

# **INCOME FROM OTHER SOURCES**

**Optimetz Advisory**

# **Taxation of certain receipts without or for inadequate consideration as income [Section 56(2)(x)]**

## **Background**

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)/(vii-a) of the Act.

Section 56(2)(vii) of the Act provided that:

any sum of money received without consideration, in aggregate exceeding Rs. 50,000; or

any immovable property received without or for inadequate consideration, stamp duty value whereof exceeds Rs. 50,000; or

any immovable property received for a consideration which is less than stamp duty value by an amount exceeding Rs. 50,000; or

any property (as defined and specified) received without consideration or for inadequate consideration in aggregate exceeding Rs. 50,000;

by an individual or an HUF, would constitute income chargeable under the head 'Income from other sources'. There were some exceptions thereto, like receipts from relatives or receipts on occasion of marriage, etc. They were not liable to tax.

Section 56(2)(*vii*a) of the Act provided that any property being shares of closely held company received without consideration or for inadequate consideration, where aggregate fair market value exceeded Rs. 50,000, by firm or closely held company, would constitute income chargeable under the head '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.

## **History, in brief**

Section 56(2)(v) was introduced by Finance (No. 2) Act, 2004 for taxation of certain gifts received by an individual or a HUF on or after 1-9-2004 but before 1-4-2006;

The said clause (v) was substituted by new clause (vi) by Taxation Laws (Amendment) Act, 2006 which was applicable in respect of the gift received on or after 1-4-2006 but before 1-10-2009;

Again, Finance (No. 2) Act, 2009 replaced clause (vi) by inserting new clause (vii) in respect of the gift received on or after 1-10-2009;

Further, Finance Act, 2010 inserted new clause (viiia) to tax a firm or closely held company on receipt of shares of closely held company without consideration or for inadequate consideration, on or after 1-6-2010.

## Amendment

Apparently, to widen the scope of the provision, Finance Act, 2017 amends section 56(2) of the Act, with effect from 1-4-2017, as follows:

- a) Section 56(2)(vii)/(viiia) is made inoperative with effect from 1-4-2017 and accordingly, any sum or property received without or for inadequate consideration (as aforesaid) before 1-4-2017 shall be taxable as income under clause (vii)/(viiia).
- b) Clause (x) is inserted in section 56(2) (hereinafter referred as "the Clause") to provide that the following receipts would be taxable as income in the hands of *any person*, under the head 'Income from Other Sources' subject to the other provisions relating thereto, made in the clause:

Any sum of money without consideration, in aggregate exceeding Rs. 50,000; or

Any immovable property without consideration, the stamp duty value of which exceeds Rs. 50,000; or

Any immovable property for a consideration which is less than stamp duty value by an amount exceeding Rs. 50,000; or

Any movable property (as defined and specified) without consideration where aggregate fair market value whereof exceeds Rs. 50,000; or

Any movable property (as defined and specified) for consideration which is less than fair market value by an amount exceeding Rs. 50,000.

- c) The clause also provides for exceptions, mode of computation and other related provision for taxation of the above receipts.
- d) 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.
- e) 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 Amendment**

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.

## Salient features of the provision

- a) The receipts contemplated [any sum of money or immovable property or movable property as stated in **para 8.1-3(b)**], exceeding Rs. 50,000 are taxable.
- b) The amount liable to tax would be:

<i>Property</i>	<i>Mode of receipt</i>	<i>Amount liable to tax</i>
Sum of money	Without consideration	Whole of the aggregate value of money received
Immovable property	Without consideration	Stamp duty value of immovable property
Immovable property	For a consideration less than stamp duty value by Rs. 50,000	Stamp duty value of immovable property in excess of the consideration
Movable property	Without consideration	Whole of the aggregate of fair market value (as per prescribed method) of movable property
Movable property	For a consideration less than fair market value (as per prescribed method) by Rs. 50,000	Aggregate fair market value (as per prescribed method) of movable property in excess of the consideration

- c) The receipts could be by any person.
- d) The receipt must be on or after 1-4-2017.
- e) The sum of money or property received from any relative, etc. (as specified in the proviso to the clause) would not be liable to tax.
- f) *Explanation* to the clause provides reference of certain terms or expressions as defined in *Explanation* to clause (vii).
- g) Property is defined to mean immovable property being land or building or both and other movable properties, i.e., shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

## **Analysis of the provision**

New provisions for taxation of gifts are analysed threadbare in **paras 8.2 to 8.14**.

### **Certain preliminary matters or aspects**

The receipts referred to in section 56(2)(x), although, not in the nature of income are classified as income chargeable under the head 'Income from Other Sources'. Under the scheme of the Act, any receipt in the nature of income can be taxed as income. Any receipt in the nature of capital receipt or a receipt not in the nature of income, as such, cannot be taxed.

The provision may also raise an issue about constitutional validity of the provision taxing the receipts inasmuch as the receipt itself, *per se*, does not constitute income.

In past, Supreme Court had dealt with taxability of income as under:

In case of *Navinchandra Mafatlal v. CIT* [1954] 26 ITR 798 (SC) held that income in its natural and grammatical meaning embraces any profit or gain which is actually received. Accordingly, it can be argued that receipt, *per se* cannot be construed as income which can be taxed.

In *K.P. Varghese v. ITO* [1981] 7 Taxman 13, the Supreme Court interpreted section 52(2) of the Act (as existed then) providing for taxation of understatement of consideration. While interpreting the provision it observed that in a case where full value of consideration is correctly declared, literal construction of section 52(2), would result in an amount being taxed which is neither accrued nor received, which from no view point can be rationally considered as capital gain or any other type of income.

