

Capital gains

< Sec 45 - Sec 55A >

Learning objectives

- * Charging section
- * meaning of capital asset
- * Negative list of capital assets.
- * Types of capital asset
- * Determination of period of holding.
- * Defn of transfer
- * Transactions not regarded as tr.
- * Transfer when it is complete + effective?
- * Scheme of computation
- * concept of Full value of consideration.
- * FVOC - Notional basis.
- * Treatment of expenditure on transfer.
- * Concept of cost of acquisition.
- * concept of notional cost of acquisition.
- * cost of asset to previous owner
- * When COA = FMV
- * COA in case of depreciable assets.
- * concept of cost of improvement.
- * CG in conversion of capital asset into S.I.T.
- * CG @ conversion of firms.
- * CG in case of non-residents.
- * CG in case of transfer of bonus shares.
- * CG in case of rights shares.
- * CG vis-a-vis liquidation.
- * CG on buy-back.
- * CG on Land / building / both.
- * Reference to valuation officer
- * CG exempt from tax
- * Other related concepts.

SEGMENT 1 - BASICS

1. Charging section [Section 45(1)]

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. $CPY \text{ of } Ch = PY \text{ of } tr$

a. Conditions for chargeability:

Cond	Particulars	Remarks
1	There should be a capital asset	<CA as defined in S. 2(14)>
2	Capital asset is transferred by the A/c.	<Tr as defined in S. 2(47)>
3	Transfer takes place during PY.	Subject to exceptions
4	Profit/gain arises as a result of such transfer	
5	Such capital gain is not exempt u/s 54-54H	

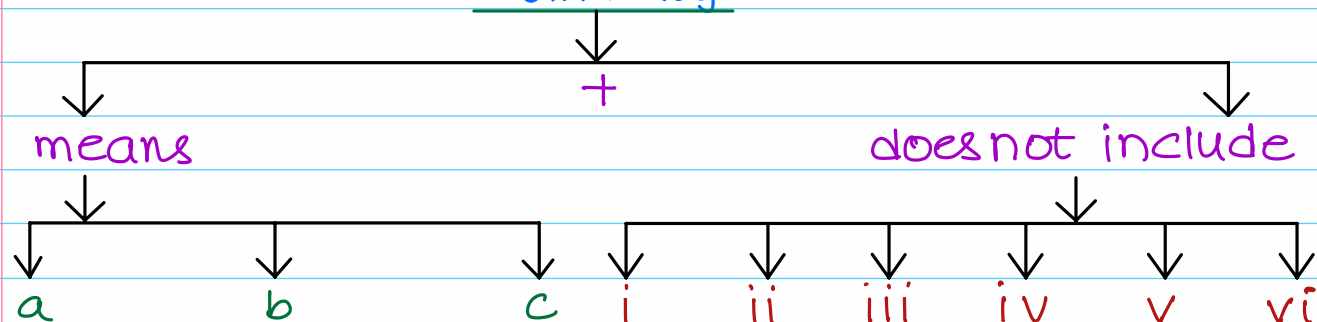
b. Other analysis

- * In some cases, Ch arises even if no transfer has taken place.
- * In some cases, Ch is taxable in a year other than the year in which CA tr'd.
- * Profit/gain arising u/s Ch is taxable irrespective of amount - This is due to use of words 'Any....'.

c. Definition of Capital asset [Section 2(14)]

<Amendment in section 2(14)(b) + 2(14)(c)>

Summary



I. Capital asset means ———

(a) property of any kind held by an assessee, whether or not connected with his business or profession;

* It is any property.

* The words 'any kind' represents that, it can be ———

- movable / immovable
- Tangible / intangible
- Fixed / circulating.

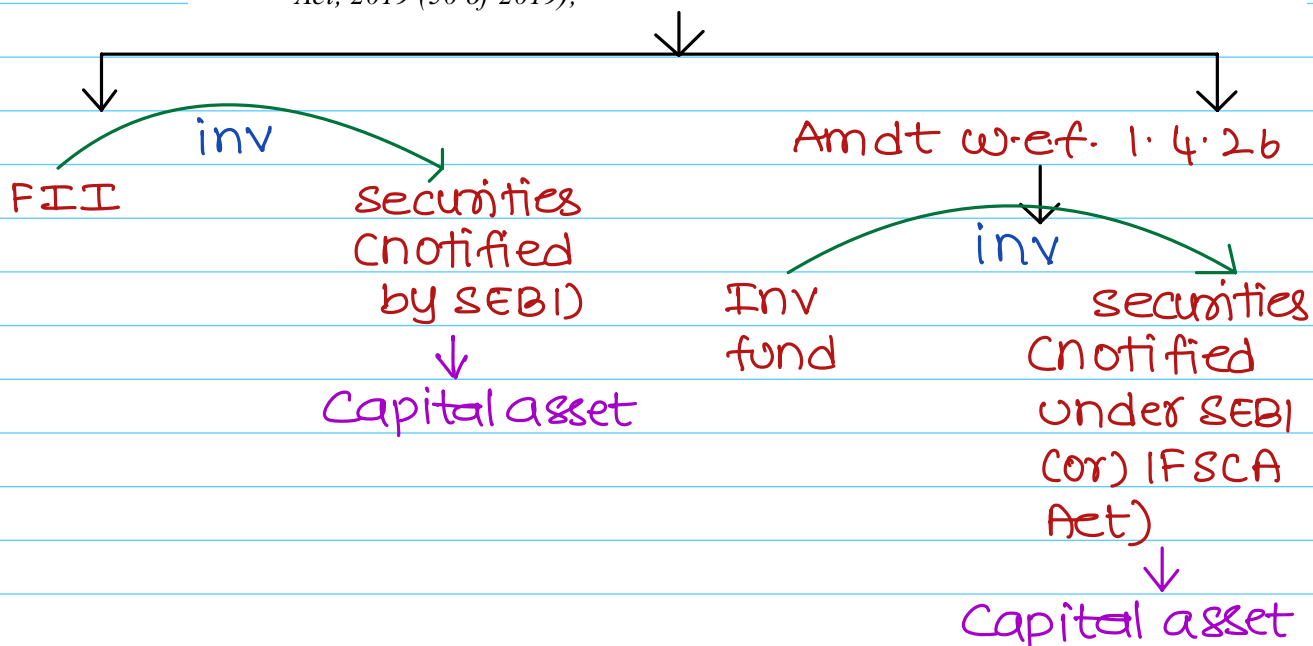
* If it is a transfer of capital asset then income is taxable U/H CH only though it is used for B/P.

* The words 'held' represents a ownership on the CA. <generally>

(b) any securities held by— <w.e.f. 1/4/26>

(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 (15 of 1992); or <upto AY 25-26>

(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 (15 of 1992) or under the International Financial Services Centres Authority Act, 2019 (50 of 2019);



Note: If FII invest in Indian securities in acc. with SEBI regulations + even though they held it as S.I.T, it is deemed as 'CA' only and resultant gain/loss is chargeable U/H CH.

"Parliamentary comment on F.I.I. categorisation"

Clause 4. Characterisation of Income in case of Foreign Institutional Investors

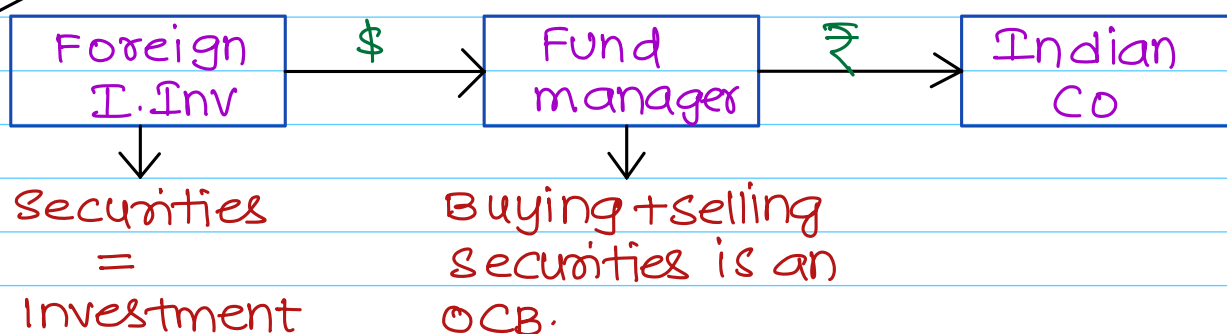
Fin. Act
2014.

4.1 The provisions contained in clause (14) of section 2 of the Income-tax Act, 1961, before amendment by the Act, defined the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but did not include any stock-in-trade or personal assets as provided in the definition. The foreign portfolio investors [notified as foreign institutional investors for the purposes of the Income-tax Act vide notification S.O. 199(E) dated 22.01.2014] faced a difficulty in characterisation of their income arising from transaction in securities as to whether it is capital gains or business income. Further, the fund manager managing the funds of such investor remained outside India under the apprehension that their presence in India may constitute permanent establishment (PE) and the income arising from transactions in securities held in India may be taxed as business income of PE. In this context, the Finance Minister, in his budget speech, had stated as under –

"Foreign Portfolio investors (FPIs) have invested more than Rs. 8 lakh crore (about 130 billion US\$) in India. One of their concerns is uncertainty in taxation on account of characterization of their income. Moreover, the fund managers of these foreign investors remain outside India under the apprehension that their presence in India may have adverse tax consequences. With a view to put an end to this uncertainty and to encourage these fund managers to shift to India, I propose to provide that income arising to foreign portfolio investors from transaction in securities will be treated as capital gains."

4.2 Accordingly, clause (14) has been amended to provide that any security held by foreign institutional investor which has invested in such security in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 shall be a capital asset and not a current asset. Therefore, any income arising from transfer of such security by a foreign institutional investor would be in the nature of "capital gains".

Summary



Securities $\begin{cases} \nearrow \text{Capital asset} = \text{FII POV} \checkmark \\ \searrow \text{Stock in trade} = \text{FM POV} \times \end{cases}$

similar amendment made in FA 2025 w.e.f. 1.4.26.

- (c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply ¹ [~~on account of the applicability of the fourth and fifth provisos thereof~~],

<deleted w.e.f. 1.4.26>

Negative list of capital assets.

II. Capital asset 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 ;

* S.I.T

* consumable stores

* Raw materials

'Held' for the purpose of BIP

≠

Capital asset

< surplus on their tr is chargeable u/s 28 >.

- (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—

- jewellery;
- archaeological collections;
- drawings;
- paintings;
- sculptures; or
- any work of art.

* Personal effects are movable only.

* It includes wearing apparel + furniture.

* They are held for personal use by

* A.I.E. (or)

* Dependant family member of A.I.E.

* Following, though used for A.I.E. personal purposes cannot be regarded as 'personal effect'.

- Jewellery
- Archaeological collections
- Drawings
- Paintings
- Sculptures
- 'Any' work of art.

< Because, the aforesaid CA gain their values naturally >

* gold/silver coins used as ornament for deities \neq personal effect

<section used words 'use' not 'for the purpose of his personal use'.>
<maharaja Rana Hemant Singh v/s CIT>

* occasional use — is it personal effect?

some clothes are held by Atee only for use in ceremonial occasions. Though they are not used regularly (or) not at all used, since it "HELD" to be used only for personal use it is treated as 'personal effect'.

<CIT v/s Usha Rani>

<Jayantilal Shah v/s CIT>

* car, scooter etc used for personal purpose — is treated as personal effect

* securities is not a personal effect.

* Jewellery — is it a personal effect?

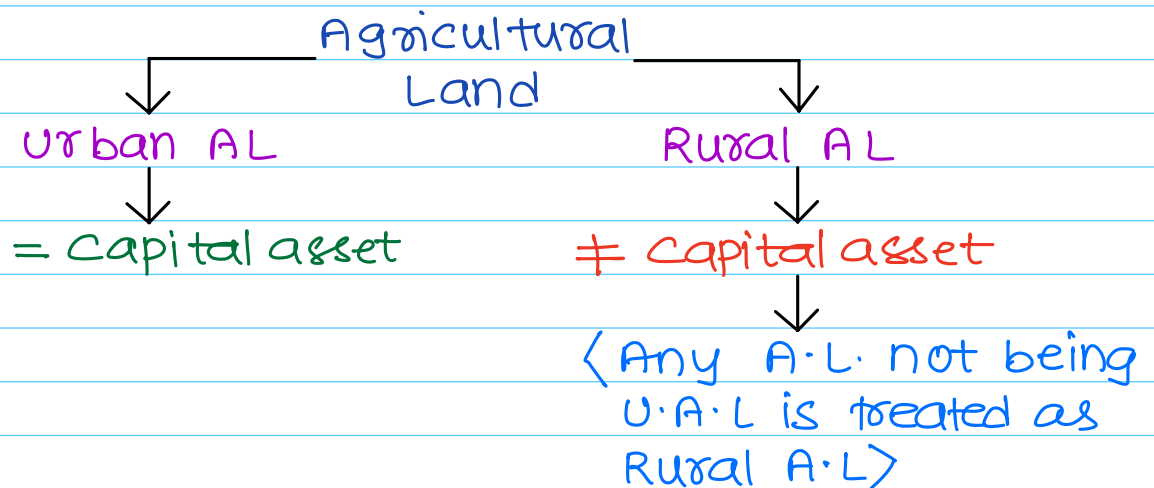
Explanation.—For the purposes of this sub-clause, "jewellery" includes—

- (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;

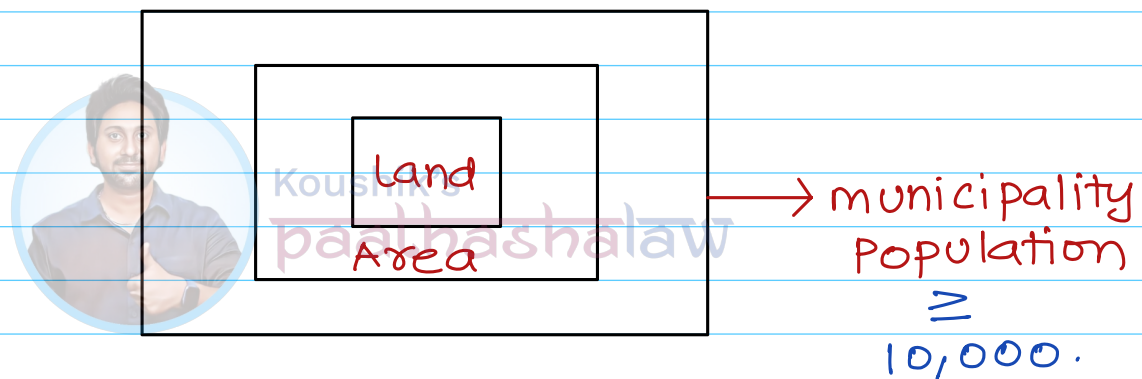
(iii) agricultural land in India, not being land situate—

- (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
- (b) in any area within the distance, measured aerially,—
 - (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;



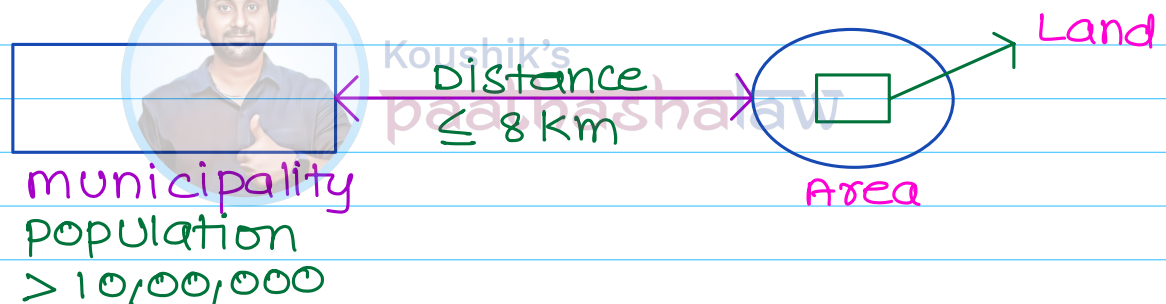
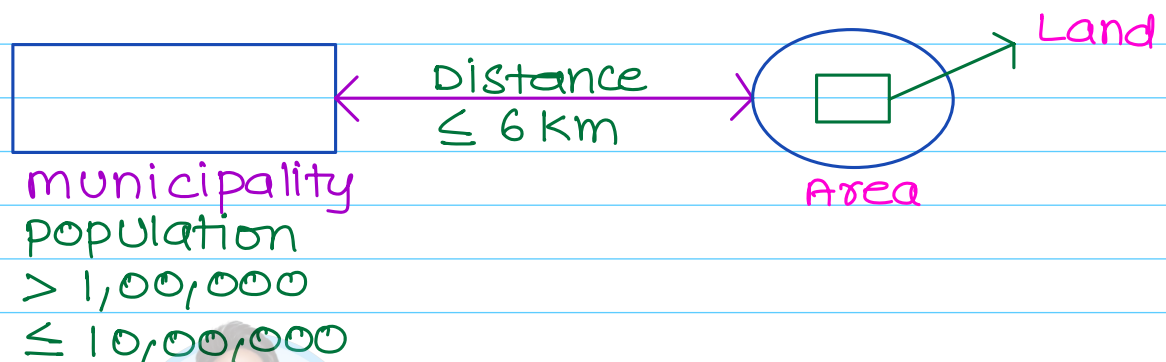
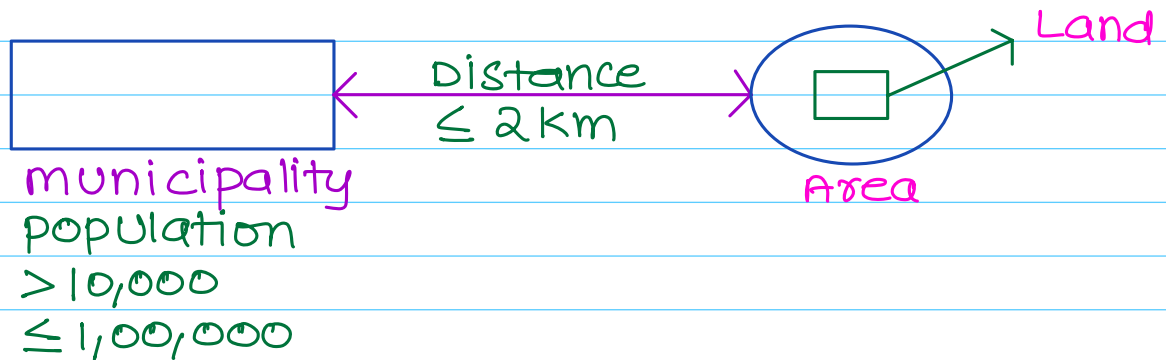
Urban Agricultural land
A. Diagrammatic presentation:



As per the latest census as at 1st day of previous year

"Any agricultural land situated in any area comprised within the jurisdiction of a municipality having population of atleast 10,000."

