

Section 56(2)(x) and Rule 11UA

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Presentation by:
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History

- Taxability of gifts was governed by the Gift Tax Act, 1958 and was taxed in the hands of the donor w.e.f. 1.4.1958
- The Gift Tax Act, 1958 was abolished by Finance (No. 2) Act, 1999 w.e.f. 01.10.1999
- Section 56(2)(v) was introduced by the Finance (No. 2) Act, 2004 w.e.f. AY 2005-06
 - FM speech - *[a] loophole requires to be plugged to prevent money laundering. .*

History

Section	Received from	Persons covered	Amount	Period
56(2)(v)	Any person	Individual/HUF	Any sum of money > Rs. 25,000 received without consideration	On or after 01-09-2004 till 31-03-2006
56(2)(vi)	Any person	Individual/HUF	Aggregate sum of money > Rs. 50,000 received without consideration	On or after 01-04-2006 till 30-09-2009
56(2)(vii)	Any person	Individual/HUF	<ul style="list-style-type: none"> • Aggregate sum of money > Rs. 50,000 received without consideration • Immovable property :- <ol style="list-style-type: none"> i. Without consideration – stamp duty value > Rs. 50,000 – then full stamp duty value is taxable ii. For consideration – which is < stamp duty value & the diff. > Rs. 50,000 – stamp duty value less consideration is taxable 	On or after 01-10-2009 till 31-03-2017

History

Section	Received from	Persons covered	Amount	Period
			<ul style="list-style-type: none"> Any property, other than immovable property :- <ol style="list-style-type: none"> Without consideration – aggregate FV > Rs. 50,000 – then full FV is taxable For consideration – which is < aggregate FV & the difference is > Rs. 50,000 – aggregate FV less consideration is taxable 	
56(2)(vii a)	Any person	Firm/not a company in which public is substantially interested (NCPSI)	Shares of NCPSI :- <ol style="list-style-type: none"> Without consideration – aggregate FV > Rs. 50,000 – then full FV is taxable For consideration – which is < aggregate FV & the difference is > Rs. 50,000 – aggregate FV less consideration is taxable 	On or after 01-06-2010 till 31-03-2017
56(2)(vii b)	Any person being a resident	NCPSI	Receives consideration for issue of shares and consideration is > FV of shares – consideration less FV is taxable	W.e.f. AY 01-04-2013

History

- 56(2)(v) – Finance (No. 2) Bill, 2004
 - FM speech - . . . *a loophole requires to be plugged to prevent money laundering. . .*
- 56(2)(vii) –
 - Finance (No.2) Bill, 2009 EM - *anything which is received in kind having ‘money’s worth’ i.e., property is also outside the purview of the existing provisions.*
 - Finance Bill, 2010 – EM - *The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act.*
- 56(2)(x) – Widening the Scope
 - Finance Bill, 2017 – EM *These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases. . .*

Section 56(2)(x) - Basic

- Section 56(2)(x) is applicable when a person receives from any person –
 - i. any **sum of money** without consideration;
 - ii. any **immovable property**, without consideration or inadequate consideration;
 - iii. any **property other than immovable property** without consideration or inadequate consideration
- Separate threshold limit of Rs. 50,000 is available in all the **five** cases.
- Additional threshold of 5% of consideration for immovable property.

Comparison on Aggregate Basis

- Sum of money – yes
 - *any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum*

- Immovable property – No
 - *any immovable property, for a consideration which is less than the stamp duty value of the property . . ., the stamp duty value of such property as exceeds such consideration*

- Property – Yes
 - *any property, other than immovable property . . ., for a consideration which is less than the aggregate fair market value of the property, the aggregate fair market value of such property as exceeds such consideration*
 - **Benefit ?**

Scope of “Sum of Money”

- Section 56(2)(x)(a) deals only with ‘sum of money’
- S. 80G - **H.H. Shri Rama Verma v. CIT [1991] (187 ITR 308) (SC)** – donation of equity shares

“The context in which the expression ‘sums paid by the assessee’ has been used makes the legislative intent clear that it refers to the amount of money paid by the assessee as donation. . . . Therefore, . . . the donation must be a sum of money paid by the assessee. The plain meaning of the words used in the section does contemplate donations in kind. . .

only cash amount of money as donation, for claiming relief of deduction and it does not refer to any donation made in kind.”

