



**The Institute of Chartered Accountants of India**  
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*Organises*

**यशस्विनी - An IDOL- Live Webinar**



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**Women & Young Members Excellence Committee**

# **INCOME TAX ASPECTS OF JOINT DEVELOPMENT AGREEMENTS**

***CA Sailee Gujarathi***

*Wednesday, 11 June 2025*

*Vipin Gujarathi & Associates*



## NEED FOR JDA/ REDEVELOPMENT

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# Addressing Urban Land Scarcity

### Optimal Land Use

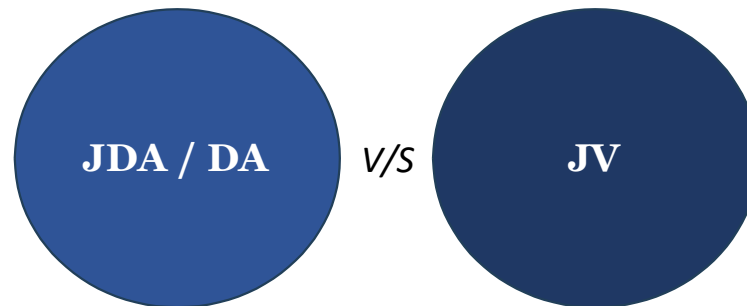
JDAs facilitate efficient land usage. They enable construction in densely populated urban areas.

### Financial Benefits

Landowners gain revenue without upfront investment. Developers gain access to prime locations. Home owners stand to gain enhanced and improved area.

### Addressing Scarcity

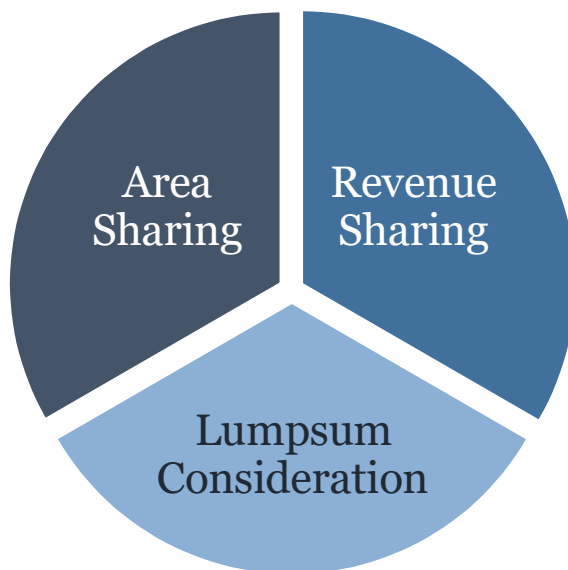
JDAs unlock value from underutilized land. They combat land scarcity in growing cities.



