NEW INCOME TAX BILL,2025 –DISCUSSION ON CAPITAL GAINS

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1. EMERGENCE OF INCOME TAX LAW IN INDIA

A. 1860

As debts of the British Government were immense on expanding military forces, first Income-tax Act was introduced on 24th July,1860 and today we celebrate Income-tax Annual Day on every 24th July. This has been the basic structure for the income-tax system that we have today.

There were 4 heads of income on which tax was levied-

(i) Income from landed property.

(ii) Salary and Pension income.

(iii) Income from securities and

(iv) Income from profession and trade.

Basis of Taxation

Tax was levied on tax payers by the Government based on the profits they earn from their income or profession

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B.1886

Income was classified into 4 income sections/heads

a. Income from salary/pension/ gratuities.
b. Interest income from the securities of the Indian Government.
c. Income from profits of companies
d. Other sources of Income.

C.1917

A super tax was introduced in the year 1917 for levying income-tax on individuals with more income or those earning more profits from various sources. Thus, the Government widened the scope of their tax collection to include more income bracket under the system.

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D.1918

1886 Act was fully replaced by 1918 Act through major revisions and reforms to the Indian System.

E.1919-1922

Excess profit tax was introduced in the year 1919 to levy taxes on those earning additional profits from their business or trade.

1922 Act replaced the 1918 Act and became more comprehensive Income-tax Law covering greater base of tax payers. In other words, tax base was widened.

One major reform was that responsibility with regard to tax administration was shifted to Central Government from Provincial Authorities.

Between 1939 and 1956, the Act had undergone 29 amendments.

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F. 1961 Act

Came into existence with effect from 01-04-1962.

Initially there were 6 heads of income.

(i) Salary

(ii) Interest on securities.

(iii) Income from House Property.

(iv) Income from Business or Profession.

(v) Capital Gains and

(vi) Income from other Sources.

Now we have only 5 heads of income as interest on securities head was deleted.

2. New Income Tax Bill 2025

The New Income Tax Bill was introduced in the Lok Sabha on **13th February 2025**. The purpose of this bill has been expressed to simplify the complex Income Tax Act of 1961 which has undergone many changes since 1961 since its inception and lots of changes have been made to it every year through the Union Budget. The Income Tax Act has evolved significantly over the past six decades, with everything from adjustments to tax rates to the introduction of new provisions, amendments to existing provisions alongside the introduction of fresh exemptions and the removal of redundant ones. Over the years, it has been revised so extensively that it now bears little resemblance to its original form in which it was first enacted.

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The Income-tax Act 1961, has number sub-sections, provisos and explanations and wherever a section or sub-section has been repealed asterisks marks appear against such repealed sections.

Though there had been some suggestions from a few quarters since quite some time about simplifying the tax provisions, yet the stupendous task could not be undertaken earlier as replacing an enactment which is more than six decades was not found to be easy.

But the present Government took up this task in the right earnest

Purpose of the New Income Tax Bill

In the Budget Speech of 2024, Finance Minister Smt.Nirmala Sitharaman revealed the Government's intention to scrutinize the Income Tax Act, 1961 in totality. Through this scrutiny, the Act was to be made more concise so that the taxpayers could easily read and understand the same.

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The primary objective mentioned by the Minister is to reduce disputes and litigation involving the tax system. The Government would thereby enhance tax certainty with the promise of offering clarity and ease of compliance for taxpayers.

After the announcement, the Income Tax Department launched a public consultation process whereby taxpayers could offer suggestions and propose changes they would like to see in the new law. This move showed the interest of the Government in public input and a more inclusive approach to tax reforms.

The Finance Minister in the 2025 Budget had assured that the new Income Tax Bill would be brought soon. She further emphasized that it would embody the same philosophy of Nyaya that was at the heart of Bharatiya Nyaya Sanhita.

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The law had repealed the Indian Penal Code of 1860 from July 2024. It is a commitment of the Government to reform, fairness, and justice.

Changes in New Income Tax Bill

The new Income Tax Bill 2025 spanning over 600 pages, 536 sections, 23 chapters and 16 schedules has provisions which are extensive yet easier to understand and aims at improving the compliance procedure. Being easier to read and understand for taxpayers and tax authorities alike, it is set to give more certainty to taxation and reduce litigation between taxpayers and the revenue authority. It seeks to eliminate provisos and explanations accompanying the sections and provisos.

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The following are the changes in the new income tax bill:

•**Ease of Compliance:** The new income tax bill will make compliance easier for the taxpayers and the Income tax authorities. It has a more structured and streamlined tax administration process and includes the use of modern compliance mechanisms.

•**Concept of Tax Year:** The tax year means the period of twelve months of the financial year commencing on 1st April. This is seen to replace the concept of Financial Year and Assessment Year thus eliminating confusion.

•**Virtual Digital Asset:** The Income Tax Bill 2025 gives a broader definition of Virtual Digital Assets. The definition now includes crypto-assets, non-fungible tokens or any other digital asset as the Government may specify.

•**Tax Recovery and Appeal:** The Bill provides provisions which bring reforms to the tax recovery and appeal processes.

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•**Reduced Content and Easier to Understand:** The Income Tax Bill 2025 even though has more Sections and same number of Chapters, is shorter in terms of content and words when compared to the Income Tax Act 1961. The aim is to simplify the contents but at the same time make it much easier for assessees to understand the various provisions (clauses) of the Income-tax Bill 2025.

•**Redefining Section 47 of Income Tax Act 1961:** The Income Tax Bill 2025 has proposed to redefine section 47 of the Act by removing the clause given for transfer of land of an industrially sick company and removing stock exchange demutualisation.

What remains unchanged in the Bill

Most of the provisions and rules remain unchanged in the Income Tax Bill 2025. All the proposed changes in the Budget 2025 have been inculcated accordingly in the Bill. The scope of income, criteria to determine residential status, slab rates, capital gains and other limits and rates remain the same or have been changed to those made in the Budget accordingly. Capital gain provisions remain almost unchanged.