Scope of “Sum of Money”

- Thus any **receipt in kind would be outside the scope of ‘sum of money’** for the purpose of Section 56(2)(x)(a).
- Any receipt of money upto Rs. 50,000 shall be exempt. But once the threshold limit of Rs. 50,000 is breached, the entire amount received shall be taxable.
- Further, the charge of Section 56(2)(x)(a) in respect of ‘sum of money’ is only for sum of money received without consideration and not for sum of money received for inadequate consideration.
- Therefore **adequacy of consideration is not be tested** for receipt of ‘sum of money’ which otherwise would be relevant in the context of receipt of property.

Scope of “Consideration”

- The term ‘consideration’ has neither been defined in the Income Tax Act nor in the Gift-Tax Act.
- Section 2(d) of the Indian Contract Act –
When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
- Achalsinhji Kesrisinhji & Co. v. CIT [1986] 157 ITR 537 (Guj.) Promise to bear loss of a partnership is a consideration to other partners. Even a promise to do something is a consideration.

Scope of “Consideration”

- Though the Gift-Tax Act doesn't define the term 'consideration', it does define the term 'gift' as *"transfer by one person to another of any existing movable or immovable property made voluntarily and without **consideration in money or money's worth...**"*
- The Bombay HC in the case of ***Keshub Mahindra v. Commissioner of Gift-Tax [1968] (70 ITR 1) (Bom. HC)*** held that *"...it is undoubtedly the intention of the Gift-tax Act by the use of the words "consideration in money or money's worth" in section 2(xii) to limit the meaning of consideration to something which can be reckoned in terms of money and not to any and every obligation, e.g., a promise to marry, which would be a valid consideration under the ordinary law of contracts."*

Scope of “Consideration”

- However, Section 56(2)(x) contains provisions where any sum of money or immovable property or property other than immovable property may be received without consideration. In such a case, **there is no qualification of consideration to be in money or money’s worth.**
- In absence of such a qualification, receipt of sum of money or specified property for a consideration that is valid consideration in law would be out of Section 56(2)(x) ?
 - Right to sue or claim against damages ?
 - Purvez A. Poonawalla v. ITO [2011] 47 SOT 380 (Mumbai T) – right to contest will
 - Compensation for hardship – redevelopment project ?
 - Love & affection

Scope of “Property”

The definition of the term ‘property’ is borrowed from Section 56(2)(vii).

Explanation to Section 56(2)(vii) defines property as under:

*“(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, bullion;*
- iv. archaeological collections; drawings; paintings; sculptures; or any work of art”*

Scope of “Property”

- Undertaking
- Bitcoins or any other Crypto Currency
- Intangibles like Trademark, Copyrights, Patents, etc.
- Plant & Machinery
- Motor Vehicles, Furniture, Mobiles, Laptops
- Receivables
- Sponsor of a Foreign Trip ?

Scope of “Immovable Property”

- Scope of immovable property

56(2)(x) where any person receives . .

(b) any immovable property . . . Without consideration or consideration less than stamp duty value

*Provided that this clause shall not apply to any sum of money or **any property** received—*

(l) from any relative . . .

"property" means the following capital asset of the assessee, namely:—

(i) immovable property being land or building or both;

Scope of “Immovable Property”

- Rights in Land or Building ?
 - S. 50C & S. 43CA - land or building or both
 - S. 54D, 54G, 54GA - land or building or any right in land or building
 - S. 269A & S. 269UA – immovable property *inter alia* means land or building or any right in land or building
 - S. 56(2)(x) –
 - Main section – immovable property
 - Exemption clause – immovable property being land or building or both
 - Rule 11UA – immovable property (for valuation of unquoted equity shares)
 - General Clauses Act - "*Immovable property*" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.
 - ITO v. Trilok Chand Sain [2019] 101 taxmann.com 391 (Jaipur - Trib.)

Scope of “Immovable Property”

- Land and Building
 - Development rights - Voltas Ltd. v. ITO [2016] 74 taxmann.com 99 (Mumbai Trib.)
 - Lease rights 60 years - Atul G. Puranik v. ITO [2011] 141 TTJ 69 (Mumbai Trib.)
 - PCIT v. Kancast Pvt. Ltd. [2018] TIOL 845 (Bom HC) – appeal admitted
 - Perpetual lease right – 50C will apply – Rajesh Gupta HUF v. PCIT [2018] TIOL-826-(Del HC)
 - Right of Allotment / Right to Purchase – ITO v. Yasin Moosa Godil [2012] 52 SOT 344 (Ahmedabad Trib)
 - 50C case laws will apply to Section 56(2)(x) ?