B. Diagrammatic presentation



Note:

- * Distance is the shortest aerial distance.
- * Not to be measured in terms of approach by road.

- (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.

III. Explanation:

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.

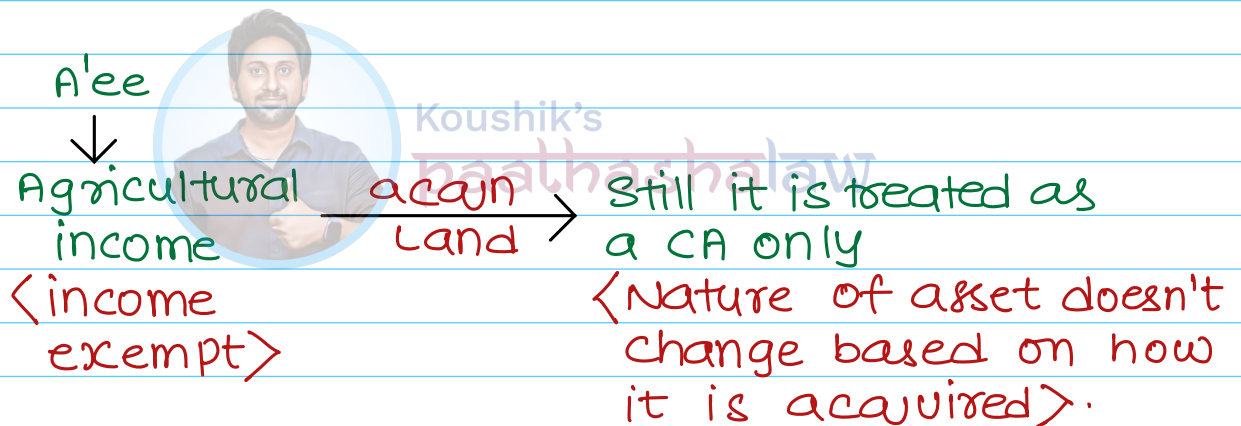
IV. Notes:

* To attract a charge of tax U/H CA, the property should be a 'CA' on the date of tr. Need not be CA on date of acqn.

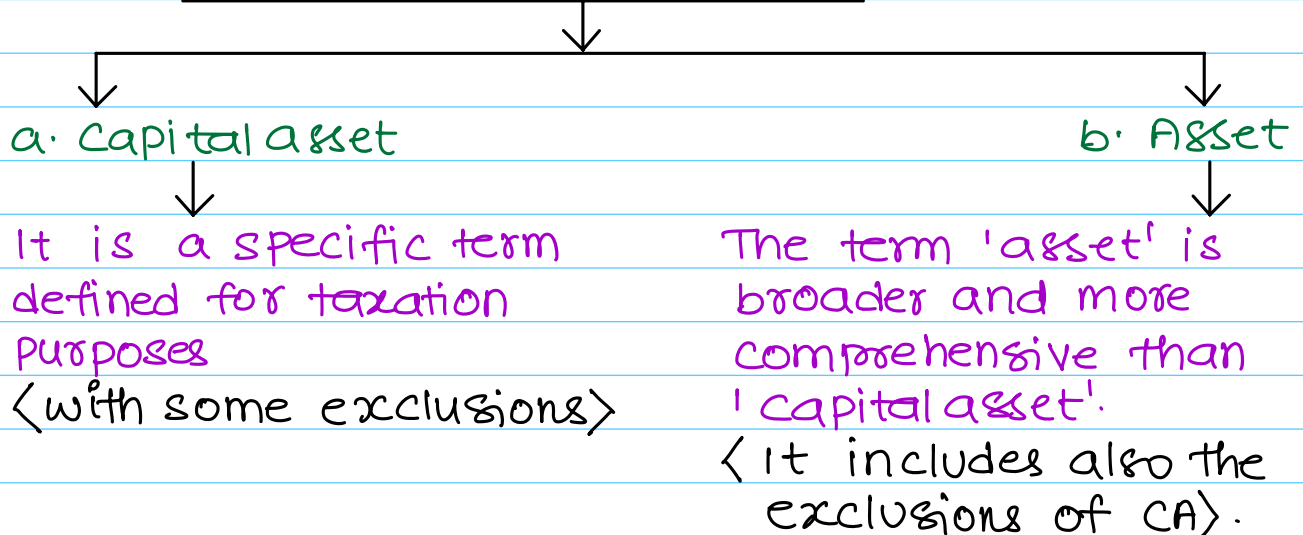
* Explan-1, is inserted to clarify that the term 'property' includes any rights in (or) in relation to an Indian co, including the rights of mgt + control.

< Inserted mainly to cover holding + subsidiary influence >

* An analysis on insignificance of acqn of CA



* Asset v/s capital asset



Note: In section 46, law uses the words 'assets' rather than 'CA' and thereby exclusions of CA are thereby included.

* Illegally encroached property donot come under the defn of 'CA' as it cannot be said as 'held.....'

* Non-competee though a capital receipt, is not taxable UH CA since the element of cost of acquisition is missing. < Acquisition donot exist >

* 'Held' v/s 'legal ownership'

- The term 'held' in context of s. 2(14) involves understanding of various forms of possession + control over the property, beyond just legal ownership.
- where SQ handed over mgt of industrial estate in 2006, but finally registered in 2015, it is held that the assessee '**HELD**' the property since 2006.
< Stewarts v/s Lloyd India Ltd (2016) 101-101 >

Illustration 1:

A Farmer, being Resident of Jaipur; sold his Rural Agricultural Land situated in Nepal and received Indian Rupees 2 Lakhs over the cost of acquisition of this land. Explain the taxability of the sale.

Solution:

* AS per Sec 2(14), rural agricultural lands in **INDIA** ≠ Capital assets

* In the given case farmer sold rural AL in Nepal i.e. o/s India + therefore, it is a CA & attracts CH tax.

Illustration - Relinquishment of Right to Acquire a Property - N 09, N 95

3-Star & Company, a Partnership Firm entered into a contract to purchase an immovable property. The agreement was not honoured by the Seller. Therefore, the Firm filed a suit for specific performance of contract against the owner. Ultimately, a compromise was arrived at. In terms of the compromise, the Owner agreed to pay 3-Star & Co. ₹ 15 Lakhs as consideration. State with reasons whether the receipt should be treated as in the nature of Capital Gain in the hands of the Firm.

1. Principle:

- (a) Right to acquire a property is a Capital Asset. Any sum received as consideration for the relinquishment of such right is a transfer. [Vijay Flexible Containers 188 ITR 699 (Bom.)]
- (b) $\text{Capital Gains} = \text{Consideration received} - \text{Amount paid for such right}$.

2. Analysis and Conclusion:

- (a) In the given case, the compensation received to release the right to acquire property of ₹ 15 Lakhs is chargeable as Capital Gains.
- (b) The expenses incurred to realise such compensation shall be allowed as a deduction.
- (c) Cost of Acquisition shall be NIL.



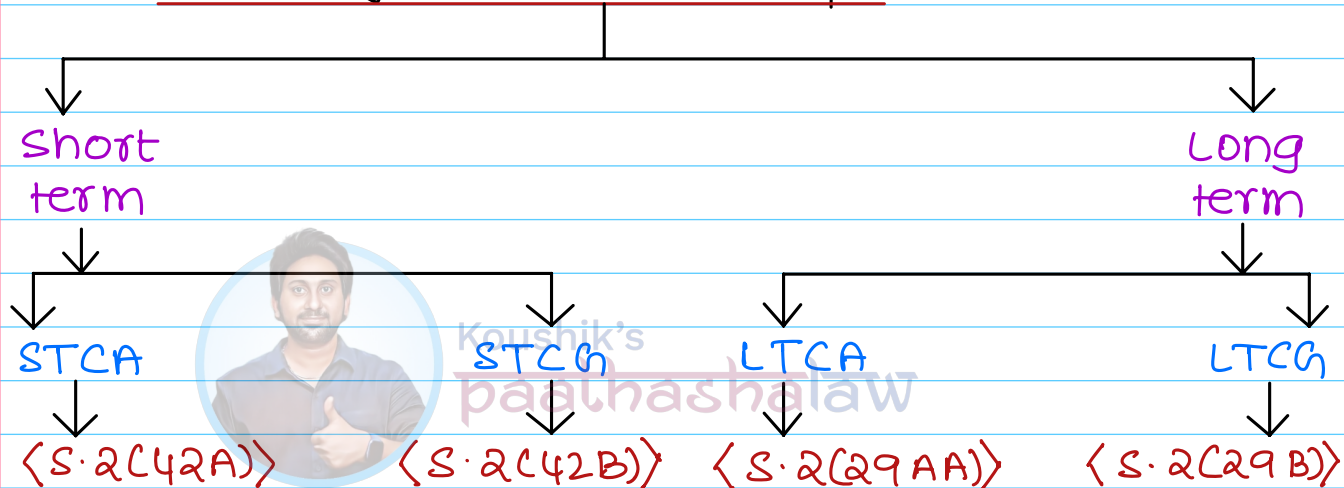
Koushik's
paathashalaw

2. Types of capital assets [Section 2(42A) + Section 2(42B) + Section 2(29AA) + Section 2(29B)]

I. Why capital assets are divided into long term + short term ?

The tax incidence U/H CA depends upon whether the CA is ST/LT. LTCA is generally taxable at lower rate.

II. Summary of the concept



A) Short-term

1) Definition of STCA [Section 2(42A)]

(42A) "short-term capital asset" means a capital asset held by an assessee for not more than ⁹[twenty-four] months immediately preceding the date of its transfer :

Provided that in the case of a security ¹⁰[***] listed in a recognized stock exchange in India or a unit of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963) or a unit of an equity oriented fund or a zero coupon bond, the provisions of this clause shall have effect as if for the words ¹¹"[twenty-four] months", the words "twelve months" had been substituted:

a) STCA shall first qualify as a capital asset.

b) General purpose holding period

< w.e.f. 23/7/24 >

=

7 24 m immediately preceding the date of transfer.

c) Special case of HP:

- * Security listed on any RSE
- * Units of UTI
- * Units of Equity oriented fund.
- * Zero-coupon bonds.

=

≠ 12 m immediately preceeding the date of transfer.

d) Tabular presentation < Broader analysis >

Particulars	Transfer took place	
	On/after 23/7/2024	Before 23/7/2024
1. <u>Listed</u> Ea/Pref shares	12m	12m
2. <u>Listed</u> debentures (or) Bonds	12m	12m
3. <u>Listed</u> Govt secs, derivatives etc	12m	12m
4. <u>Listed</u> units of UTI	12m	12m
5. <u>Unlisted</u> units of UTI	12m	12m
6. Units of Equity oriented fund (<u>Listed</u>)	12m	12m
7. Units of EOF (<u>Unlisted</u>)	12m	12m
8. <u>Listed</u> units of Debt oriented fund	12m	36m
9. <u>Unlisted</u> units of Debt oriented fund	24m	36m
10. ' <u>Listed</u> ' ZCB	12m	12m
11. ' <u>Unlisted</u> ' ZCB	12m	12m

Particulars	Transfer took place	
	On/after 23/7/2024	Before 23/7/2024
12. <u>Unlisted Eq/Pref shares</u>	24m	24m
13. <u>Unlisted debentures (or) Bonds</u>	24m	24m
14. <u>Unlisted Govt secg, derivatives etc</u>	24m	24m
15. <u>Immovable prop</u>	24m	24m
16. <u>Any other movable property</u>	24m	24m

e. Illustration:

1. State, giving reason, whether the asset is short-term or long-term in the cases given below:

1. X purchases a house property on March 10, 2023 and transfers it on June 6, 2024.
2. Y purchases listed shares in an Indian company on May 10, 2023 and transfers it on August 6, 2024.
3. Z acquires units of an equity oriented mutual fund on August 7, 2023 and he transfers these units on August 10, 2024.
4. A purchases diamonds on September 12, 2022 and gifts the same to his friend B on December 31, 2022. B transfers the asset on October 20, 2024.
5. C purchases unlisted shares in a company on November 21, 2022; the company transfers shares in the name of C: January 5, 2023). These shares are transferred by C on December 20, 2024.

FA 2025

Solution:

A/c	Asset	min. HP	P.O.H	Nature
X	House	24m	14m + 27d	STCA
Y	Listed shares	12m	14m + 27d	LTCA
Z	units of EOF	12m	12m + 3d	LTCA
B*	Diamonds			
	(other mov. asset)	24m	> 24m	LTCA
C	unlisted shares	24m	> 24m	LTCA

* In case of assets acq by way of gift etc sec 49(1) will attract & POH of previous owner shall also be considered.

2. Defn of STCG [Section 2(42B)]

(42B) "short-term capital gain" means capital gain arising from the transfer of a short-term capital asset

3. Defn of LTCA [Section 2(29AA)]

(29AA) "long-term capital asset" means a capital asset which is not a short-term capital asset

4. Defn of LTCG [Section 2(29B)]

(29B) "long-term capital gain" means capital gain arising from the transfer of a long-term capital asset

Note: Period of holding as provided in the explanation to S. 2(42A) will be discussed at the respective area.



Koushik's
paathashala

3. Transfer concept

a. Definition of Transfer [Section 2(47)]

(47) "transfer", in relation to a capital asset, includes,—

- (i) the sale, exchange or relinquishment of the asset ; or
- (ii) the extinguishment of any rights therein ; or
- (iii) the compulsory acquisition thereof under any law ; or
- (iv) 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
- (iva) the maturity or redemption of a zero coupon bond; or
- (v) 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 (4 of 1882) ; or
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative 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.

Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;

Analysis:

- * Definition is inclusive in nature. 'includes...'
- * Definition is applicable only if such transfer is in relation to a capital asset

Sec. 2(47) reads as

transfer 'in relation to a capital asset....'

- * sale is a transfer as per S. 2(47)(i)

* Agreement

Seller $\xrightarrow{\text{* competent parties}}$ Buyer

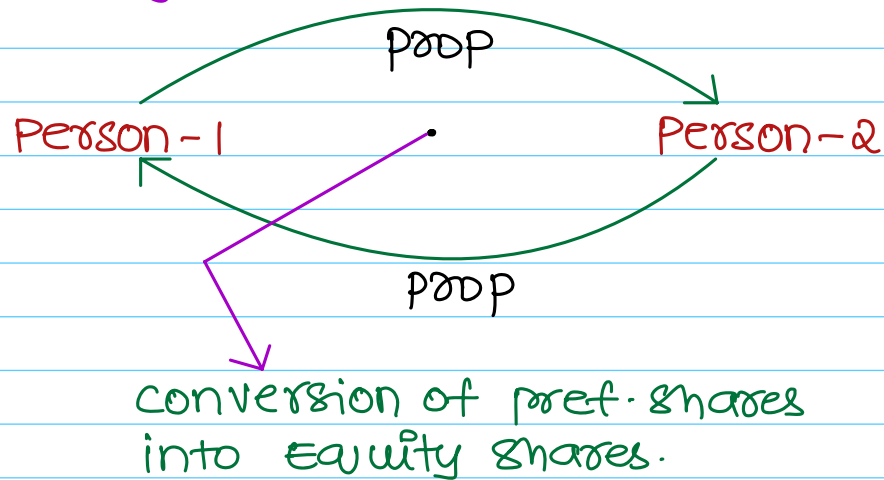
* Cn

* T's of ownership

means
=
only
<strict>

includes
=
also
<Liberal>
(or)
<fiction>

* Exchange is a transfer



* Relinquishment is a transfer:

- Relinquish = withdraw
= abandon
= Cease to hold
- Relinquishment should be in relation to asset.
- In case of relinquishment, the asset will be given up by the person and continues to be held by some other person
<CIT v/s Rasiklal Manecklal> (SC)

* Extinguishment is a transfer

- Extinguishment generally means
 - total destruction
 - termination
 - Extinction of capital asset.
- Extinguishment is used in relation to rights & not asset.
Eg: Reduction of share capital.

Notes:

- * Redn of pref. shares = sale = Transfer
- * Redn of SC = extinguishing rights = T's
<Kartileya Sarabhai v/s CIT>
- * Distribution of capital assets = T's v/s
upon firm dissolution 45C(4)

* Partner brings his capital asset into the business = Tr = S. 45(3)

* Transfer on compulsory acquisition

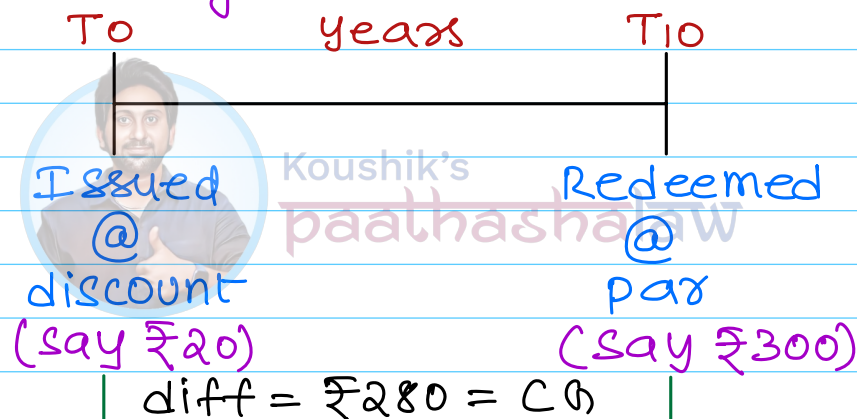
• As per Sec 2(47)(iii)

→ compulsory acqn of Capital asset under any law is regarded as tr.
(will be discussed in detail at S. 45)

* conversion of CA into S. I. T

(will be discussed in detail at S. 45)

* maturity of ZCB = Tr = S. 2(47)(iv)



* POA transactions

→ There is an agreement in writing b/w buyer + seller.

→ Pursuant to that agreement, seller is giving possession of that property to the buyer.