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Intentions of New Income Bill

•**Reduced Complexity:** The new income tax bill is expected to simplify the tax structure by minimizing the number of deductions and exemptions available to taxpayers.

•**Increased Compliance:** It will streamline tax laws and reduce legal ambiguities.

•**Liberal Tax Rates:** The Bill provides for a relieved tax structure which ensures more money saved in the hands of the taxpayer.

•**Minimized Legal Disputes:** The simplification of tax laws is expected to reduce litigation burdens for individuals and businesses significantly.

Final Word

In conclusion, the Income Tax Bill 2025 is reformative with an effort to bring a change in the direct taxation landscape of the country. However, it is to be noted that the provisions of the Bill will only come into effect after it is passed by both the houses of the parliament and is assented by the President. It is slated to be implemented from 1st April 2026.

3. TABLE SHOWING PROVISIONS OF INCOME TAX ACT,1961 & CORRESPONDING PROVISIONS OF INCOME TAX BILL,2025

CORRESPONDING PROVISIONS OF INCOME-TAX ACT,1961		PROPOSED PROVISIONS OF INCOME-TAX BILL,2025	
SECTION	HEADING	CLAUSE	HEADING
2(1A)	Agricultural Income	2 (5)	Agricultural Income
2(14)	Capital Asset	2(22)	Capital Asset
45	Capital gains	67	Capital gains
46	Capital gains on distribution of assets by companies in liquidation.	68	Capital gains on distribution of assets by companies in liquidation.
46A	Capital gains on purchase by company of its own shares or other specified securities.	69	Capital gains on purchase by company of its own shares or other specified securities.
47	Transactions not regarded as transfer	70	Transactions not regarded as transfer
47A	Withdrawal of exemption in certain cases	71	Withdrawal of exemption in certain cases

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48	Mode of computation	72	Mode of computation of capital gains
49	Cost with reference to certain modes of acquisition	73	Cost with reference to certain modes of acquisition
50	Special provision for computation of capital gains in case of depreciable assets	74s	Special provision for computation of capital gains in case of depreciable assets
50A	Special provision for cost of acquisition in case of depreciable asset	75	Special provision for cost of acquisition in case of depreciable asset

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50AA	**Special provision for computation of capital gains in case of Market Linked Debenture**	**76**	**Special provision for computation of capital gains in case of Market Linked Debenture**
50B	**Special provision for computation of capital gains in case of slump sale**	**77**	**Special provision for computation of capital gains in case of slump sale**
50C	**Special provision for full value of consideration in certain cases**	**78**	**Special provision for full value of consideration in certain cases**
50CA	**Special provision for full value of consideration for transfer of share other than quoted share**	**79**	**Special provision for full value of consideration for transfer of share other than quoted share**

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50D	Fair market value deemed to be full value of consideration in certain cases	80	Fair market value deemed to be full value of consideration in certain cases
51	Advance money received	81	Advance money received
54	Profit on sale of property used for residence	82	Profit on sale of property used for residence
54B	Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases	83	Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases

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54D	Capital gain on compulsory acquisition of lands and buildings not to be charged in certain cases	84	Capital gain on compulsory acquisition of lands and buildings not to be charged in certain cases
54E	Capital gain on transfer of capital assets not to be charged in certain cases	-	-
54EA	Capital gain on transfer of long term capital assets not to be charged in the case of investment in specified securities	-	-

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54EB	Capital gain on transfer of long term capital assets not be charged in certain cases	-	-
54EC	Capital gain not be charged on investment in certain bonds	85	Capital gain not be charged on investment in certain bonds
54ED	Capital gain on transfer of certain listed securities or unit not be charged in certain cases	-	-
54EE	Capital gain not to be charged on investment in units of a specified fund	-	-

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54F	**Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house**	**86**	**Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house**
54G	**Exemption of capital gains on transfer of assests in cases of shifting of industrial undertaking from urban area**	**87**	**Exemption of capital gains on transfer of assests in cases of shifting of industrial undertaking from urban area**
54GA	**Exemption of capital gains on transfer of assests in cases of shifting of industrial undertaking from urban area to any Special Economic Zone**	**88**	**Exemption of capital gains on transfer of assests in cases of shifting of industrial undertaking from urban area to any Special Economic Zone**

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54GB	Capital gain on transfer of residential property not to be charged in certain cases	-	-
54H	Extension of time for acquiring new asset or depositing or investing amount of capital gain	89	Extension of time for acquiring new asset or depositing or investing amount of capital gains
55	Meaning of “adjusted”,”cost of improvement” and “cost of acquisition	90	Meaning of “adjusted”,”cost of improvement” and “cost of acquisition
55A	Reference to Valuation Officer	91	Reference to Valuation Officer
111A	Tax on short – term capital gains in certain cases	196	Tax on short – term capital gains in certain cases
112	Tax on long – term capital gains	197	Tax on long – term capital gains
112A	Tax on long – term capital gains certain cases	198	Tax on long – term capital gains certain cases

4. CAPITAL GAINS TAX EXEMPTIONS: Clause 70 of the Income Tax Bill 2025 vs. Section 47 of the Income Tax Act 1961.

INCOME TAX BILL 2025	INCOME TAX ACT 1961
Clause 70(1)(a) specifies that the distribution of capital assets upon the total or partial partition of a Hindu undivided family is not considered a transfer. **(Partition of HUF)**	This mirrors Section 47(i) of the Income Tax Act, 1961, maintaining consistency in the treatment of HUF partitions.
Clause 70(1)(b) addresses transfers of capital assets by individuals or HUFs under a will, gift, or irrevocable trust. **(Transfer by Will, Gift or Trust)**	This provision is similar to Section 47(iii) of the 1961 Act, with both excluding such transfers from capital gain tax. However, the 1961 Act includes a proviso excluding employee stock options, which is not explicitly mentioned in the 2025 Bill.
Clauses 70(1)(c) and (d) cover transfers of capital assets between parent and subsidiary companies, provided the subsidiary is an Indian company. **(Transfers between companies)**	This is equivalent to Section 47(iv) and (v), ensuring continuity in corporate restructuring tax benefits.

