

1. Questionnaire No. 4 of notice dated 23.10.2019:

- 1.1. In this para, your good self asked to furnish detail of gift received by assessee from his Bhabhi (Smt. PQR) during the concerned year and gave show cause that why the said gift should not be considered as unexplained income of assessee.
- 1.2. In this regard, it is submitted that the assessee received gift from his Bhabhi i.e. Spouse of assessee's Brother through bank account, amounting to Rs.400,000/- In order to prove the creditworthiness of the donor i.e. Smt. PQR, we are hereby enclosing copy of ITR and computation of Income of Donor for A.Y. 2018-19, wherein it is clearly disclosed that She paid Rs.4,00,000/- to the assessee out of her accumulated income/capital. **(refer Page No.....34-35.....)**
- 1.3. Further, Copy of Bank Statement of Smt. PQR is enclosed for evidencing that the amount was received by assessee from the bank account of Smt. PQR only, **Refer Page No.....36-38.....**
- 1.4. Further, it may please be noted that as per section 56(2)(x) of the Act, gift received from the family members, relatives do not come under the purview of Income Tax and are exempt for the Tax. For the sake of convenience, the relevant extracts of section 56 are reproduced as under: -
- "56 (1).....*
- (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 :—*
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- (x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—*
- (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;*
- (b) any immovable property,—*
- (A) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*
- (B) for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess*

is more than the higher of the following amounts, namely:—

(i) the amount of fifty thousand rupees; and

(ii) the amount equal to 13[five] per cent of the consideration:

Provided that where the date of 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 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 14[or through such other electronic mode as may be prescribed], on or before the date of agreement for transfer of such immovable property:

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;

(c) any property, other than immovable property,—

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause shall not apply to any sum of money 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.*

Explanation.—*For the purposes of this clause, "relative" means—*

- (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);"*

- 1.5. Moreover, the Hon'ble High Court of Delhi has held in case of **CIT v. Ms. Mayawati [2011] 338 ITR 563 (Delhi)** that a gift to be treated as genuine when assessee discharges onus cast on it for proving, identity, creditworthiness and relationship. Similar decision was held by the Hon'ble High Court of Allahabad in case of **Sunil Kumar Rastogi v. CIT [2018] 406 ITR 306 (Allahabad)**.
- 1.6. **Based on above, in the instant case as well, the assessee has received gift of Rs.4,00,000/- from his relative and prove the identity, creditworthiness, relationship and genuineness of the transaction, hence, should not be considered as part of income in the hands of assessee.**