

Chamber of Tax Consultants

Section 56(2) – Burning issues

- Adv. Dharan V. Gandhi

04th May, 2019.

Amravati

History and Background

- Charging section – section 4 r.w.s. section 2(24)
- Gift – meaning
 - section 2(xii) of the erstwhile Gift Tax Act, 1958 : *-gift means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section*
 - section 122 of the Transfer of Property Act, 1882 :- *“Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.*
- History of tax on gifts –
 - Taxability under Gift tax Act, 1958.
 - Taxability under Income tax Act, 1961.
 - casual receipt/ receipt of money without consideration/ gift
 - Taxability u/s 68

History and Background

- Background of section 56
- Insertion of section 56(2)(v) – [01.09.04 till 31.03.05]
 - Individual and HUF
 - Sum of money exceeding Rs. 25,000/- received without consideration
- Insertion of section 56(2)(vi) – [01.04.06 till 30.09.09]
 - Individual and HUF
 - Sum of money exceeding Rs. 50,000/- received without consideration
- Insertion of section 56(2)(vii) – [01.10.09 – 31.03.17]
 - Individual and HUF
 - Sum of money exceeding Rs. 50,000/- received without consideration
 - Movable and immovable property received without consideration/ inadequate consideration
- Insertion of section 56(2)(viiia) - [01.06.10 – 31.03.17]
 - firm or company in which public are not substantially interested
 - receipt of shares of company in which public are not substantially interested without consideration/ inadequate consideration

Basic provision of section 56(2)(x)

- Persons covered: All persons
- Receipt of the following is chargeable to tax:
 - any sum of money, without consideration, the **aggregate value** of which exceeds fifty thousand rupees, the **whole of the aggregate value of such sum** shall be chargeable to tax.
 - Immovable property:

Consideration	Amount chargeable to tax
Without consideration, <u>whose Stamp duty value</u> exceeds Rs. 50,000.	<u>Whole of the stamp duty value</u>
Consideration which is less than the Stamp Duty Value of the property by an amount which exceeds higher of the following: <ul style="list-style-type: none">a. fifty thousand rupees orb. 5% of the consideration	The Stamp Duty Value of such property exceeding such consideration

Basic provision of section 56(2)(x)

- Receipt of the following is chargeable to tax:
 - Movable property:

Consideration	Amount chargeable to tax
Without consideration, whose aggregate fair market value exceeds Rs. 50,000	Whole of the <u>aggregate fair market value</u>
Consideration which is less than the <u>aggregate fair market value</u> of the property by an amount exceeding Rs. 50,000	The <u>aggregate fair market value</u> of such property exceeding such consideration.

Aggregate?

1. Sum of money – aggregate receipt from all during the year exceeding Rs. 50,000/- taxable
2. Immovable property –
 - a) Without consideration – limit of Rs. 50,000/- is applicable per property
 - b) Inadequate consideration – limit of Rs. 50,000/- and criteria of 5% of the consideration applicable per property.
3. Movable property –
 - a) Without consideration – aggregate FMV of all the property received without consideration exceeding Rs. 50,000/- taxable
 - b) Inadequate consideration – aggregate difference of FMV of all property received for inadequate consideration over the actual consideration exceeding Rs. 50,000/- taxable.

Receipt

“Receives in any previous year”

- What do you mean by the term “receive”?
- Does it necessarily mean transfer? Issue of share?
- Receipt of sum of money - Received by cheque? Received by bank transfer?
- Receipt of immovable property - At the time of issue of allotment letter by builder or at the time of registration of sale deed or at the time of handing over of possession?
- Receipt of shares - At the time of allotment or at the time of receipt of share certificate or credit in Demat account?
- Receipt of loan in one year and waiver in another year?
- Interest free loan?
- Receipt by agent?
- Receipt in fiduciary capacity?
- Buyback of shares?
- Revocable transfer?

Place of receipt

- Interplay of section 5 and 56(2)(x)
- Place of receipt and place of accrual
- Receipt of sum of money – whether in India or outside India?
- Receipt of immovable property – situated in India? Situated outside India?
- Receipt of shares? If Demat account is in India?
- Receipt of other movable property

Consideration

- Sum of money taxable only if received without consideration
- Movable and immovable property taxable whether received without consideration or for inadequate consideration
- What do you mean by the term “consideration”? See Indian Contract Act, 1872
- Receipt of alimony
- Bonus shares/ Right shares
- Rent for temporary shifting in case of redevelopment - Hardships faced can be adequate consideration?
- Giving up certain rights – right to sue
- Family settlement

Property

- Any sum of money – cash/ bank transfer/ FD's/ waiver of loan or debt/ Foreign Currency
- Property defined in clause (d) of Explanation to section 56(2)(vii)
- Only capital asset or also includes stock-in-trade?
- Immovable property being land or building or both
- Rights in immovable property
- Agricultural land
- Shares and securities – shares of private limited company? Right to subscribe to share capital? Derivatives
- Securities not defined – but defined in Rules
- Business undertaking/ bitcoins/ intangibles/ share in partnership

Exemptions

- Proviso to section 56(2)(x)
- On the occasion of marriage/ by bride and groom and not by parents
- Receipt by any trust or institution registered under section 12A or section 12AA – whether section 11 is redundant?
- Any sum of money or any property received from an individual by a trust created or established solely for the benefit of relative of the individual.
- Revocable transfer of property
- Receipt of shares of foreign company referred to in the Explanation 5 to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company on amalgamation or demerger of foreign companies
- Receipt by a nominee and not by heirs
- Financial assistance from friends, well wishers etc. (non relatives) for some need like medical or educational needs and he spends the same for that purpose?
- Receipt by partner on retirement
- Receipt by LLP or company on conversion not regarded as transfer u/s 47

Receipt from relatives

- Relatives only qua an individual and HUF – sister concerns etc. not covered
- Receipt by HUF from relatives/ Receipt by HUF from relatives of members.
- Receipt from HUF by any member? Whether it would amount to distribution of income or partition of HUF?
- Live in relationship
- Cousins
- Lineal ascendants and descendants – whether only male ascendants or female also?
- persons may be relative of an individual however, the vice versa may not always be necessary

Fair market value

- No valuation rules for bullion
- Valuation date – date on which shares are received – agreement on earlier day and receipt on other day.
- Different method for 56(2)(vii)b and 56(2)(x)?
- No of layers of companies – valuation difficulty.

Others issues

- Constitutional Validity
- Constitutional Validity of Rules
- GAAR / 68 / Transfer pricing
- 50C / 50CA – double taxation
- Cost of acquisition – period of holding – section 49(4)

QUESTIONS, IF ANY?

THANK YOU

Dharan V. Gandhi,

(B.Com, CA, LL.B.)

Advocate, Bombay High Court.

Email: adv.dharangandhi@outlook.com

Tel: +919820068466