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Clauses 70(1)(e)-(h) deal with various amalgamation scenarios, including domestic and cross-border mergers. (Amalgamations)	**These provisions align with Section 47(vi)-(via) and further extend to foreign company amalgamations, reflecting a modernized approach to international mergers.**
Clauses 70(1)(j)-(m) outline non taxable transfers in demergers, **(Demergers)** The 2025 Bill expands on the specifics of foreign company demergers, ensuring comprehensive coverage.	These are similar to Section 47(vib)-(vicc).
Clauses 70(1)(n)-(o) address transfers in business reorganizations involving cooperative banks. **(Business Reorganisations and Banking Sector)** The provisions ensure tax neutrality in banking sector consolidations.	These are to Section 47(vica)-(vicb).

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Clauses 70(1)(p)-(s) pertain to transfers by non-residents, including bonds and securities transactions. (Non-Resident Transactions)	**These provisions are consistent with Section 47(viia)-(viib), facilitating international financial transactions.**
Clauses 70(1)(v)-(w) include transfers by public sector companies and infrastructure finance institutions. **(Infrastructure and Public Sector Transfers)**	These are similar to Section 47(viiae)-(viiaf), promoting infrastructure development.
Clauses 70(1)(x)-(zb) covers conversion of bonds, debentures, and shares. **(Conversions and Exchange Transactions)** These provisions support corporate financing flexibility.	These align with Section 47(x)-(xb).
Clause 70(1)(zc) addresses transfers of art and cultural assets to governmental and educational institutions **(Art and Cultural Assets)**	It is akin to Section 47(ix), supporting cultural preservation.

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Clauses 70(1)(zd)-(zf) deal with the succession of firms and sole proprietorships by companies. (Succession and Conversion of Business Entities) **These provisions facilitate business continuity.**	**These are similar to Section 47(xiii)-(xiv).**
Clauses 70(1)(zg)-(zh) include securities lending and reverse mortgage transactions **(Securities Lending and Reverse Mortgage).**	These align with Section 47(xv)-(xvi),
Clauses 70(1)(zi)-(zk) pertain to mutual fund consolidations. **(Mutual Fund Schemes)**	These are akin to Section 47(xvii)-(xix).
Clause 70(1)(zl) covers transfers involving joint ventures. **(Joint Ventures)** .	It is similar to Section 47(xx).

5. Analysis of Clauses 196, 197 & 198 of Income Tax Bill 2025

Section 111A of the Income-tax Act,1961	Clause 196 of the Income-tax Bill 2025
Tax on short-term capital gains in certain cases. 111A. (1) Where the total income of an assessee includes any income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity-oriented fund or a unit of a business trust and— (a) the transaction of sale of such equity are or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and (b) such transaction is chargeable to securities transaction tax under that Chapter,	Tax on short-term capital gains in certain cases. 196(1) Where the total income of an assessee includes any income chargeable under the head “Capital gains”, arising from the transfer of a short-term capital asset— (a) being an equity share in a company or a unit of an equity-oriented fund or a unit of a business trust; and (b) the transaction of sale of such equity share or unit is chargeable to securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004, then,

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the tax payable by the assessee on the total income shall be the aggregate of— **(i) the amount of income-tax calculated on such short-term capital gains—** **(a)at the rate of fifteen per cent for any transfer which takes place before the 23rd day of July, 2024; and** **(b)at the rate of twenty per cent for any transfer which takes place on or after the 23rd day of July, 2024;** **(ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee:**	**the tax payable by the assessee on the total income, subject to the provisions of sub-section (2), shall be the aggregate of—** **(i) income-tax calculated on such short-term capital gains at the rate of 20%;** **(ii) income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee.** **(2) In the case of an individual or a Hindu undivided family, being a resident, where the total income, as reduced by short-term capital gains computed under sub-section**
Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate as applicable in clause (i):	1), is below the maximum amount which is not chargeable to income tax, then, — (a) such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax; and (b) the tax on the balance of such short-term capital gains shall be computed at the rate as applicable in sub-section (1)(i).

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Provided further that nothing contained in clause (b) shall apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency **(2) Where the gross total income of an assessee includes any short-term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.**	**(3) The provisions of sub-section (1)(b) shall not apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.** **(4) Where the gross total income of an assessee includes any short-term capital gains referred to in sub-section (1), the deduction under Chapter VIII shall be allowed from the gross total income as reduced by such capital gains.**
3) **** Explanation. —For the purposes of this section, — (a) "equity-oriented fund" shall have the meaning assigned to it in 63[clause (a) of the Explanation to section 112A]; (b) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 264 of the Special Economic Zones Act, 2005 (28 of 2005); (c) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of the Explanation 1 to sub-section (5) of section 43.]]	(5) In this section, “equity-oriented fund” shall have the meaning assigned to it in section 198.

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Section 112 of the Income-tax Act, 1961	Clause 197 of the Income-tax Bill 2025
Tax on long-term capital gains. 112. (1) Where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset, which is chargeable under the head "Capital gains", the tax payable by the assessee on the total income shall be the aggregate of,—	Tax on long-term capital gains 197. (1) Where the total income of an assessee includes any income arising from the transfer of a long-term capital asset which is chargeable under the head “Capital gains”, the tax payable by the assessee on the total income, subject to sub-sections (2) and (3), shall be the aggregate of— (a) income-tax payable on the total income as reduced by such long-term capital gains, had the total income, as so reduced, been his total income; and
(a) in the case of an individual or a Hindu undivided family, being a resident, (i)the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been his total income; and (ii) the amount of income-tax calculated on such long-term capital gains,--	(b) income-tax calculated on such long-term capital gains at the rate of 12.5%. (2) In the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by long-term capital gains computed under sub-section (1) is below the maximum amount which is not chargeable to income tax, then, — (a) such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax; and (b) the tax on the balance of such long-term capital gains shall be computed at the rate as referred in sub-section (1).