Exceptions to Section 56(2)(x)

- From any relative

- "relative" means,—

- (i) in case of an individual—

- (A) spouse of the individual; (B) brother or sister of the individual; (C) brother or sister of the spouse of the individual; (D) brother or sister of either of the parents of the individual; (E) any lineal ascendant or descendant of the individual; (F) any lineal ascendant or descendant of the spouse of the individual; (G) spouse of the person referred to in items (B) to (F); and

- (ii) in case of a Hindu undivided family, any member thereof

- Cannot gift to your uncle but can receive gift from your uncle. **Way out ?**
- Step brother ?
- Cousin Brother ?
- Step Son ?

Exceptions to Section 56(2)(x)

- on the occasion of the marriage of the individual; or
- under a will or by way of inheritance; or
- in contemplation of death of the payer or donor, as the case may be; or
- from or by any trust or institution registered under Section 12A or Section 12AA; or
- from an individual by a trust created solely for the benefit of relative of the individual
- On total or partial partition of HUF

Exceptions to Section 56(2)(x)

- by way of transaction not regarded as transfer under the following Sub-clauses of Section 47:-
 - transfer by a company to its wholly owned Indian subsidiary
 - transfer by a wholly owned subsidiary to its Indian holding company
 - Clauses in relation to amalgamation & de-merger.
- Whether transfer of cash covered ?
- Implication of Section 47A ?

Issues / Scenarios under Section 56(2)(x)

Lineal Ascendant & Descendent

- i. Maternal uncle of father would not be lineal ascendants of the individual - ACIT vs. Lucky Pamnani (2011) 135 TTJ 0607(Mum)
- ii. A son will be a lineal descendant of the mother as well as of his grandmother irrespective of whether the mother or the grandmother can form a line of succession under the Hindu law - CIT vs. Dhannalal Devilal (1956) 29 ITR 0165 (Raj HC)
- iii. Mother's sister's son is also not considered as a lineal ascendant or descendant - ACIT vs. Masanam Veerakumar (2013) 157 TTJ 0141 (Chen T)

Issues / Scenarios under Section 56(2)(x)

HUF

- i. Gift (sum of money) received by a member of the HUF from the HUF is not taxable under Section 56(2)(vi). HUF shall constitute a group of relatives - *Vineetkumar Raghavjibhai Bhalodia v. ITO [2011] (46 SOT 97) (Rajkot)*;
- ii. Gift (sum of money) received by a member of the HUF from the HUF would not be considered as a valid gift as 'relative' qua an individual does not include an HUF under Clause (e) to Explanation in Section 56(2)(vii) and hence would be taxable - *Gyanchand M. Bardia v. ITO [2018] (93 taxmann.com 144) (Ahmedabad - Trib.)*
- iii. Unequal Partition of HUF - *CGT v. N.S. Getti Chettiar [1971] 82 ITR 599 (SC)*

Issues / Scenarios under Section 56(2)(x)

- iv. Sum of money received from relative of Karta of HUF would be covered in the given exception i.e. received from relative and hence would not be taxable under Section 56(2)(v) - ***Harshadbhai Dahyalal Vaidhya (HUF) v. ITO [2013] (144 ITD 605) (Ahmedabad - Trib.)***
- v. Shares received from mother of Karta of the HUF by the HUF would be covered under property received from a non-relative and would be taxable under Section 56(2)(vii) as relative of member of the HUF shall not be a member of the HUF - ***Subodh Gupta (HUF) v. CIT [2018] (169 ITD 60) (Delhi - Trib.)***

Issues / Scenarios under Section 56(2)(x)

- vi. Amount received by assessee towards her share as coparcener of HUF on partition of HUF cannot be said to be without consideration as the right, title and interest of the coparcener in the assets of HUF will itself be a consideration - ***Smt. Sudha V. Iyer v. ITO [2011] (15 taxmann.com 234) (Mumbai)***

- vii. Loan taken by assessee's father from his HUF and gifted to the assessee for the purchase of a flat, the said amount could not be considered as Income from other sources in the hands of the assessee - ***Amit Jain v. DCIT [2012] (149 TTJ 527) (Jodhpur - Trib.)***

Issues / Scenarios under Section 56(2)(x)