## TYPES OF JDA

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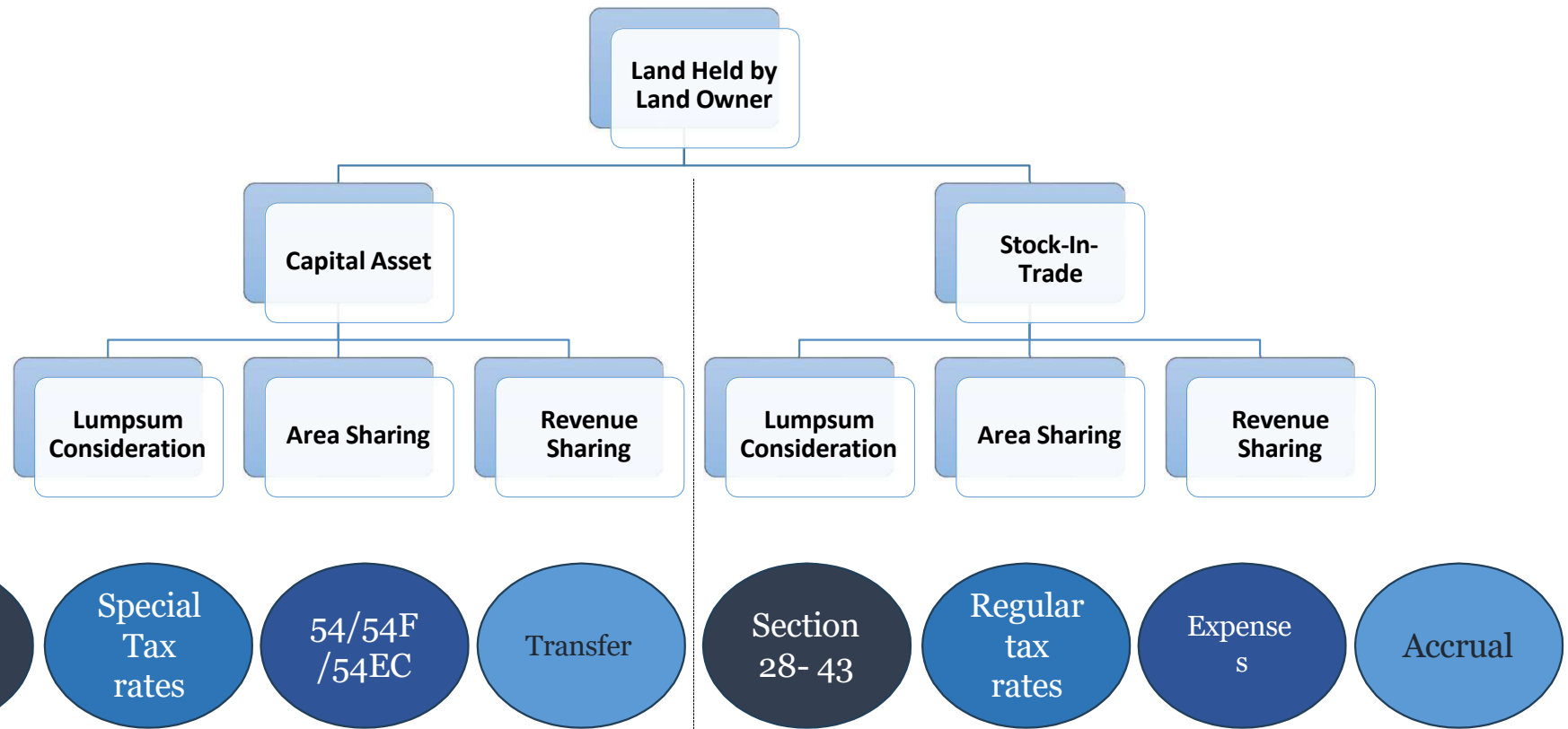
### Typical Prevalant JDAs



### Evolving Models



## BROAD CLASSIFICATION



## PECULIAR FEATURES – REAL ESTATE/ JDA

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Spread over several  
accounting years

Capital intensive and High  
degree of business risk  
and rewards

Agreements entered when  
asset has not come into  
existence

Complex Agreements  
(multiple variations  
possible)

Likelihood of disputes

Disconnect in civil and tax  
law regarding 'transfer'  
and 'ownership'

**Timing?**

**Quantum?**



## INTRODUCTION OF SECTION 45(5A)

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Finance Act, 2017 (With effect from 1 April 2018)

Practical Difficulty 1 – Capital Gains taxable in year of JDA

Practical Difficulty 2 – Ascertaining income where new project is not even in existence in the year of JDA

Retrospective application?

## 45(5A) Retrospective Application

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### Case Study

- Assessment Year 2016-17 – JDA entered
- AY 2020-21 – Possession of constructed area given
- No capital gains offered to tax up to AY 2020-21
- Whether section 45(5A) can be prospectively applied to the transaction entered in AY 2016-17?

