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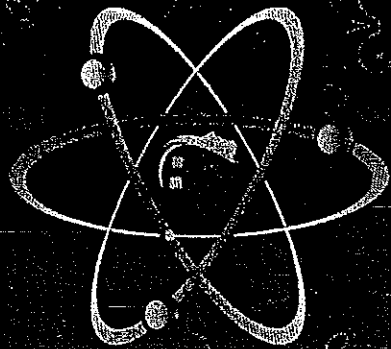
ROHIT BHAGWAT PAGARE, G. E. SOCIETY'S

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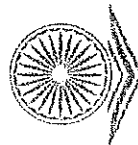
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THE STUDY OF CAPITAL GAIN TAX IN INDIA WITH REFERENCE TO INDIVIDUAL ASSESSEE

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Abstract

Tax is the source of revenue for the government. Capital gain tax is levied on the transfer of Capital Assets by the assessee. The Budget of 2017 tends to take the year 2000-01 as the base year. It's thus a matter of intrigue to evaluate the repercussions of this action. In the budget of Jan 2020 the finance minister had made certain transfer by the non-resident individual taxable. The study firstly entails to embark upon the comparative study of properties held by the owner prior to the year 1981 with the idea to fetch significant amount of money when sold in the financial year 2017-18 and what if sold in the market during the financial year 2019-20. Secondly the study considers the impact on the change in the base year 1981 to 2001-01.

Key Words: Capital Gain, Long term Assets, Short Term Assets, Long Term Capital Gain, Short Term Capital Gain.

Introduction

The capital gain tax is bound to change when the index is changed. The finance act 2017 revises the same. So the present study hypothetically analyses the impact of these changes due to finance act 2017. Capital assets are property held by assessee and securities held by FII (Income duty of India). An individual on many occasions sells and purchase property, gold and shares hence attracting the capital gain tax. The study of capital gain tax on the sell of assets is thus the matter of an individual interest. Any benefit or gain that emerges from the offer of capital assets is a capital gain. This gain or benefit is charged to assess in the year in which the exchange of the capital resource happens.

Basis of charge of Capital Gain Tax(CGT): As per Section 45(1) of the income tax Act 1961 Capital Gains means the gains or profit arising on account of transfer of a capital assets effected during the given financial year. However there are certain deductions available to save

the quantum of capital gain tax by virtue of section 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H.

Capital Assets: "capital asset" means any property by an assessee excluding the following—

- (i) any stock-in-trade,
- (ii) movable property (including wearing apparel and furniture) haing a personal effect held for personal use by the assessee or any member of his family dependent on him. However the definition of personal effect shall exclude jewellery; archaeological collections, drawings, paintings; sculptures; or any work of art.
- (iii) Urban agricultural land. An agricultural land other than the rural agricultural land means the urban agriclututal land. Rural agricultural land implies the land situated in the area:
 - a) at the distance of more than two kilometer away from the jurisdiction of a municipality
 - b) or a having population of not less than ten thousand or but not exceeding one lakh; or not being more than six kilometers which has a population of more than one lakh but not exceeding ten lakh; or not being more than eight kilometers, from the local limits of any municipality or cantonment board and which has a population of more than ten lakh.
- (iv) Certain bonds viz. 6 per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, Special Bearer Bonds, 1991 Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 issued by the Central Government.

Fair market value means the price that the capital asset would ordinarily fetch on sale in the open market on the relevant date and where the price referred is not ascertainable such price as may be determined in accordance with the rules made under the Income Tax Act.

LLong-term capital asset": means a capital asset which is not a short-term capital asset. Scetion 29(B) "lLong-term capital gain" means capital gain arising from the transfer of a lLong-term capital asset.

Short term capital assets:

Before Finance Act 2017	After Finance Act 2017
a) "short-term capital asset" means a capital asset held by an assessee for thirty-six months or less immediately preceding the date of its transfer"	a) "short-term capital asset" means a capital asset held by an assessee for thirty-six months or less immediately preceding the date of its transfer"
b) In case of listed securities or units of UTI the period of thirty six months is brought down to twelve	b) In case of listed securities or units of UTI the period of thirty six months is brought down to twelve

months	months. c) However in case of non-listed shares and land or building or both the period of holding shall be taken as twenty four months or more (instead of twelve months in case of shares and thirty six months in case of land or building)
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Cost of acquisition the cost of acquisition of the asset shall be deemed to be the cost to the owner or cost for which the previous owner of the property acquired it (where the assessee becomes the owner by virtue of Sec. 49(1)).