Alimony

- i. Monthly alimony – Revenue receipt - ***Princess Maheshwari Devi of Pratapgarh v. CIT [1984] (147 ITR 258) (Bombay)***
- ii. Lump sum alimony – Received as a consideration for relinquishing past and future claims. Also a capital receipt not liable to tax u/s 56(2)(vi) – ***ACIT v. Meenakshi Khanna [2013] (143 ITD 744) (Delhi – Trib.)***

Issues / Scenarios under Section 56(2)(x)

- Received on occasion of marriage
 - The recipient should be person getting married. Thus, where father of the groom or bride receives any gift, the same would not be exempted under this clause - Rajinder Mohan Lal vs. DCIT [2013] 263 CTR 0231 (P&H HC)
 - If the gift is associated with the event of marriage or if the reason or immediate cause for the gift is the marriage, it will be covered by the expression 'on the occasion of the marriage'. The relationship between the gift and the marriage is, thus, the relevant factor and not the time of making the gift - CGT vs. Dr. (Mrs.) Neelambai Ramaswamy [1987] 164 ITR 369 (Madras HC)

Issues / Scenarios under Section 56(2)(x)

- iii. Assessee gifted land to his daughter 14 years after marriage. A promise to gift the land was made at the time of marriage which was evidenced from the document of gift. The assessee was entitled to exemption for the said gift – ***Commissioner of Gift-tax v. G. Venkataswamy [1999] (236 ITR 539) (Madras) Contrary view - Commissioner of Gift-tax v. M.S. Rao [1976] (102 ITR 308) (Patna)***

Issues / Scenarios under Section 56(2)(x)

Gift in contemplation of death

CGT vs. Abdul Karim Mohd. (1991) 191 ITR 0317(SC)

'The requirements of a "gift in contemplation of death" as laid down by s.

191 of the Indian Succession Act are :

(i) the gift must be of movable property;

(ii) it must be made in contemplation of death;

(iii) the donor must be ill and he expects to die shortly of the illness;

(iv) possession of the property should be delivered to the donee; and

(v) the gift does not take effect if the donor recovers from the illness or the donee predeceases the donor'.

Issues / Scenarios under Section 56(2)(x)

Family Settlement

- i. There is no transfer of property but only division of existing property which is already owned by the assessee along with its family members – ***DCIT v. Paras D. Gundecha [2015] (155 ITD 880) (Mumbai – Trib.)***
- ii. A family settlement cannot be said to be without adequate consideration – ***Commissioner of Gift-tax v. Pappathi Anni [1981] (127 ITR 655) (Madras)***

Power of Attorney

Cannot be said that assessee has received the property – **Sh. Gurdev Singh v. ITO (ITA No.212/Asr./2018 – decision dated – 17.01.2019); Miss Sannidhi C. Patel v. ITO [2015] 58 taxmann.com 76 (Mum Trib.)**

Issues / Scenarios under Section 56(2)(x)

Charitable Trust

- Section 12A/12AA registration to be obtained prior to the receipt of donation ?
 - *Com. of Gift-tax v. Yogendra N. Mafatlal* [1965] 58 ITR 40 (Bom. HC)
- Subscribing shares of a charitable institution (Section 8 Company)
 - *Sonia Gandhi v. ACIT* [2018] 257 Taxman 515 (Delhi HC)

Issues / Scenarios under Section 56(2)(x)

Trust

Settlement of Trust

- Trustee is receiving in a mere fiduciary capacity and not in his own rights
- Trustee is bound by obligation to carry out the directions of the Settlor
- Beneficiary ? – determinate trust and discretionary trust

CWT v. Estate of HMM Vikramsinhji of Gondal [2014] 268 CTR 232 (SC)

Issues / Scenarios under Section 56(2)(x)

- Beneficiary ? – determinate trust and discretionary trust

W.O. Holdsworth vs. The State of Uttar Pradesh [1958] 33 ITR 472 (SC)

*“the trustee is the owner of the trust property and the beneficiary only has a right against the trustee as owner of the trust property. The trustee is thus the legal owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries but he **does not hold it on their behalf**. The expressions "for the benefit of" and "on behalf of" are not synonymous with each other. They convey different meanings.”*

Issues / Scenarios under Section 56(2)(x)

Distribution

On distribution of Corpus to beneficiaries, in case the trust is a Specific Trust or Discretionary Trust -

