

Income from Other Sources and Allied Issues.

Under Section 56 of the Income Tax Act, 1961

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OVERVIEW

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OVERVIEW



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New Provisions

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OVERVIEW

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Chargeability under Section 56(1).....

- **Income** of every kind which is **not exempt** from the total income under this Act
- shall be chargeable to income-tax under the head "Income from other sources",
- if it is **not chargeable** to income-tax under any of the heads specified **in section 14**, items A to E.

***Note: A) Salaries, B) Interest on securities omitted w.e.f. 1-4-1989, C) Income from house property, D) PGBP, E) Capital gains

Scope of Section 56(1).....

- Under section 56(1), income of every kind which is not to be excluded from the total income shall be chargeable to income-tax. The emphasis is on that income of every kind.
- To tax Any amount under this section, it must have some character of income.

Taxability of capital receipt u/s 56(1):

- It is a settled proposition of law that capital receipts, unless specifically taxed under any provisions of the Act, are excluded from income.
- Thus the income of capital in nature not specifically taxed cannot be taxed under section 56(1).

Birds eye view of Section 56(2)(i) –(iv)

Sec. 56(2)(i) Dividends

→ Sec. 56(2)(ia)
Omitted w.e.f. 01-04-1964

→ Sec. 56(2)(ib)
Any winnings from
lotteries, crossword puzzles
as referred in 2(24)(ix)

→ Sec. 56(2)(ic)
Contributions received
from Employee for PF/ ESI
as referred in 2(24)(x)

→ Sec. 56(2)(i)
Interest on securities

If not taxable under
PGBP

Sec. 56(2)(ii)

Income from let on hire
of machinery, plant
or furniture

If income is not taxable
under PGBP

Sec. 56(2)(iii)

Income from let on hire of
machinery, plant or
furniture along with
Building

If the letting of the
buildings is inseparable and
If income is not taxable
under PGBP

Sec. 56(2)(iv)

Income referred
Section 2(24) (xi) –
"Keyman Insurance
Policy"

If income is not taxable under
PGBP or Salary

*Note: any sum received
under a Keyman insurance
policy including the sum
allocated by way of bonus
on such policy*

Provisions of Section 56(2).....

In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, **shall be chargeable to income-tax** under the head "Income from other sources", namely :—

- (i) Dividends
- (ia) *Omitted by the Finance Act, 1988, w.e.f. 1-4-1988]*
- (ib) income referred to in sub-clause (ix) of clause (24) of section 2

Section 2 (24)(ix)

any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

Provisions of Section 56(2).....

(ic) income referred to in sub-clause (x) of clause (24) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession".

Section 2 (24)(x)

*any sum received by the assessee from his **employees as contributions** to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees*

(id) income by way of interest on securities, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession".

Provisions of Section 56(2).....

- (ii) income from **machinery, plant or furniture** belonging to the assessee and **let on hire**, if the income is not chargeable to income-tax under the head "Profits and gains of business or profession".
- (iii) where an assessee **lets on hire machinery, plant or furniture** belonging to him **and also buildings**, and the letting of the buildings is **inseparable** from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession".

Provisions of Section 56(2)(iv).....

- (iv) income referred to in sub-clause (xi) of clause (24) of section 2, if such income is not chargeable to income-tax under the head "Profits and gains of business or profession" or under the head "Salaries".

Section 2 (24)(xi)

“any sum received under a KIP including the sum allocated by way of bonus on such policy.

Explanation.—For the purposes of this clause, the expression "Keyman insurance policy" shall have the meaning assigned to it in the Explanation to section 10(10D)”

Birds eye view of Section 56(2)(v) –(vii)

Received by Individual or HUF From Any Person

Sum of Money

without consideration above Rs. 25,000/- or 50,000/-

Sec. 56(2)(v) 1/09/2004 to 31/03/2006
25000

Sec. 56(2)(vi) 1/04/2006 to 30/09/2009
50000

Sec. 56(2)(vii)(a) 1/10/2009 to 01/04/2017
50000

Immovable property

01/10/2009 to 01/04/2017

Sec. 56(2)(vii)(b)(i) without consideration, SDV Exceeds Rs. 50,000

Sec. 56(2)(vii)(b)(ii) For Inadequate Consideration, SDV exceeds Consideration by Rs. 50,000/-

These provision were withdrawn in Finance Act 2010 w.e.f 01/10/2009 but were reintroduced in Finance Act 2013 w.e.f 01/04/2014.

Movable property

including Shares & Securities

After 01/10/2009

Sec. 56(2)(vii)(c)(i) without consideration, FMV Exceeds Rs. 50,000

Sec. 56(2)(vii)(c)(ii) For Inadequate Consideration, FMV exceeds Consideration by Rs. 50,000/-

Shares

After 01/06/2010

Sec. 56(2)(vii)(a)

Received by Firm / Pvt. Ltd. Company From Any Person

50000

Shares of a Pvt. Ltd. Company without or inadequate consideration

After 01/04/2013

Sec. 56(2)(vii)(b)

Received by Pvt. Ltd. Company From Any Resident

Consideration for issue of shares exceeding the FV of such shares

Applicability of provision of section 56 in case of Gift.....

The term 'gift' has not been defined under the Income-tax Act, 1961. In general terms, gift consists in the relinquishment of one's own right over the property and creation of the right of another in that property.

Can gift be equated to income?

- What has to see, whether the act of receipt of gift falls within the purview of section 5 of the Income-tax Act, 1961. All gift can not be equated to income. If is so then there is no purpose of bringing in provisions of section 56(2)(v) or 56(2)(vi).

A receipt of gift if it falls within purview of section 56(2)(v) or 56(2)(vi) can only be liable to tax and not under the residuary head of section 56(1) of the Income-tax Act, 1961.

Section 56(2)(v) & (vi)...

***Provisions of Section 56(2)(v) - applicable from 1/09/2004 to
31/03/2006

*** Provisions of Section 56(2)(vi) - applicable from 01/04/2006 to
30/09/2009

Section 56(2)(vii)

- Applicability w.e.f 1st day of October 2009
- Received by an Individual or a Hindu Undivided Family

Outline of Section 56(2)(vii)

Property	Mode of receipt	Amount liable to tax
Sum of money	Without consideration the aggregate value of which exceeds 50000.	Whole of the aggregate value of money received
Immovable property	Without consideration	Stamp duty value of immovable property
Immovable property	For a consideration less than stamp duty value by Rs. 50,000	Stamp duty value of immovable property in excess of the consideration
Movable property	Without consideration ,the aggregate FMV exceeding Rs.50000.	Whole of the aggregate of FMV (as per prescribed method) of movable property
Movable property	For a consideration less than fair market value (as per prescribed method) by Rs. 50,000	Aggregate FMV (as per prescribed method) of movable property in excess of the consideration

Provisions of Section 56(2)(vii).....

Where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009 [but before the 1st day of April, 2017]

Clause (a)

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

Provisions of Section 56(2)(vii).....