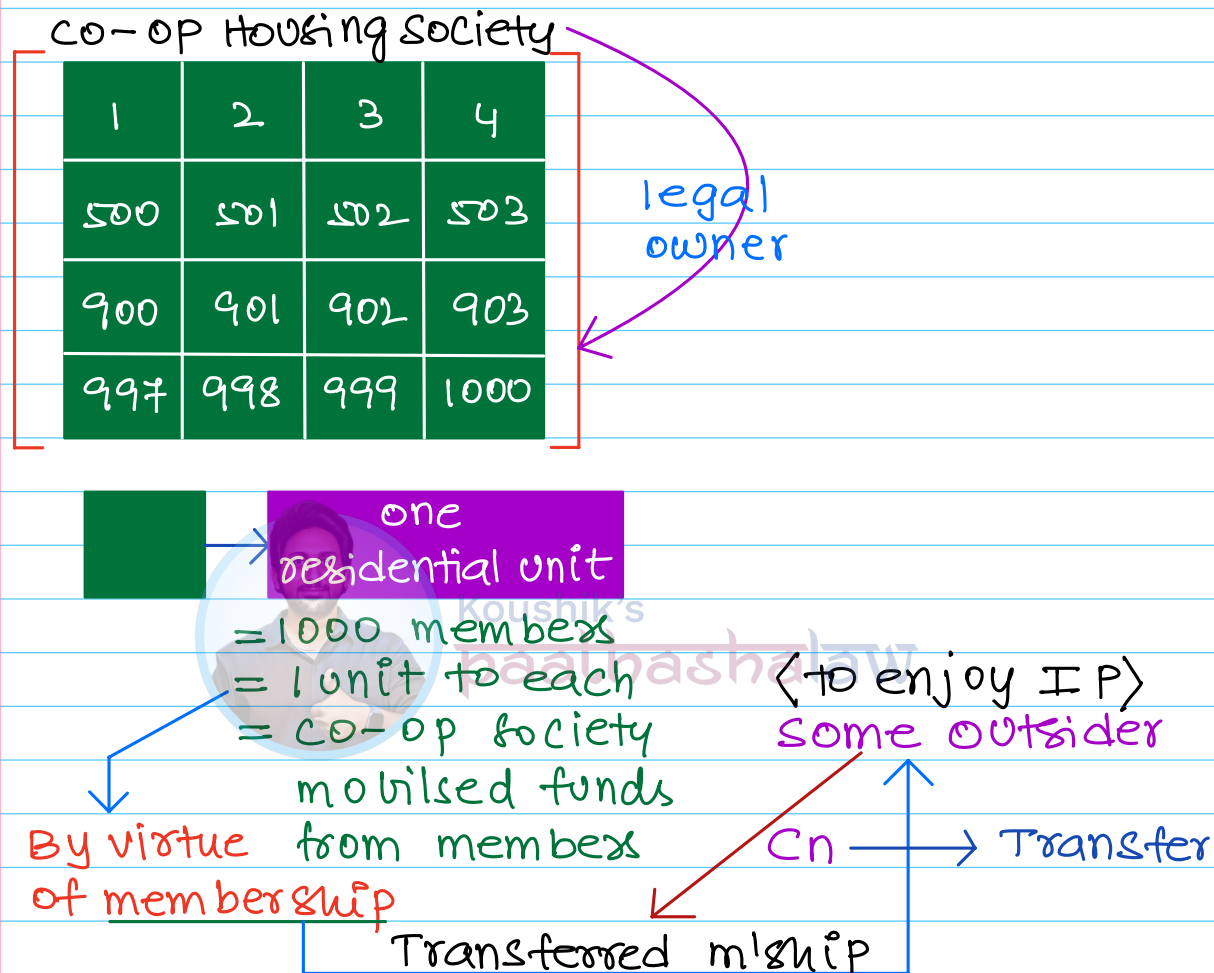
→ Buyer paid an agreed consideration to the seller.

→ BUT conveyance deed is yet to be executed + regn is pending.

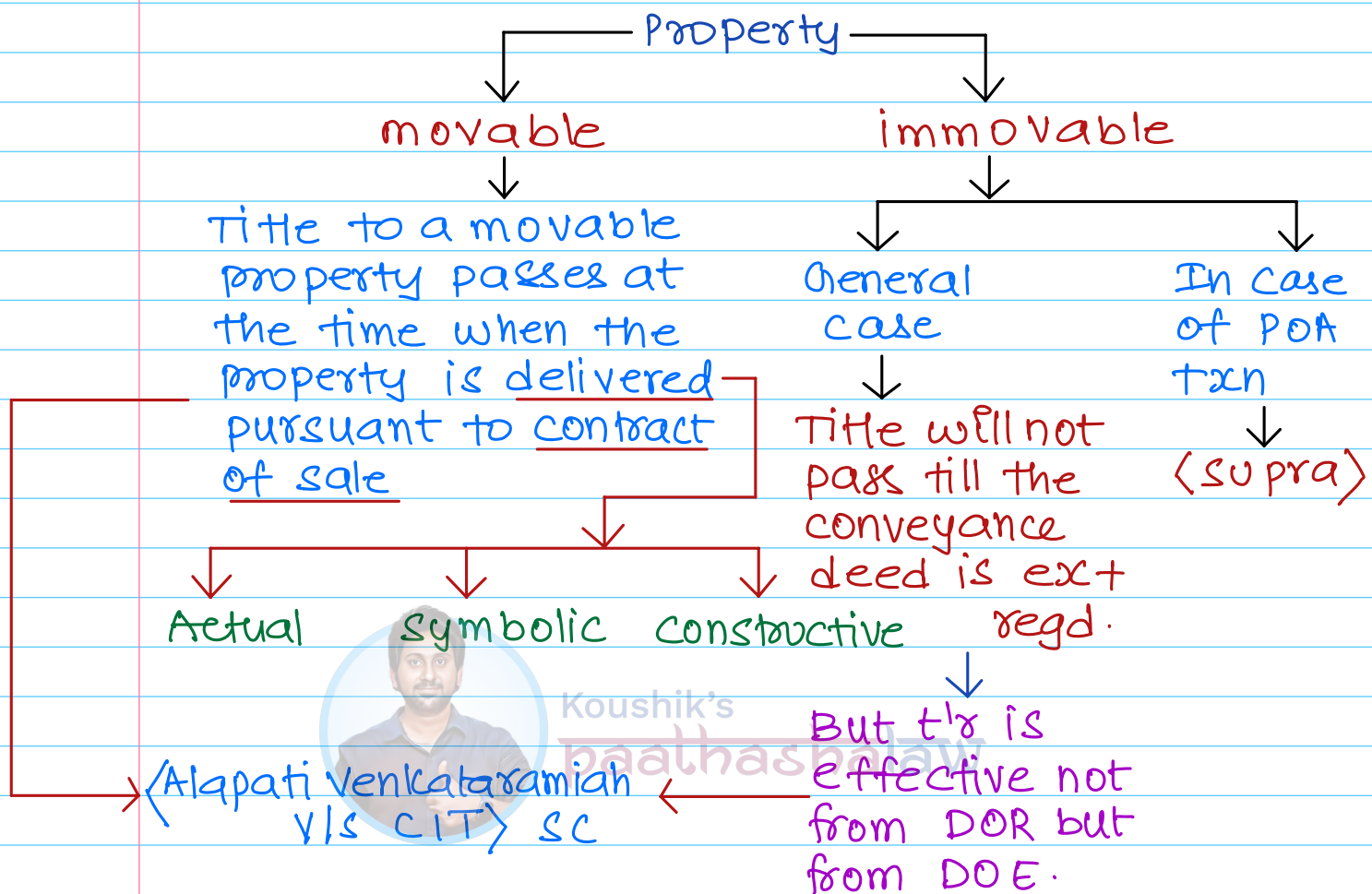
IN SUCH CASE, though legal ownership is not passed, still it is regarded as a transfer.

* Txn providing the enjoyment of Immovable property

(vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative 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.



○ b. Transfer - when effective? (From the Judiciary)



c. Computation of Capital gains [Section 48]
(Schedule of computation)

S.No	Particulars	Amt (₹)
1	Full value of consideration (FVOC)	X X X
2	Expenses on transfer (Note)	X X X
3	Net consideration (1) - (2)	X X X
4	Cost of acquisition	X X X
5	Cost of improvement	X X X
6	Capital gains (3) - (4) - (5)	X X X
7	Exemptions u/s 54-54H (Note)	X X X
8	Taxable Capital gain (6) - (7)	X X X

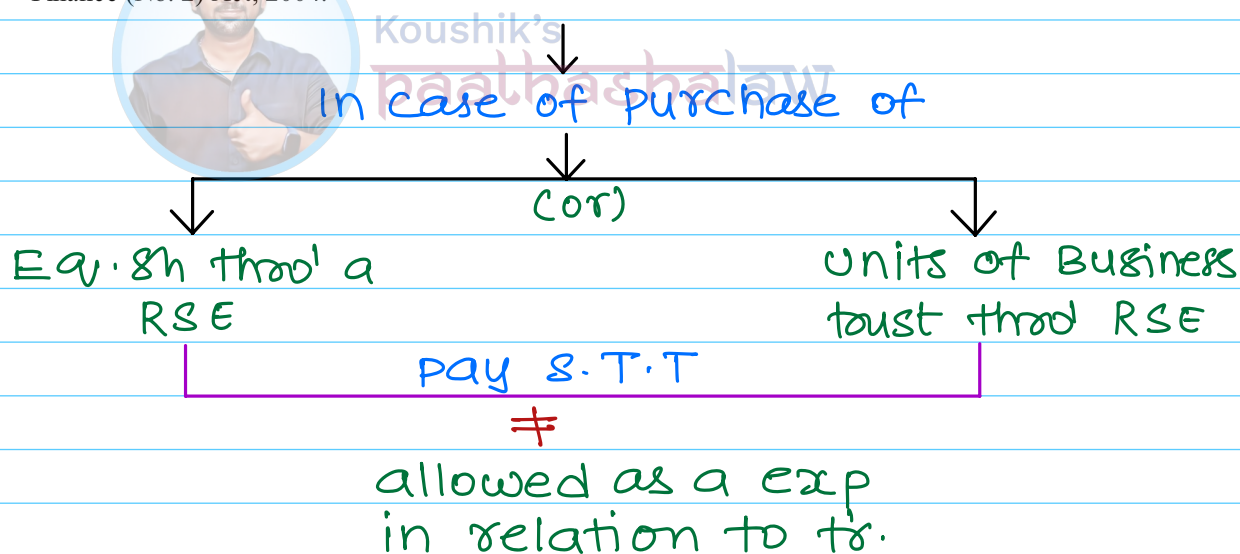
Note:

1. Only such expenditure incurred wholly + exclusively in connection with such transfer shall be considered.
2. Exemptions u/s 54-54H are not available to LT + ST CG in same way. Some exemptions are not allowed in case of STCG.
<will be discussed separately in exemptions segment>

3. Treatment of securities txn tax (STT)

<7th proviso to S. 48>

Provided also that no deduction shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.



○ d. Transactions not regarded as transfer [Section 47]

1. Opening note:

* section 47 covers circumstances which are not regarded as transfer U/H CG.

* Therefore, even though a capital asset is involved, still it is not regarded as tr and hence, no tax liability U/H CG. This can be understood as under ———
charge of tax U/H CG

case	CA U/s 2(14)	Tr U/s 47	CG
1	✓	✓	✓
2	✓	✗	✗
3	✗	✓	✗
4	✗	✗	✗

→ covered U/s 47.

* sec 47 is not an independent section. It is dependant on many interlinking concept. one should harmoniously read in that connection. sections that need cross reference includes ———

Sec 2(14)
S. 56(2)(ix) + (x)
S. 51
S. 49(1) + S. 49(4)
S. 55
S. 2(42)

2. Situations and analysis

a. Partition of HUF [Section 47(i)]

Nothing contained in section 45 shall apply to

(i) any distribution of capital assets on the total or partial partition of a Hindu undivided family

Analysis:

- * There is a HUF.
- * That HUF is undergoing the partition.
- * In the due course of partition, capital assets are distributed to family members.
- * Such distribution \neq Transfer u/s 47(i)
 \neq Sec 45(1) \neq tax on CG

HUF

1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20

1, 2, 3 ... 20 = CA
 No. of members = 10

HUF is getting partitioned (+) each member of HUF is entitled to 2 CAs.

→ This is seen as a relocating of CA to the joint owners who already own it.

- * Holding period for transferee in case of subsequent transfer - HP of previous owner is included (expl 1(i)(b) to Sec 2(42A))
 (r/w Sec 49(1)(i))

- * Cost to transferee - cost to previous owner + improvements.


49. (1) Where the capital asset became the property of the assessee—

(i) on any distribution of assets on the total or partial partition of a Hindu undivided family; the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

* Illustrations:

1. A house property is purchased by a Hindu undivided family in 1950 for Rs.40,000. It is given to one of the family members in 2024-25 at the time of partition of the family.

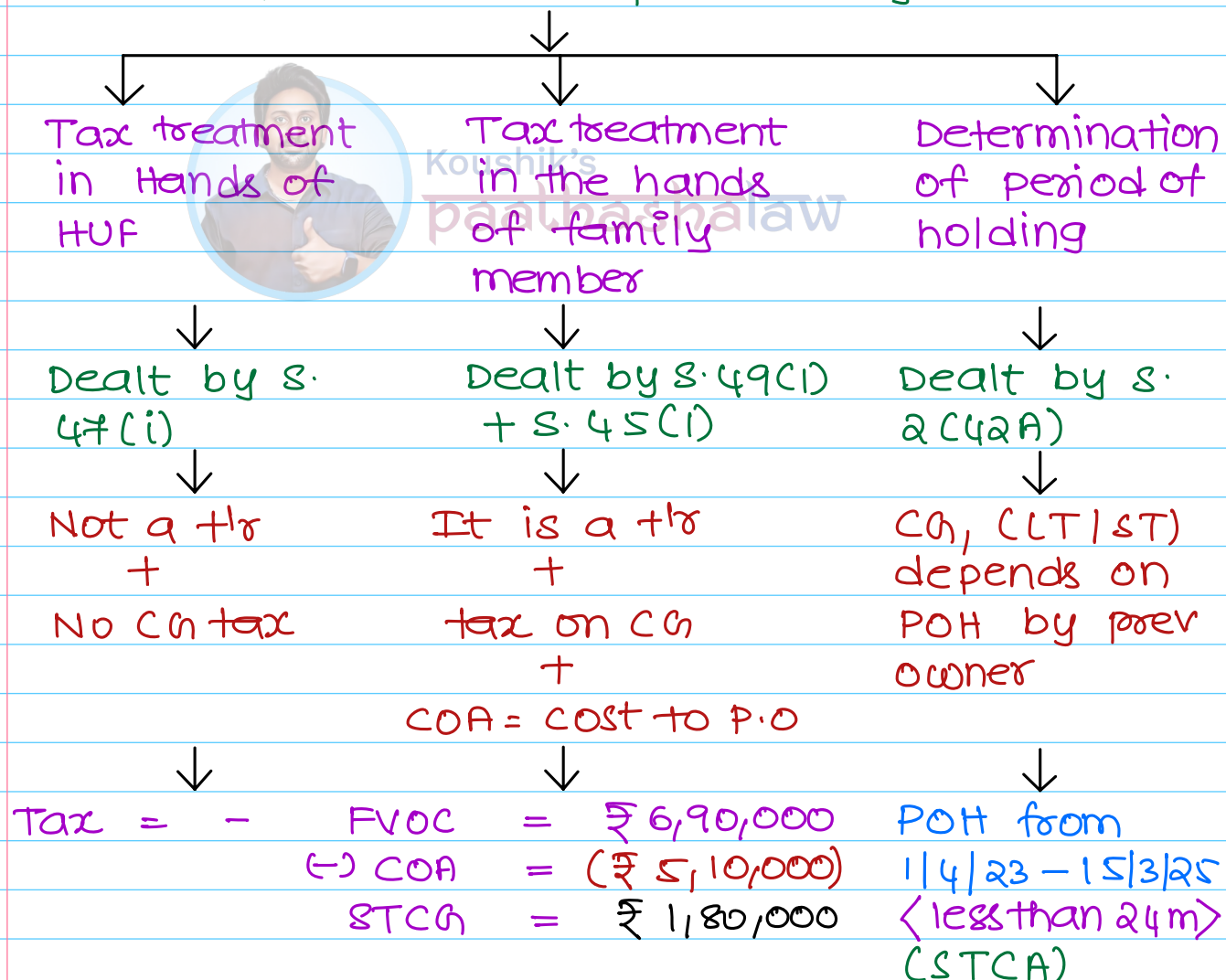
A. Since, HP being a 'CA' is given at the time of partition, it is not regarded as transfer. Hence, no tax on capital gains.

2.  Q. X (HUF) is a Hindu undivided family. The family acquires a residential house at Delhi for Rs.5,10,000 on April 1, 2023. The family undergoes complete partition on November 1, 2023 and the residential house is allotted to Y, a member of the family (fair market value on November 1, 2023 is Rs.6,00,000). Y sells the house on March 15, 2025 for Rs.6,90,000. Determine the amount of chargeable capital gains in the case of X (HUF) and Y.

(RTP)

FAQ2025

A. This attracts 3 concepts namely —



3. Illustration explaining rationale behind the provision

1. Case facts:

X (HUF)

Family members = X + Y

B/s as at March 31, 2024

Liabilities	₹	Assets	₹
<u>Capital acc</u>		<u>House prop (m.v)</u>	
X	60,000	I	60,000
Y	1,50,000	II	1,50,000
	<u>2,10,000</u>		<u>2,10,000</u>

Other details

House I - COA : ₹10,000

DOA : May 31, 2023

House II - COA : ₹40,000

DOA : July 10, 2023

2. Options available in the course of partition

Option -1

HUF may sell House I & II and the sale Cn - Cn may be divided b/w X & Y

In this case, there is an immediate burden of Cn tax.

Option -2

* HUF, instead of distributing cash after paying Cn tax, may distribute the assets directly to X & Y and that distribution is not a transfer & thereby no Cn tax.

* Therefore, the capital appreciation i.e. ₹50,000 in case of H-I and ₹1,10,000 in case of H-II is not subject to Cn tax.

* But this not a permanent exemption. If 'X' sells

H-I to an outsider on April 30, 2024 @ ₹67,000 then, not only his gain of ₹7,000 but tax free capital gain of ₹50,000 which is not subject to tax earlier will also be tax U/H CG.

$$\begin{array}{rcl}
 & \downarrow & ₹ \\
 \text{FVOC} & = & 67,000 \\
 \text{COA(P.O)} & = & (10,000) \\
 \text{CG (Mr. X)} & = & 57,000
 \end{array}$$

8.49(1) ←

○ b. Gift by Individual or HUF [Section 47(iii)]

<Amdt w.e.f 1.4.25>

1. provision

Nothing contained in section 45 shall apply to the following transfers

- (iii) any transfer of a capital asset by an individual or a Hindu undivided family, under a gift or will or an irrevocable trust;

prior amendment	Post amendment
'Any t'r of CA by any person, under a gift or will or an irrevocable trust is not a transfer'.	'Any transfer of CA by individual/HUF, under a gift/will/IT is not a transfer'.