- It involves working out of rights of beneficiaries
- It does not qualify as a receipt without consideration
- Ashok C. Pratap v. ACIT [2012] (139 ITD 533) (Mumbai)
- CIT v. Smt. Kamalini Khatau [1994] 209 ITR 101 (SC);
- Commissioner of Gift-tax v. Trustees of H.E.H. the Nizam's Wedding Gift Trust [1989] 175 ITR 266 (AP HC)

Issues / Scenarios under Section 56(2)(x)

- Trust - other issues
 - Revocable Trust - Smt. Kantra Sproo v. ITO [2016-TIOL-2449-ITAT-Amritsar]
 - Exemption available in case the beneficiary of a Private Trust is a Charitable Trust ?
 - Exemption available if settlor is one of the beneficiary ?
 - Trust for the benefit of relative can be a beneficiary ?
 - Impact of subsequent alteration in the list of beneficiary ?
 - If settlor and Trustee are the same person – ‘receive’ ?

Issues / Scenarios under Section 56(2)(x)

- **Bonus Shares** – Never considered to be received without consideration or inadequate consideration. The consideration being depression in the intrinsic value of the original shares held by him – *DCIT v. Dr. Rajan Pai [2016] (48 ITR(T) 170) (Bangalore – Trib.)*
- **Buy Back of shares** –
 - *Vora Financial Services P. Ltd. v. ACIT [2018] TS 346 (Mum Trib)*
 - *Commercial Tax Officer & Ors vs State Bank Of India [2016] 11 TMI 416 (SC)*
 - *50CA v. 115QA ?*
- **Capital reduction ?**

Issues / Scenarios under Section 56(2)(x)

- **Right Issue / Additional Issue of Shares**

- CBDT - Circular 10 of 2018 (31-12-2018)
- CBDT - Circular No. 02/2019 (4-1-2019)
- CBDT - Circular No. 03/2019 (21-1-2019)
- Sudhir Menon HUF v. ACIT [2014] (148 ITD 260) (Mumbai - Trib.) -
proportionate allotment of additional shares

Issues / Scenarios under Section 56(2)(x)

- **Right Issue / Additional Issue of Shares**

- ACIT v. Subhodh Menon [2019] 175 ITD 449 (Mumbai - Trib.) – purposive interpretation
- Shares received from another person ?
 - Khoday Distilleries Ltd. v. CIT [2009] 307 ITR 312 (SC)
- Transfer of Right to subscribe - Right to subscribe – is a specified property for S. 56(2)(x) ?
- Benefit to relative
 - Vaani Estates Pvt. Ltd v. ITO [2018] TS 529 (Chen Trib.) – Benefit to relative (S. 56(2)(viib))
 - Kumar Pappu Singh v. DCIT [2019] 174 ITD 465 (Visakhapatnam - Trib.)

Issues / Scenarios under Section 56(2)(x)

- **Convertible Instruments**

- Taxing event arises when convertible instrument is issued.
- Upon conversion it is Mere working out of pre-existing rights of the investor or mere discharging of pre-existing obligation by the issuer.
- Ratio of CIT v. Mohanbhai Pamabhai [1973] (91 ITR 393) (GUJ.) and CIT v. R.M. Amin [1977] (106 ITR 368) (SC)

Issues / Scenarios under Section 56(2)(x)

- **Loans**

- Interest free loan

- CIT v. Chandrakant H. Shah v. ITO [2010] 9 TMI 1221 (Bom HC), Paramveer Abhay Sancheti [2018] 95 taxmann.com 258 (Nagpur - Trib.); CIT v. Saranapal Singh (HUF) [2011] 237 CTR 50 (P&H HC)

- Conversion of Loan into Equity

- (a) Right embedded in the loan
 - (b) Part of re-structuring
 - Maneckchowk & Ahmedabad Mfg. Co. Ltd., In re [1970] 40 COMP CASE 819 (Gujarat HC)

Issues / Scenarios under Section 56(2)(x)

- **Loans**

- **Waiver of loan**

- Waiver of part of the loan – Restructuring
 - Waiver of complete loan
 - Receipt in the year of waiver ?
 - **Commissioner v. Mahindra And Mahindra Ltd. [2018] 302 CTR 213 (SC);**
 - **Panna S. Khatau v. ITO [2015] 59 taxmann.com 151 (Mumbai - Trib.)**
 - Section 4(1)(c) of Gift Tax Act provided for deeming a gift made by the person who was responsible for the release, discharge, surrender, forfeiture or abandonment of any debt, contract or actionable claim or of any interest in property by any person without bona fide reasons to the extent of value of such release, discharge, surrender, forfeiture or abandonment.