It further observed (page 617):

'..... under entry 82 in List I of the Seventh Schedule to the Constitution, which deals with "Taxes on income other than agricultural income" and under which the I.T. Act, 1961 has been enacted, Parliament cannot "choose to tax as income an item which in no rational sense can be regarded as a citizen's income or even receipt. Sub-section (2) would, therefore, on the construction of the revenue, go outside the legislative power of Parliament and it would not be possible to justify it even as an incidental or ancillary provision or a provision intended to prevent evasion of tax..... ‘

If the tax is not *constitutionally* valid for seller, a question that would arise is its valid for recipient?

Although object of the provision is "anti-abuse", the language of it is silent on the same and hence can be applied in any and every case.

Apart from the above, some other reasons discussed hereafter:

A person may negotiate a deal for purchase of land by hard bargaining so as to reduce his cost, which may be substantially lower than the stamp duty value. The seller may agree to do so under commercial or economic conditions and circumstances as existing presently. Yet, the saving in cost by the person (representing the difference between purchase price and stamp duty value) would constitute income? It is settled law that saving in expenditure cannot constitute income (see para 14, page 197, the Law and Practice of Income-tax, Tenth Edition, Volume I, Kanga and Palkhiwala).

In the like situation, even a farmer may be liable to pay tax on purchase of agricultural land.

Suppose, a needy person appeals for contribution generally to treat critical illness and say, receives Rs. 5 lakhs for the same; it would be taxable in his hands.

Thus, it may be appreciated that *bona fide* and genuine transactions would be hit by the ostensibly anti abuse provision but in reality applicable in all situations.

## **Different nature of income in Clause (x) of section 56(2)**

It provides:

"... the following incomes, shall be chargeable to income-tax under the head 'income from other sources', namely ...".

Thus, it may be noted that sub-section (2), as such, describes or defines in a sense, the nature of income which could be charged under the head 'income from other sources'.

### **Recipient would be any person**

Hitherto, to tax such receipts: the scope of section 56(2)(vii) was restricted only to individual and HUF; and that of section 56(2)(viiia) was restricted to firm and closely held company.

Now, in terms of the new clause (x) in section 56(2), any person will be taxed on receipt of sum of money or property without consideration or for inadequate consideration. Any person means a person defined under section 2(31) of the Act and it includes following:

An Individual;

A HUF;

A company;

A firm (including LLP);

an association of persons or a body of individuals, whether incorporated or not;

a local authority; and

every artificial juridical person, not falling within any of the above.

The provision is applicable to any PERSON, which would include all persons irrespective of their residential status, nature of profession or vocation.

In case of minors, receipts construed as income under the clause would be includible in the hands of the parents under section 64 of the Act.

## Receives

As noted above, the taxable event is receipt of sum of money or immovable property or movable property. Such receipt is being taxed as income.

"Receive"- Connotation of:

Ordinarily, 'receive' means: to take as, as something, *i.e.*, offered, given, committed, sending, paid or the like; to accept. It could also mean to take possession of.

"The word "receive" has been interpreted:

"To receive means to get by a transfer, as to receive a gift, to receive a letter, to receive money." - *Ballentine's Law Dictionary, 1093.*

Webster's New International Dictionary (2d ed.), 2076, gives the following definition:

"To come into possession of, get, acquire, or the like, from any source outside of oneself."

In other words, to "receive" seems to imply the taking into actual possession of some object which may be real or personal property.

As a matter of fact, the results obtained in the statutes, using the words "received" and "transferred," are identical.“

[In re McCullough's Estate, 193 Wash. 145, 74 P.2d 877 (1928)]

"To receive means to get by a transfer, as, to receive a gift, to receive a letter, or to receive money and involves an actual receipt.“

(The Major Law Lexicon by P. Ramanatha Aiyar, 4th Edn., Vol. 5; College Law Dictionaries by Dr. Avtar Singh, 2nd Edn.)

"The Tribunal held that the word "received" in the context of section 45(5)(b) refers only to such receipts which an assessee receives in pursuance of a vested right or enforceable decree/award. A conditional receipt of money subject to the final decision cannot be said to have been received by an assessee in his own right.

... We find no error in the order of the Tribunal.“

[*Chief CIT v. Smt. Shantavva* [2004] 136 Taxman 678 (Kar.)]

"The word 'receive' does not necessarily connote the actual receipt of the cash into the hands of the assessee-transferor. The discharge of the transferor's liability can, in this context, also be regarded as a receipt by the transferor to the extent to which part of the consideration is retained by the transferee for such discharge."

[*CIT v. N. M. A. Mohammed Haniffa* (2001) 115 Taxman 181 (Madras)]

"Property is "received" when it is within the power of its receiver to appropriate it, even though some definitive understood and determined act is still to be done. *Taxon Oil & Land Co. of Texas v. U. S., C.C.A.Tex.*, 115 F.2d 647, 650."

(Permanent Edition of Words & Phrases)

Supreme Court while interpreting the words 'is received' or 'are received' has held that:

- a) The words 'are received' are not terms of art and their meaning must receive colour from the context in which they are used [*CIT v. Dharamdas Hargovandas* [1961] 42 ITR 427 (SC)];
- b) The word receipt of income refers to the first occasion when the recipient gets the money under his own control [*Keshav Mills Ltd. v. CIT* [1953] 23 ITR 230 (SC)]

Two significant aspects may be noted from the above decision: Contextual meaning; and receipt must be such that the thing received is under recipient's own control or domain.

Accordingly, it appears the meaning of 'receives' must be construed having regard to the following :

The receipt is to be treated as income.

The receipt must be of money or immovable property or movable property as specified.

The receipt must be without consideration or for a consideration which is less than stamp duty value or fair market value.

The receipt must be from any person(s) (which implies that the person divest his ownership - legal/beneficial - and control in favour of recipient).

In the context, one needs to take into account the provisions of Transfer of Property Act, 1882, in particular, dealing with 'gift'.

Gift is defined by section 122 of the said Act as follows:

"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.

Acceptance when to be made—

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void."