Clarificatory and  
Beneficial

v/s

Substantive charging  
provision

- Amit Vishnu Pashankar [2021] 131 taxmann.com 118 (Pune - Trib.)
- Adinarayana Reddy Kummata [2018] 91 taxmann.com 360 (Hyderabad - Trib.)
- Smt. Naga Padmaja Vangara [2022] 145 taxmann.com 115 (Hyderabad - Trib.) [29-07-2022]
- K. Vijaya Lakshmi
- Smt. G. Sailaja [ITA No. 51 and 570/ Hyd/ 2016]
- DCIT v Agamati Ram Reddy [ITA No. 1774/Hyd/2017]
- Pankaj Kumar, Mohamid Abdul Hai, Hasmat Hai v CIT [455 ITR 583 (Patna)]



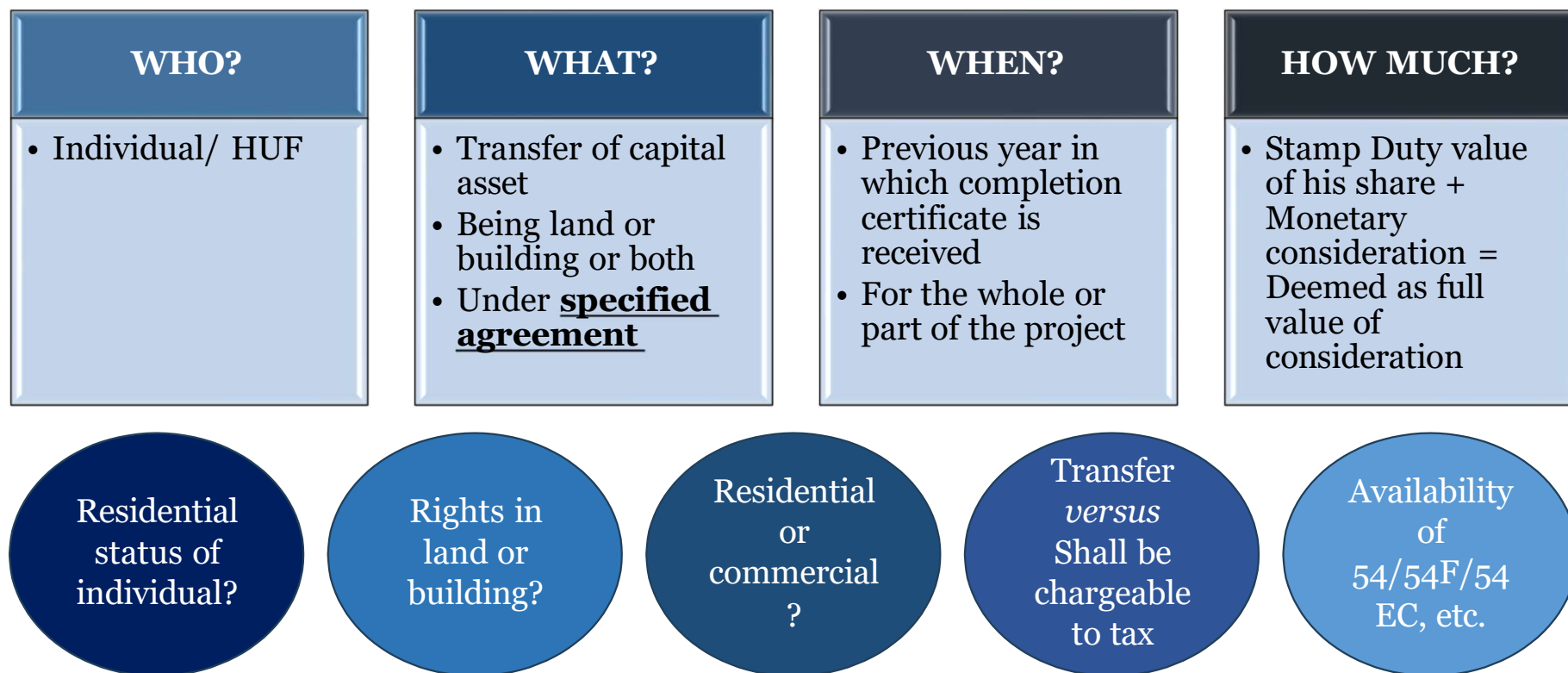
## SECTION 45(5A)

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Notwithstanding anything contained in sub-section (1), where the capital gain arises to an assessee, being an individual or a Hindu undivided family, from the transfer of a capital asset, being land or building or both, under a specified agreement, the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and for the purposes of [section 48](#), the stamp duty value, on the date of issue of the said certificate, of his share, being land or building or both in the project, as increased by any consideration received in cash or by a cheque or draft or by any other mode shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset :

## SECTION 45(5A) – ESSENTIAL INGREDIENTS

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## TRANSFER v CHARGEABLE TO TAX – KEY CONSIDERATIONS



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- Whether there is transfer?
  - Refer to section 2(47) of the Act

- 
- What is the period of holding of the asset? Short term v Long term?

