

12.5% Gaothan Expansion Scheme

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D-201, 2ND FLOOR,

TOWER No. - 3,

INTERNATIONAL INFOTECH PARK,

VASHI STATION COMPLEX,

NAVI MUMBAI – 400703.

PH: 27812781/82/0196



TAXABILITY

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graph TD; A[TAXABILITY] --> B[Receiving Compensation / Enhanced Compensation in cash]; A --> C[Receiving 12.5% Plot under (GES)]; A --> D[Disposal of 12.5% Plot]; A --> E[Applicability of 50C];
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**Receiving
Compensation
/ Enhanced
Compensation
in cash**

**Receiving
12.5% Plot
under
(GES)**

**Disposal of
12.5% Plot**

**Applicability
of 50C**

Part I : Brief history of compulsory acquisition and stages involved

Purpose : In 1969-70	Action :
(i) To reduce population	(i) Notifications u/s. 4 & 6 of Land Acquisition Act, 1894
(ii) To reduce traffic pressure	(ii) Issued by State Govt. of Maharashtra
On the existing city of Mumbai and its suburbs.	(iii) To compulsorily acquire “Village land”
	- especially from Raigad district
	- especially included Agricultural land
	- from villages, namely Kharghar, Kamothe, Taloja, Panvel and Ulwe.

Process of Acquisition

- State Govt. of Maharashtra
- Commenced “acquisition proceeding”
- Through “Special Land Acquisition Officer” (SLAO)
- Land compulsory acquired by SLAO
- After hearing Project Affected Person (PAP)
- SLOA declared “Award” u/s. 11 of LAA
- Possession of land was taken over in 1973
- Most of the cases the possession was taken in and around year 1986

Remedies in case of deficient compensation

- PAP approached “District Court”
- Land Acquisition Reference (LRA) were filed
- District Court :
 - Evaluated the evidences
 - Recorded statements of experts, valuer etc.
- District Court disposed off LRA by awarding enhanced compensation
“wherever found necessary”

Interest awarded & its nature for the purpose of taxation

- *Interest u/s. 28 & 34 of LAA awarded in most of the cases.*
- ***CIT v. Ghanshyam (HUF) (2009) 315 ITR 1 (SC) :***
 - **Interest awarded u/s. 28** – basic compensation – ***“Capital receipt”***
 - **Interest u/s. 34** – delay in getting compensation – ***“Revenue Receipts”***
- Amendment in section *145A(b), 56(2)(viii), 57(iv) and 155(16) w.e.f. AY 2010-11* – to tax interest derived u/s. 34 on “receipt basis”, “irrespective of pendency of dispute”.

Nature of land

- **Lands compulsorily acquired were :**

- Agricultural lands
- Those falling outside local limits of nearest Municipality

- **Verified from :**

- 7/12 extract - Indicating crop taken every year before acquisition and reference
- Award u/s. 11 of LAA by SLAO & District court (being fact finding authorities)
- Determine the date of possession to CIDCO

- ***CBDT Notification no. 9447 dated 06/01/1994 includes :***

- Name of “Panvel” as a notified city added
- Any land whether agricultural or not
- Falling within 8 kms from the local limits of Panvel Municipal Corporation
- Become “Capital Asset” as contemplated u/s. 2(14) of Income Tax Act, 1961
- From that date 06/01/1994.

- ***Meaning :***

- Till 05/01/1994
- Agricultural lands were falling outside notified areas
- Therefore were not a “Capital Asset”.

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• ***Earlier Notification No. S.077(E) dated 6th February, 1973***

- Did not include
- Name of “Panvel Municipal Council” as notified one
- Therefore prior to 06/01/1994, no question of taxation of awarded sum
- Where the compulsory acquired agricultural land is
 - (a) Under cultivation
 - (b) Also falling outside municipal limit

Section 10(37) of Income Tax Act, 1961

- Compensation if received
- On or after 01/04/2004
- For “compulsorily” acquired “agricultural land”
- Is “not” subject to “tax” *if*
- “Agricultural land” is under cultivation - 2 years immediately preceding date of transfer
- Used for agricultural purpose – even if it falls within notified limit

Mentioned in 2(14)(iii)(a) / (b)

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Background & Details about allotment of 12.5% area plot by CIDCO and Taxation issue

- *Order no. LQN / 1985 – 1710 / CR – 217 /85 Navi -10 dated 06.3.90*
- Agricultural land acquired after 6.2.1986
- Wherein agriculturist have not accepted compensation awarded &
- Matters are pending in Court
- Govt. decided that they would be given plots in Navi Mumbai for equivalent to 12.5% of area of agriculture land acquired.