Section 123 of the said Act provides for 'Transfer how effected' and reads as follows:

"For the purpose of making a gift of immovable property, the transfer must be effected by a register instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of immovable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.“

Having regard to the above provisions, it can be inferred that the receipt of any sum of money or property, without consideration, constitutes a gift. Accordingly, it should be in compliance with the above provisions.

The above provisions do contemplate delivery and/or instrument and/or acceptance.

Hence, the word 'receives' (without consideration), in the context of different assets, could mean as follows, in relation to:

Sum of money, when received without consideration and the recipient gets absolute control over the same.

Immovable property, when the recipient gets the possession as well as title thereto along with beneficial rights of enjoyment, like, the absolute rights of disposal thereof or deal with the same as he likes.

Movable property, when recipient gets possession, legal title where required and absolute control to deal with the same in the manner which he likes implying legal as well as beneficial ownership.

*Prima facie*, therefore, unless all the above requisites are present in a transaction of receipt, it cannot be said that a person receives the money or property, which could be taxed under the clause.

In case of transfer for inadequate consideration, to determine the point in time at which the property could be regarded as received, the above criteria may not be wholly relevant (as the transfer for inadequate consideration may not be construed as gift under the provisions of law considered) and the position could be as follows:

In case of immovable property, being transfer for a consideration (considered as inadequate), in certain circumstances including as specified in section 53A of the Transfer of Property Act, transfer of beneficial ownership may be regarded as complete transfer and, accordingly, may constitute receipt even for the purposes of the provision; and

In case of movable property, being transfer for a consideration (considered as inadequate), having regard to the nature of property, in terms of the applicable provisions of law, the transfer, whether complete or not, may have to be determined and accordingly ascertain whether it would constitute receipt for the purposes of the provision.

## **From any person**

The clause, as said above, taxes the receipts (as specified) from any person or persons (as discussed in the context of recipient).

Does Government fall within the definition of 'person'? As per Andhra Pradesh High Court in *CIT v. Dredging Corporation of India* [1988] 39 Taxman 301 (AP), Government does not constitute a person.

As per *Commentary by Kanga and Palkhiwala*, the Law and Practice of Income-tax (Tenth Edition, Volume 1, page 138), the word 'person' include the crown and government of an Indian State. However, the said observation is based on some judgments of House of Lord and Privy Council.

In case of *CIT v. Warner Hindustan Ltd.* (1986) 158 ITR 51 (AP) it was held as under:

"The expression 'person' is of a wide connotation and there is no reason why it should be interpreted as not including a foreign government."

[For the purpose of : rule 1(v) of the Second Schedule to the Companies (Profits) Surtax Act, 1964]

In case of *State of Punjab v. Okara Grain Buyers Syndicate Ltd.* [AIR 1964 SC 669] it was held as under:

"State Government is a person within the meaning of section 13 of the Displaced Persons' (Debts Adjustment) Act, 1951. However, but for the context of the said Act, there would undoubtedly be grave difficulties in the way of accepting the view that "person" was intended to include the Government of the Union or of the State."

Accordingly, a view can be taken that if any land or building or any property is purchased from the Government, for a price, and, stamp duty value or fair market value thereof is higher by more than Rs. 50,000, even then, the difference, cannot be taxed as income inasmuch as the receipt is not from a person.

However, a different view cannot be ruled out; also possibly, it may be treated as subsidy being income as per section 2(24)(*xviii*) of the Act.

## **'Receipt' on or after 1-4-2017**

The provision of section 56(2)(x) will take effect from 1-4-2017. Accordingly, any sum of money or property received without or for inadequate consideration, on or after the said date would be chargeable to tax as per the provision of clause (x) of section 56(2).

Thus, if any transfer undertaken prior to 1-4-2017 is completed on or after 1-4-2017, the clause may apply.

## Consideration - Connotation of

The clause contemplates two situations:

Receipt of any sum of money or property without consideration ; or

Receipt of any property for lower or inadequate consideration, meaning consideration is lower than FMV (as defined).

The Courts, in the context of the provisions under the Direct tax Laws explained the word 'consideration' as follows:

In the context of section 56(2)(v) of the Income-tax Act, 1961, Mumbai Tribunal in case of *Chandrakant H. Shah* [2010] 124 ITD 177 (Mumbai-Trib.) explained it as follows:

"It is, however, important to note that in section 56(2)(v), the term 'consideration' is neither prefixed by the word "adequate" nor it is suffixed by the words "money or money's worth", hence, if in any transaction there exists consideration as per the provisions of the Indian Contract Act, 1872, such transaction would not come into the ambit of this section. This legal position leads us to have a look at the provisions of the Indian Contract Act, 1872... "

In the context of the provisions of the Income-tax Act, 1922, Patna High Court in *Rai Bahadur H.P. Banerjee v. CIT* [1941] 9 ITR 137 (Patna) explained it as follows:

"In my judgment the word 'consideration' appearing in this sub-section is used in its legal sense as it is used in connection with the transfer of assets. A transfer may be gratuitous or wholly without consideration or it may be with consideration, that is for some return moving from the transferee to the transferor. The word 'consideration' is not defined in the Transfer of Property Act, and in my judgment it must be given a meaning similar to the meaning which it has in the Indian Contract Act. Section 2(b), Indian Contract Act, defines 'consideration' in these words '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 context of the provisions of the Gift Tax Act, 1958 the Full Bench of the Kerala High Court in *CGT v. Smt. C. K. Nirmala* [1995] 215 ITR 156, explained it as follows:

"Within the framework of the above finding what is required to be decided by this court is whether the transfer of property involved in this case would come within the meaning of the word 'gift' in section 2(xii) of the Act. One of the essential ingredients constituting the gift under this provision is that the transfer of property by one person to another must be without consideration in money or money's worth. However, the word 'consideration' is not defined in the Act and, therefore, it must carry the meaning assigned to it in section 2(d) of the Indian Contract Act, 1872. In *Keshub Mahindra v. CGT* [1968] 70 ITR 1 (Bombay), the Bombay High Court, in a similar situation, adopted the said course".