Rationale of amendment:

Prior to amendment, company's used argue that gift by them will not attract CG tax. To plug this lacuna FA 2025 made an amendment removing companies and including only individual + HUF.

1. Basic provision:

- * There is a transfer of CA
- * made by Individual/HUF <w.e.f. 1.4.25>
- * to any person
- * Transfer is made as a gift/will/irr. trust.

$$\neq$$

Transfer u/s 47

$$\neq$$

$$S.45 + S.48$$

2. Inter-connected provisions $\langle S.49(1) + S.49(4) + S.56(2) \rangle$

Section 49:

49. (1) Where the capital asset became the property of the assessee—

(ii) under a gift or will;

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

(4) Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (vii) or clause (viii) or clause (x) of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii) or clause (viii) or clause (x).

Section 56(2)(x):

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to ten per cent of the consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of agreement may be taken for the purposes of this sub-clause :

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections:

Provided also that in case of property being referred to in the second proviso to sub-section (1) of section 43CA, the provisions of sub-item (ii) of item (B) shall have effect as if for the words "ten per cent", the words "twenty per cent" had been substituted;

(c) any property, other than immovable property,—

- (A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;
- (B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause shall not apply to any sum of money or any property received—

- (I) from any relative; or
- (II) on the occasion of the marriage of the individual; or
- (III) under a will or by way of inheritance; or

Explan (d) below sec 56(2) (vii)

(d) "property" means the following capital asset of the assessee, namely

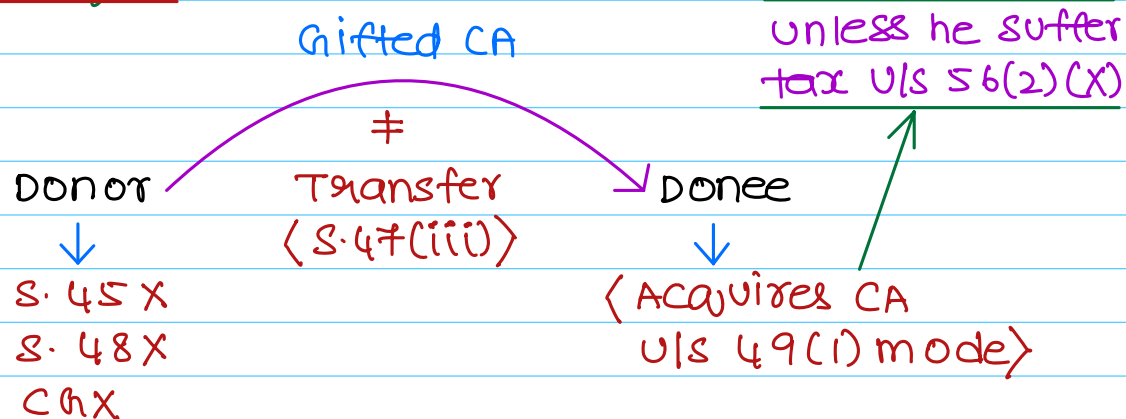
- (i) immovable property being land or building or both;
- (ii) shares and securities;
- (iii) jewellery;
- (iv) archaeological collections;
- (v) drawings;
- (vi) paintings;
- (vii) sculptures;
- (viii) any work of art; or
- (ix) bullion;

Explan below S. 56(2) (X)

- (a) the expressions "assessable", "fair market value", "jewellery", "relative" and "stamp duty value" shall have the same meanings as respectively assigned to them in the *Explanation* to clause (vii); and

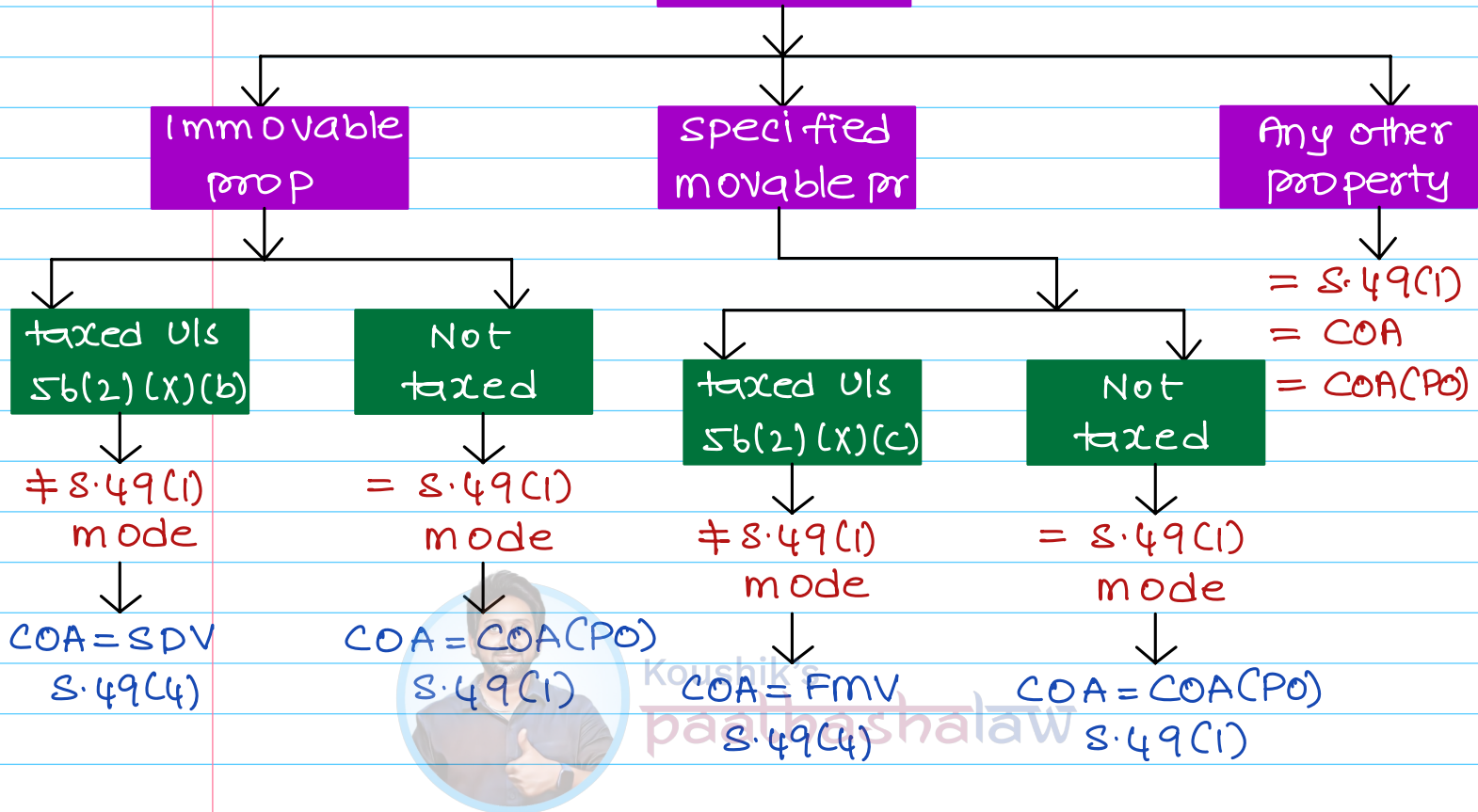
3. Holding period (Explan 1 (i) (b) to S. 2(42A)) POH(P.O) shall be added.

4. Analysis

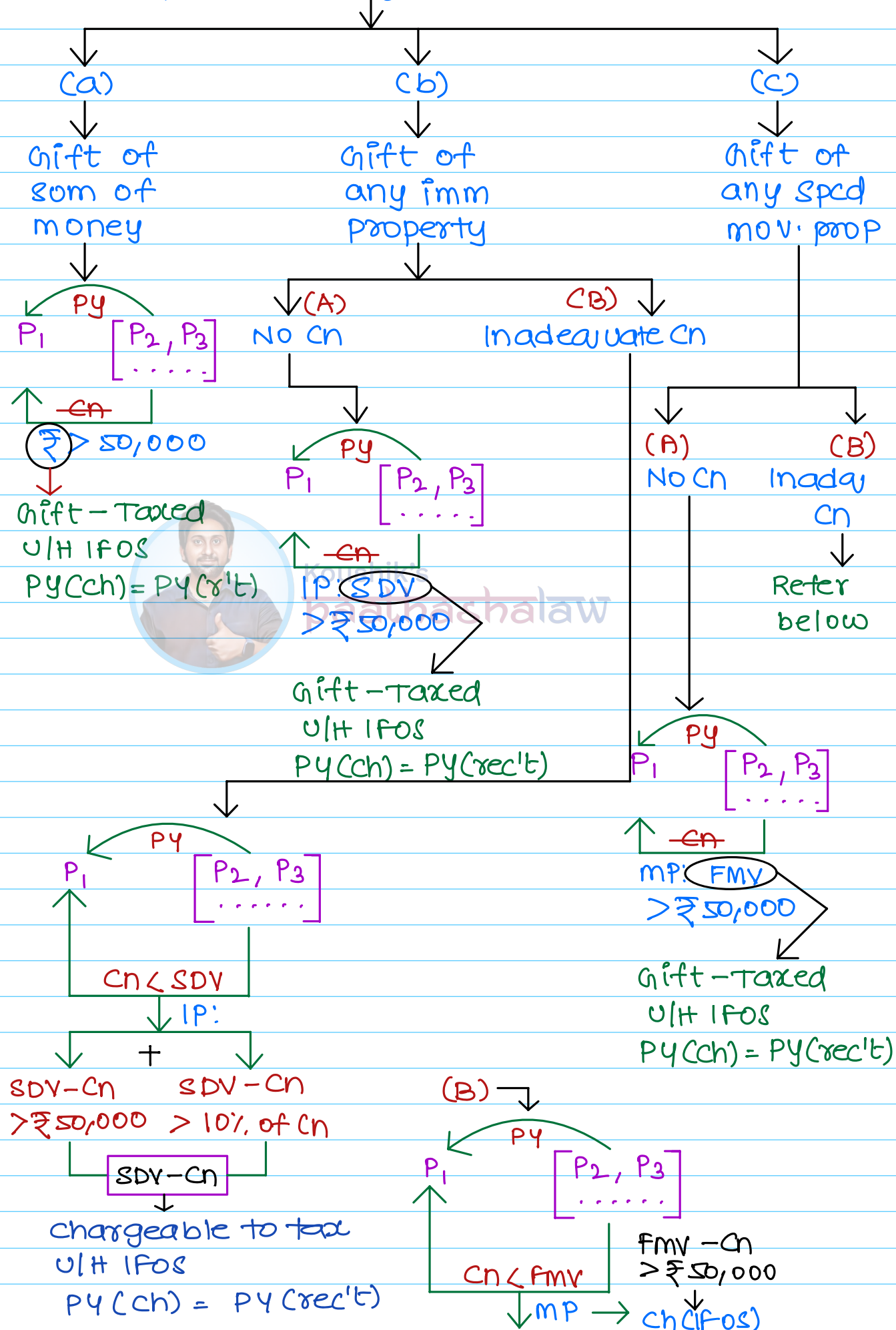


Summary

Gifted CA



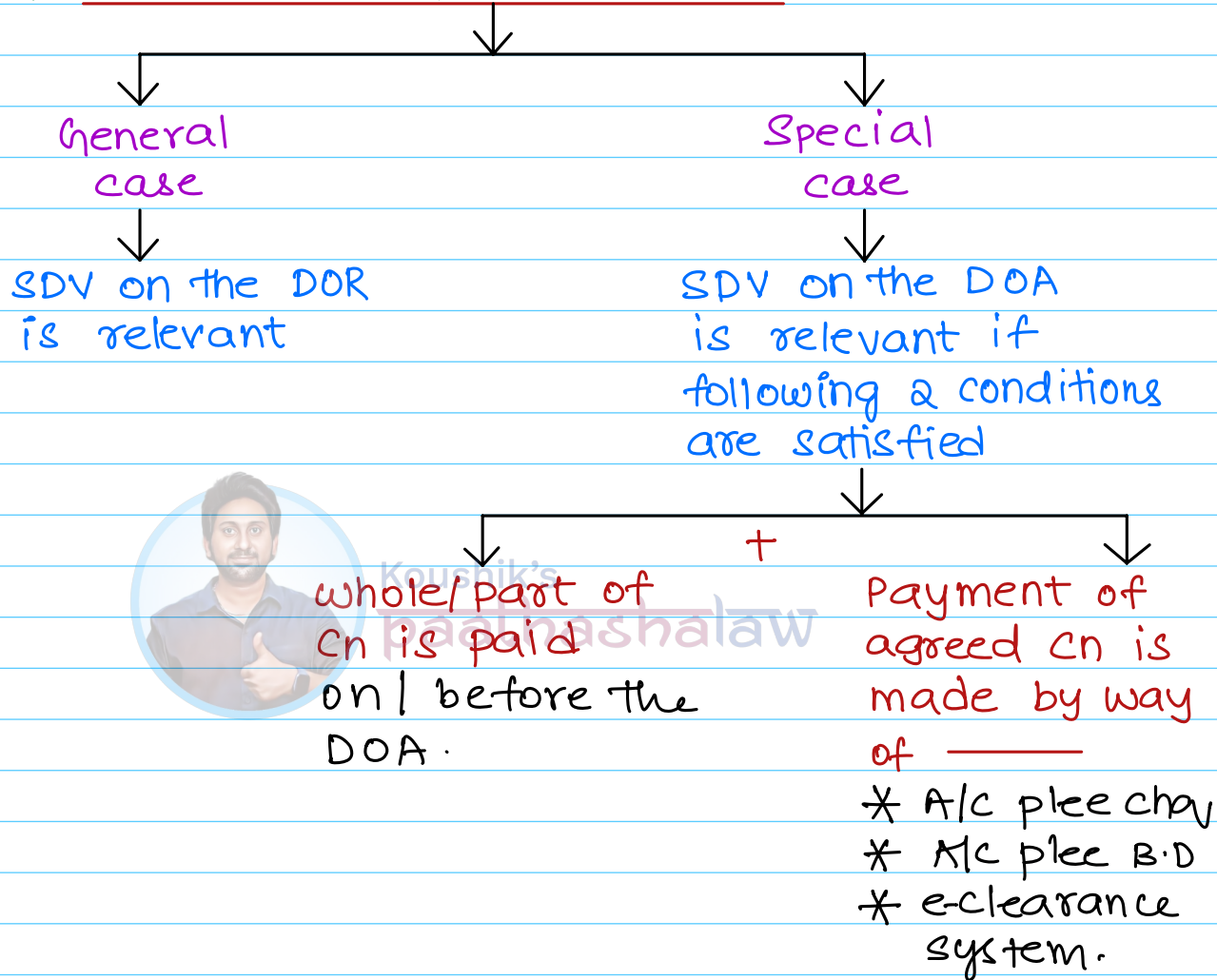
Concept dealt by S.56(2)(X)



Notes:

* Under pt (a) & (c) we should consider the aggregate value whereas under pt (b) it is independent value of one IP.

* SDV - which date : DOA/DOR?



proviso

* If the above mentioned gifts are received from _____

(i) any relative

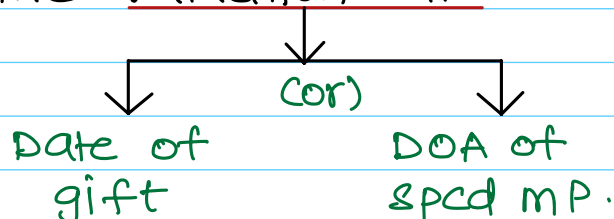
(ii) on occasion of marriage of individual etc

* computation of FMV < Rule 11 UA >

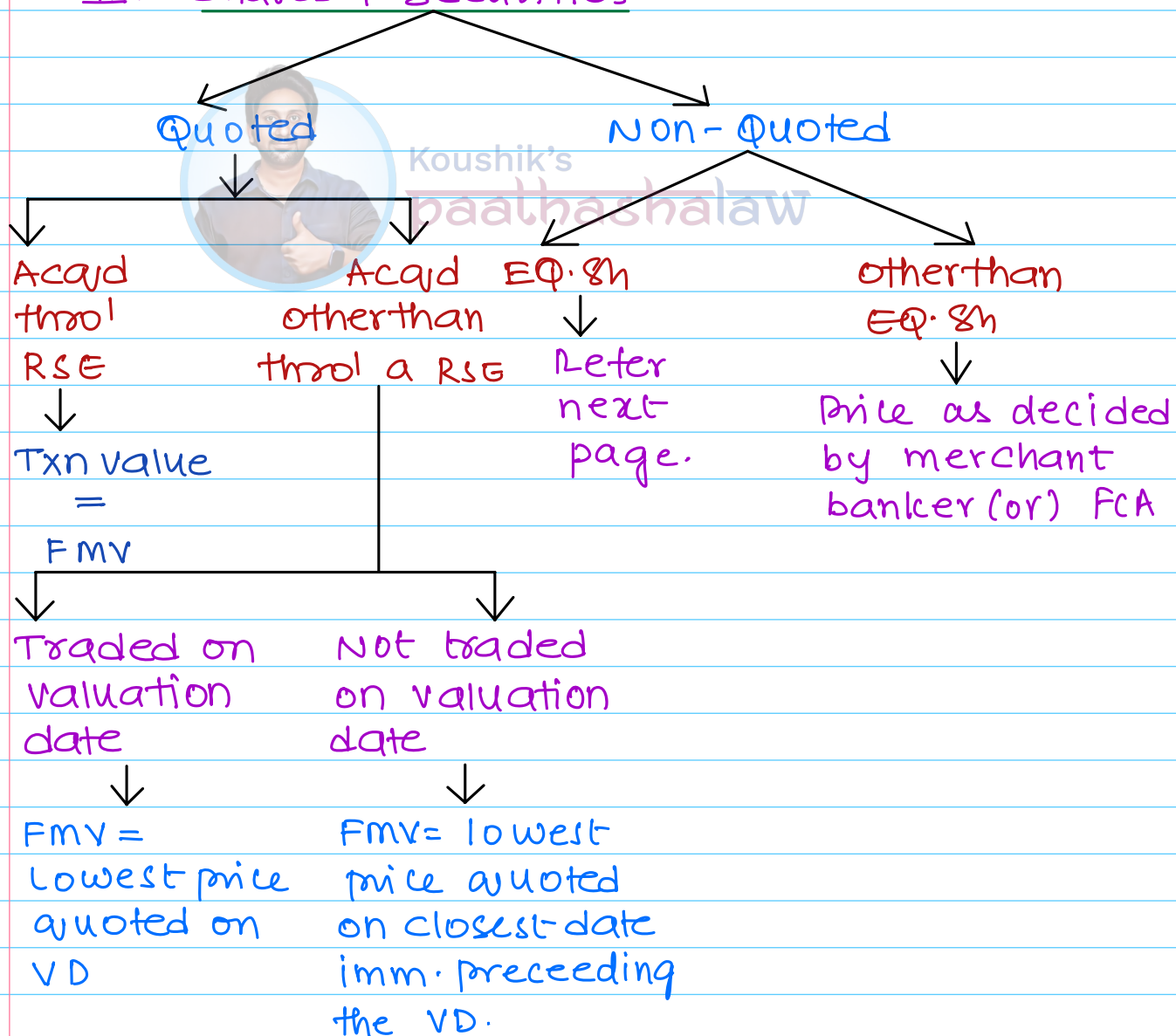
I. specified movable properties

< not being shares + securities >

FMV = Price which these could fetch if sold in the open market on the valuation date

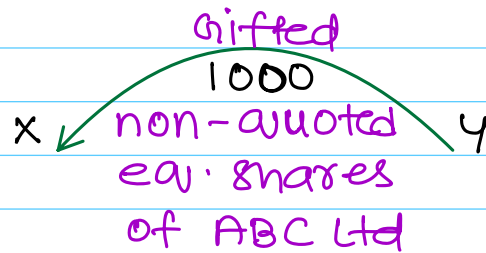


II. Shares + securities



Fmv in case of non-quoted equity shares

Illustration



↓
Fmv to be calc
as per this rule.