Clause (b)

➤ **any immovable property**

Category	Clause (b)(i) [on or after 01-10-2009]	Clause (b)(ii)**** [Inserted by Finance Act, 2013, w.e.f. 1-4-2014]
Consideration	Without consideration	For consideration less than stamp duty value
Condition	the stamp duty value of which exceeds Rs. 50,000/-	Inadequate Consideration, Stamp Duty Value exceeds Consideration by an amount exceeding Rs. 50,000/-
Taxable amount	Stamp duty value	Stamp duty value less Consideration

******Note:** Finance Act (No. 2), 2009 had inserted the clause (vii)(b)(ii) w.e.f . 01/10/2009, however the same was deleted by the Finance Act, 2010 w.r.e.f. 01/10/2009 and reintroduced by F.A., 2013 w.e.f. 01/04/2014.

Proviso to Section 56(2)(vii)(b).....

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

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;

- ✓ Date of the agreement for transfer \neq Date of registration,
- ✓ Advance received by any mode other than cash on or before the date of the agreement for transfer
- ✓ The stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause

Analysis of Provisions of Sec 56(2)(vii)(b)(ii) -Immovable Property transferred for inadequate Consideration.

- ✓ Sec 56(2)(vii)(b)(ii) was introduced by Finance Act 2009 w.e.f 01/10/2009 as **counter evasion mechanism to prevent laundering of Unaccounted money** through transfer of assets for inadequate consideration.
- ✓ **However the said provision was later withdrawn from retrospective effect in Finance Act 2010 .The Legislative intent was that sometimes there exist a time gap between booking of property and receipt of such property on registration which results in taxable differential.** Therefore the said provision was amended to provide that it would apply only if immovable property is **received without consideration and not inadequate consideration.**

- ✓ Later on the provisions were reintroduced in Finance Act 2013 w.e.f 01/04/2014 as an **ANTI AVOIDANCE MEASURE** with **parallel insertion of new section Sec 43CA** which in brief sated that:-
 - ✓ “ Where an asset (other than capital asset) is transferred for inadequate consideration, Stamp Duty Value of such property shall be deemed to be the full value of consideration for the purpose of computing profit and gains from transfer of such asset.”
- ✓ The intent of authority was clear as **Sec 50C(Deemed sale consideration to be FMV in case of Inadequate consideration)** was applicable only on **transfer of Capital Asset** which transpired into **ABUSE OF PROVISIONS** by transferring of asset to **individual/HUF as a stock in trade** resulting in **laundering of unaccounted money as provisions of Sec 56** in respect of **inadequate consideration** were already withdrawn in Finance Act 2010 and consequently the receipt of such asset for inadequate consideration was not taxable as Income u/h Other Sources until the reintroduction of said provision in **Finance Act 2013 w.e.f 01-04-2014**

- ✓ **Therefore in order to plug this loophole ,Sec 56(2)(vii)(b)(ii) was reintroduced in Finance Act 2013 w.e.f 01/04/2014 with parallel insertion of Sec 43CA by Finance Act 2013 w.e.f 01/04/2014.**

Provisions of Section 56(2)(vii)(c).....

Clause (c) w.e.f. 01/10/2009

- any property, other than immovable property

Category	Clause (c)(i)	Clause (c)(ii)
Consideration	Without consideration	For consideration which is less than the aggregate fair market value of the property
Condition	The aggregate Fair Market value of which exceeds Rs. 50,000/-	Inadequate Consideration, Fair Market Value exceeds Consideration by an amount exceeding Rs. 50,000/-
Taxable amount	Fair Market Value	Fair market value less Consideration

Proviso 1 to Section 56(2)(vii).....

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

- ✓ Stamp duty value of immovable property is disputed by the assessee
- ✓ The AO may refer the valuation of property to Valuation Officer
- ✓ The provisions of section 50C and section 155 (15) shall be applicable

Issue-Taxability u/s 56(2)(vii)(c) of issue of Additional shares on a pro rata basis

Sudhir Menon HUF Vs. Asst. CIT 2014-TIOL-150-ITAT-MUM

Facts: The book value of the shares received by the assessee was more than the face value thereof, the AO held that the shares were received by the assessee for an inadequate consideration. He treated the difference between the FMV and face value and taxed u/s. 56(2)(vii)(c).

Held_ that section 56(2)(vii)(c)(ii) provides that where an individual/ HUF receives any property for a consideration which is less than the FMV of the property, the difference shall be assessed as income of the recipient. **The said section does not apply to the issue of bonus shares because there is a mere capitalization of profit by the issuing-company and there is neither any increase nor decrease in the wealth of the shareholder as his percentage holding remains constant.** The same argument applies pari materia to the issue of additional shares to the extent it is proportional to the existing share-holding because to the extent the value of the property in the additional shares is derived from that of the existing shareholding, on the basis of which the same are allotted, no additional property can be said to have been received by the shareholder. **The fall in the value of the existing holding has to be taken into account. Since, there is no disproportionate allotment, there is no scope for any property being received by them on the said allotment of shares.**

Proviso 2 to Sec 56(2)(vii) – Non- applicability

Provided further that clause(vii) shall not apply to any sum of money or any property received—

- a) from any relative; or
- b) on the occasion of the marriage of the individual; or
- c) under a will or by way of inheritance; or
- d) in contemplation of death of the payer; or
- e) from any local authority as defined in the *Explanation* to clause (20) of section 10; or
- f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
- g) from any trust or institution registered under section 12AA.
- h) by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47. (w.e.f. 01-04-2017)

Issue- Whether gifts received from relatives & friends on occasion of daughter's marriage is exempt u/s 56.

Rajinderco Mohan Lal vs Dy. CIT [2013] 36 taxmann.com 250 (Punjab & Haryana)

Held _No

- The word 'individual' appearing in clause (b) of proviso to section 56(2)(vi) is preceded by the word 'marriage' and, therefore, **relates to the marriage of the individual concerned, i.e., the assessee** and **not to the marriage of any other person related to him** in whatsoever degree, whether as his daughter or son.
- The expression 'marriage of the individual' is unambiguous in its intent and does not admit to an interpretation that it would include an amount received on the marriage of a daughter.
- If the legislature had intended that gifts received on the occasion of marriage of the assessee's children should be exempted, nothing prevented the Legislature from adding the words 'or his children' after the words 'marriage of the individual'.

Explanation to section 56(2)(vii)

For the purposes of clause (vii)—

- (a) "**assessable**" shall have the meaning assigned to it in the *Explanation 2* to sub-section (2) of section 50C;
- (b) "**fair market value**" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed
- (c) "**jewellery**" shall have the meaning assigned to it in the *Explanation* to sub-clause (ii) of clause (14) of section 2;

Explanation to section 56(2)(vii).....

(d) **“Property”** means the following capital asset of the assessee, namely:—

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

(e) **“Relative”** means.....

In case of an **Individual**

- (i) spouse of the individual;
- (ii) brother or sister of the individual;
- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendant or descendant of the individual;
- (vi) any lineal ascendant or descendant of the spouse of the individual;
- (vii) spouse of the person referred to in clauses (ii) to (vi);

In case of a **Hindu undivided family**,
any member thereof.