• ***Order (resolution) No. CID / 1094 / 2094 / P.K. – 287. Navi
– 10 dated 28.10.94***

- Applied even to acquisition done prior to 1986

- Rate of compensation of giving plot to the extent of 12.5% of land acquired.

Case Laws :

Asstt. CIT v. Shri Nirmal Bhogilal

ITA no. 2942/Mum/2002

Order dated 23/11/2005

Facts of the case :

- Land owned by Assessee's father acquired by Govt. in 1977
- Compensation paid to assessee's father who expired in 1979
- All land owners filed suit for additional compensation
- On 16/10/1999 Govt. allotted rights in land at Vashi under 12.5% scheme to Assessee and his brother
- On 29/04/1999 sale deed was executed
- On transfer, capital gain was claimed as exempt on ground :
 - Rights assigned and transferred were additional compensation for acquisition of agricultural land
 - Agricultural income u/s. 2(1A)

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AO's Contention :

- Piece of land transferred was not an “agricultural land”
- No link between original agricultural land as compensation had already been paid
- COA for land under 12.5% scheme was “Nil”
- Calculated short term capital gain

CIT(A)'s Contention :

- Deleted addition by AO
- Reason :
 - Entitlement for allotment of land under 12.5% scheme flowed from compulsory acquisition of agricultural land
 - Agricultural land does not fall under “Capital assets” definition u/s. 2(14)
 - Any additional / enhanced compensation would bear same character as of original asset.

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Before ITAT:

Questions	Answers
Whether land under 12.5% scheme is a capital asset ?	Yes Capital Assets u/s. 2(14)
Capital gain is short term / long term ?	Short term – period of holding less than 36 months
COA of land under 12.5% scheme ?	MV on the date of allotment of land under 12.5% scheme

Atul G. Puranik v. ITO

(2011) 132 ITD 499 (Mum.)

Facts of the case :

- Land belonging to Assessee father acquired by Govt. on 28/12/1972 and Compensation was paid by SLAO @ Rs.5/- per sq.mtrs.
- Further claim for additional compensation@ Rs.16/- per sq.mtrs was awarded by order dt. 25/04/2000
- Plot under CIDCO 12.5% scheme allotted to assessee vide agreement dated 16/08/2004 on lease basis for 60 yrs.
- The assessee assigned lease rights on 25/08/2005 for Rs.2.50 Crores.
- No income offered on above transfer.

Assessee's contention :

- Land acquired by SLAO was “agricultural land”
- Hence, land allotted under 12.5% scheme would be agricultural land
- Cost of plot allotted = MV of the land at the time of allotment

AO's contention :

- Assessee got the plot as revised compensation
- The original land acquired was converted into NA land
- The land was a “Capital asset” u/s2(14)
- Thus, its transfer attracted provisions of section 45.
- Calculated short term capital gain by considering :
 - Sale consideration by applying S.50C
 - COA – being cost at which land was acquired by assessee's father.

Before ITAT:

Questions	Answers
Whether the gain is chargeable to tax ?	Yes
If yes, then under which head ?	Capital Gain
Whether land under 12.5% scheme, capital asset ?	Yes
What is COA for asset sold ?	MV on date of allotment of land under 12.5% scheme
Whether section 50C applicable ?	No

- *Whether land sold is a “capital asset” u/s. 2(14)?*

- Yes
- All requirements of section 2(14) fulfilled.
- In present case “leasehold rights” acquired which is a “property”
- Thus, “capital asset”.

*COA = -MV of leasehold rights
-as on date of agreement with
CIDCO*

• *Sale consideration : 50 C not applicable : Reason :*

- Deeming provision
- Extends only to “land” or “building” or “both”
- Present case involves “leasehold rights” for 60 yrs.

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