B/S of ABC Ltd

Liabilities ₹	Assets ₹
Eq. Sh. Cap (PE) XXX	Spced mov prop (Fmv) XXX (Note) (B)
o/s Liab (L) XXX	Shares + sec (Fmv) XXX (Note) (C)
	Imm. prop (SDV) XXX (D)
	other assets (BV) XXX (A)

Note:

* spced movable property means —

- shares & sec
- jewellery
- Archaeological collections
- sculptures
- Drawings
- Paintings
- work of art
- Bullion

* shares + sec on assets side invested by the Co, also are to be calculated as per that rule.

$$FmV = \underbrace{(A + B + C + D - L)}_{\text{Net Assets value}} \times \frac{PV}{PE}$$

PV = paid up value of gifted shares
PE = paid up eq value of shares.



Koushik's

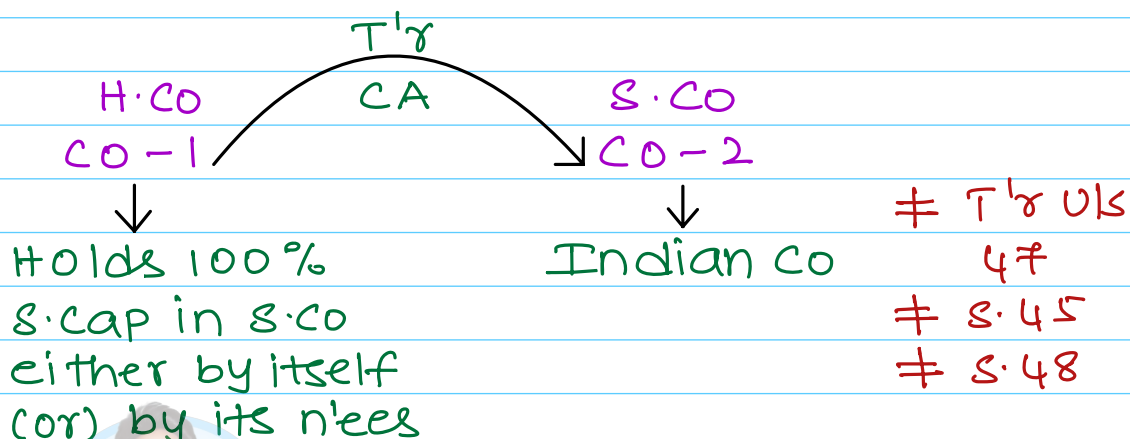
paathashala

c. Transfer by Holding Company [Section 47(iv) r/w section 2(42A) + section 49]

(iv) any transfer of a capital asset by a company to its subsidiary company, if—

- (a) the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
- (b) the subsidiary company is an Indian company;

1. As per section 47(iv)



Note: It covers only immediate subsidiary and the defn as stated in S. 2(87) of Companies Act, 2013 do not apply
< Kalindi Investments (P) Ltd v/s CIT >
(Chuji He)

2. As per section 49(i) —

49. (1) Where the capital asset became the property of the assessee—

(e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (viab) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vicc) or clause (viiac) or clause (viiaa) or clause (viiaf) or clause (xiii) or clause (xiiib) or clause (xiv) of section 47;

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

∴ COA (S.Co) = COA to the previous owner
= COA to Parent Company.

3. Period of holding: (Expl 1(i)(b))

Explanation 1.—(i) In determining the period for which any capital asset is held by the assessee—

- (b) in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in sub-section (1) of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section;

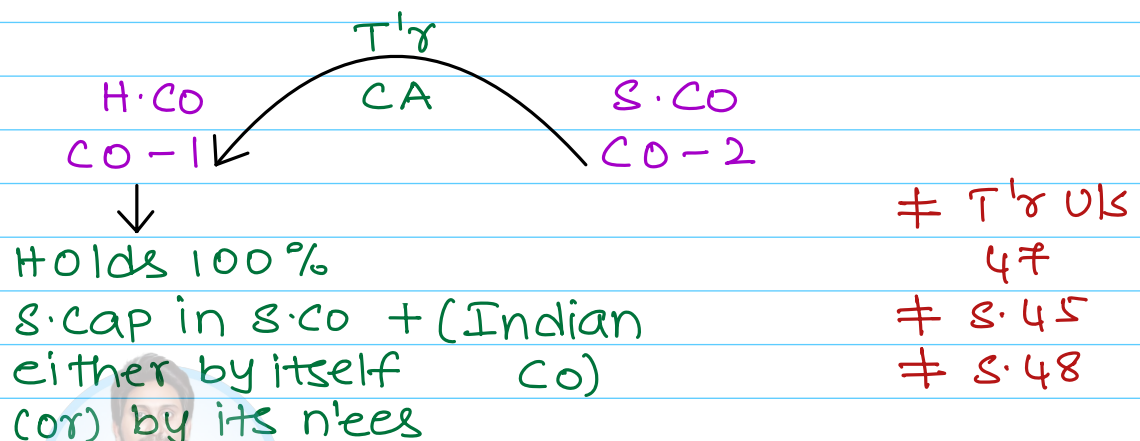
∴ POH (S.Co) = include the POH to P.O. (H.Co)

○ d. Transfer by Subsidiary Company [Section 47(v) r/w section 2(42A) + section 49]

47. Nothing contained in section 45 shall apply to the following transfers

- (v) any transfer of a capital asset by a subsidiary company to the holding company, if—
- (a) the whole of the share capital of the subsidiary company is held by the holding company, and
 - (b) the holding company is an Indian company :

1. As per section 47(v)



Note: It covers only immediate subsidiary and the defn as stated in S.2(87) of companies Act, 2013 do not apply
< Kalindi investments (P) Ltd v/s CIT >
(Gujarat)

2. As per section 49(1) —

49. (1) Where the capital asset became the property of the assessee—

(e) under any such transfer as is referred to in clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (viab) or clause (vib) or clause (vic) or clause (vica) or clause (vich) or clause (vice) or clause (viic) or clause (viid) or clause (viie) or clause (vii) or clause (viii) or clause (xiii) or clause (xiiib) or clause (xiv) of section 47;

the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.

∴ COA (H.Co) = COA to the previous owner
= COA to sub sy Company.

3. Period of holding: (Expl 1(i)(b))

Explanation 1.—(i) In determining the period for which any capital asset is held by the assessee—

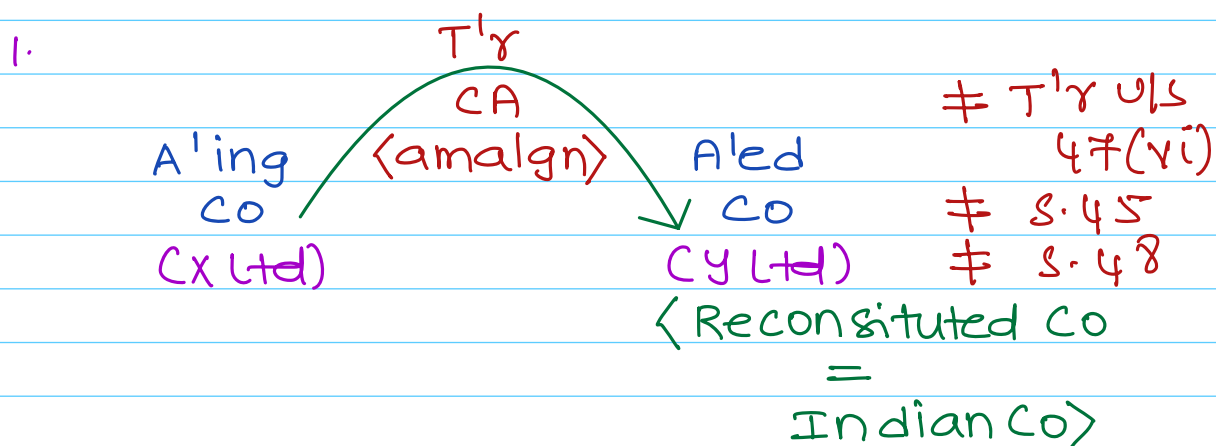
- (b) in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in sub-section (1) of section 49, there shall be included the period for which the asset was held by the previous owner referred to in the said section ;

∴ POH (H.Co) = include the POH to P.O. (S.Co)

e. Transfer in scheme of amalgamation [Section 47(vi) r/w section 2(42A) + section 49]

47. Nothing contained in section 45 shall apply to the following transfers

- (vi) 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;



2. COA (A'ed Co) = COA (P.O) (S. 49(1))
 = COA (A'ing Co)

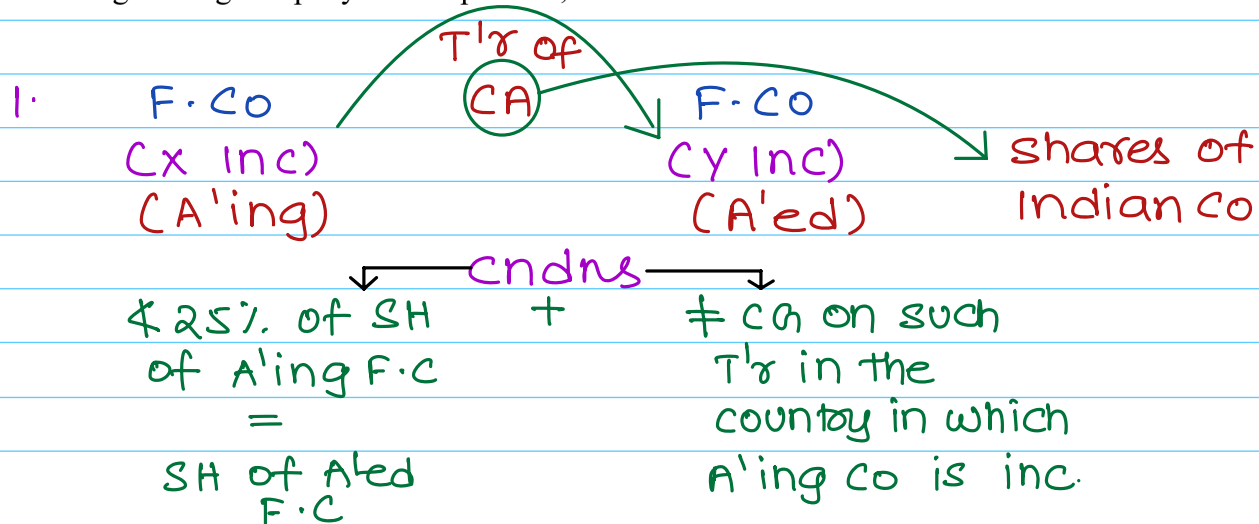
3. POH (A'ed Co) = includes POH of A'ing Co (explanation (b) to S. 2(42A))

f. Transfer in scheme of amalgamation of foreign Company [Section 47(via) r/w section 2(42A) + section 49]

Nothing contained in section 45 shall apply to the following transfers

any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company, if—

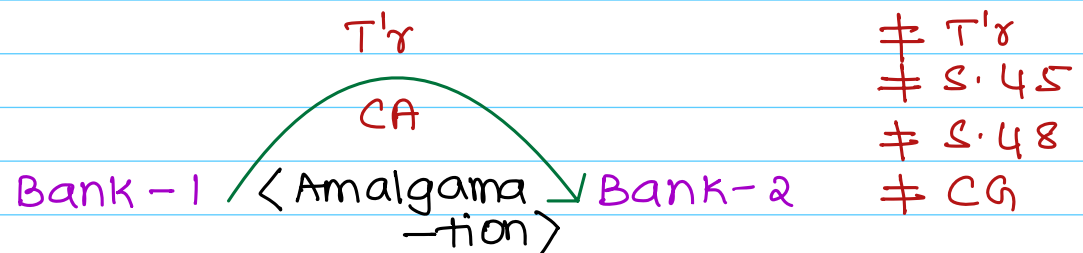
- (a) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and
 (b) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated;



○ g. Transfer in amalgamation of Banking Company [Section 47(viaa) r/w section 2(42A) + section 49]

Nothing contained in section 45 shall apply to the following transfers —

(viaa) any transfer, in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949 (10 of 1949), of a capital asset by the banking company to the banking institution.



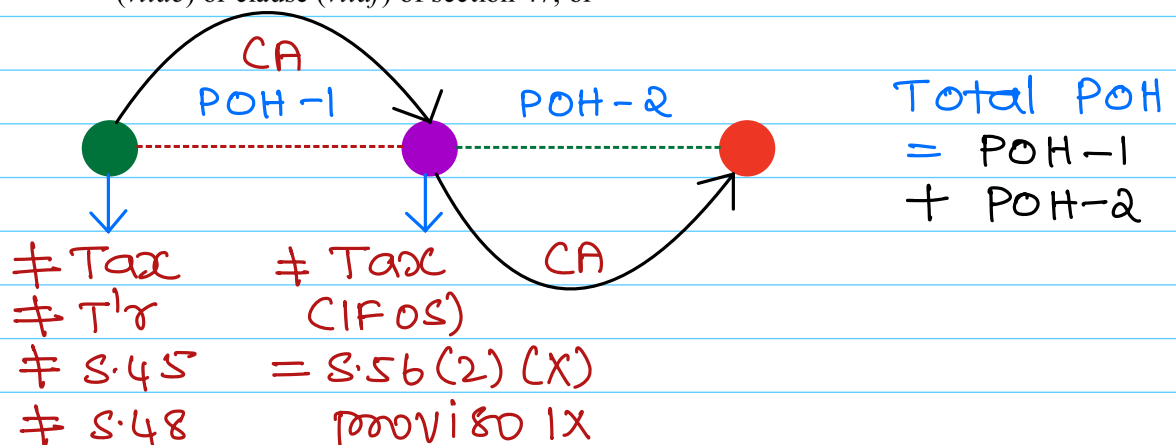
POH + COA to acquirer (supra)

common interlinkage for pts(c) - Cg)

proviso IX to S. 56(2)(X) reads as under

Provided that this clause shall not apply to any sum of money or any property received—

(IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) or clause (viiac) or clause (viiad) or clause (viiac) or clause (viiad) or clause (viiac) or clause (viiad) of section 47; or



Note: All sections on clause (vi) + (vii) relating de-merger etc are dealt separately in a chapter called 'Business re-organisation'

INTERCONNECTED PROVISION [SECTION 47A(1)]

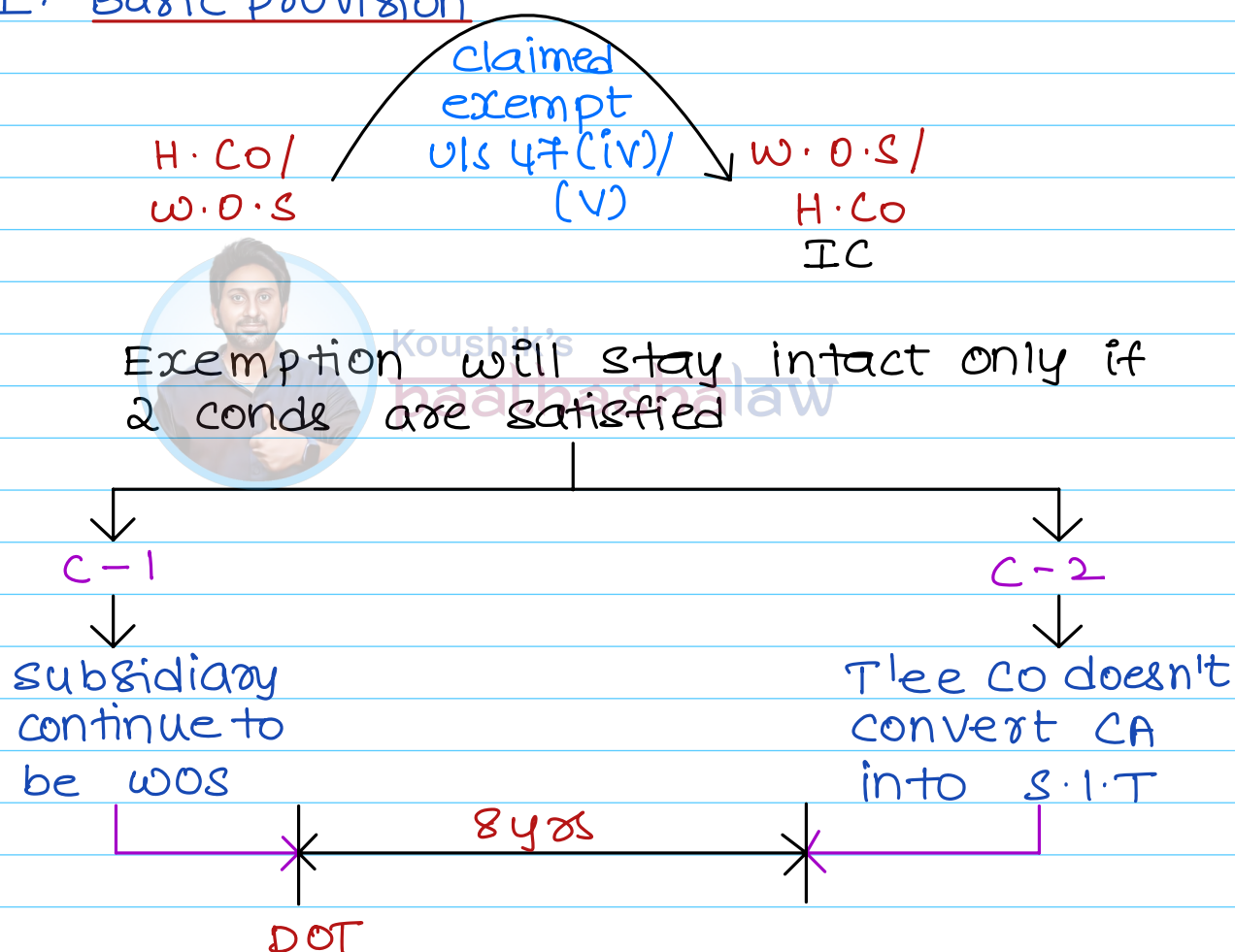
Withdrawal of exemption in certain cases.