Before Finance Act 2017	After Finance Act 2017
a) cost of acquisition before 01/04/1981 shall be taken as the actual cost or fair market value as on 01/04/1981	a) cost of acquisition before 01/04/2001 shall be taken as the actual cost or fair market value as on 01/04/2001

Indexed cost of acquisition: means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee.

Before Finance Act 2017	After Finance Act 2017
a) Base year of indexation shall be taken as 1981-82.	a) Base year of indexation shall be taken as 2001-02.

Cost of improvement: means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset by the previous owner or the assessee.

Before Finance Act 2017	After Finance Act 2017
Cost of improvement before 01/04/1981 shall be ignored.	Cost of improvement before 01/04/1981 shall be ignored.

Cost Inflation Index, in relation to a previous year, means such Index as the Central Government may in the Official Gazette, specify, in this behalf.

Deductions: The gross Capital deduction qualifies for deductions under sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H if the conditions laid down in these sections are satisfied.

I) Objectives of the Study:

- 1) To Study the impact of change in the base year for capita; gain i.e. 1981 and 2000-2001.
- 2) To study the capital gain payable by the assessee if the 1981 is considered to be the base year.

II) Hypothesis:

There is no change in the capital gain tax payable because of the change in the provisions relating to capital gain tax even as the base year is shifted to 1981 to 2001-02.

III) Assumptions:

- 1) The present study is restricted to Gold and selected Properties only
- 2) Properties are selected from the Nashik Municipal Corporation only.
- 3) The study is confined only to resident individuals.

IV) Working Definitions:

- 1) Capital Gain Tax: The charged levied upon the transfer of capital assets.
- 2) Transfer: Means the transfer other than mentioned in Section 49(1) of Income Tax Act.
- 3) Long term Capital Asset: This is the assets held for a period of more than 36 months except equity or preference shares held by the assessee. For equity and preference shares of the company the period is said to be not more than 12 months.
- 4) Short term Assets: This is the assets held for a period of not more than 36 months and in case of equity and preference the period is said to be not more than 12 months.
- 5) Long term capital gain: Payable on transfer of Long term capital assets.
- 6) Short term capital assets: payable on transfer of short term capital assets.

V) Research methodology:

The research is primarily based on the secondary data. For the purpose of primary data the valuers were approached with structured questionnaire. Case study method to be adopted for the purpose of the study.

VI) Data analysis and Interpretation:

For the purpose of study the names of the actual owner/ traders is not disclosed.

Mr KMS is inherited one kilogram of gold from his father on 15th Sept. 1978 at the prevailing market rate of Rs. 185 per ten grams. He had sold it in the market on 26th Aug. 2017 at the prevailing rate. 26,30,080. As a researcher the interest is in knowing whether he stands at gain if the gold was sold before the Finance Act 2017 (that is assessment year 2017-18) or stand at gain when sold after the financial act 2017 (that is assessment year 2018-19)

	Date of sale 26 th Aug, 2017 (A.Y. 2018-19)	Date of sale 31 st March, 2017 (Hypothetically Assumed)
Sales consideration	26,30,080	26,05,390
Cost of Acquisition		
a) FMV as on 01/04/2001 (A.Y. 2018-19 or afterwards) or the actual cost (higher) (4,19,250*272/100)	11,40,360	Not applicable
b) FMV as on 01/04/1981 (A.Y. 2017-18 or before) or the actual cost (higher) (167,000*1125/100)	Not applicable	18,78,750
Capital Gain before deductions	14,89,720	7,26,640
Deductions	Nil	Nil
Capital Gain	14,89,720	7,19,327
Tax payable	3,06,882	1,48,181
Net Cash flow for Assessee (Sales proceeds- Capital Gain Tax)	23,23,198	24,57,209

Interpretation:

- 1) The present assessee has to pay more tax because of the shift in the base year from 1981 to 2001
- 2) Moreover the multiplier effect in the fair market value of gold on 01/04/1981 together with the new revised CII falls short of the old rates of CII.