Issues / Scenarios under Section 56(2)(x)

- **Partnership**

- Formation of Partnership or Admission of Partner
 - CIT v. Marudhar Hotel (P.) Ltd. [2004] 269 ITR 310 (Rajasthan HC), Sree Narayana Chandrika Trust v. Commissioner of Gift-tax [2003] 261 ITR 279 (SC)
- Transfer of Interest in Partnership
 - Marketable Security ?
- Retirement of Partner
 - Smt. Vasumati Prafullachand Sanghavi v. DCIT [2018] 168 ITD 585 (Pune - Trib.)
- Unequal dissolution of Firm
 - Jagatram Ahuja v. CGT [2000] 246 ITR 609 (SC)

Issues / Scenarios under Section 56(2)(x)

- **Conversion of Company into LLP**
 - No express exemption
 - ACIT v. Celerity Power LLP [2018] 100 taxmann.com 129 (Mumbai - Trib.)
 - Shareholder – receiving interest in partnership
 - Company – receiving anything ?
 - LLP – receiving specified property ? Inadequate consideration ?

Issues / Scenarios under Section 56(2)(x)

Scope of 'Securities'

- Section 56(2)(x) does not make a reference to the Securities Contracts (Regulation) Act, 1956 (SCRA).
- Rule 11U(h) has refers to the meaning of securities from SCRA.
- *S. 2(h) - shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
- *derivative, units of mutual fund, Government securities, rights or interest in securities*

Issues / Scenarios under Section 56(2)(x)

Securities

- Bhagwati Developers (P.) Ltd. v. Peerless General Finance & Investment Co. Ltd. [2013] 179 COMP CASE 421 (SC) – Shares of Public Unlisted Company
- Dahiben Umedbhai Patel v. Norman James Hamilton [1985] 57 Comp Case 700 (Bombay HC) – Shares of Private Company
- Debentures of Private Company ?
- Interest in LLP ?
- Shares of a foreign company ?

Issues / Scenarios under Section 56(2)(x)

Restructuring Issues

- i. Section 56(2)(x) specifically exempts cases of qualifying amalgamation /demerger. Whether the provisions of section 56(2)(x) be triggered in case of non-qualifying amalgamation/demerger?
 - Amalgamating Company/Demerged Company
 - Amalgamated Company/Resulting Company – Aamby Valley Ltd. v. ACIT [2019] 102 taxmann.com 385 (Delhi - Trib.)
 - Shareholders
 - The term ‘property’ defined for the purpose of Section 56(2)(x) does not include ‘undertaking’

Issues / Scenarios under Section 56(2)(x)

- ii. Whether the provisions of section 56(2)(x) will be applicable to a company/firm on acquisition of business under a “slump sale”?
 - Slump sale – Lump sum consideration paid for acquisition of business
 - Consideration not determinable for each of the items separately
 - However, in cases of itemised sale of business – Section 56(2)(x) may apply

Double Tax Avoidance Agreement

- Source country also has the right to tax (e.g. USA, Mauritius, UK, Japan, France)
 - *items of income of a resident of a Contracting State not dealt with in the foregoing Articles of Convention and arising in the other Contracting State may also be taxed in that other State*
- Governed as per domestic law (e.g. Singapore)
 - *Items of income which are not expressly mentioned in the foregoing Articles of this Agreement may be taxed in accordance with the taxation laws of the respective Contracting States.*
- Resident Country has the right to tax (e.g. Germany, Switzerland, Cyprus, UAE)
 - *items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.*

Non – Resident

- Place of receipt
 - Receipt of currency outside India ?
 - What is the place of receipt of shares ?
 - Receipt of demat slip/share certificate ?
 - Place of maintenance of shareholders register Or Registered office of Company ?
 - Place of demat account ?
 - What is the place of receipt of immovable property ?
 - Place of execution of the document ?
 - Place of registration of the document ?
 - Location of immovable property ?

Rule 11UA

Rule 11UA – Basic

- Jewellery, archaeological collections, drawings, paintings, sculptures or any work of art

- estimated to be price which it would fetch if sold in the open market
- purchase on the valuation date, from registered dealer, the invoice value
- Value > 50K - report of registered valuer

- "registered dealer" means a dealer who is registered under Central Sales Tax Act, 1956 or General Sales Tax Law for the time being in force in any State including value added tax laws

- Valuation rule for Bullion ?