47A. (1) Where at any time before the expiry of a period of eight years from the date of the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47,—

- (i) such capital asset is converted by the transferee company into, or is treated by it as, stock-in-trade of its business; or
- (ii) the parent company or its nominees or, as the case may be, the holding company ceases or cease to hold the whole of the share capital of the subsidiary company,

the amount of profits or gains arising from the transfer of such capital asset not charged under section 45 by virtue of the provisions contained in clause (iv) or, as the case may be, clause (v) of section 47 shall, notwithstanding anything contained in the said clauses, be deemed to be income chargeable under the head "Capital gains" of the previous year in which such transfer took place.]

I. Basic provision



II. Consequence of violation:

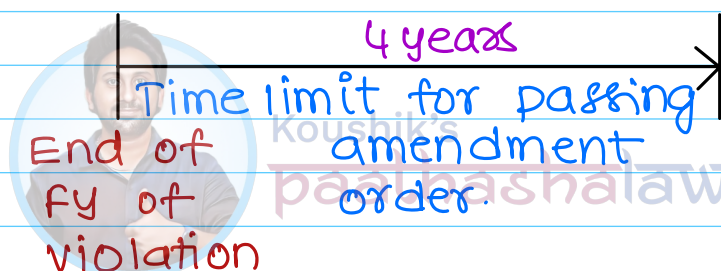
- * Exemption granted u/s 47(iv) + (v) shall be withdrawn.
- * T.I. of PY (tr) = recomputed.
- * Section 155(7B) apply.

Sec 155 (7B) reads as under

(7B) Where in the assessment for any year, the capital gain arising from the transfer of a capital asset is not charged under section 45 by virtue of the provisions of clause (iv) or, as the case may be, clause (v) of section 47, but is deemed under section 47A to be income chargeable under the head "Capital gains" of the previous year in which the transfer took place by reason of—

- (i) such capital asset being converted by the transferee company into, or being treated by it, as stock-in-trade of its business ; or
- (ii) the parent company or its nominees or, as the case may be, the holding company ceasing to hold the whole of the share capital of the subsidiary company,

at any time before the expiry of the period of eight years from the date of such transfer, the Assessing Officer may, notwithstanding anything contained in this Act, recompute the total income of the transferor company for the relevant previous year and make the necessary amendment ; and the provisions of section 154 shall, so far as may be, apply thereto, the period of four years specified in sub-section (7) of that section being reckoned from the end of the previous year in which the capital asset was so converted or treated or in which the parent company or its nominees or, as the case may be, the holding company ceased to hold the whole of the share capital of the subsidiary company.]



III. consequences on Tlee

Since the exemption granted is withdrawn, acquisition shall be considered under S. 49(i), therefore,

$COA(Tlee) \neq COA \text{ by } PO$

$POH(Tlee) \neq Incl \text{ } POH \text{ by } PO$

$COA(Tlee) = Actual \text{ } COA = S. 49(3)$

$POH(Tlee) = Actual \text{ } POH$

S. 49(3) reads as under —

(3) Notwithstanding anything contained in sub-section (1), where the capital gain arising from the transfer of a capital asset referred to in clause (iv) or, as the case may be, clause (v) of section 47 is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A, the cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it.

— other concepts on Hx will be covered separately at the end of this chapter.

4. Special cases of transfer (Part - 1)

- * Distribution of assets by companies in liquidation
- * Reduction of share capital
- * Buy back of shares - amendment
- * Reverse mortgage

a. Distribution of assets by companies in liquidation [Section 46 and all other relevant provisions]

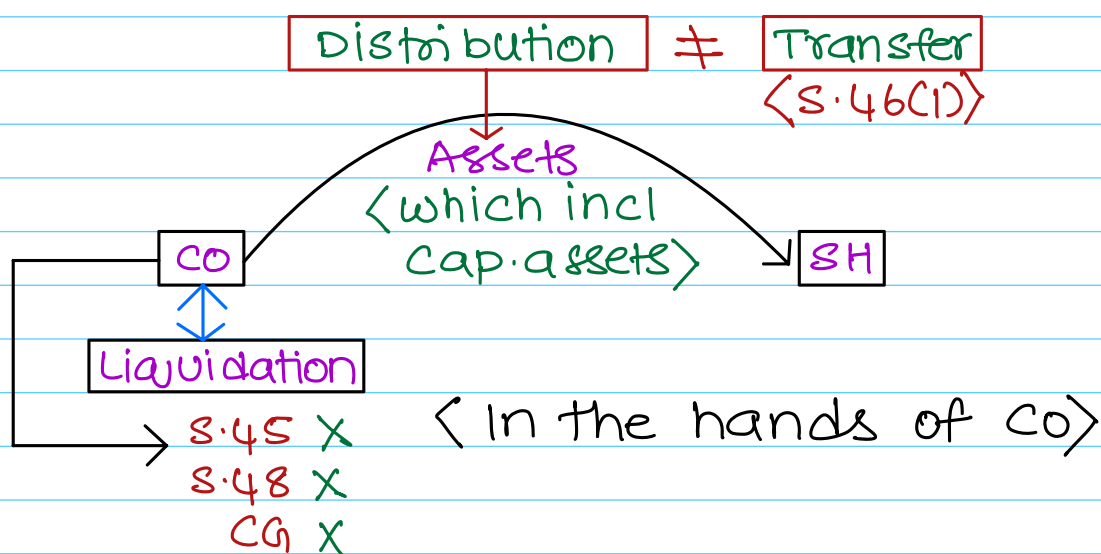
1. As per section 46(1):

46. (1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

- * The opening lines 'notwithstanding anything contained in section 45....' clearly show that section 46 shall operate independent of section 45.

- * Distribution of assets by companies in lian is not a transfer u/s 47 as per section 46(1).

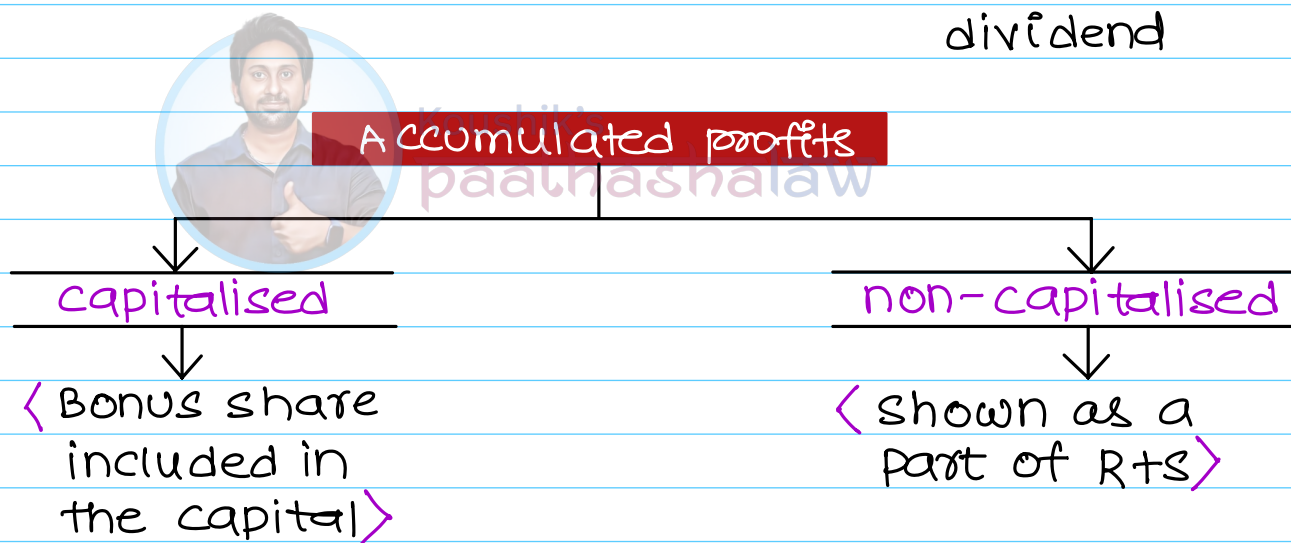
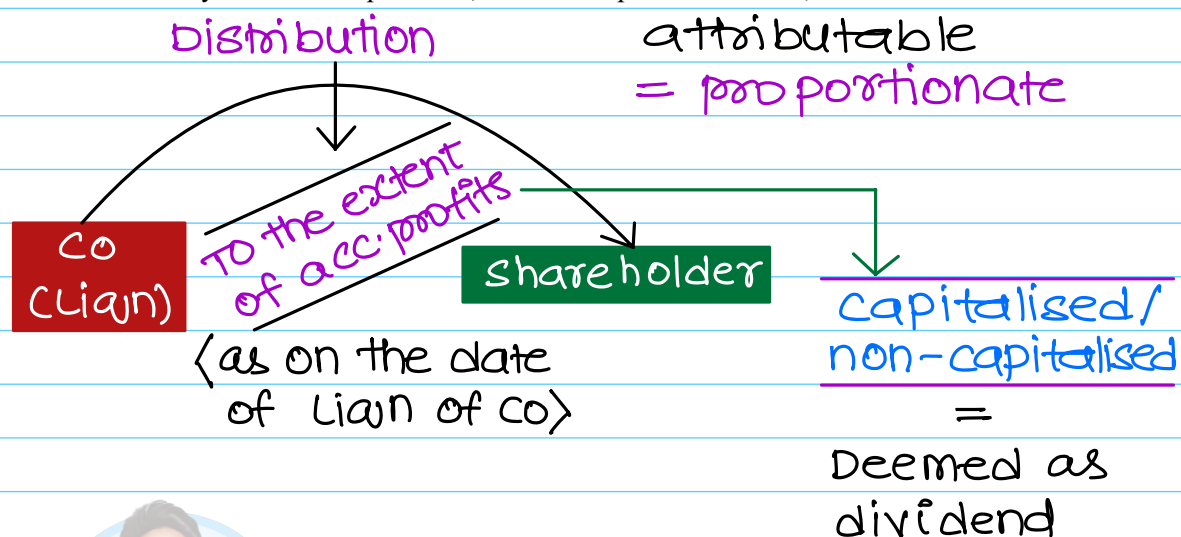
2. concept dealt - Diagrammatic presentation



3. Interconnected section - s. 2(22)(c) <Impact in the hands of SH>

(22) "dividend" includes—

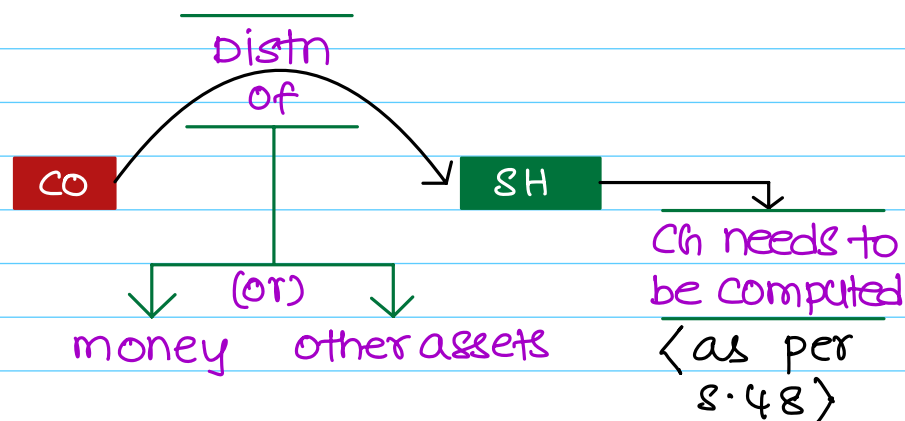
- (c) any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;



B/s	
sh. capital ₹. 100L	
Cincludes (₹20L Bonus shares)	→ Capitalised A.P.
R+S ₹. 80L	→ Non-capitalised A.P.
$AP = \underbrace{₹. 20L}_{Cap} + \underbrace{₹. 80L}_{Non-Cap} = ₹. 100L$	

4. Tax implications on Liqn - special case Sec. 46(2)

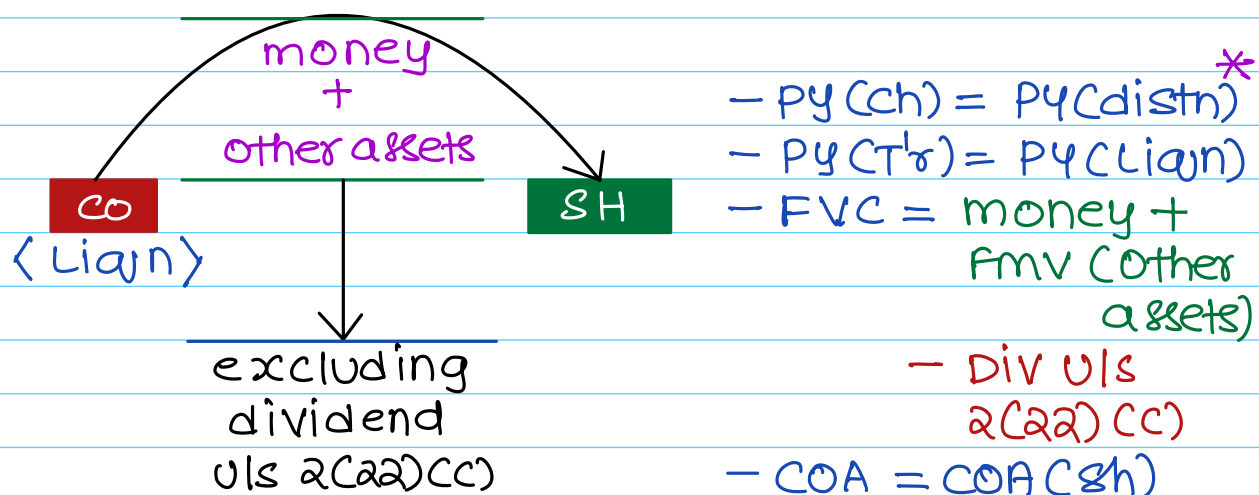
(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.



Logical explanation.

< Jaya Krishna Harivallabhadras (Huj) >
< vijay kumar Budhia (sc) >

- Company goes into liquidation
- upon Liqn, company comes into an end.
- shares of company = ends
- Rights in such shares = ends
- End of right = extinguishment u/s 2(47)
- extinguishment of rights = Transfer



* Sec 46(2) uses the words 'receives any, money/other assets ...'

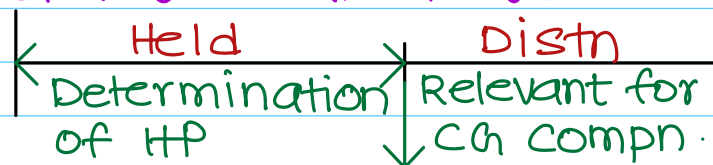
s. Period of holding - sec 2(42A) & w expl 1(i)(a)

Explanation 1.—(i) In determining the period for which any capital asset is held by the assessee—

- (a) in the case of a share held in a company in liquidation, there shall be excluded the period subsequent to the date on which the company goes into liquidation ;

∴ POH end on the day preceeding
the date of Liqn.