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(A)at the rate of twenty per cent for any transfer which takes place before the 23rd day of July, 2024; and **(B)at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024:**	**(3) In the case of an individual or a Hindu undivided family, being a resident, in the case of transfer of a long-term capital asset, being land or building, or both, which is acquired before the 23rd July, 2024, the excess income-tax computed as per the following formula shall be ignored: —** **E = A – B where—** **E = excess income-tax to be ignored;** **A = income-tax computed under clause (b) of sub-section (1);**
Provided that where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains shall be computed at the rate as applicable in sub-clause (ii):	B = income-tax computed under clause (b) of sub-section (1) taking the rate as 20% and the capital gains is computed by taking the cost of acquisition as indexed cost of acquisition and the cost of improvement as indexed cost of improvement. (4) Where the gross total income of an assessee includes any income arising from the transfer of a long-term capital asset, the gross total income shall be reduced by such income and the deduction under Chapter VIII shall be allowed as if the gross total income as so reduced were the gross total income of the assessee

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Provided further that in the case of transfer of a long-term capital asset, being land or building or both, which is acquired before the 23rd day of July, 2024, where the income-tax computed under item (B) exceeds the income-tax computed in accordance with the provisions of this Act, as they stood immediately before their amendment by the Finance (No. 2) Act, 2024, such excess shall be ignored;	**(5) In this section, — (a) "securities" shall have the same meaning as assigned to it in section 2(h) of the Securities Contracts (Regulation) Act, 1956;** **(b) "listed securities" means the securities which are listed on any recognised stock exchange in India;** **(c) "unlisted securities" means securities other than listed securities;** **(d) "indexed cost of acquisition" and "indexed cost of improvement" shall have the meanings respectively assigned to them in section 72.**
(b) in the case of a domestic company, — (i) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income; and (ii) the amount of income-tax calculated on such long-term capital gains, --	

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(A) at the rate of twenty per cent for any transfer which takes place before the 23rd day of July, 2024; and **(B) at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024;**	
(c) in the case of a non-resident (not being a company) or a foreign company, — (i) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, had the total income as so reduced been its total income; and (Iii) the amount of income-tax calculated on long-term capital gains [except where such gain arises from transfer of capital asset referred to in sub-clause (iii)],— (A) at the rate of twenty per cent for any transfer which takes place before the 23rd day of July, 2024; and (B) at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024; and	

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the amount of income-tax on long-term capital gains arising from the transfer of a capital asset, being unlisted securities or shares of a company not being a company in which the public are substantially interested, as computed without giving effect to the first and second provisos to section 48 calculated on such long-term capital gains,— **(A)at the rate of ten per cent for any transfer which takes place before the 23rd day of July, 2024; and** **(B)at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024;**	
(d) in any other case of a resident, — (i)the amount of income-tax payable on the total income as reduced by the amount of long-term capital gains, had the total income as so reduced been its total income; and (ii)the amount of income-tax calculated on such long-term capital gains, -- (A) at the rate of twenty per cent for any transfer which takes place before the 23rd day of July, 2024; and (B) (B)at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024:	

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Provided that where the tax payable in respect of any income arising from the transfer of a long-term capital asset which takes place before the 23rd day of July, 2024, being listed securities (other than a unit) or zero coupon bond, exceeds ten per cent of the amount of capital gains before giving effect to the provisions of the second proviso to section 48, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee :	
Provided further that where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being a unit of a Mutual Fund specified under clause (23D) of section 10, during the period beginning on the 1st day of April, 2014 and ending on the 10th day of July, 2014, exceeds ten per cent of the amount of capital gains, before giving effect to the provisions of the second proviso to section 48, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee.	

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Explanation. —For the purposes of this sub-section, — **(a) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (32 of 1956);** **(aa) "listed securities" means the securities which are listed on any recognised stock exchange in India;**	
(ab) unlisted securities" means securities other than listed securities.] (b) ***] (2) Where the gross total income of an assessee includes any income arising from the transfer of a long-term capital asset, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee. (3) ***	

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Section 112A of the Income-tax Act,1961	Clause 198 of the Income-tax Bill 2025
Tax on long-term capital gains in certain cases. 112A. (1) Notwithstanding anything contained in section 112, the tax payable by an assessee on his total income shall be determined in accordance with the provisions of sub-section (2), if—	Tax on long-term capital gains in certain cases 198. (1) Irrespective of anything contained in section 197, the tax payable by an assessee on his total income shall be determined as per the provisions of sub-section (2), if— (a) the total income includes any income chargeable under the head “Capital gains”; (b) the capital gains arise from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity-oriented fund or a unit of a business trust; (c) securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 has—

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(i) the total income includes any income chargeable under the head "Capital gains"; (ii) the capital gains arise from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity-oriented fund or a unit of a business trust; (iii) securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004) has, —	**(i) in a case where the long-term capital asset is in the nature of an equity share in a company, been paid on acquisition and transfer of such capital asset; or (ii) in a case where the long-term capital asset is in the nature of a unit of an equity-oriented fund or a unit of a business trust, been paid on transfer of such capital asset.**
(a) in a case where the long-term capital asset is in the nature of an equity share in a company, been paid on acquisition and transfer of such capital asset; or (b) in a case where the long-term capital asset is in the nature of a unit of an equity-oriented fund or a unit of a business trust, been paid on transfer of such capital asset.	2) The tax payable by the assessee on the total income referred to in sub-section (1) shall be the aggregate of— (a) income-tax calculated on such long-term capital gains exceeding one lakh twenty-five thousand rupees on long-term capital gains at the rate of 12.5%; and (b) income-tax payable on the total income as reduced by long-term capital gains referred to in sub-section (1) as if the total income so reduced were the total income of the assessee.