Govind Saran Ganga Saran v. Commissioner of Sales Tax [1985] 155 ITR 144 (SC)

Rule 11UA – Basic

- Equity Shares

- Listed – selling price on the stock market or lowest price on selling date if sold off-market
- Unlisted Equity Shares – Book value of shares, primarily adjusted for
 - Fair value of Shares, immovable property & other property covered by Section 56(2)(x).
- 56(2)(viib) – Equity – book value or DCF (report merchant banker)
- Other shares & securities – estimated price it would fetch if sold (report CA or merchant banker)

Rule 11UA – Issues

- Valuation of Shares -

- Holding Company Discount
- Liquidity Discount
- Restriction on Transfer (e.g. lock-in period)
- Tax outflow, etc.

- Audited Balance Sheet –

- 56(2)(x) - on the date of valuation – applicable even for investment ?
- 56(2)(viib) - on the date of valuation or last approved balance sheet

Rule 11UA – Issues

- Valuation in case of cross holding ?
 - Company A is holding 10% in Company B and Company B is holding 10% in company A.
- Negative value of shares – to be restricted as zero ?
- No amendment in Rule 11UA(2) – issue of shares – interplay 56(2)(viia) & 56(2)(x)
- Issue of preference shares – S. 56(2)(viib) – valuation can be done by CA.

Rule 11UA – Issues

- Companies Act, 2013 permits differential right to dividend & right to vote .

How will that be factored in valuation of shares ?

- Shares to be valued as equity shares ? (balance sheet approach – will not consider the differential right to dividend/vote)
- Shares to be valued securities other than equity shares ?
- Medplus Health Services (P.) Ltd. v. ITO [2016] 48 ITR(T) 396 (Hyderabad Trib.)

- Income Tax paid under protest – treatment for computing Rule 11UA of the shares ?

- any amount of income-tax paid, if any, less the amount of income-tax refund claimed*

Rule 11UA – Ind-AS Issues

- Ind-AS – Interest free loan from group company
 - Fair value credit to liability
 - Difference in loan amount & fair value – credit to Other Equity (Reserves & Surplus)

- Ind-AS – Compulsory convertible debentures (compound financial instrument)
 - Debt component – liability
 - Equity component – Other Equity (Reserves & Surplus)

- Ind-AS 116 – Operating lease – stamp duty value of the property to be considered ?
 - Distinction between leave & license and a lease agreement ?

Rule 11UA – Judicial Precedents

- Medplus Health Services (P.) Ltd. v. ITO [2016] 48 ITR(T) 396 (Hyderabad Trib.) - Shares acquired at valuation as per 11UA cannot be treated as deemed gift. 11UA value negative, shares acquired from group companies @ Rs 1 / shares and on the same day shares acquired @ 74.49 from 3rd party
- Minda S M Technocast (P.) Ltd. v. ACIT [2018] 92 taxmann.com 29 (Delhi - Trib.) – market value of underlying asset not relevant (prior to amendment in Rule 11UA)
- DCIT v. M/s. Ozoneland Agro Pvt.Ltd (I.T.A./4854/Mum/2016) & Rameshwaram Strong Glass (P.) Ltd. v. ITO [2018] 96 taxmann.com 542 (Jaipur - Trib.) - Rule 11UA allows the assessee the right to adopt the method of his choice for valuing shares (DCF, NAV etc).

Rule 11UA – Judicial Precedents

- Agro Portfolio (P.) Ltd. v. ITO [2018] 171 ITD 74 (Delhi - Trib.) – Valuer needs to verify correctness of projections given by assessee.
- Innoviti Payment Solutions Private Limited, [TS-4-ITAT-2019(Bang)] the assessee could not conclusively establish that the projections used for DCF valuation were prepared scientifically. The Tribunal held that if the assessee has opted for the DCF method, the AO cannot discard it and adopt another method; however, the AO is well within his rights to examine the methodology adopted by the assessee and the underlying assumptions and if he is not satisfied, he can challenge the same and suggest necessary modifications.
- TUV Rheinland NIFE Academy Pvt Ltd.[TS-92-ITAT-2019(Bang)] In this case, the Tribunal held that since the assessee was unable to substantiate the projections (based on which the value was determined using the DCF Method) to the AO, the very basis for the DCF valuation did not hold good, and hence, the AO was correct in adopting the NAV Method to determine the valuation.

Thank You

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