Date of acqn Date of Liqn



extinguishment
happened

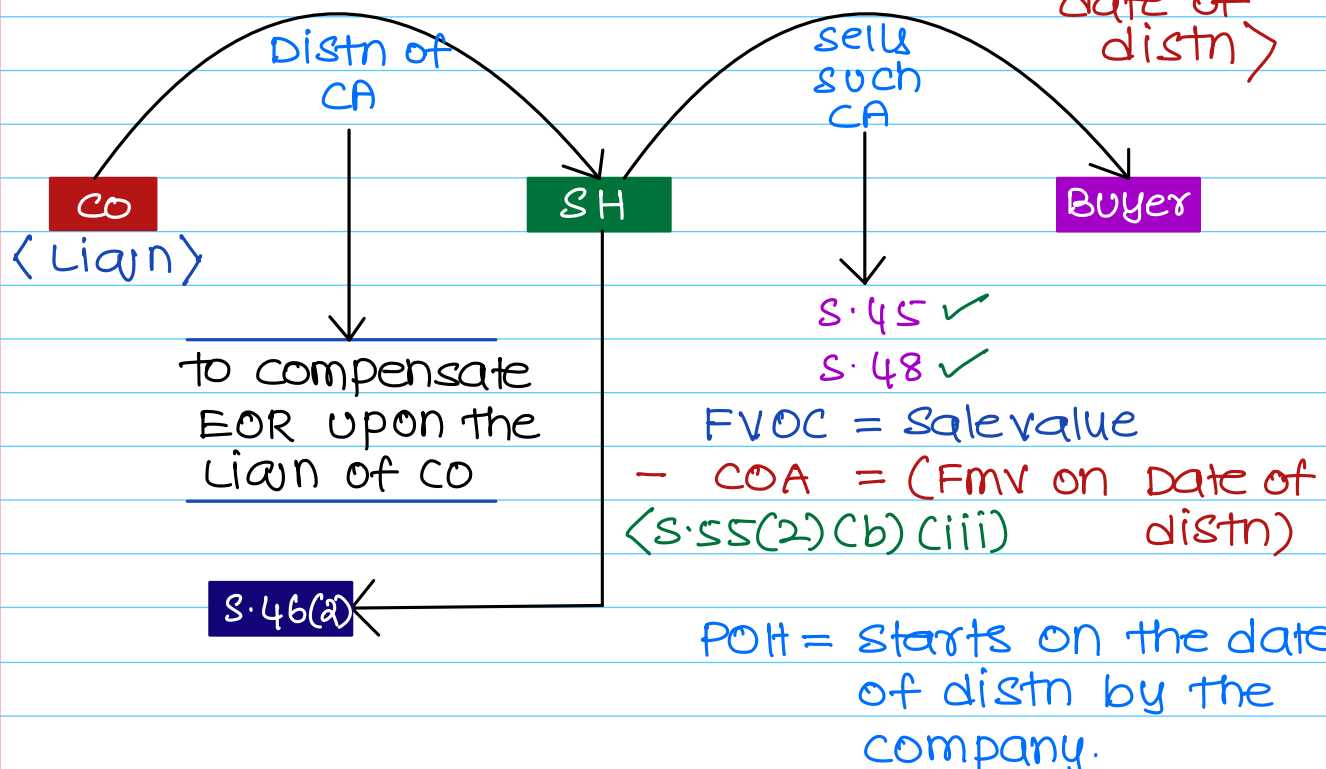
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Py(T'r)

6. Tax implications on subsequent transfer - sec 55(2)(b)(iii) - COA of CA

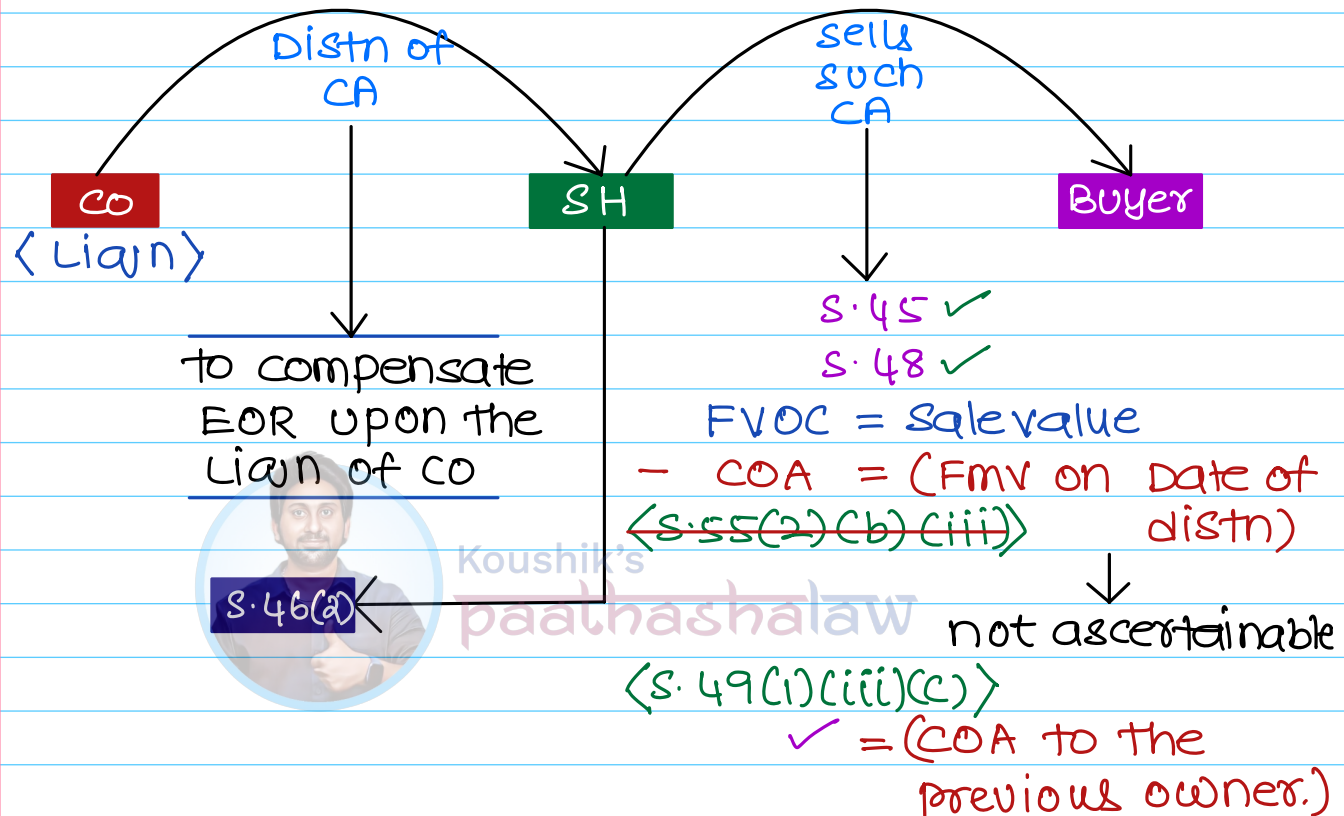
- (iii) where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to income-tax under the head "Capital gains" in respect of that asset under section 46, means the fair market value of the asset on the date of distribution ;

$\langle \text{COA of CA acq on dist} \rangle = \text{FMV (CA) on date of distn} \rangle$



7. Tax implications if couldn't be charged U/s 46(2) - S. 49(1)(iii)(c)

49. (1) Where the capital asset became the property of the assessee—
 (c) on any distribution of assets on the liquidation of a company,
 the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it, as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be.



8. Illustration

Facts:

- X purchases 4000 equity shares in Y Ltd on 16th April 2004 @ ₹2/sh.
- Y Ltd goes into Liquidation on June 30th 2024.

B/S as on 30th June 2024 (₹)

40,000 ES	4,00,000	10,000 Debs of Z Ltd *	28,00,000
@ ₹10/each			
Acc. profit	30,00,000	Cash in Hand	6,00,000
Total	34,00,000		34,00,000

* Debentures are listed, COA = ₹. 9L,
DOA = 1st May 2023.

- Assets are distributed to SH
- X gets 1,000 debs in Z Ltd (MV = ₹. 2,80,000)
- X also got ₹ 60,000 in cash on June 30th 24.
- X transferred on 6th April 2025 1,000 debs for ₹ 3,10,000.

Explain tax consequences.

I. Tax consequences in the hands of co

As per S. 46(1) ———

Distribution of assets by the company at the time of liquidation ≠ transfer ≠ S. 45 ≠ S. 48 ≠ CG.

∴ Nothing is taxable in the hands of company U/H CG.

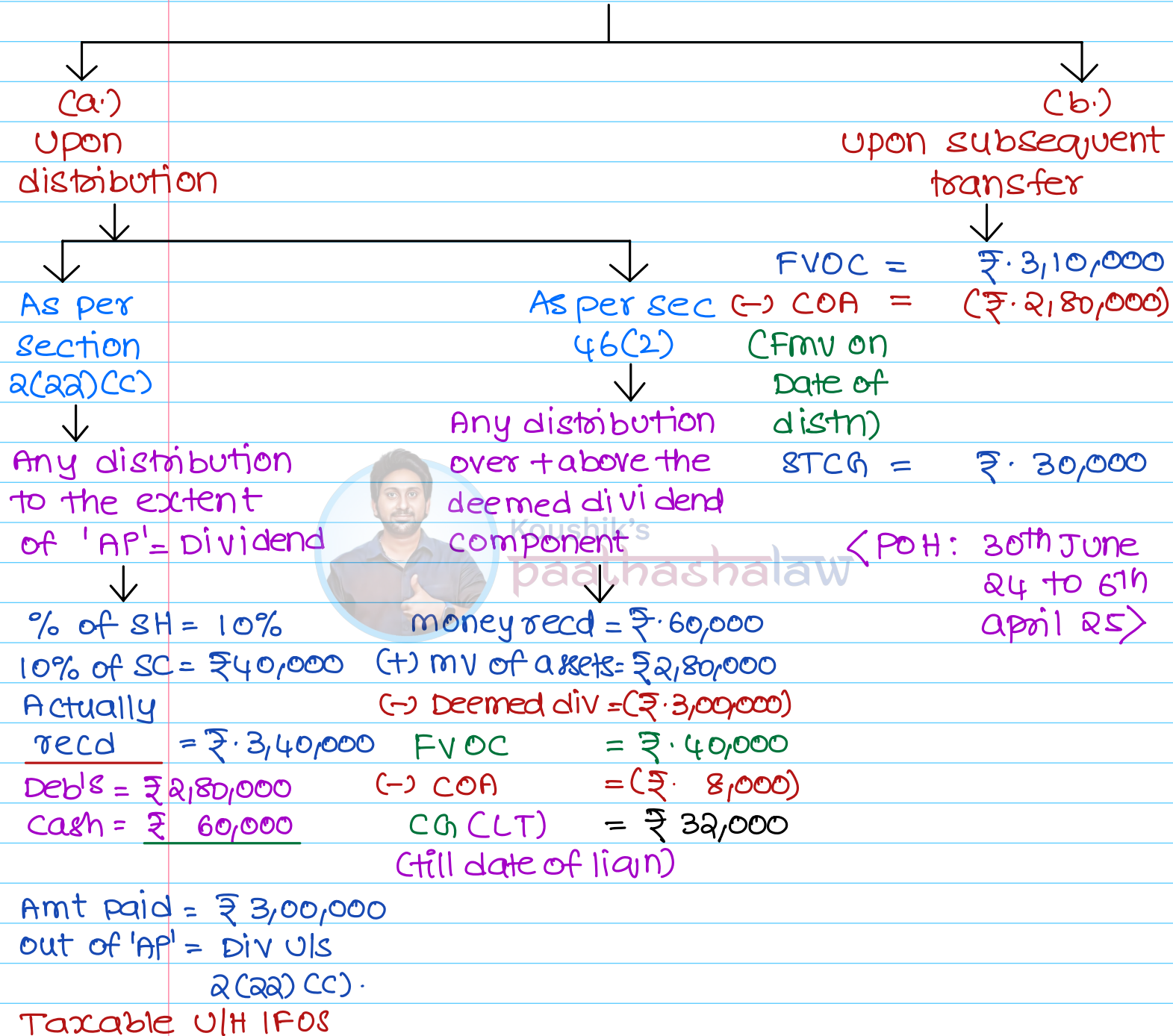
II. Tax consequences in the hands of SH This has to be calculated in 2 different scenarios

a) Upon distribution

* Deemed dividend U/s 2(22)(c)

* Capital gains U/s 46(2)

b) Upon re-transfer
 Capital gains u/s 55(2)(b)(iii)
 Calculations are as under

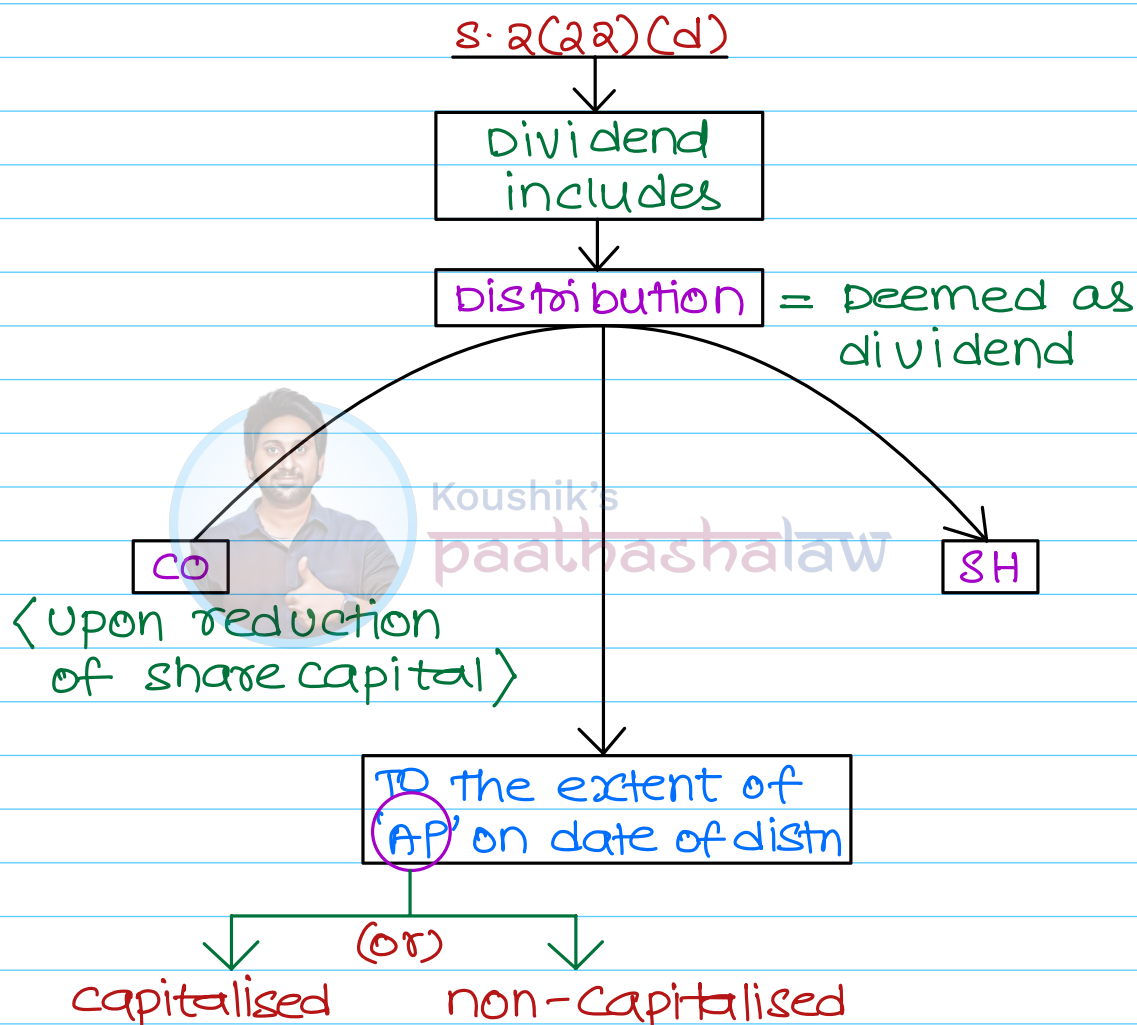


b. Reduction of share capital (Section 2(22)(d) + other relevant sections)

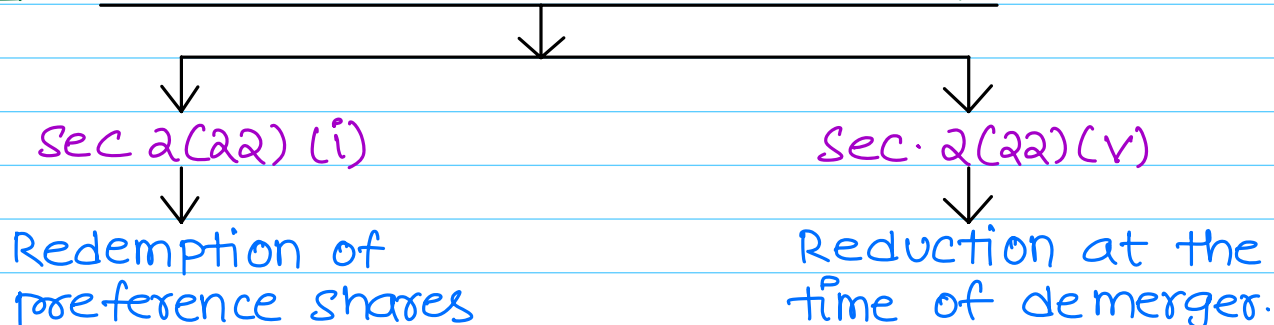
- tax implications

I. Bare provision < s. 2(22)(d) >

- (d) any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits ~~which arose after the end of the previous year ending next before the 1st day of April, 1933~~, whether such accumulated profits have been capitalised or not ;



II. Exclusions from deemed dividend



1. Sec 2(22)(i):

but "dividend" does not include—

- (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;

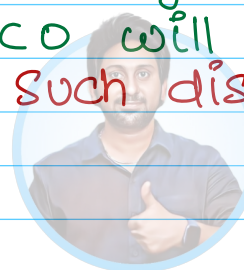
Distribution to pref. SH upon redemption of PS \neq Dividend u/s 2(22)(d)

2. Sec 2(22)(v):

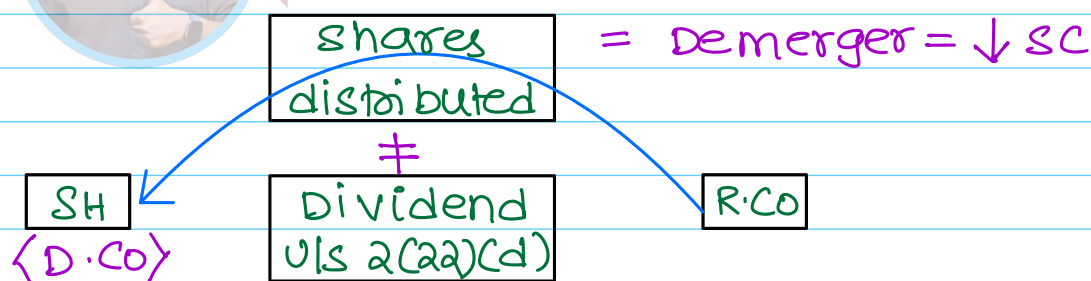
- (v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

At the time of demerger, the SC of the demerged co is reduced and resulting co will issue shares to the SH of D.Co.

Such distribution of shares \neq Dividend u/s 2(22)(d)

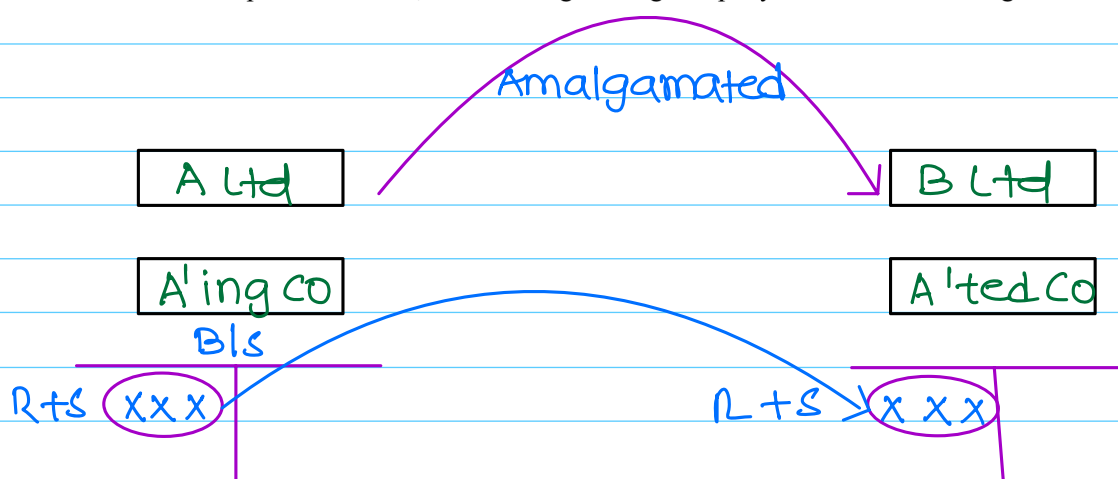


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III Accumulated profits of A'ing Co (Expl 2A to S. 2(22))

Explanation 2A.—In the case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be, shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.