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(2) The tax payable by the assessee on the total income referred to in sub-section (1) shall be the aggregate of— **the amount of income-tax calculated on such long-term capital gains exceeding one lakh twenty-five thousand rupees—** **(a) on long-term capital gains at the rate of ten per cent for any transfer which takes place before the 23rd day of July, 2024; and** **(b) on long-term capital gains, at the rate of twelve and one-half per cent for any transfer which takes place on or after the 23rd day of July, 2024:**	**(3) In the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by long-term capital gains computed under sub-section (1) is below the maximum amount which is not chargeable to income-tax, then, —**
Provided that the limit of one lakh twenty-five thousand rupees shall apply on aggregate of the long-term capital gains under sub-clauses (a) and (b);] the amount of income-tax payable on the total income as reduced by the amount of long-term capital gains referred to in sub-section (1) as if the total income so reduced were the total income of the assessee:	(a) such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax; and (b) the tax on the balance of such long-term capital gains shall be computed at the rate as referred to in sub-section (2).

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Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, the long-term capital gains, for the purposes of clause (i), shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax.	**(4) The condition specified in sub-section (1)(c) shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.** **(5) The Central Government may, by notification, specify the nature of acquisition in respect of which the provisions of sub-section (1)(c)(i) shall not apply.**
(3) The condition specified in clause (iii) of sub-section (1) shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.	(6) Where the gross total income of an assessee includes any long-term capital gains referred to in sub-section (1), the deduction under Chapter VIII shall be allowed from the gross total income as reduced by such capital gains.

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(4) The Central Government may, by notification in the Official Gazette[88], specify the nature of acquisition in respect of which the provisions of sub-clause (a) of clause (iii) of sub-section (1) shall not apply. **(5) Where the gross total income of an assessee includes any long-term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.**	**allowed from the gross total income as reduced by such capital gains.** **(7) Where the total income of an assessee includes any long-term capital gains referred to in sub-section (1), the rebate under section 156 shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.** **(8) In this section, "equity-oriented fund" means a fund set up under a scheme of a mutual fund specified in Schedule VII (Table: Sl. No. 20 or 21) or under a scheme of an insurance company comprising unit linked insurance policies to which exemption in Schedule II (Table: Sl. No. 2) does not apply and—**
(6) Where the total income of an assessee includes any long-term capital gains referred to in sub-section (1), the rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.	(i) in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange, — (A) a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund; and (B) such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and

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Explanation. —For the purposes of this section, — (a) "equity oriented fund" means a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10or under a scheme of an insurance company comprising unit linked insurance policies to which exemption under clause (10D) of the said section does not apply on account of the applicability of the fourth and fifth provisos thereof] and,— (i) in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange, —	(ii) in any other case, a minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange, and, for the purposes of this clause,— (I) the percentage of equity shareholding or unit held in respect of the fund, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures; (II) in case of a scheme of an insurance company comprising unit linked insurance policies to which exemption in Schedule II (Table: Sl. No. 2) does not apply, the minimum requirement of 90% or 65%, as the case may be, is required to be satisfied throughout the term of such insurance policy.

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(A) a minimum of ninety per cent of the total proceeds of such fund is invested in the units of such other fund; and **(B) such other fund also invests a minimum of ninety per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and**	
(ii) in any other case, a minimum of sixty-five per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange:	
Provided that the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures:	

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Provided further that in case of a scheme of an insurance company comprising unit linked insurance policies to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof, the minimum requirement of ninety per cent or sixty-five per cent, as the case may be, is required to be satisfied throughout the term of such insurance policy;	
(b) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2[90] of the Special Economic Zones Act, 2005 (28 of 2005);	
(c) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43	

6.“Understanding the terms agricultural land, agriculture and agricultural purposes“

It is not always possible to define all terms in the Income-tax Act. While the legislature is primarily responsible for creating law, courts do play a significant role in declaring laws, particularly by interpreting and applying them.

The Uttarakhand High Court in the case of CIT vs. Green Gold Tree Farmers (P.) Ltd [2008] 167Taxman151 (Uttarakhand) while deciding the issue “whether sale proceeds of plants raised in nursery on land belonging to assessee constitutes income from agriculture” in favour of the assessee made the following observations at paras.12 and 13 of its decision, which in the considered opinion of the author, are quite relevant-

“ 12. The terms "agriculture" and "agricultural purposes" not having been defined in the Indian Income-tax Act, but necessarily fall back upon the general sense in which they have been understood in common parlance. "Agriculture" in its root sense, means a gear, a field and cultivate, cultivation of field which of course implies expenditure of human skill and labour upon land. Turning to the Dictionary meaning of "agriculture", 'Websters' New International Dictionary describing it as the art or science of cultivating the ground, including rearing and management of

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livestock, husbandry farming etc. and also including in its good sense farming, horticulture, forestry, butter and cheese making etc. Murray's Oxford Dictionary describes it as the science and art of cultivating the soil, including the allied pursuits of gathering in the crop and rearing livestock,tillage, husbandry, farming in the widest sense. In Bouviers' Law Dictionary quoting the Standard Dictionary agriculture is defined as the cultivation of soil for food products or any other useful or valuable growths of the field of garden, tillage, husbandry, also by extension, farming, including any industry practiced by cultivator of the soil in connection with such cultivation as breeding and rearing of stock, dairying etc. The science that treats of the cultivation of the soil. In Corus Juris Secondum the term "agriculture" has been understood to mean, art or science of cultivating the ground, especially in fields of large quantities, including the preparation of soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and

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management of livestock, in the crop and rearing livestock, tillage, husbandry, farming in the widest sense. In Bouviers' Law Dictionary quoting the Standard Dictionary agriculture is defined as the cultivation of soil for food products or any other useful or valuable growths of the field of garden, tillage, husbandry, also by extension, farming, including any industry practiced by cultivator of the soil in connection with such cultivation as breeding and rearing of stock, dairying etc. The science that treats of the cultivation of the soil. In Corus Juris Secondum the term "agriculture" has been understood to mean, art or science of cultivating the ground, especially in fields of large quantities, including the preparation of soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of livestock, tillage, husbandry and farming.

