

All Questions of New Syllabus on Capital Gains with Slump Sale & 9B/45(4)

➤ May23:(8 Marks)

Section 115BBH: Capital Gains of Virtual Digital Assets

- 1) Gains arising from transfer of Virtual Digital Assets are treated as Capital Gains. If held for more than 36 months then considered as Long term Capital Asset.
- 2) For taxability calculation, except cost of acquisition, no other deduction or exemption shall be allowed. Even indexation is not allowed.
- 3) Tax Rate for Short/Long term capital gain @30% flat. No deduction of chapter VI-A or exemption of 54F shall not be allowed.
- 4) No setoff against other income except income from another virtual asset shall be allowed.

Q. Mr. A, aged 34 years, is a salaried employee with TKM Limited. He has furnished the following details for the previous year 2022-23:

Sr. No.	Particulars	Amount in
1.	Gross Salary	23,00,000
2.	Business Loss from a new part time business of trading in Mobiles	(4,50,000)
3.	Short Term Capital Loss on sale of Property (computed)	(3,60,000)
4.	Mr. A purchased 1000 Bibcoins, a virtual digital currency on 01.04.2022 for 1,000 per coin, which he sold on 15.02.2023 for 1,300 per coin. Commission for transfer of Bibcoins is 2% of the sale value.	

You are required to compute the total income of Mr. A, assuming that he has not opted for section 115BAC for the Assessment year 2023-24 as per the provisions of the Income-tax Act, 1961

Ans. Computation of total income of Mr. A for A.Y.2023-24 (under the regular provisions of the Income-tax Act, 1961)

	Particulars	Amount (in `)	Amount (in `)
I	Salaries		
	Gross Salary	23,00,000	
	Less: Standard deduction under section 16(ia)	<u>50,000</u>	
			22,50,000
II	Profit and gains from business or profession		
	Business loss from part time business	(4,50,000)	

	<p>Loss from business cannot be set off against salary income.</p> <p>No set off of business loss is allowed against any capital gain from virtual digital assets.</p> <p>Business loss of 4,50,000 has to be carried forward to A.Y. 2024-25.</p>		
III	<p>Capital Gains</p> <p>Short term capital loss on sale of property</p> <p>[Short term capital loss cannot be set off against any income other than Capital gains. Short term capital loss of 3,60,000 has to be carried forward to A.Y. 2024-25].</p> <p><u>It is not eligible for set off against capital gain arising from transfer of virtual digital asset.</u></p>	(3,60,000)	
IV	<p>Capital Gains</p> <p>Income from transfer of virtual digital assets</p> <p>[(1,300 - 1,000) × 1,000 bib coins]</p> <p>[No deduction in respect of any expenditure other than cost of acquisition is allowed]</p>		3,00,000
	Total Income		25,50,000

➤ **Section 9B & 45(4):**

Section 9B: Where a partner receives during PY any capital asset or SIT or both from the firm (AOP/BOI) in connection with dissolution or reconstitution (One or more Partner = ceases, admitted, change in respective shares) then firm shall be deemed to have transferred such assets to partner in the year when such assets are received by partner and firm is required to pay tax u/h PGBP or Capital Gain or both. (Cash nii milega) (PGBP for SIT)

FMV on date of receipt by partner shall be taken as FVOC for PGBP & Capital Gains.

Section 45(4): Where a partner receives during PY any money or capital asset or both from a firm in connection with reconstitution then profits or gains from such receipt are taxable for firm u/h Capital gains in PY when assets are received by partner. (Only reconstitution cases) (Only capital Gain Income) (Cash bhi mil sakta hai)

Capital Gain:

Value of money received on date of receipt	xxx
+ FMV capital assets on date of receipts	xxx
- Partner capital Account Balance (Check steps)	xxx
Capital Gain	xxx

- 45(4) is applicable only in case where capital account balance is not more than t/f amount of money & capital asset. If more then both 9B & 45(4) apply.
- If capital gain is -ve then it shall be deemed to be zero.
- Balance of Capital Account should be without revaluation of any capital asset or due to self generated goodwill.
- Capital gain calculated above is distributed as per rule 8AB.
- Capital Gain shall be STCG if remaining assets at the time of taxation u/s 45(4) is short term assets, Capital Asset is depreciable asset, Self generated asset/goodwill. For other cases LTCG.