In case of *Regional Provident Fund Commissioner v. Shiv Kumar Joshi*, [AIR 2000 SC 331/(2000) 1 SCC 98], Supreme Court explained the meaning of 'consideration' as under:

"The word 'consideration' has not been defined either under the scheme or the Act. Black's Law Dictionary defines 'consideration' thus: Consideration is not to be confounded with motive, consideration means something which is of value in the eye of the law, moving from the plaintiff, either or benefit of the plaintiff or of detriment to the defendant. In volume 17 of Corpus Juris Secundum (pp. 420-421 and 425) the import of 'consideration' has been described thus: Various definitions of consideration are to be found in the textbooks and judicial opinions. A sufficient one, as stated in Corpus Juris and which has been quoted and cited with approval is, "a benefit to the party promising, or a loss or detriment to the party to whom the promise is made....". At common law every contract not under seal requires a consideration to support it, that is, as shown in the definition above, some benefit to the promisor, or some loss or detriment to the promisee... There is a sufficient consideration for a promise if there is any benefit to the promisor or any detriment to the promisee. It may be laid down as a general rule. in accordance with the definition given above, that there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss or detriment to the promisee. The gist of the term 'consideration' and its legal significance has been clearly summed up in Section 2(d) of the Contract Act which defines 'consideration' thus: 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 promise to do or to abstain from doing, something such actor abstinence or promise is called a consideration for the promise. Webster's Third New International Dictionary (Unabridged) defines 'consideration' as: Something that is legally regarded as the equivalent or return given or suffered by one for the act or promise of another."

Section 2(*d*) of the Indian Contract Act provides the meaning of 'consideration' as under:

"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.

There is nothing to show in the definition of the term 'consideration' that the benefit of any act or abstinence must 'directly' go to the promisor. A contract can arise even though the promisee does or abstains from doing something for the benefit of a third party and the promisor can treat the benefit to a partnership firms where he is also a partner as consideration. Sir William R. Anson said : The consideration may be of benefit to the promisor, or to a third party, or may be of no apparent benefit to anybody, but merely a detriment to the promise. (Principles of the English Law of Contract)....

...but the cardinal issue in this case has to be solved within the framework of the provisions contained in section 2(*xii*) of the Gift-tax Act read with section 2(*d*) of the Indian Contract Act..."

Various Courts and Tribunals have referred and followed the definition of 'consideration' as provided under section 2(d) of Indian Contract Act. In this connection, reference can be made to the following judgments:

*Hari Krishna Kanoi v. Appropriate Authority* [1993] 71 Taxman 413 (Cal.)

*Keshub Mahindra v. CGT* [1968] 70 ITR 1 (Bom.)

*CGT v. C K Nirmala* [1995] 215 ITR 156 (Ker.)

*CGT v. Smt. K. Nagammal* [1997] 226 ITR 598 (Ker.)

*Achalsinhji Kesrisinhji & Co. v. CIT* [1986] 25 Taxman 264 (Guj)

*CWT v. Khan Saheb Dost Mohd. Alladin* [1973] 91 ITR 179 (AP)

*Purvez Poonawala v. ITO* [2011] 10 taxmann.com 221/47 SOT 380 (Mum)

Thus, in the context of the provision, the word 'consideration' in the provision needs to be construed having regard to the provisions of the Indian Contract Act.

Accordingly, any amount received pursuant to any contract with respect to any goods, services, promises, payments, etc., cannot be considered as income. To illustrate, any consideration for immovable property, receipt of insurance money, compensation or damages under a contract, etc., cannot be considered as income.

The provision of the Clause would not apply to the amount received in lieu of giving of rights to contest since it cannot be said that amount is received without consideration. In this context, Mumbai Tribunal in case of *Purvez Poonawala v. ITO* [2011] 10 taxmann.com 221/47 SOT 380 (Mum. - Trib.) held that "..the assessee has abstained from contesting the will and this constitute the consideration for payment by Mr..... to the assessee. Thus the amount received by the assessee is not without any consideration. Therefore, the provisions of section 56(2)(v) of the Act were not applicable."

## **Subvention Money**

Recently, Supreme Court in case of *Siemens Public Communication Network P. Ltd. v. CIT* [2017] 77 taxmann.com 22 held that subvention money received by loss making company from parent company could be understood to be payment made in order to protect the capital investment of the company, hence it is capital receipt and not revenue receipt.

Now, the question arise that in view of the provision of Clause (x), would such receipt of subvention money be taxable in the hands of assessee? Does it amount to receipt without consideration construed as income? *Prima facie*, having regard to facts, purpose and relationship, it appears that subvention money paid by the parent company cannot be considered as payment without consideration. If the business of the parent company wholly or partly depends on the subsidiary company which suffers losses; it is prime obligation of the parent company to provide fund to the subsidiary company for survival of business of both the companies. In this context, commercial expediency and business need may be considered as good consideration. Accordingly, it could be argued that depending on facts provision of Clause (x) may not apply on receipt of subvention money by the subsidiary company.

However, matter is not free from doubt.

## Family Settlement

In case of genuine family arrangement, in order to purchase peace, resolve disputes and keep harmony in the family, certain amount is paid or property is given to family member(s), such receipt cannot be considered as receipt without consideration in the hands of recipient [*Dy. CIT v. Paras D Gundecha* [2015] 62 taxmann.com 170/155 ITD 880 (Mum. - Trib.)]. In family settlement, only existing interest or rights in the common asset or property gets realized, therefore, the provision of Clause (x) would not apply in such cases.

## **Receipt of sum of money - Section 56(2)(x)(a)**

The provision lays down that:

If any person,

Receives without consideration from any person,

On or after 1-4-2017,

Any sum of money, the aggregate whereof exceeds Rs. 50,000,

then the whole of the aggregate as income from other sources.