- 
- Date up to which indexation will be available

- 
- Reinvestment timeline for 54/ 54F purposes from date of transfer?
  - Circular no. 791, dt 02.06.2000

### Case Study (Period of holding):

- Asset acquired in -2023-24
- JDA entered -2024-25 (1 year);
- Completion Certificate received 2027-28 (4 years)

### Indexation upto date of transfer

- Best & Crompton Engineering Ltd. 2015 (3) TMI 977

### Indexation upto date of taxability

- Sakthi Sugars Ltd - IT.A.Nos. 866/Mds/2016
- Mather & Platt Pumps Ltd. ITA No. 351/PN/2009

## SPECIFIED AGREEMENT

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"specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash

**Rights in land or  
building**

**Miniscule area +  
Substantial  
monetary payment**

**Meaning of real  
estate project/  
Plotted development**

**Allotment of area in  
some other project**

**Timing of taxation  
of monetary  
consideration**

**Implications if  
FMV>SDV**

## DEDUCTION OF TAX AT SOURCE

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### Payment under specified agreement.

**194-IC.** Notwithstanding anything contained in [section 194-IA](#), any person responsible for [paying to a resident](#) any sum by way of consideration, [not being consideration in kind](#), under the agreement referred to in sub-section (5A) of [section 45](#), shall at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount [equal to ten per cent](#) of such sum as income-tax thereon.