Steps for calculating Partner Capital Account Balance:

Step1: Take PGBP calculated as per 9B & for Capital Gain take balance as (FMV - Book Value of Asset)

Step2: Now, Calculate Tax Payable on both Incomes.

Step3: Reduce Step2 from total Income of Step1.

Step4: Bifurcate the share of step3 among Partners.

Step5: Adjust Partner Capital Balance with Step3.

Q. L, M and N are three partners of M/s. L & G Associates, a partnership firm established on 01.04.1995. L retires from the firm on July 27,2022 and after his retirement, business of the firm will be operated by M and N. Capital account balance of L as on July 27,2022 is 20 Lakhs, (there is no revaluation of assets in books of the firm at any time after 2003-04 when L joined the firm as a partner).

The firm gives to L the following to settle his account:

(i) Cash payment of 1,00,000

(ii) Stock in trade (Fair market value on July 27,2022 is 2,00,000).

This stock was purchased on April 15,2022 for 1,20,000.

(iii) Plot of Land at Kota (Fair market value of plot as on July 27,2022 is 17,00,000)

Book value of plot is 17,00,000. It was acquired during 1998-99 for 60,000. Fair market value of the plot as on April 1, 2001 is 1,10,000.

You are required to calculate the Taxable Income as per the provisions of Income- tax Act, 1961 for L & G Associates for A.Y. 2023-24.

Cost Inflation index for F.Y.2022-23 is 331 and for F.Y. 2001-02 is 100.

Ans. Computation of taxable income for M/s. L & G Associates for A.Y. 2023-24

Particulars	Amount (in)	Amount (in)
Profits and gains of business or profession		
Deemed transfer on receipt of stock in trade by Mr. L from L & G associates		
Receipt of stock in trade by Mr. L from L & G associates in connection with reconstitution of L & G associates would be deemed to be transfer of stock in trade by L & G associates to Mr. L and would be taxable in the P.Y. 2022-23 u/s 9B		

Full value of consideration of stock in trade [FMV as on 27.7.2022, being the date on which stock in trade is received by Mr. L]	2,00,000	
Less: Purchase cost	<u>1,20,000</u>	
Profits and gains from business		80,000
Capital Gains		
Deemed transfer on receipt of plot of Land by Mr. L from L & G associates		
Receipt of plot of land by Mr. L from L & G associates in connection with reconstitution of L & G associates would be deemed to be transfer of plot of land by L & G associates to Mr. L and would be taxable in the P.Y. 2022-23 u/s 9B		
Full value of consideration of plot of land [FMV as on 27.7.2022, being the date on which capital asset is received by Mr. L]	17,00,000	
Less: Indexed cost of acquisition [Higher of cost of acquisition (60,000) and FMV as on 1.4.2001 (1,10,000) i.e., $1,10,000 \times 331/100$]	(3,64,100)	
Capital Gains		13,35,900
Deemed income on receipt of cash and plot of land by Mr. L from L & G associates		
Profits and gains arising on receipt of cash and plot of land by Mr. L from L & G associates in connection with reconstitution of L & G associates would be deemed to be the income of L & G associates and would be taxable in the P.Y. 2022-23 under section 45(4)		
Cash payment	1,00,000	
FMV of plot of land as on 27.7.2022	<u>17,00,000</u>	
	18,00,000	
Less: Amount of balance in capital account [See Working Note below]	19,25,724	
Since, income chargeable is negative, it would be deemed to be zero	(1,25,724)	-
Taxable Income		14,15,900
Working Note		
Amount of balance in capital account for section 45(4) = Capital balance as on date 27.7.2022 +/- due to transfer of Section 9B.		