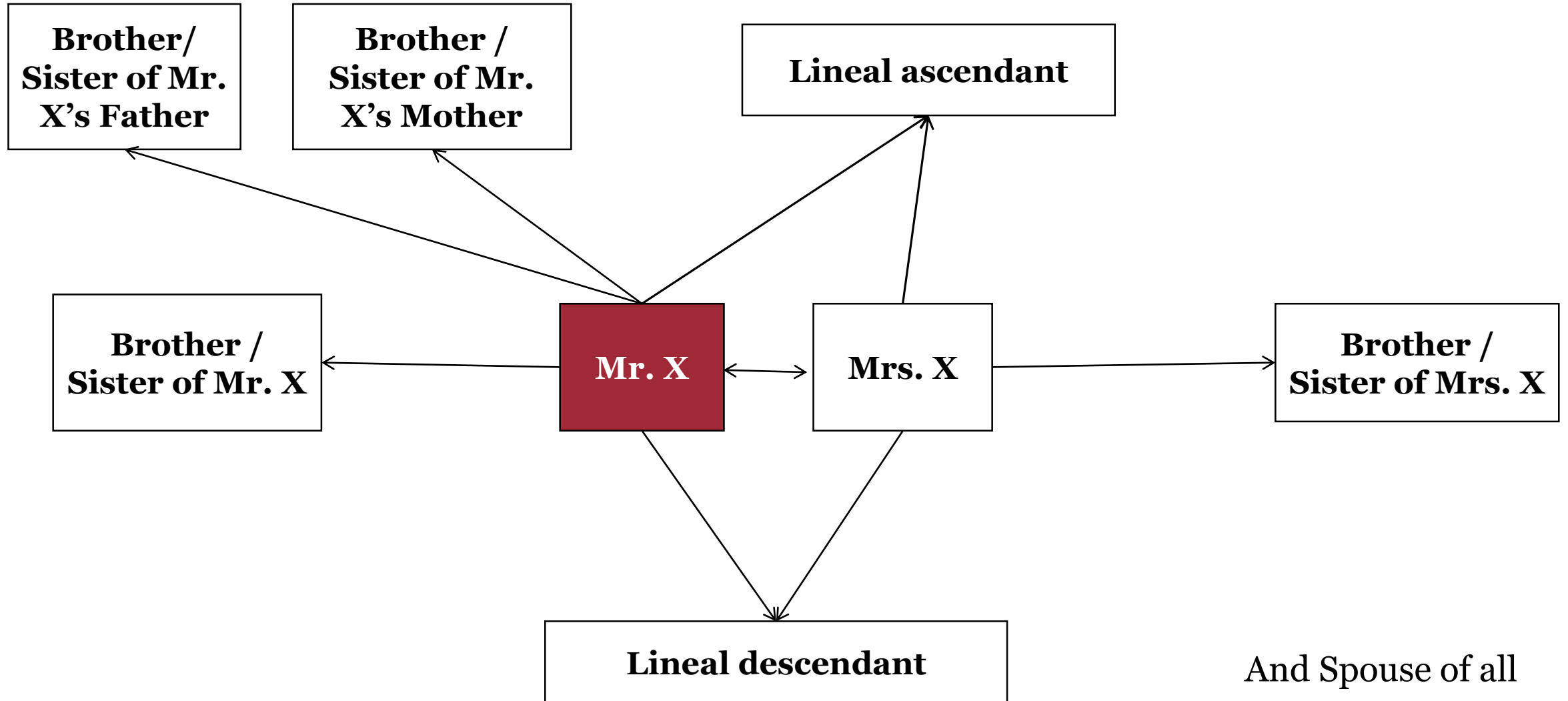
Definition of relative in case of HUF inserted vide Finance Act, 2012 w.r.e.f 01-10-2009 after decision of Rajkot-ITAT in Vineetkumar Raghavjibhai Bhalodia v. ITO [2011] 46 SOT 97/[2011] 12 ITR(T) 616 (Rajkot)

Lineal Ascendant or Descendant

- Lineal ascendant or descendant means ascendant or descendant in the right line without any deviation.
- This will include line from father to son, and grand son and great grand son and vice versa, from mother to daughter, and grand daughter and great grand daughter and vice versa.

***(Rajasthan High Court in CIT vs Dhannalal Devilal [1956] 029
ITR 165 (F.B.))***

In case of an Individual—



And Spouse of all

Explanation to section 56(2)(vii).....

(f) "**stamp duty value**" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property

Issue- Mother's sister's son is NOT relative.

Asstt. CIT v. Manasam Veerakumar [2013] 34 Taxmann.com 267 (Chennai-ITAT)

Held that_

- The term used in proviso to section 56(2)(v) is 'relative' which has been further elaborated in the *Explanation* to clause (v) of section 56(2).
- When the meaning of the term relative is defined in the Act itself, to derive meaning of the word relative from term 'lineal ascendant or lineal descendant' and bring the relationship with the purview of the section to grant benefit is unjustified and bad in law.
- When the definition has been provided in the Act itself, it is not appropriate to import dictionary meaning of the term.
- A perusal of the term 'relative' used in the section clearly shows that mother's sister's son does not fall within the definition of relative.

Therefore, the amount received by the assessee from mother's sister's son does not qualify for the benefit.

Whether Gift received by individual from his HUF taxable u/s 56(2)(vii)

Gyanchand M. Bardia Vs Income Tax Officer Ahmedabad ITAT 93 ITR 144

Held: Yes

- The Hon'ble bench of Ahmedabad ITAT held that clause (i) to clause(e) of explanation to Sec 56(2)(vii) defining a relative qua an individual recipient does not include an HUF as a donor. Further clause(ii) deals with HUF as a donee receiving gifts from his members. Therefore Gift received by individual from his HUF doesn't come under the definition of "Relative" and therefore isn't exempt.

Section 56(2)(viia)

- Applicable w.e.f 1st day of June, 2010 as inserted by Finance Act, 2010.

Firm/ Pvt. Company ← Shares of Pvt Ltd Company — **Any Person**

Provisions of Section 56(2)(viiia).....

- Where a firm or a company not being a company in which the public are substantially interested,
- receives, in any previous year,
- from any person or persons,
- on or after the 1st day of June, 2010, [but before the 1st day of April, 2017]
- any property, being shares of a company not being a company in which the public are substantially interested
 - Without Consideration
 - Inadequate consideration

Section 56(2)(viiia).....

(i) without consideration,

- **the aggregate fair market value of which exceeds Rs. 50,000/-**
- **Taxable amount - Fair market value**

(ii) Inadequate consideration

- Consideration is less than the FMV of the property by an amount exceeding Rs. 50,000/-
- **Taxable amount – Fair market value less consideration.**

Proviso to Section 56(2)(viia) – Non Applicability

Provided that this clause **shall not apply** to any such property received by way of a transaction **not regarded as transfer** under clause (*via*) or clause (*vic*) or clause (*vicb*) or clause (*vid*) or clause (*vii*) of **section 47**.

Proviso to Section 56(2)(viia).....

Section 47 (via)

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

(a) at least twenty-five per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and

(b) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated

Section 47 (vic)

any **transfer in a demerger**, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if—

(a) [the shareholders holding not less than three-fourths in value of the shares] of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated

Proviso to Section 56(2)(viia).....