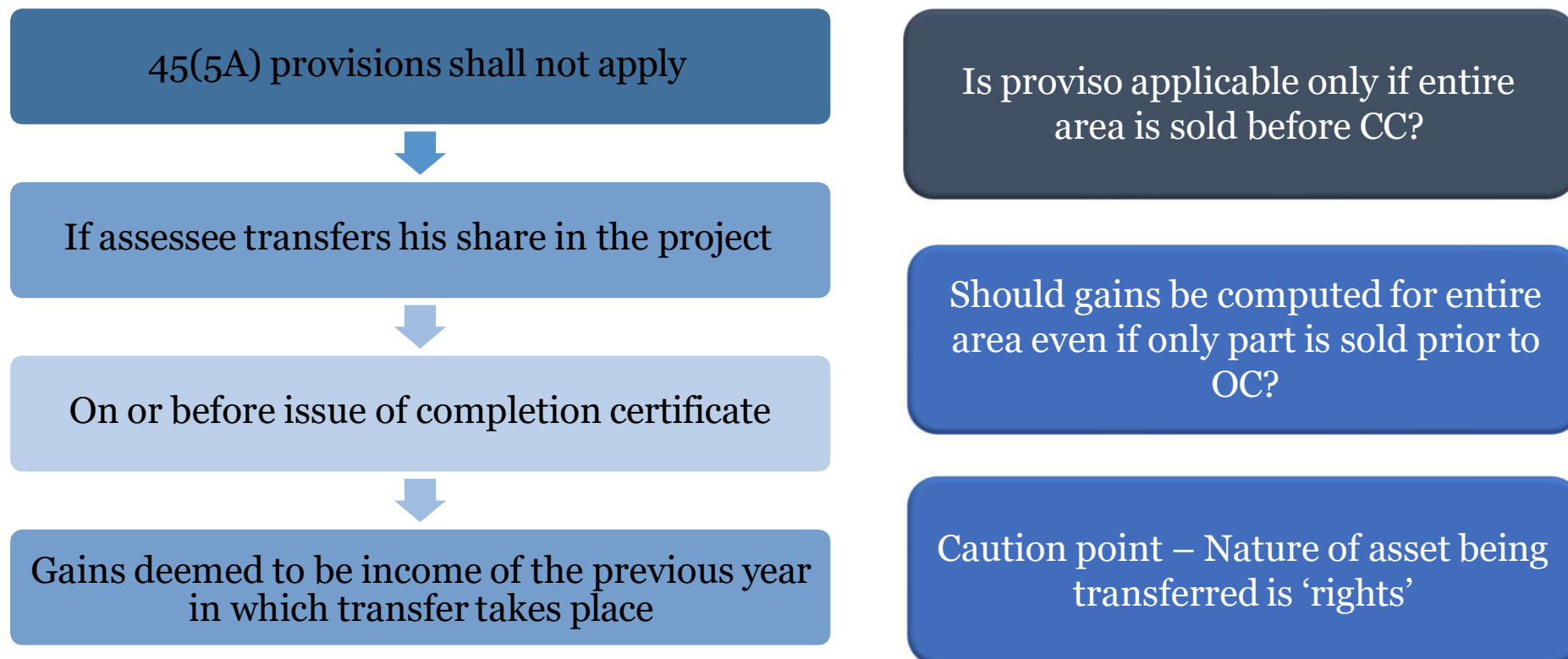
## TDS - POINTS FOR CONSIDERATION

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- 194-IA v 194-IC
- Payment to non-resident
- TDS on consideration in kind
- TDS on transfer before CC
- TDS on payment of consideration to company – specified agreement
- Timing of TDS
- TDS on transit rent/ hardship allowance, etc.

## SECTION 45(5A) –PROVISO FOR TRANSFER BEFORE CC

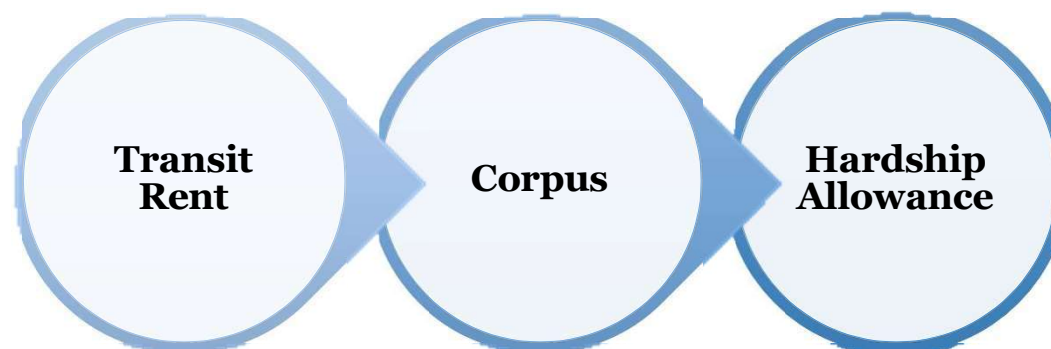
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## TAXABILITY OF OTHER AMOUNTS

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### **In the context of 194-I/ 194-IC**

- *Sarfaraz S. Furniturewalla Vs Afshan Sharfali Ashok Kumar* - [2024] 166 taxmann.com 425 (Bombay)/[2024] 467 ITR 230 (Bombay)[15-04-2024];
- *N. Rose Developers (P.) Ltd.* - [2025] 171 taxmann.com 652 (Mumbai - Trib.)[30-01-2025];
- *Nathani Parekh Constructions Pvt. Ltd.* - ITA No.4174;

### **Hardship allowance, rent, corpus, etc.**

- *Narayan Devarajan Iyengar* - [2023] 152 taxmann.com 188 (Mumbai);
- *Lawrence Rebello* - IT Appeal No. 132./Ind./2020;
- *Ajay Parasmal Kothari* - [2024] 159 taxmann.com 570 (Mumbai - Trib.);
- *Jitendra Kumar Soneja* - [2016] 161 ITD 269 (Mumbai);

## SECTION 49 – COST OF ACQUISITION

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### Case Study

- Asset acquired in 2010-11 – at Rs 50 lakhs
- Asset transferred under JDA
- Stamp duty value in year of completion certificate (say 2024-25) was Rs. 2 crore
- New asset proposed to be transferred in 2030-31
- What would be the cost of acquisition of this new asset?



