
Section 56(2)(x) of Income Tax Act, 1961

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Highlights of Old Provisions i.e. upto 31/03/2017

Overview of Provisions of Section 56(2)(vii):

- Section 2(24)(xv) of the Act, defining income, includes therein any sum of money or value of property referred to in section 56(2)(vii)/(viiia) of the Act.
- As per 56(2)(vii), the following received by an **Individual or HUF** was considered as income:
 - money received without consideration, in aggregate exceeding Rs. 50,000
 - any immovable property received without consideration, stamp duty value whereof exceeds Rs. 50,000/-
 - any immovable property received for a consideration which is less than stamp duty value by an amount exceeding Rs. 50,000/-
 - any property (as defined and specified) received without consideration, the aggregate FMV of which exceed Rs. 50,000/-
 - any property (as defined and specified) received for inadequate consideration where the aggregate shortfall exceed Rs. 50,000/-
- There were some exceptions thereto, like receipts from relatives or receipts on occasion of marriage, etc. They were not liable to tax.

Overview of Provisions of Section 56(2)(viiia):

- Section 56(2)(viiia) of the Act provided that when **shares of closely held company** received **without consideration or for inadequate consideration**
- where aggregate fair market value(FMV) or the shortfall exceeded Rs. 50,000
- **Recipient: (a) Firm (b) closely held company**
- Then, FMV of such shares exceeding Rs. 50,000/- after reducing the value of consideration paid, if any, was considered as 'Income from other Sources'.
- There were some exceptions thereto, like transfer of shares in amalgamation, demerger, reorganization of co-operative bank, etc., and they were not liable to tax.

Amendments in Section 56(2)

Overview of Amendments

- Section 56(2)(vii)/(viiia) is made inoperative with effect from 1-4-2017
- Clause (x) is inserted in section 56(2) to provide that the specified receipts [same as provided in Sec. 56(2)(vii)] will be taxable as income in the hands of **any person**, under the head 'Income from Other Sources'
- The clause also provides for some additional exceptions.
- In section 49(4), reference of clause (x) is inserted to provide that cost of acquisition of property, value whereof is subject to tax under section 56(2)(x), shall include such value, for computing capital gains.
- Sub-clause (xviiia) is inserted in clause (24) of section 2 so as to include income referred in clause (x) of sub-section (2) of section 56, in the definition of income.

Reasons for Amendments in Section 56(2)

The Memorandum explaining provision states the reason as under:

- *“The existing definition of property for the purpose of this section includes immovable property, jewellery, shares, paintings, etc. These anti-abuse provisions are currently applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in cases of other assesseees.”*
- Thus, it appears that through insertion of new provision, the scope of the existing anti-abuse provision is widened to make it applicable to all assesseees.

Old Provisions v. New Provisions

Old Provisions vs. New Provisions

- 56(2)(vii) was applicable only to Individuals/HUF
- 56(2)(viia) was applicable only to Firm and Closely held company.
- Whereas, 56(2)(x) will be applicable to all kinds of assessee.

- 56(2)(vii) and (viia) will now be relevant only if specified receipt(Sum of money/ Immovable Property/ Movable Property/Shares of company in which public are not substantially interested) is before the 1st day of April, 2017.
- 56(2)(x) will govern the cases where specified receipt as mentioned above are received on or after 1st day of April, 2017.

- Section 56(2)(x) is verbatim reproduction of section 56(2)(vii). 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 have been retained in the new section also. Even the definition of the terms including that of 'relative' and 'property' has been retained in the new clause also.

Provisions of Section 56(2)(x)

Sub-Clause (a) of Clause (x) of Section 56

- Taxation of **money** received without consideration:
 - If any sum of money is received by any person
 - The aggregate in whole year if exceeds Rs. 50,000/-.
 - Then, whole of the aggregate value of money received will be considered as 'Income from Other Sources'.

(Exceptions are discussed later.)