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In its general sense, the word also includes gardening or horticulture. Century Dictionary and Anderson's Dictionary of Law: -The primary meaning of 'agriculture' is the cultivation of the ground, and in its general sense, it is the cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock. Wharton's Law Lexicon adopts the definition of agriculture, in 8 Edn. VII, C. 36. As including horticulture, forestry and the use of land for any purpose of husbandry etc. In 10 Edn. VII, C8, section 81, it was defined so as to include the use of land as meadow or pasture land or orchard or osier or woodland or for market gardens, nursery grounds, or allotments, etc. In 57 and 58 Vict C 30 section 22, the term 'agricultural property' was defined so as to include agricultural land, pasture, and woodland etc.

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13. The Hon'ble Supreme Court in a case CIT vs. Raja Benoy Kumar Sahas Roy [1957] 32 ITR 466 (SC) has held that —

“the term ‘agriculture’ cannot be confined merely to the production of grain and food products for human beings and beasts but, must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts, etc.””

These 2 paragraphs were extracted by the Punjab & Haryana High Court in the case of Land Acquisition Collector vs. Addl. CIT [2016] 73 taxmann.com 7 (P& H) while correcting the wrong approach made by the Tribunal when the Tribunal incorrectly observed that “the words "agricultural land" are to be determined with reference to the definition in section 2(14) of the Act.

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This paragraph has been coined to make the professionals understand that so much controversy exists not only in understanding the terms which have not been defined but also in understanding the words “agricultural income” which appear to have been defined extensively in section 2(1A) of the Act as can be seen in this article.

7.What is agricultural income ? Madras High Court explains and denies exemption

7.1 The assessee in the case which arose before the ITAT Chennai in E.Palaniappan vs. ITO [2009] 119 ITD385 (Chennai) had grown sugarcane on his agricultural land and converted the same into jaggery. The profit on sale of jaggery was shown as agricultural income exempt from tax. The Assessing Officer rejected the assessee's claim and the assessee declared agricultural income as his business income. On first appeal, the Commissioner of Income-tax (Appeals) upheld the order of the Assessing Officer.

The Tribunal, on second appeal from the assessee, dismissed his appeal by holding as under-

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"It is clear from the perusal of the statutory provision as mentioned in section 2 (1A) that what is taken to the market and sold must be the produce which is raised by the cultivator. Even though for the purpose of making it marketable or fit for sale, some process may have to be undertaken, yet the section does not contemplate the sale of an item or a commodity which is different from what is cultivated and processed. The immediate source of income must be land of the description or character mentioned in the definition. There exists no nexus between jaggery and agricultural operations. The nature of the commodity becomes different after the application of the process. When sugarcane was converted into jaggery, it resulted in the production of a different commodity. Conversion of sugarcane into jaggery is not a necessary process performed by the cultivator to render sugarcane fit for being taken to the market. As such, profit from the sale of jaggery falls beyond the ken of agricultural income. Therefore, the impugned order was to be upheld."

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The Tribunal explained at para.12 of its order that “after examining the process and the dictionary meaning of gur and jaggery, we find that both the items are of the same nature. Actually, in Allied's Hindi-English Dictionary, the meaning of gur is given as jaggery.”

The assessee filed an appeal before the Madras High Court. [E.Palaniappan vs.ITO in ITA Nos. 1467 & 1468 of 2008- Date of Judgment 22nd June,2021].

The Madras High Court identified the common point as to whether “the profit from the sale of Jaggery falls within the definition of agricultural income?”.

The Madras High Court expressed that “It is common knowledge that the expression “agricultural income” connotes any income derived from land by agricultural operations including processing of agricultural produce raised or received so as to render it fit for the market. It is sine qua non that the produce must retain its original character and the only change which is permitted in the produce would be that which makes it marketable.”

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The High Court listed out the facts of the case and referred to the decisions of the Bombay High Court in the cases of CIT vs. H.G. Date [1971] 82 ITR 71 (Bom.) and CIT vs. Kirloskar Bros. Ltd. [1990] 48 Taxman 146 (Bom.) wherein the Bombay High Court held that the conversion of sugarcane into jaggery was a process essential to make sugarcane marketable.

Relying on the decision of the Allahabad High Court in the case of Banarsi Das Gupta vs. Commissioner of Income Tax [1977] 106 TTR 804 (All.) it was argued on behalf of the Revenue that wherein the assessee had sold part of the sugarcane in its original form and the remaining was converted into jaggery claiming exemption for both the incomes, it was held that the portion of income earned from sale of jaggery was not an agricultural income and it was not entitled for any exemption from tax. It was also argued on behalf of the Revenue that unlike the Bombay case in the case of H.G.Date (supra) wherein the sugarcane did not have a ready market and it had to be converted into jaggery, there was no compulsion or necessity in this (Madras) case to convert sugarcane into jaggery.

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The Madras High Court, appreciating the argument raised on behalf of the Revenue that there was no reason or justification for converting sugarcane into jaggery,dismissed the appeal of the assessee.

The High Court noted that “It is further observed by the Assessing Officer that the assessee has incurred an expenditure of Rs.1,70,000/- for manufacturing of jaggery while he incurred expenditure of Rs.1,30,000/- towards cultivating sugarcane” meaning thereby that substantial amount was spent on second stage before marketing the jaggery.

The High Court extracted the procedure for converting sugarcane into jaggary from the order of the Tribunal in para.9 of its judgment and noted that “there is more profit in making it as jaggery and selling.”

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It is submitted, with great respect, that the author (presenter) has noted 2 strange things in this decision-

The first one is, the Supreme Court in the case of Shiv Raj Gupta vs.CIT [2020] 117 taxmann.com 871 (SC) held that “substantial question of law” has to be framed by the High Court before starting the process of answering it. The Madras High Court, in this case, does not seem to have framed “the substantial question of law” to be answered by it.