## **TAXABILITY PRIOR TO AY 2018-19 AND CASES NOT COVERED BY SECTION 45(5A)**

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## **TAXATION – FOR CASES OTHER THAN 45(5A) – CAPITAL ASSETS**

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**Section 2(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**



**(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**

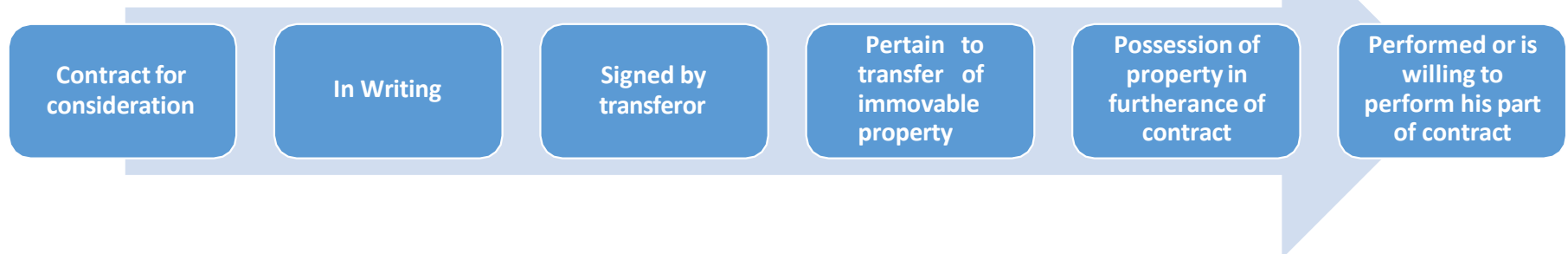


**(vi) any transaction which has the effect of transferring, or enabling the enjoyment of, any immovable property.**

## SECTION 53A OF TOPA

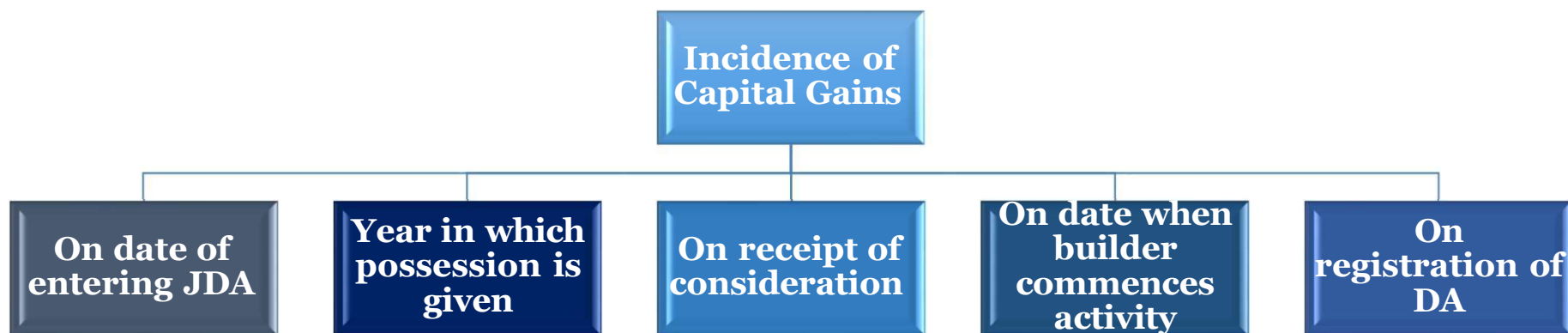
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- *Section 53A : Part performance- Where any person **contracts** to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed thereof by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than the right specifically provided by the terms of the contract;*



# TIMING OF TAXATION

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## **Landmark Judicial Precedents:**

*Seshasayee Steels Private Limited* - [2020] 115 taxmann.com 5 (SC)

*Balbir Singh Maini* - [2017] 398 ITR 531 (Supreme Court)

*Charturbuj Dwarakadas Kapadia* - (2003) 260 ITR 491 (Bom)