<p>Book profit after income-tax on account of deemed transfer u/s 9B</p> <p>Book profit on transfer on land = Nil (17,00,000 - 17,00,000) (FMV - Book Value)</p> <p>Book profit on transfer on stock in trade = 80,000 (2,00,000 - 1,20,000)</p> <p>Tax on capital gains on transfer of land as per section 9B = 13,35,900 × 20.8% = 2,77,867</p> <p>Tax on business income on transfer of stock in trade under section 9B = 80,000 × 31.2% = 24,960</p> <p>Profit as per books as reduced by Income-tax on transfer u/s 9B</p> <p>80,000 - 2,77,867 - 24,960 = (2,22,827)</p> <p>Share of loss of Mr. L = 2,22,827/3 = 74,276</p> <p>Capital account balance before adjustment 20,00,000</p> <p>Less: Share of loss 74,276</p> <p>Amount of balance in capital account on 27.7.2022 19,25,724</p>		
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➤ Dec21: (4 marks)

Q. The Government compulsorily acquired land of Mr. Shivam in April 2021 and paid compensation of 20 lakhs in June 2022. The land was acquired by Mr. Shivam in June 2003 for 12 lakhs. He had filed for additional compensation through Court and was awarded 18 Lakhs in February 2023 but this amount was received only during May 2023. Compute the taxable capital gain from the above transaction indicating the relevant assessment year. Expenses in connection with compulsory acquisition were 30,000 and for obtaining enhancement of compensation was 1 lakh Cost inflation index: FY 2003-04 :109; FY 2020-21: 301; FY 2021-22: 317; FY 2022-23:331

Ans. Computation of capital gains of Mr. Shivam for the A.Y.2023-24

Particulars	₹
Full value of consideration (Compensation received) [Taxable in the year of receipt i.e., P.Y.2022-23]	20,00,000
Less: Expenses in connection with compulsory acquisition	30,000
	19,70,000
Less: Indexed cost of acquisition [12,00,000 × 317/109]	34,89,908
Long-term capital loss (since land was held for > 24 months) for the A.Y. 2023-24	15,19,908

Note - Since the year of compulsory acquisition i.e., F.Y.2021-22 is the year of transfer of land, CII for F.Y.2021-22 has to be considered for computing indexed cost of acquisition.

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Computation of capital gains of Mr. Shivam for the A.Y.2024-25

Particulars	₹
Full value of consideration (Enhanced Compensation received is taxable in the year of receipt i.e., P.Y.2023-24)	18,00,000
Less: Expenses for obtaining enhanced compensation (allowable as deduction)	1,00,000
	17,00,000
Less: Set-off of b/f long-term capital loss from A.Y.2023-24	15,19,908
Long-term capital gains for the A.Y. 2024-25	1,80,092
Note - No deduction in respect of cost of acquisition is allowable from enhanced compensation.	

➤ **Jan21:**

M/s R Ltd. sold factory building for 14 lakhs on 19.4.22 purchased on 1.4.2009 it was used for manufacturing & depreciation claimed for it. The amount for sale was reinvested in 54EC bonds. Now AO rejected the claims on the ground that it is a depreciable asset and section 50 will be applicable & 54EC will not be allowed.

Here, Section 54EC does not make any distinction between depreciable & non depreciable asset it is just for the reinvestment of the amount from capital gains of long term assets. Investment has to be made in NHAI or RECL Bonds.

Section 50 is a different provision which is for computation of capital gains in case of depreciable asset. It does not deal with exemption of reinvestment u/s 54EC. Therefore, exemption u/s 54EC cannot be denied to the assessee on account of fiction created by Section 50.