IV. Capital gains - Karthikeya V. Sarabhai (SC) + G. Narasimhan (SC)

Upon ROSC



extinguishment of rights

=

Transfer



Capital gains need to be computed.

"ROSC by a company and paying off the balance to SH would result in 'E.O.R'. The amount rec'd by the SH on 'ROSC' is subject to capital gains. Upon ROSC, the rights of SH in dividend and net assets on liquidation is extinguished. So, will be attracted where a company reduce the face value from ₹. 1,000 to ₹. 50/sh by paying ₹. 950/sh to the SH of the Company."

$$1. FVOC = \text{money} + FMV(\text{other assets}) - \text{Dividend u/s 2(22)(c)}$$

$$2. COA = \text{COA of extinguished part of shares.}$$

Illustration

upon ROSC in a co

(Share)

Extinguished

Non-extinguished

part

"Deductible"
COA

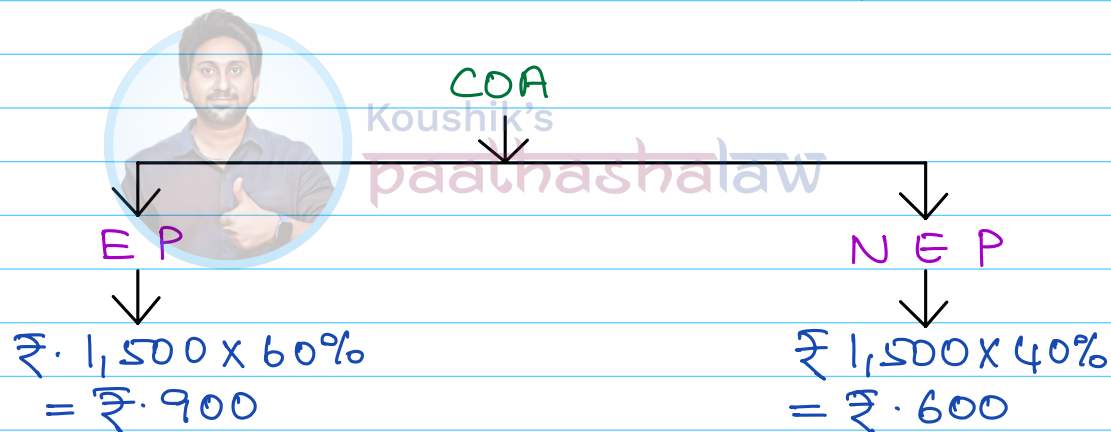
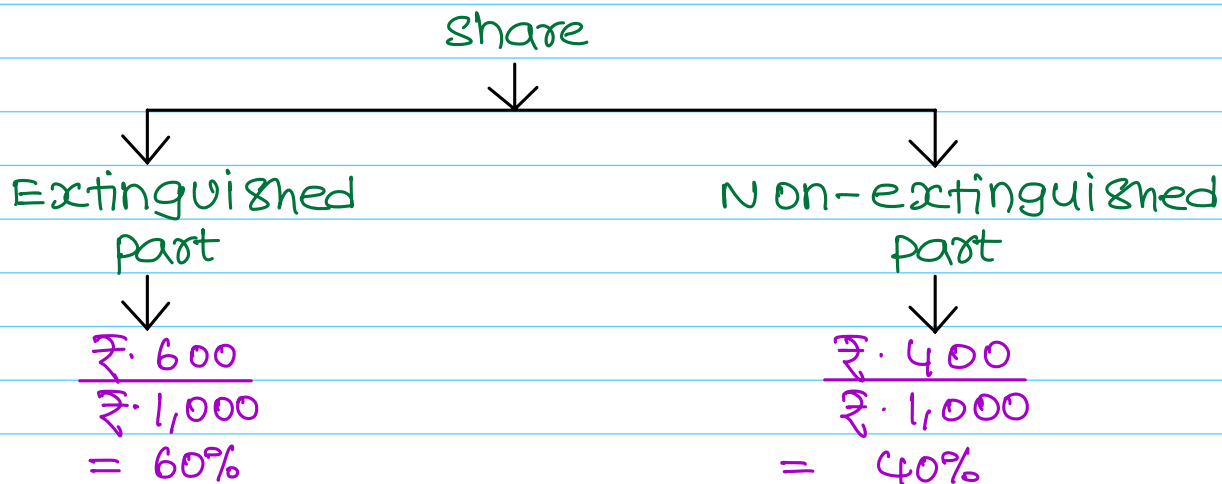
part

Let's say, $\text{Cost/sh} = ₹. 1,500$

$\text{FV/sh} = ₹. 1,000$

(-) Reduction = (₹. 600)

<Revised> $\text{FV/sh} = ₹. 400$



V. Illustrations

a)		B/s	
Eq. sh. Cap	₹. 2,00,000	Assets	₹. 3,00,000
(Bonus sh of ₹ 50,000)		P&L(Dr)	₹. 1,00,000
Creditors	₹. 2,00,000	Balance	
	₹. 4,00,000		₹. 4,00,000

Company reduces sh. Cap by ₹. 1,00,000 by setting off P&L(Dr) Bal.

Solution:

* There is no deemed dividend u/s 2(22)(d) since:

- Company has no acc. profits (except BS)
- No distribution of assets to SH.

b)

B/s			
Eq. & Sh. Cap	₹. 2,00,000	Cash	₹. 2,50,000
(Bonus Sh of ₹ 50,000)		P&L(Dr)	₹. 1,50,000
Reserves	₹. 2,00,000	Balance	
	<u>₹. 4,00,000</u>		<u>₹. 4,00,000</u>

Case I: Company reduces Capital by ₹. 1,50,000 by setting off P&L(Dr) balance.

Case II: Company reduces Capital by ₹. 1,50,000 by refunding the cash to SH.

Solution:

Case I: Not a deemed dividend <supra>

Case II:

a) computation of acc. profits

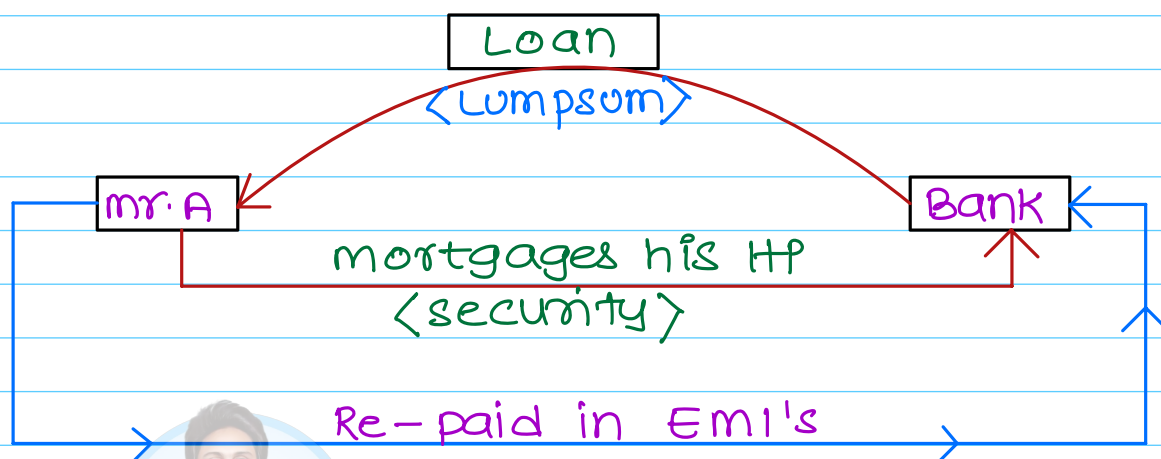
$$\begin{aligned}
 \text{Reserves} &= ₹. 2,00,000 \\
 (-) \text{ P\&L(Dr)} &= (₹. 1,50,000) \\
 (+) \text{ Bonus capital} &= ₹. 50,000 \\
 \text{AP total} &= ₹. 1,00,000 = \text{Deemed as div u/s 2(22)(d)}
 \end{aligned}$$

c. Reverse Mortgage - Tax implications [Section 47(xvi) + Sec 10(43)]

47. Nothing contained in section 45 shall apply to the following transfers

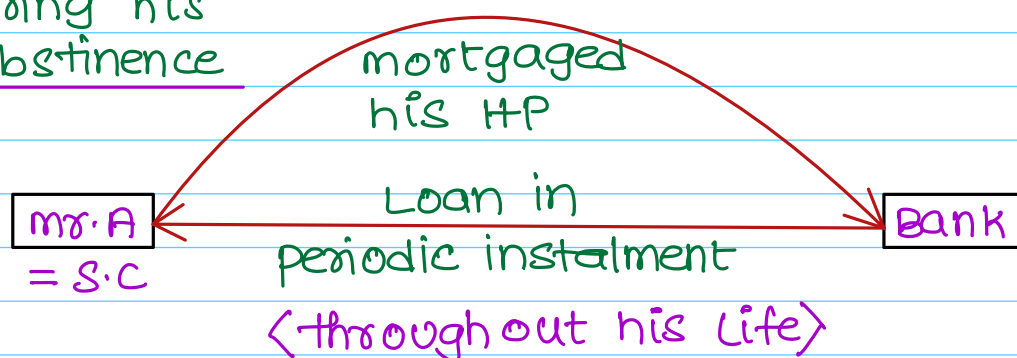
(xvi) any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government;

I. concept of normal mortgage

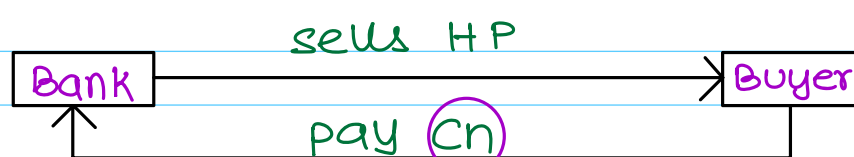


II. concept of reverse mortgage

a. during his substinence



b. Upon his death:



1. Appropriated towards loan + o/s interest

2. Balance left out = given to legal heir.

III. Exempted transfer

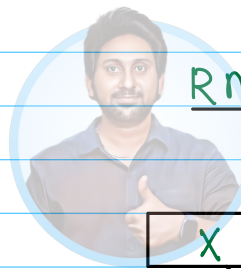
U/s 47(xvi)
↓
Reverse mortgage

≠
Transfer
≠ S.45
≠ S.48
≠ CG

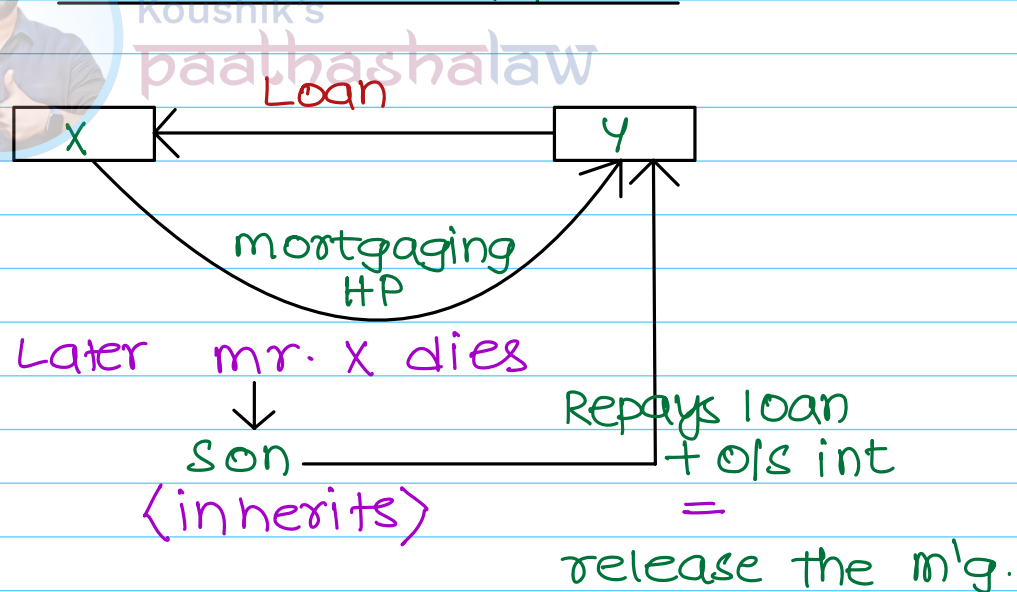
"CG computation comes only if bank sells property".

IV. Exemption U/s 10(43)

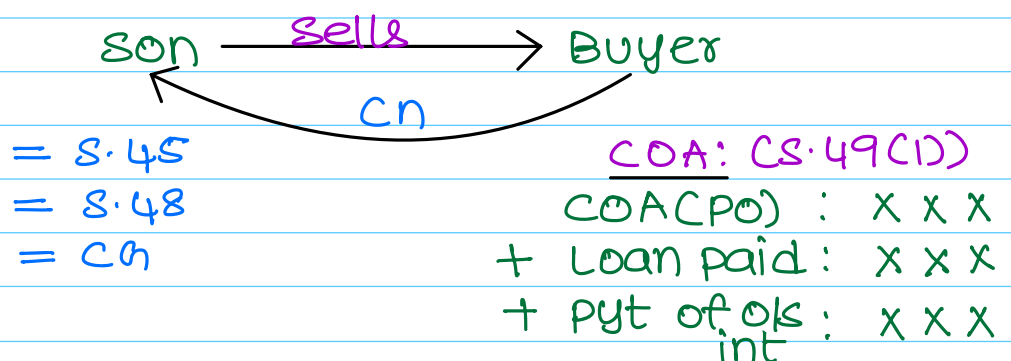
Periodical sum rec'd ≠ Taxable
= Exempt U/s 10(43)



Rm. Arunachalam (SC)

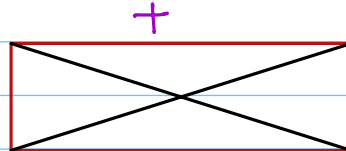


Later on



conversely, keeping all facts intact, if the m'gr doesn't die, he releases the m'g by paying loan + o/s interest, then previous caselaw shall not apply

$$\text{COA} = \text{Actual COA} +$$



< Jagadish Chandran (SC) >



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d. Buy-back - Tax Implications [Section 46A + Section 2(22)(f)]

○ Amended w.e.f 1st October, 2024

Prior amendment

For Co:

Domestic company
shall pay tax @

23.296% (20% + 12% + 4%)

on _____

Buy back price = XXX

(-) Issue price incl = (XXX)
premium

Taxable part = XXX

Post amendment

For Co:

No tax

For SH:

< Refer Sec 46A
+ S. 2(22)(f) >

For SH:

Exempt u/s 10(34A)

I. Section 46A.

Capital gains on purchase by company of its own shares or other specified securities.

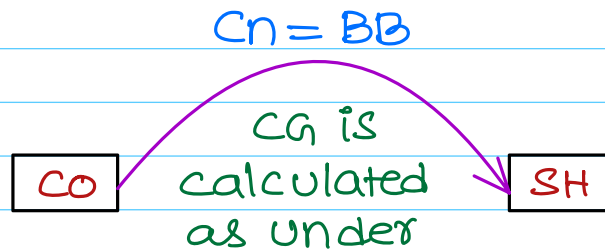
46A. Where a shareholder or a holder of other specified securities receives any consideration from any company for purchase of its own shares or other specified securities held by such shareholder or holder of other specified securities, then, subject to the provisions of section 48, the difference between the cost of acquisition and the value of consideration received by the shareholder or the holder of other specified securities, as the case may be, shall be deemed to be the capital gains arising to such shareholder or the holder of other specified securities, as the case may be, in the year in which such shares or other specified securities were purchased by the company:

⁴²[**Provided** that where the shareholder receives any consideration of the nature referred to in sub-clause (f) of clause (22) of section 2 from any company, in respect of any buy-back of shares, that takes place on or after the 1st day of October, 2024, then for the purposes of this section, the value of consideration received by the shareholder shall be deemed to be *nil*.]

II. Section 2(22)(f):

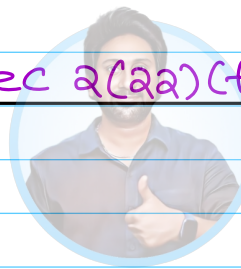
(22) "dividend" includes—

²[(f) any payment by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 68 of the Companies Act, 2013 (18 of 2013);]

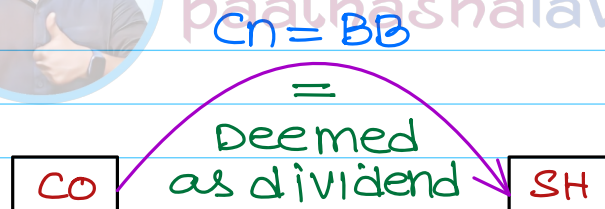
III. Tax implicationsa) sec 46A:

Particulars	₹
FVOC	NIL (proviso)
(-) COA	(XXX)
STCL/LTCL	(XXX)

$$PY(Cn) = PY(BB)$$

b) sec 2(22)(f):

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Illustration:

On March 3, 2025, X Ltd. purchases its own shares (face value: Rs.10, amount offered to shareholders: Rs.90 per share). Y is one of the shareholders. He holds 2,000 shares (cost of acquisition: Rs.27 per share, year of acquisition: 2007-08). He gets Rs.1,80,000.

1. Tax implications in hands of company:
X Ltd is not liable to pay any tax.

2. Tax implications in hands of SH:

A. U/H Cn ₹.

FVOC = NIL

(-) COA = (54,000)

LTCL = (54,000)

- This can be s/o only against LTCH incy.
- This can be c/f to s/o x LTCH - 8AY.

B. U/H 1 Fos;

₹. 1,80,000 recd on BB = Dividend
= tax @ normal rates.



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