

**J.B. NAGAR CPE STUDY CIRCLE**

**STUDY GROUP MEETING - 15.07.2017**

**ISSUES UNDER SECTION 56(2)(x) OF THE INCOME TAX ACT, 1961**

**BY SHRI JITENDRA SINGH, ADVOCATE**

1. Hon'ble Finance Minister in the Finance Act No. 2 of 2017 presented in the Lok Sabha on 01.02.2017 inserted a new clause (x) in sub-section (2) of section 56 of the Act. The new clause (x) introduced in the Finance Act is introduced to tax any sum of money or property by any person without any consideration or for inadequate consideration in excess of Rs.50,000/- under the head "Income from Other Sources".
2. A cursory look of new clause (x) in sub-section (2) of section 56 shows that the new provision is in verbatim of earlier clause (vii) of sub-section (2) of section 56 of the Act inserted by Finance (No.2) Act 2009 w.e.f. 01.10.2009. Thus, all the provisions relating to referring the valuation to DVO in case of immovable property and in relation to the relevant date to be taken for ascertaining the stamp duty value in case where the date of registration and date of agreement is different are similar to existing provisions of clause (vii) of sub-section (2) of section 56 of the Act. Further, the definition of the term "relative" and "property" are similar to the existing section 56(2)(vii) of the Act.
3. The new clause (x) in section 56(2) has been introduced to widen the scope of taxability under the head "Income from Other Sources". Under the existing provisions of section 56(2)(vii) any sum of money or any property which is received without consideration or for inadequate consideration in excess of Rs.50,000/- by an individual or HUF is chargeable to tax in the hands of recipient under the head "Income from Other Sources" subject to certain exceptions mentioned therein.

Further, receipt of certain shares by a firm or company in which the public are not substantially interested is also chargeable to tax in case such receipt is in excess of Rs.50,000/- and is received without consideration or for inadequate consideration. The existing provisions are applicable only to individual and HUF and to firm or company in certain cases. However, these anti abuse provisions are not attracted in case of other assessee's. Hence, the new clause (x) in section 56(2) has been introduced to bring into its ambit all the recipient of money of property in excess of Rs.50,000/- without consideration or for inadequate consideration.

4. The new clause (x) of section 56(2) has also widened the scope of exceptions. Section 56(2)(x) shall not apply to any sum of money received—
- (I) from any relative; or
  - (II) on the occasion of the marriage of the individual; or
  - (III) under a will or by way of inheritance; or
  - (IV) in contemplation of death of the payer or donor, as the case may be; or
  - (V) from any local authority as defined in the Explanation to clause (20) of section 10; or
  - (VI) 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;
  - (VII) from or by any trust or institution registered under section 12AA; or
  - (VIII) 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

- (IX) by way of transaction not regarded as transfer under clause (i) [i.e. on total or partial partition of HUF] 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.
- (X) from an individual by a trust created or established solely for the benefit of relative of the individual.

5. Receipt of money or property by the partnership firm from the partner for inadequate consideration would be taxable in the hands of the firm. Similarly, where a sum of money or capital asset is received by an association of person or body of individual from its members is taxable in the hands of the members. Receipt of property by a company on conversion of a partnership firm or a proprietary concern into a company for inadequate consideration would be taxable in the hands of the company. Similarly, receipt of property by an LLP from the company or a firm on its conversion for inadequate consideration would get exposed to the provision contained in the proposed amendment.

6. A comparative chart of existing provisions containing the provisions of section 56(2)(vii), 56(2)(viia) and section 56(2)(x) of the Act clearly shows the widening of scope of taxability under the head income from other sources as under:

Particulars	As per earlier clause (vii) & (viia) of section 56(2)		As per new clause (x) of section 56(2)
Class of recipients	Individual/HUF	Firm/closely held company	All persons including widely held company
Category of assets			
(a) Sum of money	Taxable	Not taxable	Taxable
(b) Immovable property being land and building	Taxable	Not taxable	Taxable

(c) Shares of Closely Held Company	Taxable	Taxable	Taxable
(d) Shares of Widely Held Company	Taxable	Not taxable	Taxable
(e) Jewellery, bullion	Taxable	Not taxable	Taxable
(f) Archaeological collection, drawings, paintings, sculpture, paintings, any work of art	Taxable	Not taxable	Taxable

7. A comparative chart showing transactions which amounts to transfer as per section 47 of the Act under the earlier section 56 (2)(vii) and (viii) and as per the amended section 56(2)(x) is as under:

Transaction not regarded as 'transfer'	Excluded under earlier Section 56 (2)(vii) and (viii) of the Act	Excluded under new Section of the Act
Section 47(i) Distribution of capital assets on partial or total partition of HUF	No	Yes
Section 47(vi) Transfer of capital asset by amalgamating company to amalgamated company	No	Yes
Section 47(via) Transfer of shares of Indian company by amalgamating foreign company to amalgamated foreign company	Yes	Yes
Section 47(viaa) Transfer of capital asset by amalgamating banking company to amalgamated banking entity	No	Yes
Section 47(vib) Transfer of capital asset by demerged company to resulting company	No	Yes
Section 47(vic) Transfer of shares of Indian company by	Yes	Yes

demerged foreign company to resulting foreign company		
Section 47(vica) Transfer of capital asset by predecessor co-operative bank to successor co-operative bank	No	Yes
Section 47(vicb) Transfer of shares by a shareholder of predecessor co-operative society for shares of successor co-operative society	Yes	Yes
Section 47(vid) Transfer or issue of shares by resulting company to the shareholders of the demerged company	Yes	Yes
Section 47(vii) Transfer of shares of by a shareholder amalgamating company to amalgamated company	Yes	Yes

## 8. Issues

- A. Whether cash gift received beyond the prescribed limit of Rs.50,000/- attracts penalty provisions under section 271DA?
- B. Whether conversion of partnership firm into Company amounts to transfer of assets of the firms to the company and provisions of section 56(2)(x) is applicable?
- C. Applicability of provisions of section 56(2)(x) on slump sale
- D. Impact of new provision section 50CA inserted w.e.f. 01.04.2018
- E. **Example with issues:**  
Mr. 'A' acquired 10000 share of a Private Limited Company for Rs.50/- each. The said shares were sold by Mr. 'A' to Mr.'B' for the consideration of Rs.100/- each. The Fair Market Value on date of transfer was Rs.180/- per share.

**Issues:**

1. In whose hands the Capital Gain will be taxed under section 50CA of the Act?

**Ans:** The Capital Gain will be taxed in the hands of Mr. 'A' as he is the transferor in the present case.

2. Whether the Assessing Officer can invoke section 56(2)(x) of the Act in the present case?

**Ans:** Yes, Assessing Officer can invoke the provisions of section 56(2)(x) of the Act as the consideration received by Mr. 'A' is less than the Fair Market Value of the Shares by an amount exceeding fifty thousand.

3. In whose hands the Income from other Sources will be taxed as per section 56(2)(x) of the Act?

**Ans:** The Income from other Sources will be taxed in the hands of Mr. 'B' as he has purchased the shares for a consideration less than the Fair Market Value of the shares by an amount exceeding fifty thousand.

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