➤ **Nov18:**

Mr. Sarthak commenced business of manufacture of solar powered car. Estimated cost of project 5 crores. For financing, M. Sarthak can sale his residential house of Surat for 3 crores purchased in 2010. Rest 2 crores from bank borrowings @13% p.a. For 2 crores another option is to take contribution from co-partner Ms. Juhi. Indexed COA of residential house is 70 Lakhs.

Here, Company of Mr. Sarthak is a Eligible start up company u/s 80IAC and invests the Sale proceeds of 3 crores in equity share of the company and the company buys P&M within one year of subscription of shares, then LTCG of 2.30 crores (3 crores - 70 Lakhs) shall be exempt u/s 54GB.

If Ms. Juhi contributes 2 crores as share capital & becomes shareholder of company. Then also deduction u/s 54GB shall be available to Mr. Sarthak as he owns more than 25% of the equity share capital of company.

Also, the 100% profits of the Company shall be allowed as deduction for 3 consecutive AY's. If Mr. Sarthak takes loan then Interest cost will be allowed as deduction u/s 36(1)(iii).

➤ Slump Sale Question:

Alpha Ltd. has two industrial undertakings. Unit 1 is engaged in the production of television sets and Unit 2 is engaged in the production of refrigerators. The company has a part of its restructuring program, decided to sell unit 2 as a going concern, by way of slump sale for 300 Lakhs to a new company called Beta Ltd. in which it holds 85% equity shares, The following are extracted from B/S of Alpha Ltd. as on 31st Mar 2023:

Rs. In Lakhs	Unit-1	Unit-2	
		Book Value	FMV
Fixed Assets	112	158	170
Debtors	88	68	68
Inventories	85	22	30
Liabilities	33	65	65

	Rs. in lakhs
Paid up share capital	231
General Reserve	160
Share Premium	39
Revaluation Reserve	105

The company had set up Unit 2 on 1st April 2012. The WDV of the block of FA for tax purposes as on 31st Mar 2023 is Rs. 130 L out of which 75 L are attributable to Unit-2.

Ans. Computation of Capital Gains on Slump Sale

As per Section 50B, Any profits or gains arising from the slump sale of the undertaking effected in the PY shall be chargeable to tax as capital gains and shall be deemed to be the income of the PY in which the transfer took place. If the assessee owned undertaking transferred under slump sale for more than 36 months before the date of transfer, then Capital Gains shall be deemed to be long-term Capital Gains.

Indexation benefit is not available in case of Slump Sale.

Tax Liability calculation:

Particulars	Amount
Slump Sale Consideration (W.N. 2)	3,00,00,000
Less: COA (Networth) (W.N. 1)	1,00,00,000
LTCG as Unit 2 held for > 36m	2,00,00,000
Tax Liability	
Tax @ 20% on LTCG u/s 112	40,00,000
Surcharge @7%	2,80,000
	42,80,000
HEC @4%	1,71,200
Total Tax Liability	44,51,200

W.N. 1: NetWorth (A-L)

WDV of Block of Assets + Debtors + Inventories = 75 L + 68 L + 22 L = 1.65 Crores

Less: Liabilities = 65 L

Networth = 1 crores

W.N. 2 Slump Sale Consideration

As per Rule 11UAE, Full Value of Consideration to be higher of 1 or 2 below:

1) FMV_1 of Assets transferred = $A + B + C + D - L$

A = Book Value of all assets except Jewellery, Artistic Work, Shares & Securities & Immovable property :

FA : 158 + Debtors: 68 + Inventories: 22 = 248 L

B, C, D shall be NIL as no such assets (B- FMV of Jewellery, C- FMV of shares & securities, D- SDV of Imm. Prop.)

L = 65 L

$FMV_1 = 2,48,00,000 - 65,00,000 = 1,83,00,000$

2) $FMV_2 = E + F + G + H$

E = Monetary Consideration = 3,00,00,000

F, G, H shall be Nil as there is no non monetary consideration.

$FMV_2 = 3,00,00,000$

Therefore, Slump Sale Consideration = 3,00,00,000 (Higher of 1,2)

ALL THE BEST!