

Sec 56(2)(x) of the Income Tax Act, 1961

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OVERVIEW

Basic Sections of Sec 56

- Sec 56(1) and Sec 56(2)(i) to(iv)

OVERVIEW

Existing Provisions

- Sec 56(2)(v) to(ix)



What's
new?

New Provisions

- Sec 56(2)(x) and (xi)
- Slide No-04 to 25.

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.**

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

Amendment 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 (viia) **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 (viia) **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

IFOS-Income from other sources u/s 56

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

10000

Issue – Non Extendibility of provisions of Sec 49(4) to Sec32 (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 (viia) 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 (viia) 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.**

Issue – Non Extendibility of provisions of Sec 49(4) to Sec 32..... Contd...

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 B Ltd. as a trading asset.**

Issue – Non Extendibility of provisions of Sec 49(4) to Sec32..... Contd...

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.

Issues - Section 56(2)(x)

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.

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.



Thank You..!!

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