The second one is about the observation of the High Court at para.9 of its judgment which, in the considered opinion of the author, is not in tune with the object of the legislature. In other words, when exemption for agricultural income is specified in the Act and the assessee- no reference in this regard is made to this judgment but only a general statement by the author- adopts one perfect method to claim exemption, the High Court, with great respect, cannot make a sweeping remark as was done in this case which ran as under-

“If the exemption of agricultural income is extended to the sale of jaggery, it would only facilitate many agriculturists to claim this exemption and carrying revenue loss to the exchequer.”

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7.2 The Madras High Court in the case of CIT vs. Stanes Amalgamated Estates Ltd. [1998] 232 ITR 443 (Mad.) “on noticing the fact, that eucalyptus leaves had ready market which was evidenced by contract allowed by forest department for cutting green leaves by private merchants, held that it could not be said that income arising from sale proceeds of eucalyptus oil was in nature of agricultural income and, therefore, was not assessable to tax.”

The High Court, while allowing the appeal of the Revenue also held that “Even though the assessee contended that the leaves themselves had no market, it was not substantiated before the Tribunal. Therefore, the Tribunal was not right in holding that the income arising from the sale proceeds of eucalyptus oil extracted by the assessee from the leaves of the eucalyptus trees grown by it was in the nature of agricultural income and hence it was not assessable to tax.”

It is to be noticed that the assessee-company extracted eucalyptus oil from leaves of eucalyptus trees grown by it.

8.Cases wherein exemption on agricultural income was declared to be available

8.1 The facts of the case which arose before the Bombay High Court in H.G. Date (supra) were that the assessee, who cultivated sugarcane on his land and converted it into jaggery for sale in the market, claimed exemption for the income received as agricultural income. The Tribunal found that the quality of sugarcane cultivated by the assessee was such that it could not be used for chewing. Sugarcane could not be stored as a crop as it would start losing its sugar content within 48 hours of being cut. The Revenue contended that there was a sugar mill near the lands belonging to the assessee which bought sugarcane in its natural condition.

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But the Tribunal found on evidence that the mill bought sugarcane mainly from cultivators in the factory area and from Government farms and had refused in the past to buy from the assessee and concluded from this that the existence of the single mill would not constitute a market for the assessee's sugarcane in its natural condition and that conversion of sugarcane into jaggery had been the process ordinarily employed in India to render it fit to be sold in market.

The High Court held that “there was evidence before the Tribunal to justify its finding that there was no market for the sugarcane produced by the assessee in its natural condition. Hence, the income received by the assessee from sale of jaggery was exempt from income-tax as agricultural income.”

8.2 The Bombay High Court, in a subsequent decision in the case of Kirloskar Bros. Ltd.(supra) following its earlier decision in the case of H.G.Date (supra), held as under at para.8 of its judgment-

“8. In H.G. Date'scase (supra) this Court was concerned with a situation where the assessee cultivated sugarcane on his land and converted it into jaggery for sale in the market. He claimed exemption from tax on the income received, it being agricultural income. The finding of the Tribunal was that sugarcane could not be stored as a crop as it started losing its sugar content within 48 hours of being cut. There was a sugar mill near the land belonging to the assessee which bought sugarcane in its natural condition, but the evidence showed that the mill bought sugarcane mainly from cultivators in the factory area and from the Government farms and had refused in the past to buy from the assessee.

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The Tribunal concluded that the existence of the single mill would not constitute a market for the assessee's sugarcane in its natural condition. Conversion of sugarcane into jaggery was a process ordinarily employed in India to render it fit to be sold in the market This Court noted that findings of fact made by the Tribunal were open to attack in a reference only if they were perverse or were reached without due consideration of relevant matters. It was not for the Court in reference, to scrutinize the details of the evidence to ascertain whether there had been evidence before the Tribunal to justify the finding that there was no market for the sugarcane produced by the assessee in its natural state. The income received by the assessee from the sale of jaggery was, accordingly, held to be agricultural income exempt from income-tax."

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9. Interesting case before Supreme Court

An interesting case arose before the Supreme Court in Commissioner of Sales-tax vs.D.S. Bist [1980] 3 Taxman 61 (SC) wherein the assessee owned some tea gardens in U.P. The tea-leaves grown by him in his gardens were sold in the market after being processed and packed. The process of preparing tea involved withering, crushing, roasting, fermentation or final roasting with charcoal for obtaining suitable flavour or colour and grading them with sieves. The assessee claimed that the tea-leaves sold by him were agricultural produce grown by himself and, therefore, the sales were not exigible to sales tax. His claim was not accepted.

On reference(appeal) by the final revising authority, the High Court held that the tea so produced did not cease to be an agricultural produce and would not be exigible to sales tax. The Revenue filed an appeal before the Supreme Court.

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The Supreme Court Bench consisted of 2 Hon'ble Judges namely Hon'ble Justice Shri.N.L.Untwalia and Hon'ble Justice Shri.R.S.Pathak (as His Lordship then was) and the main judgment was written by Hon'ble Justice Shri.N.L.Untwalia and Hon'ble Justice Shri R.S.Pathak (as His Lordship then was) agreed with the main judgment except for one point about which we will see later. Wherever reference is made to the judgment of the Supreme Court, it is the main judgment authored by Hon'ble Justice Shri.N.L.Untwalia.

The Supreme Court held as under- (Headnote of Taxmann)-

1. Tea-leaves are plucked from tea plants as green tea-leaves. The same are not fit for consumption and are not sold in the open market. They are often purchased by big tea concerns from the owners of the gardens and, after processing and packing, they sell them in the market. In their cases, the sales will be exigible to sales tax.

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2. Unlike many agricultural produces, tea-leaves are not marketable in the market fresh from the tea gardens. Nobody eats tea-leaves. It is meant to be boiled for extracting juice out of it to make tea liquor. Tea-leaves are, therefore, only fit for marketing when by a minimal process they are made fit for human consumption. The processing may stop at a particular point in order to produce inferior quality of tea and bit more may be necessary to be done in order to make it a bit superior. But that by itself will not substantially change, the character of the tea-leaves, still they will be known as tea-leaves and sold as such in the market.