“MONEY”

- Section 56(2)(x)(a) talks only about “any sum of **money**”
- The term “money” has been elaborated and explained by Hon’ble Supreme Court in case of **CIT v. Kasturi & Sons Ltd [1999] 237 ITR 24 (SC)** , though the issue pertained to Section 41(2), the same principles may also be applied in case of Sec. 56(2)(x)(a)
- It was held that :

*“It is obvious that the Legislature had deliberately used the word 'moneys' in the provisions of sections 41(2) and 32(1A).
Wherever the Legislature intended to refer to payment in kind other than cash or money, it has taken care to provide specifically therefor.
The word 'money' used in section 41(2) has to be interpreted only as actual money or cash and not as any other thing or benefit which could be evaluated in terms of money.”*

Sub-Clause (b) of Clause (x) of Section 56

- Taxation of **immovable property** received :
 - If received without consideration & SDV > Rs.50,000/-, then SDV will be considered as IFOS
 - In case of inadequate consideration:

Income under IFOS will be [SDV – actual consideration], provided that,

The difference between SDV and actual Consideration is greater than, the **higher** of the following:

(a) Rs. 50,000/-

(b) the amount equal to five per cent of the consideration

Difference between Actual Consideration & SDV

- There were various Judicial pronouncement which provided a relief upto 10% of sale consideration:
 - M/s LGW Limited vs. I.T.O. (ITANo. 267/Kol/2013)
 - ACIT vs. Suvarna Rekha (ITA No.743/Hyd/2009)
 - Rahul Construction Co. vs. ITO (51 SOT 192)

Sub-Clause (b) of Clause (x) of Section 56

- Taxation of **immovable property** received :
 - In case of Immovable Property where the date of agreement and the date of registration of such transfer of asset are not the same, then the Stamp Duty Value may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.
 - The above provision shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than banking channels on or before the date of agreement for transfer of the asset

Sub-Clause (b) of Clause (x) of Section 56

- If the valuation made by SVA is revised in any appeal or revision proceedings later on, Section 155(15) provides for modification of the order of assessment u/s 154, within 4 years from the end of the financial year in which such revision has taken place.
- If the value adopted or assessed or assessable by the State Valuation Authority (SVA) has not been challenged before any authority, Court or High Court, and the assessee claims that this value is more than the fair market value of the property, the assessing officer may refer the question of valuation to Departmental Valuation Officer (DVO).
- If the valuation made by the DVO is less than the valuation made by the SVA, the valuation of DVO will be adopted.
- If the valuation made by the DVO is more than the valuation made by SVA, the valuation of SVA will be adopted.
- DVO will have to give a reasonable opportunity to the assessee before submitting his report. The Valuation made by him or the assessing officer can be challenged in appeal before the appellate authorities.

Reference to DVO by Assessing officer.

- If the value adopted or assessed or assessable by the State Valuation Authority (SVA) has not been challenged before any authority, Court or High Court, and the assessee claims that this value is more than the fair market value of the property, the assessing officer **may** refer the question of valuation to Departmental Valuation Officer (DVO).
- The proviso uses the word `may'. In the context of S. 50C(2), the Tribunal has in the following cases held that “**may**” should be read as `**should**'. It is held that if S. 50C is read to mean that if the AO is not satisfied with the explanation of the assessee then he `may' or `may not' send the matter for valuation to the DVO, then in that case this provision would be rendered redundant.
 - M/s Fortuna Structures Pvt. Ltd. v ACIT (2008)(60 itatindia 886)(Lucknow)
 - Meghraj Baid v ITO 23 SOT 25 (Jodh.)
 - Kalpataru Kalpataru Industries Industries v ITO (ITA No. 5540/Mum/2007)
 - Abbas T. Reshamwala v ITO (ITA No. 3093/Mum/2009)

Sub-Clause (c) of Clause (x) of Section 56

- Taxation of any property other than Money and Immovable Property :
 - If received without consideration & $FMV > Rs.50,000/-$, then FMV will be considered as IFOS
 - If there is inadequate consideration whereby the difference between FMV and consideration exceeds $Rs.50,000/-$ then $(FMV - Consideration)$ will be considered as IFOS

Property:

‘Property’ means the following **capital asset** of the assessee –

- (i) immovable property being land or building or both;
- (ii) share and securities;
- (iii) jewellery;
- (iv) archaeological collections;
- (v) drawings;
- (vi) paintings;
- (vii) sculptures; or
- (viii) any work of art.
- (ix) Bullion