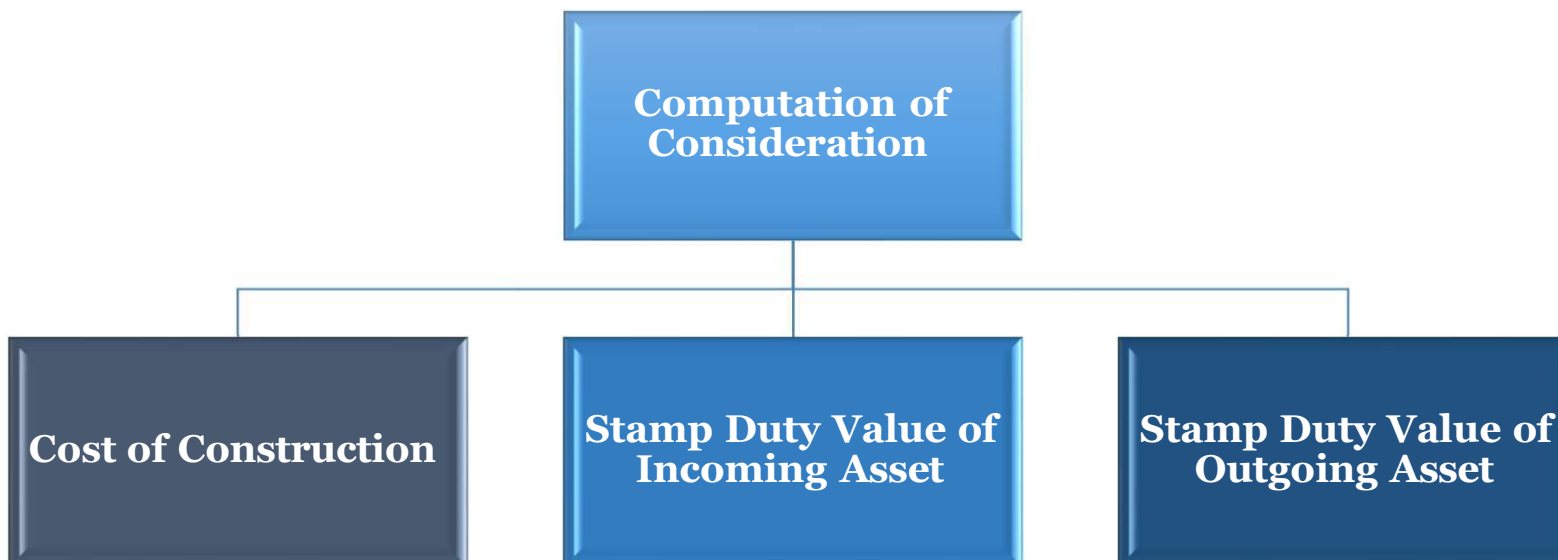
*Jasbir Singh Sarkaria* - (2007) 294 ITR 196 (AAR)

*Smt. Najoo Dara Deboo* - [2013] 218 Taxman 473 (All);

*Mrs. Aarti Sanjay Kadam* - [2018] 172 ITD 362 - Mum. ITAT

# QUANTIFICATION OF CONSIDERATION FOR TRANSFER

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## **Landmark Judicial Precedents:**

*Prabhandam Prakash* - [(2008) 22 SOT 58 (Hyd.-Trib)]

*N A Haris* – [2021] 124 taxmann.com 354 (Bangalore - Trib.)

*M/s Shankar Vittal Motor Co. Ltd.* - ITANo.35/Bang/2015;

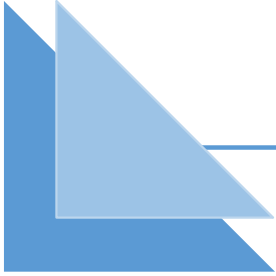
Circular F.No. 225/58/2016/ITA.II dated 29/02/2016 issued by CBDT;



## JDA DRAFTING – KEY POINTERS

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Manner of transfer	Purpose of handing over possession	Exclusive right to sell developed units	Manner of sale consideration
Right to mortgage land	Manner of conferring legal title on ultimate customers	Supplementary documents; i.e. PoA, MoU	AOP risk
	GST, Stamp Duty	Dispute resolution and exit mechanism	



# THANK YOU

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