To illustrate, if a person receives Rs. 25,000 on 5-4-2017 from Mr. A, Rs. 10,000, from Mr. B on 12-4-2017 and Rs. 30,000 from Mr. C on 13-1-2018, without consideration, the aggregate amount received between 1-4-2017 and 31-3-2018 is Rs. 65,000. The entire amount of Rs. 65,000 would be taxable as income from other sources under section 56(2)(x) of the Act in assessment year 2018-19.

## Nature of Receipts

- i. As per literal reading of the provision, any receipt without consideration, save exclusions, whether capital or otherwise may be considered as income. To illustrate the receipts, apart from gifts, could be:  
Any compensation received in case of injuries, death, etc.  
Earthquake, or natural calamity relief,  
Receipts by religious heads or by gurus on gurupoornima, etc.
- ii. The provision would apply to any person irrespective of his residential status (subject to provisions of DTAA applicable, if any, in case of a non-resident). Accordingly, any receipt by a non-resident in India of the nature discussed above would be considered as income in his hands.

- iii. Gifts on occasions, other than marriage, for example, birthday, religious ceremonies, like, thread ceremony, would be taxable as income. Gifts received on the occasion of the marriage of the individual, irrespective of any limit, would not constitute income as per the provision.
- iv. The receipts must be without consideration, implying in the nature of gift, as discussed above.

However, the provision of the Clause would not apply to gift in kind except in case of certain capital asset as defined under the *Explanation*.

A gift received by amateur sportsman is not nature of income as clarified by the CBDT *vide Circular No. 447 dated 22-1-1986*. The relevant para of the said Circular reads as under:

"...However, in the case of a non-professional, the award received by him will be in the nature of a gift and/or personal testimonial. In view of this, it is clarified, that such awards in the case of a sportsman, who is not a professional, will not be liable to tax in his hands as it would not be in the nature of income. The question whether a sportsman is a professional or not will depend upon the facts and circumstances of each case to be decided by the Assessing Officer."

However, after introduction of Clause (x) (also similar provisions in past since 2004), a question arises about the applicability of the Circular and the matter may not be free from doubt. Further, the said Circular also states that whether a sportsman is a professional or not will depend upon the facts and circumstances of each case to be decided by the Assessing Officer. Therefore, the litigation in such matter is certain.

However, Delhi Tribunal in case of *Abinav Bindra v. Dy. CIT* [2013] 35 taxmann.com 575/59 SOT 87] based on typical set of facts held that gift received by non-professional sportsman is not liable to tax under section 56(2)(v) as then existed. It held and observed as under:

"Coming back to the facts of the assessee's case, Shri Abhinav Bindra is the first person in the history of independent India to have won the Olympic Gold Medal. In a country whose population is more than 100 crores, if a sportsman who is not a professional sportsman has won the gold medal for the first time after 60 years of independence of the country and he has been given the awards/rewards/prizes mainly by various Governments, local authorities, trusts and institutions and of course some corporate/individuals, a liberal construction of Circular No. 447 is required. Considering the facts of the case and the nature and spirit of Circular No. 447, we hold that in the case of the assessee, *viz.*, Shri Abhinav Bindra, all the rewards/prizes/gifts received by him are covered by Circular No. 447 dated 22nd January, 1986 and, therefore, should not be treated as income in his hands."

The provision of Clause (x) would apply to the gift received by politician as token for appreciation of work specially in a circumstances where no obligations on assessee to perform any duty toward donors and such money is received for personal qualities and not from political vacation [*Dy. CIT v. Mayawati* [2010] 7 taxmann.com 45/42 SOT 59 (Delhi - Trib.)].

## **Receipt of immovable property - Section 56(2)(x)(b)**

It contemplates:

Receipt without consideration; and

Receipt for inadequate consideration (as specified).

The clause provides as follows:

*Situation 1:*

a) If any person receives,

b) From any person,

c) On or after 1-4-2017,

d) Any immovable property, without consideration,

e) Stamp duty value of which property exceeds Rs. 50,000,

then Stamp duty value would be chargeable as income under the head 'Income from Other Sources'.

*Situation 2:*

- a) If any person receives,
- b) From any person,
- c) On or after 1-4-2017,
- d) Any immovable property for a consideration which is less than the stamp duty value of the property by more than Rs. 50,000,

then the stamp duty value in excess of the consideration would be chargeable as income under the head 'Income from Other Sources'.

For the purpose, immovable property, is described as 'immovable property being a land or building or both'.

## **Land or Building**

In the context, in particular, an issue arises whether tenancy, lease, licences in or with respect to land or building or both are acquired, would they constitute land or building? In the definition of property, what is included is 'immovable property being land or building or both'. In other words, to constitute an immovable property, it must be land or building or both.

Chapter XXC of the Act as applicable to a transfer of any immovable property effected before 1-7-2002 defined immovable property. Apart from land and building, it also included any rights in or with respect to any land or any building [*See section 269UA(d)(ii)*].

Similarly, while defining owner of house property, clauses (iii) to (iiib) of section 27 of the Act refer to certain types of transactions in or with respect to land or building.

However, the definition of property does not refer to some such rights or transactions, which may enable use or enjoyment of property.

Accordingly, *prima facie*, in particular, having regard to its description, context and objectives, it appears such acquisition of rights cannot be equated with immovable property and, therefore, such rights in or with respect to immovable property cannot be regarded as immovable property, entailing its treatment as income under the clause.

## **Agricultural land**

Whether the land would include agricultural land also? The definition of capital asset under section 2(14) excludes certain agricultural land. However, the said definition is not relevant since the Clause specifically provides the definition of property which *inter alia* includes capital asset namely immovable property being land. Therefore, for the purpose of this Clause, land may include agricultural land also.