Case II) Mr KMS purchased 250 grams of gold 19th Feb. 2005 for Rs. 6370 per ten grams. He had sold it in the market on 18th July. 2017 for Rs. 30,800 per ten grams . As a researcher the

interest is in knowing whether he stands at gain if the gold was sold before the Finance Act 2017 (that is assessment year 2017-18) or stand at gain when sold after the financial act 2017 (that is assessment year 2018-19)

	Date of sale 1 st July, 2017 (A.Y. 2018-19)	Date of sale 31 st March, 2017 (Hypothetically Assumed)
Sales consideration	7,67,500	7,00,000
Cost of Acquisition		
a) Actual Cost (6370*25*272/113)	383327	Not applicable
b) Actual Cost (6370*25*1125/480)	Not applicable	373242
Capital Gain before deductions	3,81,673	3,73,360
Deductions	Nil	Nil
Capital Gain	3,81,673	3,73,360
Tax payable	78,625	76,912
Net Cash flow for Assessee (Sales proceeds- Capital Gain Tax)	6,88,875	6,23,088

Interpretation:

- 1) The aspect of fair market value does not come into picture as the property is purchased after 01/04/2001.
- 2) Though there is a slight rise in the price of gold in the Assessment year 2018-19 as compared to the assessment year 2017-18 but the assessee net cash takeover has increased because of the benefit of rise in CII for A. Y. 2018-19 as compared to CII for A. Y. 2017-18. This is potentially because the gold was purchased after 01/04/2001.

3) Mr.DMP sold a residential bungalow at College road nashik, maharashtra for Rs. 42,00,000 on 25th Oct. 2017. Which he had purchased for Rs. 36,00,000 on 11th Sept 2015 (A. Y. 2018-19). What would be the position if he had sold the on 31st March 2017(A. Y. 2018-18)

	Date of sale 1 st July, 2017 (A.Y. 2018-19)	Date of sale 31 st March, 2017 (Hypothetically Assumed)
Sales consideration	42,00,000	7,00,000
Indexed Cost of Acquisition		
a) Actual Cost of purchase (36,00,000*272/254)	38,55,118	Not applicable
Cost of acquisition		
b) Actual Cost	Not applicable	36,00,000
Gross Capital Gain		
Long term capital gain	3,44,881	
Short term capital gain		6,00,000
Deductions	Nil	Nil
Gross Capital Gain		
Long term capital gain	3,44,881	
Short term capital gain		6,00,000

Interpretation:

- 1) From the assessment year 2018-19 (Finance Act 2017), the benefit of indexation on Long term capital asset is allowed in case of building or land or both if the period of holding is more than 24 months. Which the previous Assessment year 2017-18 maintains at more than 36 months.

- 2) Thus the capital gain tax payable will reduce because of the indexation benefit conferred upon the said property.

VII) Hypothesis testing:

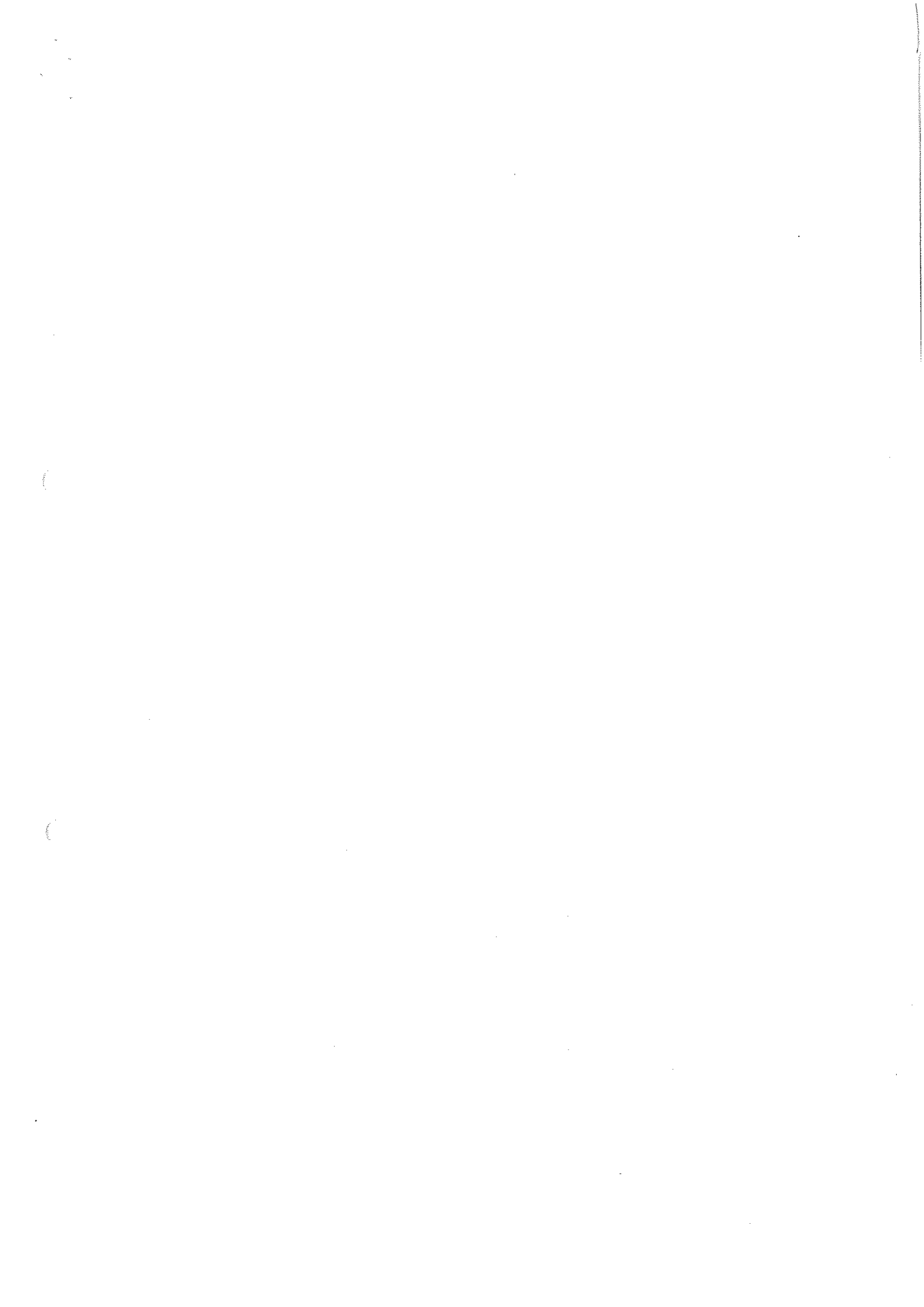
As there is a considerable change in the net tax payable because of the changes in the provisions of Capital Gain Tax Payable as per finance Act 2017 the hypothesis stands rejected. Thus the finance act assumption that 2000-01 to be the base year had increased the tax liability.