‘Fair market value’ of a property other than immovable property, means the value determined in accordance with Rule 11U and 11UA

Exceptions to Section 56(2)(x):

- Provision of 56(2)(x) shall not apply to any sum of money or any property received-
 - (a) from any **relative**:
 - **In the case of an individual:**
 - spouse of the individual
 - brother or sister of the individual
 - brother or sister of the spouse of the individual.
 - brother or sister of either of the parents of the individual
 - any lineal ascendant or descendant of the individual
 - any lineal ascendant or descendant of the spouse of the individual.
 - the spouse of any of the persons referred to in 2 to 6 above.
 - **In case of a Hindu undivided family**
 - any member thereof.
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Exceptions to Section 56(2)(x):

- Provision of 56(2)(x) shall not apply to any sum of money or any property received-
- ...
 - (b) on the **occasion of the marriage** of the individual
 - (c) under a **will or by way of inheritance**
 - (d) in contemplation of death of the payer or donor, as the case may be
 - (e) from any local authority as defined in the *Explanation* to clause (20) of section 10
 - (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
 - (g) from **or by** any trust or institution registered under section 12A or section 12AA

New Exceptions to Section 56(2)(x):

- (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

- (i) from an individual by a trust created or established solely for the benefit of relative of the individual.

New Exceptions to Section 56(2)(x):

- (J) Sum of money or any property received by way of Certain transfers as referred in section 47 are also not to be considered for Section 56(2)(x):
- 47(i) distribution of capital assets (CA) on the total or partial partition of a HUF
 - 47(iv) transfer of a CA by a Co. to its subsidiary company
 - 47(v) transfer of a CA by a subsidiary Co. to the holding Co.
 - 47(vi) transfer during amalgamation... where amalgamated Co. is an Indian Co.
 - 47(via) transfer during amalgamation where amalgamated Co. is foreign Co.
 - 47(viaa) transfer during amalgamation of a banking co. with a banking Co.
 - 47(vib) transfer, in a demerger, of a CA by the demerged Co. to the resulting Co., if the resulting Co. is an Indian Co.

New Exceptions to Section 56(2)(x):

- (J) Sum of money or any property received by way of Certain transfers as referred in section 47 are also not to be considered for Section 56(2)(x):
- 47(vic) transfer in a demerger, of a CA, being a share(s) held in an Indian Co., by the demerged foreign Co.
 - 47(vica) any transfer in a business reorganization, of a CA by the predecessor co-operative bank to the successor co-operative bank
 - 47(vicb) any transfer by a shareholder, in a business reorganization, of a capital asset being a share or shares held by him in the predecessor co-operative bank
 - 47(vid) any transfer or issue of shares by the resulting Co., in a scheme of demerger to the shareholders of the demerged Co. if the transfer or issue is made in consideration of demerger of the undertaking
 - 47(vii) any transfer by a shareholder, in a scheme of amalgamation, of a CA being a share or shares held by him in the amalgamating Co.

Issues in Section 56(2)(x)

Consideration:

- The word 'consideration' is not defined in Sec. 56(2)(x).
- It is not defined even in the General Clauses Act, 1897.
- Indian Contract Act, 1872 defines consideration in Sec. 2(d) as follows:
“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.”
- In the absence of the definition of consideration in Income Tax Act, it must carry the meaning assigned to it in the Indian Contract Act. [CGT vs. Smt. C.K. Nirmala 215 ITR 156 (Ker – FB) & Chandrakant H.Shah vs. ITO 121 TTJ 145 (Mum)].

➤ ***Subodh Gupta (HUF) v. PCIT [2018] 169 ITD 60 (Delhi - Trib.)***

Only gift received by member of HUF is not chargeable to tax; thus, where assessee HUF received gift of 75,000 equity shares from mother of Karta of assessee HUF, not being member of assessee HUF, said sum would be chargeable to tax under section 56 (2) (vii)

Determination of fair market value for section 56, having been notified under rule 11UA shall be applicable and not as provided under section 2(22B)

Issues

- ***Mrs. Jyoti Rakesh Kapoor v. ITO 17(2)(1) [ITA No.583/M/2018]***
No Capital Gains in case where there is family arrangement, wherein there is relinquishment of interest in property and gifted to family member, even though a sum is received from the recipient of Gift.