## **Consideration and lower consideration**

Section 56(2)(x)(b) describes two different nature of incomes in respect of receipt of immovable property.

Section 56(2)(x)(b)(A) deals with receipt of immovable property without consideration. The term consideration is explained in **para 8.8**. Accordingly, any amount received pursuant to any contract entailing some outgo in cash or in kind may not be covered as receipt of immovable property without consideration.

Section 56(2)(x)(b)(B) deals with the second case in the nature of lower consideration or inadequate consideration. The provision specifically provides for a benchmark for determining the lower consideration. It does not use any language, like 'inadequate consideration' or 'without adequate consideration' leaving the determination of the extent of inadequacy of the consideration.

The benchmark is stamp duty value. If the consideration is lower than the stamp duty value, the difference, if any, in excess of Rs. 50,000 is regarded as income. To put it differently, the difference, if any, is less than Rs. 50,000, it is not considered as income.

## **Stamp Duty Value**

Stamp duty value is defined by *Explanation (f)* below clause (vii) to mean:

- a) Value adopted or assessed or assessable,
- b) By any authority or Central Government or State Government,
- c) For payment of stamp duty in respect of an immovable property.

The definition of stamp duty value is more or less on the same lines as applicable for computing capital gains under section 50C of the Act, being an existing provision, and, therefore, not discussed in details.

In case, stamp duty value is disputed by assessee on grounds contained in section 50C(2) of the Act, it may be referred to Valuation Officer in terms of section 50C of the Act and section 155(15) of the Act.

## **Date for adoption of Stamp Duty Value or Market Value**

The tax is on the receipt of specified nature. The language, to illustrate, reads: 'where any person... receives... any immovable property... without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property'.

The provision itself does not throw any light about the date of which the stamp duty value should be adopted. Hence, it may have to be determined having regard to the nature of transaction. The nature of transaction is 'receive'. Accordingly, on the date of receipt, one will have to find the value. In relation to a transaction in immovable property, there are various stages involved and to illustrate: agreement to purchase, obtaining possession, payment of consideration, conveyance, registration, etc. The provision of section 2(47) of the Act defining 'transfer' contemplates various different types of situations for determining the transfer, which may enable determination of date of transfer. However, obviously, that provision cannot apply.

As discussed earlier, in the context, it cannot be said that the person has received the immovable property, unless the legal title and beneficial ownership is vested in the recipient. Accordingly, it appears the date on which the last of the requisite requirement for transferring the immovable property is completed; the value on that date may be relevant, having regard to the facts and circumstances of the case.

For the purpose 'assessable' has the same meaning as assigned to in *Explanation 2* below section 50C(2) of the Act as price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

On a literal reading, the obligation to determine such value is cast on the assessee, on the same basis as it would have been valued by a stamp duty authority.

## Illustrations

*a) Where immovable property is transferred without consideration, the position could be as follows :*

Mr. B gifts immovable property to Mr. A. Its stamp duty value is, say, Rs. 5 lakhs. The stamp duty value, *i.e.*, Rs. 5 lakhs, would be the amount of income chargeable to tax under section 56(2)(x)(b)(A) of the Act.

*b) Where immovable property is received for inadequate consideration:*

Mr. X has sold his immovable property to Mr. Y for Rs. 10 lakhs. Stamp duty authorities assessed the value of property at Rs. 12 lakhs. The difference is Rs. 2 lakhs and is in excess of Rs. 50,000. Accordingly, Mr. Y would be chargeable to tax on Rs. 2 lakhs under section 56(2)(x)(b)(B) of the Act. Here, Mr. X is liable to capital gains tax. For computing capital gains in his hands the consideration would be Rs. 12 lakhs, as per section 50C of the Act.

## **Aggregation requirement - Not stipulated**

There is no requirement for aggregation as in case of receipt of sum of money. *Prima facie*, the aggregation may not be practical and feasible, and, therefore, not provided for.

Accordingly, when, in a given case, more than one immovable property is received without consideration or lesser consideration, in respect of each of the immovable property it would be necessary to find its quantum. If quantum in respect of any immovable property or the difference in consideration is less than Rs. 50,000, it would not be treated as income. Further, it would not be aggregated with income arising in respect of any other receipt.

To illustrate, Mr. A has received gift of agricultural land having stamp duty value of Rs. 40,000, apart from a residential house having a stamp duty value of Rs. 80,000. In this case, the gift of agricultural land would not fall within the mischief of section 56(2)(x)(b)(A) of the Act as its value is below Rs. 50,000 and therefore, it would not be considered as income. Mr. A would be liable to tax on Rs. 80,000.

## **Receipt of movable property - Section 56(2)(x)(c)**

It contemplates:

Receipt without consideration; and

Receipt for inadequate consideration (as specified).

The clause provides as follows:

- a) If any person receives,
  - b) From any person,
  - c) On or after 1-4-2017,
  - d) Any movable property, without consideration,
  - e) Aggregate fair market value of such property exceeds Rs. 50,000,
- then aggregate fair market value would be chargeable as income under the head 'income from other sources'.

Also:

- a) If any person receives,
- b) From any person,
- c) On or after 1-4-2017,
- d) Any movable property for a consideration which is less than the fair market value of the property by more than Rs. 50,000,

then the aggregate fair market value in excess of the consideration would be chargeable as income under the head 'income from other sources'.

## **Property**

*Explanation (d)* below the clause (vii) of section 56(2) defines 'property' and 'movable property' as consisting of the following items:—

- a) Shares and securities
- b) Jewellery
- c) Archaeological collections
- d) Drawings
- e) Paintings
- f) Sculptures
- g) Any work of art
- h) Bullion

As per the definition, property means only capital asset and not stock-in-trade. Therefore, the provision will not apply if the above properties are received as stock-in-trade.

Further, the definition of property is exhaustive and only covers specified capital asset. Thus, the provision of Clause (x) would not apply on receipt of any other capital asset (other than specified asset) without consideration or for inadequate consideration.