VIII) Conclusion

- 1) The assessee can claim deductions under various sections 54, 54B, 54D, 54E, 54EA, 54EB, 54F, 54G and 54H and claim the entire amount tax free, if the conditions laid down in these sections are satisfied.
- 2) It would be incorrect to say that these provision will make the assessee pay more tax as the Tax payable is always predetermined by the quality of assets held.
- 3) The tax payable will be dependent upon the Fair Market value as on 01/04/2001 if acquired before 01/04/2001.
- 4) Though the benefit for indexed cost of acquisition for holding the assets for much longer period before 01/04/1981 seems to have washed away but the asset whose Fair Market value is more than factor 9.03 (that is (as per the assessment 2016-17 CII for F. Y. 2016-17/CII for the assessment year 1981-82 =1125/100 as per the old rates of CII)/ CII for F. Y. 2017-18/CII for the assessment year 2001-02 =272/100 as per the new rates of CII =11.25/272= 4.14)

Provision illustrated:

The property was originally purchased for Rs. 1,20,000 on 01/04/1979. The sales consideration as on 31/07/2017 is Rs. 47,00,000. Calculate the Gross capital gain tax chargeable to tax under the assumption that the fair market value of the property as on 01/04/2001 is a) Rs. 5,00,000 (more than the factor 4.14) b) Rs. 4,50,000



Content	FMV is Rs. 5,00,000 (factor more than 4.14)		FMV is Rs. 4,50,000 (factor less than 4.14)	
	New CII (AY 2018-19)	Old CII (AY 2017-18)	New CII (AY 2018-19)	Old CII (AY 2017-18)
Sales Consideration	47,00,000	47,00,000	47,00,000	47,00,000
Indexed Cost of Acquisition	*13,60,000	**13,50,000	*12,24,000	**13,50,000
Capital gain	33,40,000	33,50,000	34,76,000	33,50,000

- Fair market value as on 01/04/2001 *CII of F.Y. 2018-19 (as per new CII)

CII of 2001-02

- ** Fair market value as on 01/04/1981 *CII of F.Y. 2017-18 (as per old CII)

CII of 1981-82

Hence if the fair market value as on 01/04/2001 is more than the fair market value as 01/04/1981 by the factor 4.14 than one can expect the same Gross Capital to remain constant

- 5) For the assets acquired after 01/04/2001 when the revised inflation cost index will rise the indexed cost of acquisition from the assessment year 2018-19 (Finance Act 2017)

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