Section 47 (vicb)

any transfer by a shareholder, in a business reorganisation, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or **shares in the successor co-operative bank**

Section 47 (vid)

any transfer or issue of **shares by the resulting company**, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking

Section 47 (vii)

any transfer by a shareholder, **in a scheme of amalgamation**, of a capital asset being a share or shares held by him in the amalgamating company, if—

- (a) the transfer is made in consideration of the allotment to him of any share or shares in the *[amalgamated company except where the shareholder itself is the amalgamated company, and]*
- (b) the amalgamated company is an Indian company

Explanation to section 56(2)(viia)

"**fair market value**" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii)

Explanation to section 56(2)(vii)

(b) "**fair market value**" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed

Section 56(2)(viib)

- Applicable w.e.f 1st day of April, 2013 as inserted by Finance Act, 2012.

Pvt. Company ← **Consideration for issue of shares exceeding FV** → **Resident**

Provisions of Section 56(2)(viib).....

- Where a **company**, not being a company in which the public are **substantially interested**,
- **receives**, in any previous year,
- from any person being a resident,
- any **consideration for issue of shares** that **exceeds the face value** of such shares,
- **the aggregate consideration received for such shares as exceeds the fair market value of the shares**

Proviso to Section 56(2)(viib).....

Provided that this clause **shall not apply** where the consideration for issue of shares is received—

- (i) by a **venture capital** undertaking from a venture capital company or a venture capital fund; or
- (ii) by a company from a class or classes of persons as may be **notified** by the Central Government in this behalf.

Explanation to Section 56(2)(viib).....

- a) The **fair market value** of the shares shall be the value—
- (i) as may be determined in accordance with such method as may be prescribed; or
 - (ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,
- whichever is higher;
- b) "**venture capital company**", "**venture capital fund**" and "**venture capital undertaking**" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of Explanation to clause (23FB) of section 10;

Section 10(23FB).....

(a) - "*venture capital company*" means a company which—

- A. has been granted a **certificate of registration**, before the 21st day of May, 2012, as a **Venture Capital Fund** and is **regulated** under the **Securities and Exchange Board of India** (Venture Capital Funds) Regulations, 1996 (hereinafter referred to as the Venture Capital Funds Regulations) made under the Securities and Exchange Board of India Act, 1992 (15 of 1992); or
- B. has been granted a certificate of registration as Venture Capital Fund as a **sub-category of Category I Alternative Investment Fund** and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (hereinafter referred to as the Alternative Investment Funds Regulations) made under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and which fulfils the following conditions, namely:—
- i. it is **not listed** on a recognised stock exchange;
 - ii. it has **invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking**; and
 - iii. *it has not invested in any venture capital undertaking in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding ten per cent of its equity share capital) holds, either individually or collectively, equity shares in excess of fifteen per cent of the paid-up equity share capital of such venture capital undertaking;*

Section 10(23FB).....

(b) "**venture capital fund**" means a fund—

A. operating under a **trust deed** registered under the provisions of the Registration Act, 1908 (16 of 1908), which—

I. has been granted a **certificate of registration**, before the 21st day of May, 2012, as a **Venture Capital Fund** and is regulated under the Venture Capital Funds Regulations; or

II. has been granted a certificate of registration as Venture Capital Fund as a **sub-category of Category I Alternative Investment Fund** under the Alternative Investment Funds Regulations and which fulfils the following conditions, namely:—

i. it has **invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking**;

ii. it has **not invested in any venture capital undertaking** in which its trustee or the settler holds, either individually or collectively, equity shares in excess of fifteen per cent of the paid-up equity share capital of such venture capital undertaking; and

iii. the units, if any, issued by it are **not listed** in any recognised stock exchange; or

B. operating as a **venture capital scheme** made by the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

Section 10(23FB).....

(c) "**venture capital undertaking**" means—

- (i) a venture capital undertaking as defined in clause (n) of regulation 2 of the Venture Capital Funds Regulations; or
- (ii) a venture capital undertaking as defined in clause (aa) of sub-regulation (1) of regulation 2 of the Alternative Investment Funds Regulations;

Issues- Whether provisions of sec 56(2)(viib) applies to issue of redeemable preference shares

M/s. Microfirm Capital Pvt. Ltd vs The Deputy Commissioner of Income Tax I.T.A. No. 513/Kol/2017

- The Kolkata bench of Income Tax Appellate Tribunal held that provisions of Sec 56(2)(viib) applies to issue of all classes of shares including redeemable preference shares
- Sec 56(2)(viib) was introduced with an objective to curb abusive measures of routing unaccounted money through infusion of funds from shareholders at substantial premium.
- Sec56(2)(viib) is a deeming provision and needs to be strictly interpreted.

Issue- Whether security premium is taxable under section 56....

Green Infra Ltd. vs. ITO [2013] 38 taxmann.com 253 (Mumbai - Trib.)

Held_No

It is a settled proposition of law that share premium realized from the issue of shares is of capital in nature and forms part of the share capital of the company and, therefore, cannot be taxed as a revenue receipt. It is also a settled proposition of law that any expenditure incurred for the expansion of the capital base of a company is to be treated as a capital expenditure. Thus the expenditure and the receipts directly relating to the share capital of a company are of capital in nature and, therefore, cannot be taxed under section 56(1).

Section 56(2)(viii)- Interest on compensation/ enhanced compensation

Applicable w.e.f 1st day of April, 2010
[inserted by Finance (No. 2) Act, 2009]

Section 56(2)(viii)- Interest on compensation/ enhanced compensation

Section 56(2)(viii) r.w.s. 145A(b) – Interest received on compensation or on enhanced compensation shall be deemed to be the income of the year in which it is received and taxable as Income from other sources.

Deduction of a sum equal to 50% of such income shall be allowed u/s 57 (iv) even if the actual expenditure is less than the said deduction (*no other deduction shall be allowed under any other clause of section 57*).

Section 56(2)(ix)- Sum of money received during negotiation of transfer of capital asset

Applicable w.e.f 1st day of April, 2015

[Inserted by Finance (No. 2) Act, 2014]

Section 56(2)(ix): Any sum of money received as an **advance** or **otherwise** in the course of negotiations for transfer of a **capital asset**, if,—

- (a) such sum is forfeited; and
- (b) the negotiations do not result in transfer of such capital asset.

Section 56(2)(x)

- Applicable W.e.f 1st day of April, 2017
- Received by any person

Outline of Section 56(2)(x)

Property	Mode of receipt	Amount liable to tax
Sum of money	Without consideration aggregate value exceeding Rs.50000.	Whole of the aggregate value of money received
Immovable property	Without consideration ,the Stamp Duty Value exceeding Rs.50000.	Stamp duty value of immovable property
Immovable property	For a consideration less than stamp duty value by Rs. 50,000.	Stamp duty value of immovable property in excess of the consideration
Movable property	Without consideration aggregate FMV exceeding Rs.50000.	Whole of the aggregate of FMV (as per prescribed method) of movable property
Movable property	For a consideration less than fair market value (as per prescribed method) by Rs. 50,000.	Aggregate FMV (as per prescribed method) of movable property in excess of the consideration

Provisions of Section 56(2)(x).....

Where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017

Clause (a)

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

Provisions of Section 56(2)(x).....