## **Consideration and Lower Consideration**

Section 56(2)(x)(c) describes two different nature of incomes in respect of receipt of movable property.

Section 56(2)(x)(c)(A) deals with receipt of movable property without consideration. The term 'consideration' is explained in **para 8.10** Accordingly, any amount received pursuant to any contract entailing some outgo in cash or in kind may not be covered as receipt of movable property without consideration. However, it may fall under the other item of sub-clause (c).

Section 56(2)(x)(c)(B) deals with the second case in the nature of lower consideration or inadequate consideration. The provision specifically provides for a benchmark for determining the lower consideration. It does not use any language, like, 'inadequate consideration' or 'without adequate consideration' leaving the determination of the extent of inadequacy of the consideration.

The benchmark is fair market value. If the consideration is lower than the fair market value, the difference, if any, in excess of Rs. 50,000 is regarded as income. In other words, the difference, if any, is less than Rs. 50,000, it is not considered as income.

## **Fair Market Value**

As explained above, for determination of value, the benchmark is fair market value.

Fair market value is defined by *Explanation (b)* below the clause (vii) of section 56(2) to mean value as prescribed under Rules 11U and 11UA. It may be noted that clause (x) of section 56(2) refers the definitions given in *Explanation* to clause (vii) of the said sub-section. In other words, 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).

## Illustrations

*Where movable property is transferred without consideration, the position could be as follows:*

Mr. B gifts movable property to Mr. A. The fair market value as per prescribed method therefor is, say, Rs. 5 lakhs. The fair market value i.e. Rs. 5 lakhs, would be the amount of income chargeable to tax under section 56(2)(x)(c)(A) of the Act.

*Where movable property is received for inadequate consideration:*

Mr. X has sold his movable property to Mr. Y for Rs. 10 lakhs. Fair market value of property as per prescribed method is Rs. 12 lakhs. The difference is Rs. 2 lakhs and is in excess of Rs. 50,000. Accordingly, Mr. Y would be chargeable to tax on Rs. 2 lakhs under section 56(2)(x)(c)(B).

## Aggregation

Unlike sub-clause (b) of clause (x), sub-clause (c) of clause (x) describing receipts (both without and for inadequate consideration) of movable property as income provides for aggregation and it is on the same lines as sub-clause (a) of clause (x) in relation to receipts of sum of money.

To illustrate, Mr. X receives gift of jewellery from Mr. A, Mr. B and Mr. C respectively having a fair market value of Rs. 25,000, Rs. 35,000 and Rs. 15,000. Each of them is below Rs. 50,000. However, the aggregate is Rs. 75,000. Under section 56(2)(x)(c)(A) the aggregate would constitute income and being in excess of Rs. 50,000, it would be treated as income chargeable under the head 'income from other sources'.

## **Aggregation of receipts under different clauses**

While sub-clauses (a) and (c) of clause (x) of section 56(2) provide for aggregation of receipts referred to therein, there is no provision for aggregation of receipts under sub-clause (b) of clause (x).

As noted above, the five different receipts under the sub-clause have been described separately. Each of them to constitute income chargeable under the head Income from Other Sources, must fulfil the requisite requirements. In respect of income referred in sub-clause (a) aggregation is required of the receipts of the nature referred therein. Similarly, in sub-clause (c)(A) and sub-clause (c)(B) aggregation is required of the receipts respectively referred in the said sub-clauses.

However, clause (x) does not contemplate or require aggregation of the receipts referred in different sub-clauses.

To illustrate, Mr. A has received:

Rs. 45,000 by cheque from Mr. X.

Immovable property of Rs. 45,000 from Mr. Y.

Jewellery of Rs. 35,000 from Mr. Z.

The aggregate receipts exceed Rs. 50,000. However, individually, they are below Rs. 50,000 and, therefore, would not constitute income. For the purpose of finding out whether the receipt is in excess of Rs. 50,000, the clause does not require aggregation of different receipts, taxable under different sub-clauses.

## **Receipts not liable to tax**

The proviso to the Clause provides that the receipt of any sum of money or any property would not be considered as income, if they are received in the following circumstances:

- i. From any relative
- ii. Upon marriage of individual
- iii. Under a will or by way of inheritance
- iv. In contemplation of death of the payer or donor.
- v. From any local authorities defined in *Explanation* below section 10(20)
- vi. From any fund or foundation or university or other educational institution or hospitals or other medical institutions or any trust or institution referred in section 10(23C) of the Act.

- vii. From or by any trust or institution registered under section 12A or 12AA of the Act.
- 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 section 10(23C) of the Act.
- ix. By way of transaction not regarded as transfer under clause (i) 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.

## Relative

As per the proviso, the provision of this Clause would not apply to any sum of money or any property is received from relatives. For the purpose, the *Explanation (e)* to clause (vii) of section 56(2) defines relative as under:

"(e) "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"

While determining the scope and meaning of relative in the context of the similar earlier provisions in the Act, Appellate Tribunal in the following judgments clarified as under:

Mother's sister's son is not relative [*Asstt. CIT v. Masanam Veerakumar* [2013] 34 taxmann.com 267/143 ITD 664 (Chennai - Trib.)]

Relative of karta of HUF is also relative [*Harshadbhai Dahyalal Vaidhya (HUF) v. ITO* [2013] 33 taxmann.com 483/144 ITD 605 (Ahd. - Trib.)]

In case of minors, relationship of donor should be with reference to minor who is to be treated as 'individual' and not his parents [*Asstt. CIT v. Lucky Pamnani* [2011] 9 taxmann.com 146 (Mum. - Trib.)]

Gift received from HUF is not specifically covered under the definition. However, contrary view has taken by Tribunal [*Vineetkumar Raghavjibhai Bhalodia v. ITO* [2011] 11 taxmann.com 384/46 SOT 97 (Rajkot - Trib.)].