- ***Pendurthi Chandrasekhar v. DCIT [2018] 91 taxmann.com 229 (Andhra Pradesh and Telangana)***
Assessee received a gift of Rs. 73 lakhs from his maternal aunt. AO held that since assessee could not show on what 'occasion' such gift was received, he made addition under section 68. It was held that when donor herself had given a confirmation letter clearly stating therein that she had transferred amount of Rs.73 lakhs to account of assessee and further declaring that she gave said gift out of her natural love and affection towards her nephew, AO ought not to have entertained further doubts. **No occasion needs to be proved and donor in instant case being no other than assessee's own maternal aunt, was a 'relative'**

Issues

➤ ***ACIT v. Meenakshi Khanna (143 ITD 744)(Del ITAT)***

Where assessee as per divorce agreement executed in year 1990 received lump sum payments from her ex-husband in August, 2007, receipt by assessee represented accumulated monthly instalments of alimony, which had been received as a consideration for relinquishing all her past and future claims, and, therefore, provisions of section 56(2) would not be applicable to instant case

➤ **Chatterji v. Commissioner of Gift-tax (53 Taxman 428)(Bom)**

Section 2(xii) of the Gift-tax Act, 1958 : Assessee, who was a divorcee, made a proposal of marriage with person 'S'. S agreed to marry and assessee undertook to make over to S, certain shares of a company before marriage – such transfer of aforesaid shares by assessee to S amounted to 'gift' within meaning of section 2(xii) of Gift Tax Act, 1958.

A promise of marriage, although it might be a valid consideration in law under the Indian Contract Act, 1872 could not be considered as consideration in money or money's worth. Various considerations might go into a promise of marriage such as natural love and affection of the parties for each other. These are not capable of being evaluated in money or money's worth. Therefore transfer of the shares in question was covered by the definition of gift' within the meaning of section 2(xii).

- **Vineetkumar Raghavjibhai Bhalodia v. ITO [2011] 12 ITR(T) 616 (Rajkot)**
In the given case a member of HUF received Gift from HUF, Assessing Officer was of the view that HUF is not covered in the definition of 'relative'. It was held that a gift received from 'relative', irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax under provisions of section 56(2)(vi). **HUF is a group of relatives and therefore, gift received from HUF would be exempt from tax under section 56(2)(vi)**

Issues

- The ongoing controversy of whether, receipt of shares on issue of the same be subject matter of the provisions of section 56(2)(x) ([See 148 ITD 260(Mum) Sudhir Menon HUF vs. ACIT])?

VALUATION

Fair Market Value:

- For determination of value of property, the benchmark is **fair market value**.
- FMV is defined by *Explanation (b)* below section 56(2)(vii) to mean value as prescribed under Rules 11U and 11UA.
- Section 56(2)(x), for the purpose of FMV, refers to the definitions given in *Explanation (b)* below section 56(2)(vii) .
- Though in clause (*vii*) sunset date is inserted by Finance Act, 2017, the *Explanation* of the said clause is applied and must be referred for the purpose of Clause (*x*).

Rule 11UA(1)(a)&(b)

➤ **Valuation of Jewellery, archaeological collections, drawings, paintings, sculptures or any work of art:**

(a) FMV= estimated price which such jewellery would fetch if sold in the open market on the valuation date

(b) FMV= the invoice value

-If purchased on valuation date

-Purchase is from **registered dealer**

(c) FMV= price it would fetch if sold in the open market on the valuation date

-If received by any other mode

-Value exceeds Rs. 50,000/-

- obtain the report of registered valuer in respect of the price

Rule 11UA(1)(c)(a)

➤ Valuation of Quoted Shares & Securities

Situation	Fair Market Value
Received by way of transaction carried out through any recognized stock exchange	Transaction value as recorded in such stock exchange.
Received by way of transaction carried out other than through any recognized Stock exchange	the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date and Lowest price as on the valuation date or on a date immediately preceding the valuation date, if such shares or securities are not traded on the valuation date

Rule 11UA(1)(c)(b)