Clause (b)

➤ any immovable property

Category	Clause (b)(A) [on or after 01-04-2017]	Clause (b)(B) [on or after 01-04-2019]
Consideration	Without consideration	For consideration, less than the stamp duty value of such property
Condition	the stamp duty value of which exceeds Rs. 50,000/-	Excess of such stamp duty value is more than the higher of following:- <ul style="list-style-type: none"> • Rs.50,000/- • 5% of the consideration
Taxable amount	Stamp duty value	Stamp duty value less Consideration

Proviso to Section 56(2)(x)(b).....

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

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

- ✓ Date of the agreement for transfer ≠ Date of registration
- ✓ Advance received by an account payee cheque or an account payee bank draft or by use of electronic clearing system on or before the date of the agreement for transfer
- ✓ The stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause

Proviso to Section 56(2)(x)(b).....

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

- ✓ Stamp duty value is disputed by assessee on grounds mentioned in section 50C(2)
- ✓ AO may refer the valuation of property to valuation officer
- ✓ The provisions of section 50C and section 155 (15) shall be applicable

Provisions of Section 56(2)(x)(c).....

Clause (c) w.e.f. 01/04/2017

➤ any property, other than immovable property

Category	Clause (c)(A)	Clause (c)(B)
Consideration	Without consideration	For consideration which is less than the aggregate fair market value of the property
Condition	The aggregate Fair Market value of which exceeds Rs. 50,000/-	Inadequate Consideration, Fair Market Value exceeds Consideration by an amount exceeding Rs. 50,000/-
Taxable amount	Fair Market Value	Fair market value less Consideration

Proviso 1 to Sec 56(2)(x) – Non- applicability

Provided further that **clause(x)** shall not apply to any sum of money or any property received—

- a) from any **relative**; or
- b) on the occasion of the **marriage** of the individual ; or
- c) under a **will** or by way of **inheritance**; or
- d) in **contemplation of death** of the payer or donor, as the case may be; or
- e) from any **local authority** as defined in the *Explanation* to clause (20) of section 10 ; or
- f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in **clause (23C) of section 10**; or
- g) from or by any **trust or institution** registered under **section 12A** or **section 12AA**
- h) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) **of clause (23C) of section 10** ; or
- i) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) or or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of **section 47**.
- j) from an **individual by a trust** created or established solely for the benefit of relative of the individual.

Issue-Whether gift from mother of Karta of HUF is exempt

Subodh Gupta (HUF)v. P-CIT [2018] 89 taxmann.com 418 (Delhi - Trib.)

Held-No

- As per the proviso annexed to sub-section (x), any property other than immovable property received by members of HUF is exempt. In the given case 75000 equity shares of a private limited company have been gifted by the mother of karta to the assessee HUF. Mother of karta is not covered in the definition of member of his HUF. Hence gift received by assessee HUF from mother of karta of assessee HUF would be chargeable to tax under section 56 (2) (x)

Issues- Whether amount received by retiring partner of a partnership firm after surrendering the interest in the firm taxable under income from other sources

Smt. Vasumati Prafullachand Sanghavi vs. D-CIT [2018] 89 taxmann.com 95 (Pune-Trib.)

Held-No

- Where the assessee has received amount on time of her retirement from partnership firm after surrendering her right, title and interest, same was said to be received for consideration. Amount so received is not taxable In the hands of the assessee.
- **ISSUE:-In light of provisions of Sec 56(2)(x),the issue is debatable particularly where partner at the time of retirement takes an immovable property for a consideration higher than book value of asset. Whether the Excess amount over and above the value of asset be treated as received for surrendering of right,title and interest is debatable.**

Issues - Interest payable on income-tax refund is taxable as income from other sources

CIT vs. Delhi State Industrial & Infrastructure Development Corporation Ltd. [2012] 25 taxmann.com 195 (Delhi)

- Interest payable on income-tax refund fulfills basic character as income defined under section 2(24) and the basic characteristic of income being what it is, the amount received towards statutory interest has to be subject to tax under the head 'income from other sources'

Issue- where the repayment capacity of assessee is very poor, interest free loan is not be treated as gift us 56(2)(v)

Held that there no provision under section 56(2)(v) to treat loan as gift, which might not be repaid.

Facts:

- Assessee received a huge loan without any security and interest as a mark of gratitude, irrespective of his repayment capacity. The AO made addition u/s 56(2)(v) vide raising contention that in absence of any obligation on part of assessee to repay loan, entire transaction was of nature of gift which was given a colour of a loan. **[Chandrakant H. Shah vs. ITO [2009] 28 SOT 315 (MUM.)]**

[Also see CIT vs. Saranapal Singh(HUF) [2011] 237 CTR 50 (P&H)]

Provisions of Section 50CA

Applicable w.e.f. 1st day of April, 2018 (Finance Act'2017)

Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, **being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed***, the value so determined shall, for the purposes of section 48, be deemed to be the full value of consideration received or accruing as a result of such transfer.

Explanation.—For the purposes of this section, "quoted share" means the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.]

*
— RULE 11UA of Income tax Rules 1962

Insertion in subsection (4) of Sec 49- Cost with reference to Certain Mode of Acquisition

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

Sec 49(4) is amended to provide cost step up in respect of assessment made under Section 56(2)(x).

Implication of provisions of Sec 50CA, Sec 56(2)(X) and Sec 49(4)

Example

- Transferee/Buyer : A Ltd.
- Transferor/Seller : B Ltd.
- A Ltd. purchased 100 shares of XY Pvt.Ltd from B Ltd. for a price of INR 200 per share; total consideration =INR 20000.
- B Ltd. had purchased above shares of XY Ltd. at INR 500 per share; gross amount paid=INR 50000.
- FMV of said shares on transfer date is INR 800.

Prior to amendment

Impact on Transferor-B Ltd

	Sale Consideration-	20000
Less:-	Cost of acquisition-	(50000)
	LTCL/STCL	(30000)

Impact on Transferee-A Ltd

No Impact

Post Amendment

Impact on Transferor-B Ltd

	Deemed Sale Consideration(FMV>SC)	80000
Less:-	Cost of acquisition-	(20000)
	LTCG/STCG	60000

Impact on Transferee-A Ltd

	Sale Consideration-	80000
Less:-	Cost of acquisition-	(20000)
	IFOS	60000

Amount is taxable only if difference between FMV and Sale consideration exceeds Rs.50000.

Impact u/s 49(4)

- ✓ If A Ltd. Further Sells the shares say (on or after 01-04-2017) at Rs.900

Sale Consideration (assuming FMV =SC)	90000
Less:- Cost of Acquisition	(80000)
LTCG/STCG	<hr/> 10000

Issue – Non Extendability of provisions of Sec 49(4) to Sec 32 (Depreciation)

- Sec 49(4) asserts that the **cost of acquisition** of the property for the purpose of **capital gain** which had been
 - acquired by the assessee for inadequate consideration or without consideration and;
 - Subjected to income tax under clause(vii) or clause (viii) or clause(x) of sub section (2) of Sec 56.
 - Shall be **deemed** to be the **Fair market value(FMV)** of the property which **had been taken into consideration for computing the income tax liability** under clause (vii) or clause (viii) or **clause (x)** of sub section(2) of Sec 56(Income from other Sources).
 - **The above mentioned provision applies only when the asset is sold as a capital asset and not a trading asset.**

Issues –Non Extendability of provisions of Sec 49(4) to Sec32(Depreciation)

Example

- Transferor:-Individual A
- Transferee:-B Ltd.(A real estate conglomerate).
- Sale consideration-500000
- Cost of acquisition(for transferor)-100000
- FMV of property:- 600000
- **Asset is to be used by BLtd. as a trading asset.**

Computation of tax liability of BLtd. u/s 56(2)(x)

Applying provision of Sec 56(2)(x)

Particular	Amount(in Rs.)
Sale Consideration(assumed FMV)	600000
LESS:-Cost Of Acquisition	500000
Income u/h Other Sources	100000

Tax is paid on FMV Rs.60000 and not Cost of Acquisition of Rs. 500000 as per provisions of Sec 56(2)(x)

Cost of Acquisition in books of BLtd.