## **Receipt by charitable trust, etc.**

The provision of clause (x) will not apply, even if any sum of money or any property is received 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 section 10(23C) of the Act.

The relevant sub-clauses of section 10(23C) referred above are:

*sub-clause (iv)* - any other fund or institution established for charitable purposes;

*sub-clause (v)* - any trust or institution wholly for public religious purposes or wholly for public religious purposes and charitable purposes;

*sub-clause (vi)* - any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority.

*Sub-clause (via)* - any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (*iiiac*) or sub-clause (*iiiae*) and which may be approved by the prescribed authority.

## **Transactions not regarded as transfer**

The provision of clause (x) will not apply, if any property is received by way of transaction not regarded as transfer under clause (i) 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.

The relevant clauses of section 47 referred above are:

Clause (i) : receipt of capital assets on the total or partial partition of a HUF

clause (vi) : receipt of a capital asset by amalgamated company

clause (via) : receipt of capital asset being shares in Indian company by foreign company on amalgamation of another foreign company.

clause (viaa) : receipt of capital asset by banking institution on amalgamation of banking company.

clause (vib) : receipt of capital asset by resulting company being Indian company on demerger

clause (*vic*) : receipt of capital asset being shares in Indian company by resulting foreign company on demerger of another foreign company.

clause (*vica*) : receipt of capital asset by successor co-operative bank on business re-organisation.

clause (*vicb*) : allotment of shares in successor co-operative bank in lieu of shares in predecessor co-operative bank in business re-organisation

clause (*vid*) : receipt of shares from resulting company on demerger of undertaking

clause (*vii*) : receipt of shares from amalgamated company being an Indian company.

## **Receipt by Trust or by Beneficiary upon settlement of Trust property**

Under the old provisions (as well as the amended provision) treating a gift (wholly or partly) as income, there is a debate whether receipt of the property by a trustee of a specific or discretionary trust could be regarded as received without consideration or for inadequate consideration and accordingly treated as income.

There are different views on the subject matter and, in particular, whether receipt coupled with obligation accepted by a trustee could be regarded as receipt in the nature of income and that too without or for inadequate consideration? As per one view, such a receipt by trustee, without any beneficial interest, cannot be regarded as receipt in the nature of income that too without or for inadequate consideration. In this connection, a reference may be made to the decision of Mumbai Tribunal in case of *Chandrakant H. Shah v. ITO* [[2010] 124 ITD 177], where a similar view was taken.

As per the other view, the receipt is identifiable for the benefit of specified persons and accordingly can be regarded as receipt in the nature of income under the provision, subject to exceptions provided therein.

However, to put matter beyond doubt a specific exclusion is provided and, in that: where a trust is settled by an individual (whether specific or discretionary) solely for the benefit of relative (as defined) then receipt by the trust from the individual would not be considered as income.

## Other exclusions

While construing the exclusions specified in the Proviso, it may not be considered as exhaustive. It does not necessarily mean that save exclusions there cannot be any other exception and that in all other cases the matter would be covered or governed by the provision. In this connection, following observations of Supreme Court in case of *CIT v. Madurai Mills Co. Ltd.* [[1973] 89 ITR 45] are relevant:

"Provisos, as mentioned on page 221 of Craics on Statute Law, sixth edition, are often inserted to allay fears. A proviso is inserted to guard against the particular case of which a particular person is apprehensive, although the enactment was never intended to apply to his case or to any other similar case at all.

...A proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect. Further, if the language of the enacting part of the statute is plain and unambiguous and does not contain the provisions which are said to occur in it, one cannot derive those provisions by implication from a proviso."

## **Cost of acquisition in cases covered by section 56(2)(x) [Section 49]**

Section 49(4) of the Act provides for determining cost of acquisition of property (received without consideration or lower consideration) value whereof is taxed under section 56(2)(x). The cost of acquisition of such asset, in the hands of transferee for capital gains purposes, will be the value which has been taken into account for the purpose of section 56(2)(x).

To illustrate:

1. An individual has received a movable property without consideration. Fair market value thereof is, say, Rs. 1,00,000. He has paid tax thereon under section 56(2)(x)(c)(A). He sells the said property for Rs. 1,25,000. For the purposes of computing capital gains, the cost of acquisition, in terms of the said provision, would be Rs. 1,00,000. Accordingly, the capital gains would be Rs. 25,000 (subject to applicability of indexed cost of acquisition).

2. An individual has purchased an immovable property for Rs. 5,00,000. The stamp duty value thereof is Rs. 6,00,000. On the difference, the individual has paid tax under section 56(2)(x)(b)(B). He sells the same for Rs. 7,50,000. For computing capital gains, the cost of acquisition, in terms of the said provision, would be Rs. 6,00,000 being the value considered for the purposes of section 56(2)(x).

As said above, the value taxed under section 56(2)(x) is adopted as cost and hence wherever applicable such cost can be indexed in terms of the provisions of the Act.

It appears that the period of holding will have to be determined with reference to the date of receipt and, in particular, having regard to section 49(4).

## **Amount not deductible [Section 58(1A)]**

### **Background**

Section 58 disallows certain amounts while computing income under the head "Income from other sources" ("Other Sources"). Sub-section (1A) thereof provides that any sum paid on account of wealth tax as referred under section 40(a)(iia) would not be deductible.

### **Amendment**

Finance Act, 2017 has amended sub-section (1A) of section 58 to include therein reference to section 40(a)(ia) disallowing expenditure for failure to deduct tax or pay it. Accordingly, while computing income under "Other Sources", any expenditure in respect of which tax is deductible is not deducted or after deduction it is not paid (as required by Chapter XVII-B of the Act), it will be disallowed in accordance with the provision of section 40(a)(ia).

The amendment will take effect from 1-4-2018 and will accordingly, apply to assessment year 2018-19 and subsequent assessment years.