- Valuation of unquoted equity shares: (w.e.f. 01/04/2018)

$$\text{FMV} = \frac{(A+B+C+D - L) \times (PV)}{(PE)}$$

- A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet.
- B= the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer.
- **C= fair market value of shares and securities as determined in the manner provided in this rule**
- D= the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of **the immovable property.**

Rule 11UA(1)(c)(b)

- Valuation of unquoted equity shares: (w.e.f. 01/04/2018)
- L= book value of liabilities shown in the balance sheet **LESS**
 - (a) *paid-up capital in respect of equity shares*
 - (b) *the amount set apart for payment of dividends on preference shares and equity shares...*
 - (c) *reserves and surplus...*
 - (d) *any amount representing provision for taxation...*
 - (e) *any amount representing provisions made for meeting liabilities, other than ascertained liabilities*
 - (f) *any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares*
- PV= the paid up value of such equity shares
- PE = total amount of paid up equity share capital as shown in the balance-sheet

Rule 11UA(1)(c)(c)

- **Valuation of unquoted shares other than equity shares which are not listed in any recognized stock exchange .**

- **FMV=** price it would fetch if sold in the open market on the valuation date
and
the assessee may obtain a report **from a merchant banker or an accountant** in respect of which such valuation.

Note: Recent notification of Central Govt. which omitted Word “an accountant” was only in respect of Rule 11UA(2)(b) which specify the valuation rule for Section 56(2)(viib) and not for Section 56(2)(x)

Rule 11U - Definitions

- **"valuation date"** means the date on which the property or consideration, as the case may be, is received by the assessee.

- **"balance-sheet"** means the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) **as drawn up on the valuation date** which has been **audited by the auditor** appointed under of the Companies Act.

Section 50CA

Section 50CA- Overview

- New provision in case of transfer of **unquoted shares**
- Analogous to s. 50C
- Where the consideration **received or accruing**
- On transfer of share of a company **other than a quoted share**
- If such **consideration < FMV (as per Rule 11UAA)**
- Then, Such FMV will be considered as Full value of consideration for the purpose of Section 48.
- The section applies only if the shares are held as capital asset and not as stock-in-trade.
- The section applies to all shares whether equity or preference. However, the section does not cover convertible debentures.

- *Effective from AY 2018-19*

Where the consideration received or accrued

- As per section 50CA, there should be consideration “**received**” or “**accruing**” as a result of transfer of unquoted shares.
- In the case of ***CIT v. Ashokbhai Chimanbhai [1965] 56 ITR 42 (SC)***, Hon’ble Supreme Court has observed with respect to the meaning of the said terms, the Court observed that **income is said to be received when it reaches the assessee**, whereas **when the right to receive the income becomes vested in the assessee, it is said to accrue or arise**.
- It may be inferred from judicial precedents that the term “**accrue**” **conveys the idea of a present enforceable right to receive** and the term “**received**” means that there is an actual receipt of consideration.
- The section reads as “*Where the consideration received or accruing as a result of the transfer*”. Thus ‘Consideration’ is prerequisite for applicability of Section 50CA. 50CA may not be applicable where no consideration is envisaged.

Section 50CA viz-a-viz Section 56(2)(x)

- Section 56(2)(x) provides that where any person receives, any shares and securities for lower consideration, where the difference between FMV and consideration, exceeds Rs. 50,000/- then such difference between FMV and actual consideration will be considered as income from other sources and chargeable to tax under section 56(2)(x) **in the hands of the transferee/recipient.**
- Whereas, Section 50CA provides that where unquoted shares are transferred at a value which is lower than the FMV then, the consideration will be the FMV of such share and not the actual consideration. Thus, such difference will be **added in the actual consideration of transferor/seller.**
- At the time of transfer of the said asset, subsequently by the recipient, the value as adopted for Section 56(2)(x) at the time of receipt will be considered as cost of acquisition as per Section 49(4).

Section 50CA- Valuation Rules

- Fair Market Value for share other than quoted share shall be as per Rule 11UAA
- Rule 11UAA refers to following Rule for calculating the FMV:
 - (a) Rule 11UA(1)(c)(b) – for equity shares OR
 - (b) Rule 11UA(1)(c)(c) – for shares other than equity shares
- Valuation Date = Date of transfer of unquoted share of a company.

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