Balance sheet of B Ltd.

Assets	Amount(in Rs.)
Trading Asset (Property acquired from A)	500000

The provision of Sec 49(4) needs a review by the legislature since tax in this case is paid on FMV Rs.600000 whereas cost accounted in books is Rs.500000 which depicts clear loss to assessee in terms of cost step up benefit and depreciation on the asset.

Sale of asset by B Ltd.

Particular	Amount(in Rs.)
Sale Consideration(say)	800000
Less:-Cost of Acquisition	(500000)
Income u/h PGBP	300000

The provisions of sec 49(4) are applicable only where capital gain arises and not when the asset is sold as a trading asset. The assessee can't take the benefit of taking cost of acquisition as FMV on the date when asset was initially purchased (Rs.600000 in this case) although tax had been paid on FMV at the time of computation of income u/s 56(2)(x) as shown in previous slides.

Provisions of Section 56(2)(xi)

Applicable w.e.f. 1st day of April, 2019

Any compensation or other payment,

- Due to or received by ,
- Any person by whatever name called,
- In connection with the termination of his employment or
- Modification of terms and conditions thereto.

Determination of FMV - Rule 11UA
of Income Tax Rules, 1962

Notification No. 23/2010. W.e.f 01/10/2009

Rule 11UA- Determination of FMV

Rule 11UA(1)(a) - Valuation of Jewellery:

- i. the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;
- ii. in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;
- iii. in case the jewellery is received by any other mode and the value of the jewellery exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;

Rule 11UA- Determination of FMV.....

Rule 11UA(1)(b) - Valuation of Archaeological Collections, drawings, paintings, sculptures or any work of art:

- i. the fair market value of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred as artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;
- ii. in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;
- iii. in case the artistic work is received by any other mode and the value of the artistic work exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;

Rule 11UA- Determination of FMV.....

Rule 11UA(1)(c)(a) - Valuation of quoted shares and securities:

Condition	Fair Market Value
Received by way of transaction carried out <u>through any recognized stock exchange</u>	Transaction value as recorded in such stock exchange
Received by way of transaction carried out <u>other than through any recognized stock exchange</u>	<p>(a) lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and</p> <p>(b) <u>where there is no trading on the valuation date</u> lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange</p>

Rule 11UA- Determination of FMV.....

Rule 11UA(1)(c)(b) Valuation of Unquoted Equity shares:

Other than for the purposes of clause (a)(i) of Explanation to section 56(2)(viib):

$$\text{FMV (on the Valuation date)} = \frac{(A - L)}{(PE)} \times (PV)$$

Contd...

Rule 11UA- Determination of FMV.....

Rule 11UA(2) - For determining FMV under clause(a)(i) of Explanation to section 56(2)(viib)

FMV (on the valuation date) shall be as under:

(a) **FMV** (on the Valuation date) = $\frac{(A - L)}{(PE)} \times (PV)$

(b) FMV determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method

at the option of the assessee

A

Book value of assets less TDS, TCS, advance tax, un-amortised assets, deferred expenditure plus Refund claimed

L

Book value of liabilities excluding

- i. paid-up capital of equity shares;
- ii. Amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting;
- iii. Reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- iv. Provision for taxation, other than amount of tax paid as TDS or TCS or advance tax as reduced by refund claimed, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- v. Provisions for liabilities, other than ascertained liabilities;
- vi. Contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE

total amount of paid up equity share capital as shown in the balance-sheet

PV

paid up value of such equity shares

Contd...

Rule 11UA- Determination of FMV.....

Rule 11UA(1)(c)(c) - Valuation of unquoted shares and securities other than equity shares:

- **FMV** shall be estimated to be price it would fetch if sold in the open market on the valuation date **and**
- the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

Determination of FMV For SHARE OTHER
THAN QUOTED SHARE - Rule 11UAA
of Income Tax Rules, 1962

Inserted by the Income-tax (Twentieth Amendment) Rules, 2017, w.e.f. **1-4-2018**.

Determination of Fair Market Value for share other than quoted share

- For the purpose of transfer u/s 50CA ,the fair market value of the share of a company other than a quoted share, shall be determined in the manner provided in *sub-clause (b) or sub-clause (c),as the case may be, of clause (c) of sub-rule (1) of rule 11UA.*
- The valuation date for the purpose of Rule 11UAA shall be the date on which the unquoted share is transferred for the purpose of Sec 50CA.

Section 57- Deductions

- (i) In the case of **dividends** (other than dividends referred to in sec.115-O) or interest on securities,
*deduction of any reasonable sum paid by way of **commission or remuneration** to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee.*
- (ia) In the case of income referred to section 2(24)(x) i.e. **Employee contribution** towards PF/ ESI etc
deduction may be allowed in accordance with the provisions of section 36(1)(va)
- (ii) In the case of income referred to in section 56(2)(ii) & (iii) i.e. rental income from let on hire of machinery, plant or furniture with or without Building
***deductions**, may be allowed in accordance with the provisions of sub-clause (ii) of clause (a) and clause (c) of section 30, section 31 and sub-sections (1) and (2) of section 32 and subject to the provisions of section 38.*

Section 57- Deductions

(*ii*) in the case of Family Pension,

deduction of a sum equal to thirty-three and one-third per cent of such income or Rs. 15,000/-, whichever is less.

(*iii*) ***any other expenditure*** (*not being in the nature of capital expenditure*) ***laid out or expended wholly and exclusively for the purpose of making or earning such income.***

(*iv*) *in the case of income referred in Section 56(2)(viii)*

deduction of a sum equal to 50% of such income and no deduction shall be allowed under any other clause of this section.

Issues – For deduction u/s 57(iii), there must be nexus b/w Expenses incurred and income earned ...

For the purpose of allowability of interest u/s 57(iii) what is to be correlated or connected is not the fund with the income received from such loan but earlier borrowing and subsequent earning of interest from the loan.

For instance, if the assessee after borrowing the amount for the purpose of business had kept part of it in short term deposit in the bank, it is to be held that the interest paid on amount of borrowed is not deductible from interest earned from short term deposit as borrowing is not for the purpose of earnings said interest income. Thus, no deduction is allowed.

Consolidated Fibres & Chemicals Ltd. vs. CIT [2005] 146 TAXMAN 14 (Cal.)

Other Issues and Controversies under Section 56

Issue- Whether interest on Fixed deposits made out of amount borrowed for investment in capital asset is assessable as income from other sources.

