{109}$ [F.Y. 2022-23]		
Long Term Capital Loss		(5,73,394)

Notes:

- (1) According to Section 50C, the Assessing Officer can refer to the property to the Valuation Officer, only when the following two conditions are satisfied:
 - (a) The value fixed by the stamp valuation authority is not disputed in appeal or revision, etc.
 - (b) The Assessee claims before the Assessing officer that the value adopted or Assessed by the Stamp Valuation Authority exceeds the Fair Market Value (FMV) of the property as on the date of transfer.
- (2) In the instant case, the value determined by the valuation officer is less than the value adopted by the stamp valuation authority. Therefore, such value only could be adopted for computing chargeable capital gains.

Q-5

A piece of land owned by Mr. Lobo located on Jaipur – Delhi Highway was acquired by NHAI in the F.Y. 2008-09, but the award ordered in F.Y. 2009-10 was paid in the F.Y. 2022-23. This land was purchased by him on 02.04.1998 for ₹10,000/-. The Fair Market Value (FMV) of the land as on 01.04.2001 was ₹9,000/-. Compensation paid was ₹18 Lakhs.

The other piece of land located in Chennai purchased in April 2004 for ₹25 Lakhs was also sold by him in February 2023 for ₹35 Lakhs, but sale deed thereof could not be executed by 31.03.2023. The value for the valuation authority was ₹40 Lakhs.

Compute the Income Chargeable to tax arising as a result of these transactions in A.Y. 2023-24. (The CII for F.Y. 2004-05, 2008-09, 2009-10 and 2022-23 are 113, 137, 148 and 331 respectively.)

A-5

Name of the Assessee: Mr. Lobo

Previous Year: 2022-23

Assessment Year 2023-24

Computation of Capital Gain

Particulars		Land – Jaipur Delhi Highway	Land – Chennai
Full Value of Consideration		18,00,000	40,00,000
Less : Transfer Expenses	—	----NIL---	----NIL---
Net Consideration		18,00,000	40,00,000

Particulars		Land – Jaipur Delhi Highway	Land – Chennai
Less: Indexed Cost of Acquisition	---		
Land: Jaipur – Delhi Highway			
Cost ↑ 10000 x 137 [2008-09]			
FMV ↓ 9000 100 [2001-02]			
Land: Chennai		(13,700)	
25,00,000 x 331 [2022-23]			(73,23,009)
113 [2004-05]			
Long Term Capital Gain/(Loss)		17,86,300	(33,23,009)

Notes:

- (1) As per section 45(5) in case of compulsory acquisition, transfer took place in the year in which asset was compulsory acquired but tax will be paid in the year in which compensation received.
- (2) The execution of sale deed is not compulsory for the purpose of charge of capital gain because if possession is transfer then it is treated as transfer.
- (3) As per section 50C if sale value is less than SDV & SDV is more than 110% of sale value, then such SDV is treated as FVOC.

Q-6

Nikhil, an individual purchased a site on 21.04.2003 for ₹2,00,000/-. He completed construction of a building thereon on 14.02.2022 at a cost of ₹10,00,000/-. He sold the property consisting of site and building on 07.12.2022 for ₹20,00,000/-. Nikhil seeks your opinion on the nature of Capital Gain arising to him from the sale of property for the A.Y. 2023-24.

Computation of Capital gain is not necessary.

A-6

As per SC judgment in case of Alps Theatre, site and Building are separate assets for the purpose of Capital Gain.

In this case, site is LTCA since held for more than 2 years and building is STCA since held for less than 2 years. We have to calculate separate capital gain on both the assets. Capital gain on Land is treated as Long Term Capital Gain and on building treated as STCG.

Q-7

Answer the following questions.

1. John inherits a house property from his father, who had mortgaged it. John discharges the mortgage debt. John later sells the property. Can he claim the amount paid to the mortgages as cost of improvement in computing the Capital Gains?

2. Laxman mortgaged his house property and utilized the mortgage amount to perform the marriage of his son. He paid the amount to the mortgagee later. Upon the sale of the said property thereafter, he claims the mortgage debt discharged as forming part of the cost of acquisition. Can Capital Gain be computed accepting the claim?

A-7

1. As per SC, in case of R.M. Arunachalam if any property is inherited with the liability to discharge the mortgage debt, then the amount paid to mortgagee can be claimed as cost of acquisition/improvement.
2. Laxman has himself created the mortgage in respect of his property. Therefore, the debt discharged by Laxman does not form part of Cost of acquisition. (V.S.M.R. Jagdish Chandran, S.C.)

Q-8

X Ltd has transferred its 'Units N' to Y Ltd. By way of slump sale on 30th November, 2022.

The summarized Balance Sheet of X Ltd as on that date is given below:

Liabilities	₹ In Lakhs	Assets	₹ In Lakhs
Paid up Capital	1700	Fixed Assots:	
		Unit L	150
		Unit M	150
		Unit N	550
Reserves & Surplus	620		
Liabilities:		Other Assots:	
Unit L	40	Unit L	520
Unit M	110	Unit M	800
Unit N	90	Unit N (FMV 425 Lakhs)	390
Total	2560	Total	2560

Using the further information given below, compute the capital gain arising from slump sale of unit N and tax on such capital gain.

1. CII for F.Y. 2006-07 and F.Y. 2022-23 are 122 and 331 respectively.
2. Lump sum consideration on transfer of unit N is ₹ 880 lakhs.
3. Fixed assets of Unit N include land which was purchased at ₹60 Lakhs in August 2007 and revalued at ₹90 Lakhs as on March 31, 2022. The SDV of the land on transfer date is ₹80 lakhs and FMV of other assets was ₹480 lakhs.