All the six processes enumerated from the primary findings of the fact recorded in the order of the revising authority were necessary for the purpose of saving the tea-leaves from perishing, making them fit for transporting and marketing them. The process applied was minimal.

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Withering, crushing and roasting the tea-leaves will surely be necessary for preserving them. The process of fermentation or final roasting with charcoal for obtaining suitable flavour or colour and also the process of grading them with sieves were all within the region of minimal process and at no point of time it crossed that limit and robbed the tea-leaves, the agricultural produce, of their character of being and continuing as such substantially.

3. In the instant case, the assessee had not sold his tea-leaves from his gardens to any manufacturing tea company. He had himself applied some indigenous and crude manufacturing process in order to enable him to sell his tea in the market. In such a situation, there is no difficulty in holding that the sale was of his agricultural produce.

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4. The High Court was, therefore, right in law in holding that the tea produced by the assessee was not exigible to sales tax.

The Supreme Court approved the decisions of the Madras High Court in the cases of State of Madras vs. R. Saravana Filial [1961] 7 STC 541 and N. Deviah Gowder vs. Commercial Tax Officer [1964] 13 STC 422 where a similar question arose with respect to areca nuts (seeds of betel palm) and the Supreme Court extracted page 544 from the decision of the Madras High Court in the case of R. Saravana Filial (supra) which were in the following words-

"As we have pointed out, it was common ground that there is no market in Coimbatore or elsewhere for areca nuts as they are when plucked from the trees, and it should be remembered that they are gathered when they are still unripe.

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The proviso to section 2(i) of the Act is obviously conceived in the interests of agriculturists. It excludes from any tax liability under the Act, sale of agricultural and horticultural produce, the primary condition to be satisfied being that it must be produce of the land which either belongs to the seller or of the land in which he has an interest as specified by section 2(i). To restrict that concession to sale of areca nuts, for instance, only if those areca nuts are sold in the stage in which they are immediately on being gathered from the trees, would render the statutory exclusion meaningless."

The Supreme Court then referred to the decisions of the Bombay High Court in the cases of R.B.N.S. Bora wake vs. State of Bombay [1963] 11 STC 8 and H.G. Date (supra) and extracted the following passage from page 11 (of STC) from the decision of the Bombay High Court in the case of R.B.N.S. Bora (supra) in its judgment-

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"It is true that gur cannot be regarded as an agricultural produce grown on land. But if gur is prepared out of the agricultural produce which is grown on land, in the absence of any indication to the contrary suggesting that the agricultural produce must be sold in the form in which it is grown, we will be justified in holding that an agriculturist who is exclusively selling agricultural produce grown on the land either in the form in which it is grown or in the form in which it is converted for the purpose of transportation or preventing deterioration is within the exception provided by section 2(6). In the present case, with a view to prevent deterioration and for the purpose of facilitating transportation the assessee converted the sugarcane grown by him into gur and sold it.“

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The Supreme Court in the next paragraph opined that “It appears, as I have done, that this case has gone a bit too for and on an appropriate occasion it may require further consideration.”

The Supreme Court then held as under- “I” in both the places including the one below refers to Hon’ble Justice Shri. N.L.Untwalia-

“Nonetheless, in the instant case, one can safely conclude, as I have done, that with a view to prevent deterioration and for the purpose of facilitating transport and making it marketable, the assessee himself did some processing to the plucked tea-leaves and hence the High Court was right in holding that such sales were not exigible to sales tax. Similar or identical principles have been applied by other High Courts also in respect of different commodities such as rubber, sole crepe, casuarina, pig bristles, etc.”

10. Concluding Remarks

The difference of opinion between the two Hon'ble Judges in the case of D.S. Bist (supra) which arose in analyzing the judgment of the Calcutta High Court in the case of Killing Valley Tea Co. Ltd. vs. Secretary to State AIR 1921 Cal. 40, however did not affect the final outcome of the decision.

Hon'ble Justice Shri.N.L.Untwalia agreed with the following view of the High Court which His Lordship extracted in his judgment-

"That the process in its entirety cannot be appropriately described as agriculture. The earlier part of the operation when the tea bush is planted and the young green leaf is selected and plucked may well be deemed to be agriculture. But the latter part of the process is really manufacture of tea, and cannot, without violence to language, be described as agriculture. . . The green leaf is not marketable commodity for immediate use as an article of food, but it is a marketable commodity to be manufactured by people who possess the requisite machinery into tea fit for human consumption."

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Hon'ble Justice Shri.R.S.Pathak [as His Lordship then was] struck a different note by finding fault with the approach of the High Court which drew a distinction between the two processes for the purpose of apportioning the income between agricultural income and non-agricultural income. Hon'ble Justice Shri. R.S. Pathak [as His Lordship then was] then went to observe as under-

"The question before us is whether after the tea leaf had been put through the process of withering, crushing, roasting and fermentation it continued to be agricultural produce. If the Calcutta High Court can be said to have laid down that as a result of those processes the tea leaf ceased to be agricultural produce, ***I am unable to agree with it. To my mind, the tea leaf remained what it always was***. It was tea leaf when selected and plucked, and it continued to be tea leaf when after the process of withering, crushing and roasting it was sold in the market.

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tea bush. The potential surfaced in the tea leaf when the mechanical processes of withering, crushing and roasting, fermenting by covering with wet sheets and roasting again were applied. ***The tea leaf was made fit for human consumption by subjecting it to those processes. At no stage, did it change its essential substance. It remained a tea leaf throughout. In its basic nature, it continued to be agricultural produce***."

From the above it is submitted, with respect, that there is no unanimity with regard to the concept of agricultural produce even among the judges of the Highest Court of the land.

This point of disagreement, which was not relevant for deciding the main issue, goes to show that the issue as to what is agricultural produce is not free from doubt.

However, it is earnestly requested by the author(presenter) that illustrations can be given at least in respect of exempted provisions covered under section 10 of the Income-tax Act 1961, wherever it is possible, as given in most of the sections in Indian Contracts Act,1872 so that controversies and disputes get reduced though not fully eliminated.


Thank
you!