Hotel Queen Road (P.) Ltd. v. ITO [2012] 25 taxmann.com 425 (Delhi - Trib.)

Held that no document whatsoever had been brought on record to show that whatever was invested in fixed deposit receipt was actually out of the amount received by the assessee for acquiring capital asset or for development of infrastructure. In the absence of such link, the amount had to be assessed separately as income from other sources.

Issues - Interest received on inter-corporate deposits is taxable as income from other sources

Held- Yes

Sai Fragrance & Flavours Pvt. Ltd. vs. ACIT [2018] 90 taxmann.com 307 (Mumbai-Trib.)

Assessee was in business of manufacturing of fragrance & flavour. Assessee discontinued its business operations, however, it earned certain interest income from inter corporate deposits, such income was declared as 'income from business'. AO took a view that the interest earned should be declared as **'income from other sources'**.

Issue- Interest earned from bank deposit before commencement of business is taxable as Income from other sources where deposit has no nexus with setting up of plant

- In the absence of any nexus between the deposit kept with the bank and the setting up of the plant. Interest earned on the surplus funds during the construction period on the short-term deposit kept with the bank is taxable as income and pre-commencement expenditure are set off against such income.

Central Travancore Specialists Hospital Ltd. v. Asstt. CIT [2008] 302 ITR (A.T.) 0131 (Coch.-Trib.)

Bharat Oman Refineries Ltd. vs. Dy. CIT [2013] 35 taxmann.com 232 (Indore - Trib.)

Issue- Reimbursement of expenses not to be considered as
Income from other sources.

CIT v. Fortis Health Care Ltd. [2009] 181 Taxman 257 (Delhi)

- Held that no income would arise under the head Other Sources merely for the reason that tax had been deducted on amount paid for reimbursement of expenses incurred in respect of common services.
- Also held that the expenses incurred by the assessee are equivalent to the monies received by the assessee from another concern and hence, **no income would arise to the assessee if the expenses are set-off there being a direct nexus between the two.**

Issue- Interest on Investment of surplus fund is taxable as income from other sources

ITO vs. Information Technology Park Ltd. [2012] 17 taxmann.com 208 (Bang.)

Yum ! Restaurants (India) (P.) Ltd. vs. Addl. CIT [2013] 33 taxmann.com 633 (Delhi - Trib.)

➤ Interest earned by co-operative society on mutual funds invested with banks would be treated as other income of society as same could not be treated to be an expansion of mutual fund by contributions of members but expansion of funds of co-operative society by a third party i.e. bank.

[CIT vs. Laksar Cooperative Cane Development Union Ltd. [2013] 35 taxmann.com 445 (Uttarakhand)]

Issue-Whether leasing out of business asset taxed as income from other sources

Maltex Malsters Ltd. v. CIT [2016] 76 taxmann.com 79 (Punjab & Haryana)

Held-No

- Assessee company was engaged in manufacturing malt. It leased out its entire malting facility to another company for a period of ten years. In the terms of lease agreement, assessee retained its interest in plant and machinery and only minor repairs were to be carried out by lessee. Moreover, lessee had to continue its business operations with employees of assessee. It was clear that assessee wanted to resume its business operations after expiry of period of lease and, therefore, income arising from leasing out of business assets was to be regarded as business income.

Issues.....

➤ Money received as a gift from NRI brother in almost alternative year is exempt u/s 56.
Smt. Veena Bhatia vs. Asstt. CIT [2012] 22 taxmann.com 150 (Delhi)

➤ Money received by minor from grandmother's brother is taxable u/s 56(2)(v) even it is assessable u/s 64, in the hands of his father who is relative of the donor as the relationship of the donor should be with reference to the minor who is to be treated as 'the individual'. With reference to the minor the donor is not a brother or sister of either of the parents and he cannot even be considered as a lineal descendant. Provision of section speaks of the relationship between the donor and the donee and not a deemed assessee.

Asstt. CIT vs. Lucky Pamnani [2011] 129 ITD 489 (Mum.)

Misc. Issues

Whether award received by a sportsman is taxable.....

In view of the Circular No. 447 [F. No. 199/1/86-IT(A-I)], dated 22-1-1986

- In the case of a professional sportsman: the award received by him will be in the nature of a benefit in exercise of his, profession and, therefore **will be liable to tax** under the provisions of the Income-tax Act.
- In the case of a non-professional sportsman: the award received by him will be in the nature of a gift and/or personal testimonial. Thus, such awards **will not be liable to tax** in his hands as it would not be in the nature of income.[

[Also see Abhinav Bindra vs. DCIT [2013] 35 taxmann.com 575 (Delhi - Trib.)]

****Note:** The question whether a sportsman is a professional or not will depend upon the facts and circumstances of each case to be decided by the Assessing Officer. Further, where such receipt is in the nature of gift, the chargeability to gift-tax will be considered separately.

Issue-Whether gift from relative of Karta of HUF is exempt

Harshadbhai Dahyalal Vaidhya (HUF) v. ITO [2013] 33 taxmann.com 483 (Ahmd. - Trib.)

Held-Yes

- As per the proviso annexed to sub-section (v), the charging clause shall not apply to any sum of money received from any relative. Meaning thereby the proviso is applicable to both of them i.e., "individual" as well as "HUF". The donor "relative" can be either relative of "Individual" or "HUF", as the case may be.

Issue- Applicability of Section 56(2)(v) in case gift in kind

- Provisions of section 56(2)(v) taxed sum of money received and same could not apply on agriculture land received as gift. **[ITO vs. Komal Kumar Bader [2010] 33 SOT 58 (JP-Trib.)]** The issue has now become redundant.
- Gift of India Millennium Deposit Certificate (IMD) received prior to 1-9-2004 However maturity proceeds received after 1-9-2004, provisions of section 56(2)(V) would not be applied. **[Vineetkumar Raghavjibhai Bhalodia vs. ITO [2011] 11 taxmann.com384]**

Issues.....

- No deduction of expenditure from salary to MLA u/s 57 [**B. Nanjamari vs. Asstt. CIT [2012] 23 taxmann.com 38 (Bang.)**]
- Where income tax is paid by availing overdraft facility, assessee is not allowed to set off interest received on income tax refund with interest paid on overdraft. [**Dy. CIT vs. American Express(India)(P.) Ltd. [2012] 19 taxmann.com 23 (Delhi)**]
- If the interest received and interest paid are commonality about their nature and character, revenue could not treat them differently for taxation purpose. Thus, interest received on unutilized commitment advances could not be taxed as income from other source, if the interest paid on utilized commitment advance is capitalized. [**CIT vs. Sasan Power Ltd. [2012] 18 taxmann.com 182 (Delhi)**]

Issue- Taxability of Interest on funds received as Share Capital earned before commencement of business

Indian Oil Panipat Power Consortium Ltd. vs. ITO [2009] 181 Taxman 249 (Delhi)

Facts:

Assessee claimed that the funds were required for purchase of land and development of infrastructure, but due to legal entanglements with respect to title of land, same were temporarily put in FD and certain interest was earned thereon and interest was in nature of capital receipt and was liable to be set off against pre-operative expenses.

Held:

The interest earned on funds primarily brought for infusion in the business could not have been classified as 'income from other sources'. Since, the income was earned in a period prior to commencement of business, it was in the nature of capital receipt and, hence, was required to be set off against pre-operative expenses.

Indian Oil Panipat Power Consortium Ltd. vs. ITO [2009] 181 Taxman 249 (Delhi)

The test, therefore, is whether the activity which is taken up for setting up of the business and the funds which are garnered are inextricably connected to the setting up of the plant. The clue is perhaps available in section 3 which states that for newly set-up business, the previous year shall be the period beginning with the date of setting up of the business. Therefore, as per section 4, income, which arises to an assessee from the date of setting up of the business but prior to commencement, is chargeable to tax, depending on whether it is of a revenue nature or a capital receipt. The income of a newly set-up business, post the date of its setting up, can be taxed if it is of a revenue nature under any of the heads provided under section 14 in Chapter IV. For an income to be classified as an income under the head 'PGBP', it would have to be an activity which is in some manner or form connected with business.

The word 'business' is of wide import which would also include all such activities which coalesce into setting up of the business.

Once it is held that the assessee's income is an income connected with business, then it could not be held that the income derived by parking the funds temporarily with bank, would result in the character of the funds being changed inasmuch as the interest earned from the bank would have a hue different than that of business and be brought to tax under the head 'Income from other sources'.

Issues- The expression 'income from other sources' would come into play only where income is relatable to a known source.

Dulari Digital Photo Services (P.) Ltd. vs. CIT [2013] 38 taxmann.com 390 (P&H)

- Where the income is not relatable to any known or any bona fide source, it would not be assessed as income from other source but considered as income of the assessee under section 68.

Issues- Whether Income of Municipal Corporation from granted licences for putting up hoardings in its property and private properties is taxable under section 56

CIT vs. Rajkot Municipal Corporation [2014] 43 taxmann.com 99 (Gujarat)

Held_Yes

- The fees charged for granted license for putting up hoardings in its property and private properties to regulate such activities, income from hoardings was in nature of 'income from other sources' and, therefore, exempt under section 10(20).

Issues- Whether surrendered income is taxable under income from other sources where assessee claimed it as business income

CIT vs. Ram Gopal Manda [2013] 35 taxmann.com 229 (Rajasthan)

Held_No

- Where assessee surrender certain amount during course of survey conducted under section 133A, such amount is not assessed as income from other source as assessee claimed said amount is his returned as income from business and it is entitled to get set off against said amount.

Issues- Whether actual interest income should be verified from TDS certificate

Ranjeet D Vaswani vs. A-CIT [2017] 81 taxmann.com 259 (Mumbai-Trib.)

Held-Yes

- Where the assessee due to a clerical error, assessee wrongly considered interest income at Rs. 7,89,198 instead of Rs.2,71,591. The AO was directed to verify the actual interest earned from the TDS certificates and bring the actual interest to tax after giving the assessee an opportunity of being heard.

Issues – others.....

CIT vs. SAR Infracon(P.) Ltd. [2014] 42 taxmann.com 405 (Gujarat)

- Grant received from central government and deposit such grant in bank as fixed deposit so interest earned on such deposit is also form part of grant and not assessed as income from other source.

Woodland Associates (P.) Ltd. vs. ITO [2013] 29 taxmann.com 216 (Mumbai - Trib.)

- Income from property let out to a director to be taxed as business income in the hands of the company as it is to be treated as used for business and income derived has to be assessed as business income.

Issues- Taxability of Rental Income

Issue- Signage rent, parking rent, terrace rent and licence fee, is to be taxed under head 'Income from other sources'

Held that to treat the income from house property, **first it should be letting out of a property. This is a primary requirement of treating any income from income from property.** Similarly, the income derived from installation of towers/antennas on roof of building and giving parking space on rent is not income from house property which falls or to be assessed under section 22 of Income-tax Act.

Any income from these sources has to be assessed under the head "income from other sources".

JMD Realtors (P.) Ltd. v. DCIT [2012] 19 taxmann.com 36 (Delhi-ITAT)

Issue- Amenity charges received from let out property assessable as income from other sources and not income from house property

CIT vs Chennai Properties & Investments Ltd. [2008] 303 ITR 33 (Mad.) and J. Farm House vs. Asstt. CIT [2011] 16 taxmann.com 313 (Chennai)

Held that the amenity charges were liable to be assessed as income from other sources after following the decision of **Tarapore and Co. v. CIT [2003] 259 ITR 389 (Mad)** wherein it has been held as under:

“service charges received separately in excess of rent by owner of building as value of service rendered by him to his tenants should be considered as income from other sources and not as income from house property”

Followed in Orient Hospital Ltd. vs Dy. CIT [2009] 315 ITR 0422 (Mad.)

Also see CIT vs Winsome Dyeing and Processing Ltd. [2008] 306 ITR 0340 (Himachal Pradesh)

Issues- Rental income from letting out factory building temporarily and assessee intended to resume its business, is assessee as 'income from other source'

Where the income from letting out of factory is to be treated as business income, when there was nothing on record to show that the assessee had only let out the same temporarily and intended to resume its business

**CIT vs. Venkateswara Agro Chemicals and Minerals (P.) LTD. [2012]
20 taxmann.com 259/ [2011] 338 ITR 428 (Mad.)**

Issues- Rental Income ...

- Where letting of building and letting of fixtures, fittings, air-conditioning plant, furniture, etc., were inseparable, rental income is taxable as income from other sources.

Garg Dyeing & Processing Industries vs. Asstt. CIT [2012] 28 taxmann. com 287 (Delhi)

- Where the assessee is not allowed to sub-lease the property, the income from sub-leasing is taxed as income from other source.

Vallabhdas Kanji Ltd. vs. CIT [2009] 13 DTR 154 (Ker-HC)

Issue- Whether interest received for failure of performance by builder is taxable as Other Sources Income.

Kumarpal Mohanlal Jain v. Income-tax Officer [2014] 41 taxmann.com 55 (Mum.- Trib.)

- Compensatory interest received from builder on failure to give delivery/ possession on time is assessable as interest income u/s 56 being revenue receipt.
- Lump sump amount awarded by common forum as compensation for non performance of contract was held exempt by the Hon'ble ITAT.

Issues- Where services are not separately provided under agreement, Rental Income is taxable under House Property instead of Income from Other sources

CIT vs. J.K. Investors (Bom) Ltd., [2012] 25 taxmann.com 12 (Bom.)

- The test to determine whether the service agreement was different from the rent agreement would be whether the service agreement could stand independently of the rent agreement.
- The services, which are not separately provided but go along with the occupation of the property are to be considered as a part of the rent received and subjected to tax under the head 'Income from House Property'.

Issues - Section 56(2)

Following issue needs consideration to avoid more litigation:

- Company received consideration in kind (*as section referred word “Any” consideration*)
- Taxability in case company convert Preference Shares into equity shares.
- Conversion of debentures into equity shares at a pre-agreed value.
- Company issued shares or security in the substantial loan providers.
- Money received on divorce as lump-sum amount .
- A company dealing in shares receives shares at less than FMV.
- Amount received on the occasion of Marriage in the account of parents.
- Loan forgiver forgives the loan during the course of business.



Thank You..!!

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