**Taxation Aspects - special consideration to Section**

**56(2)(x) of the IT Act**

**2. Legislative background of amendments made in sec 56(2):**

2.1 Gift tax Act 1958 charged to tax, the gifts made by a person to another, with effect from 1 st April 1958. Vide clause 78 of the Finance Bill (No. 2) 1998, sub-section (3) was sought to be inserted in section 3 of the Gift Tax Act, 1958 to provide that any gift made on or after 1 st day of October 1998 was not chargeable to tax under this Act. Simultaneously, vide clause 28 of the Finance bill (No.2) 1998, section 56 was sought to be amended to insert clause (v)therein to treat the property received otherwise than for adequate consideration as income from other sources.

2.2 While moving the Finance bill in Parliament, the Hon. Finance Minister Mr. Yaswant Sinha, in Para 99 of budget speech, observed as under:

Gift-tax' has been levied in India since 1958. The revenue yield from this tax has been

insignificant. Last year we collected barely ~ 9 crore. The Gift-tax Act has also not been

successful as an instrument to curb tax evasion and avoidance. I, therefore, propose to

discontinue the levy of gift- tax on gifts made after 30th September 1998. At the same time,

to ensure that there are no leakages of income-tax revenue through the mechanism of gifts, I propose to tax the gifts under the Income-tax Act itself in the hands of the recipients. However, the gifts from non-residents including NRls through banking channels will continue to enjoy exemption as at present.

2.3 However, when the Finance (No. 2) Bill of 1998 became Finance (No. 2) Act, 1998, amendment proposed in section 56 was dropped. But, vide section 75 of the Finance (No. 2) Act 1998, the amendment proposed in Section 3 of the Gift tax Act was carried out. As a result, gifts made on or after 1-10-1998 were neither taxable under Income tax Act nor under the Gift tax Act.

2.4 Vide Finance (No. 2) Act of 2004, the amendment was made in section 56 by inserting clause (v) therein to treat sum of money exceeding twenty-five thousand rupees received without consideration by an individual or a Hindu undivided family from any person on or after the 1 st day of September, 2004 as income chargeable to tax subject to certain exceptions.

2.5 Para 102 of the budget speech of the Hon. Finance Minister Mr. P. Chidambaram read as follows:

Hon'ble Members are aware that I abolished the gift tax in 1997. That decision remains, but a loophole requires to be plugged to prevent money laundering. Accordingly, purported gifts from unrelated persons, above the threshold limit of ~ 25,000, will now be taxed as income. Gifts received from blood relations, lineal ascendants and lineal descendants, an~ gifts received on certain occasions like marriage will continue to be totally exempt.

2.6 The provisions of section 56(2)(v) was in force from 1-9-2004 to 31-3-2006. This clause (v) was replaced by clause (vi) of section 56(2) by Finance Act 2006. This clause (vi) was in force from 1-4-2006 to 30-9-2009. This clause (vi) was replaced by clause (vii) by Finance (No. 2) Act 2009. A new clause (viia) was introduced by the Finance Act 2010 with effect from 1-6-2010. These clauses were in force upto 31-3-2017. By replacing the clauses (vii) and (viia) of section 56, clause (x) was inserted in section 56 by Finance Act 2017.

2.7 It needs to be noted that since these receipts are capital in nature and sought to be taxed under IFOS, correspondingly, sec 2(24) defining income was amended by inserting cl Taxation Aspects - special consideration to Section 56(2)(x) of the IT Act

2.8 The intention of the Parliament in replacing the clauses (vii)/(viia) by clause (x) in section 56(2) can be gathered from the Hon. Finance Minister's speech in presenting the budget and the memorandum explaining the proposal in the Finance Bill 2017. J

2.9 Para 1.2 of the Annexure III to Part B of the budget Speech of Hon. Finance Minister, Shri Arun Jaitley on 1-2-2017 read as under:

"It is proposed to widen the scope of section 56 of the Income-tax Act to provide that any money, immovable property or specified movable property received without consideration or with inadequate consideration, by any person, subject to certain exemption and exceptions, shall be \_ taxable if its value exceeds rupees fifty thousand"

2.10 The memorandum explaining the provisions of the Finance Bill, 2017 in relation to the amendment proposed, read as under:

Under the existing provisions of section 56 (2)(vii), any sum of money or any property which

is received without consideration or for inadequate consideration (in excess of the specified

limit of ~ 50,000) by an individual or Hindu undivided family is chargeable to income-tax in

the hands of the recipient under the head "Income from other sources" subject to certain

exceptions. Further, receipt of certain shares by a firm or a company in which the public are

not substantially Interested is also chargeable to income-tax in case such receipt is in excess

of ~ 50,000 and is received without consideration or for inadequate consideration.

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 assessees.

In order to prevent the practice of receiving the sum of money or the property without consideration or for inadequate consideration, it is proposed to insert a new clause (x) in sub­ section (2) of section 56 so as to provide that receipt of the sum of money or the property by any person without consideration or for inadequate consideration in excess of ~ 50,000 shall be chargeable to tax in the hands of the recipient under the head "Income from other sources". It is also proposed to widen the scope of existing exceptions by including the receipt by certain trusts or institutions and receipt by way of certain transfers not regarded as transfer under section 47.

Consequential amendment is also proposed in section 49 for determination of cost of acquisition.

These amendments will take effect from 1st April, 2017 and the said receipt of sum of money or property on or after 1st April, 2017 shall be chargeable to tax in accordance with the provisions of proposed clause (x) of sub-section (2) of section 56

2.11 The Scope of the above clauses is summarised in the table below:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Section ref. | 56 (2) (v) | 56 (2) (vi) | 56 (2) (vii) | 56 (2) (viia) | 56 (2) (x) |
| Applicable period | 1-9-2004 to 31-03-2006 | 1-4-2006 to 30-09-2009 | 1-10-2009 to 31-03-2017 | 01-06-2010 to 31-03-2017 | 01-04-2017 onwards |
| Status of the recipient | Individual/ HUF | Individual/ HUF | Individual/ HUF | Firm/ Company in Which public not substantially interested | Any person |
| Type of transaction | Received Without Consideration | Received Without Consideration | Received without or for inadequate consideration | Received Without or  for inadequate consideration | Received Without or  for inadequate consideration |
| Nature Of Assets |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
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2.12 Post introduction of taxation of receipt of movable properties without consideration or for inadequate consideration, Rules 11 U and 11 UA were notified on 07-04-2010 with effect from 1-10-2009, to determine the Fair Market value of the movable properties.

2.13 For the purpose of taxation of receipt of immovable properties without or for inadequate consideration, the stamp duty value (SDV) is the basis. In section 50C, to mitigate the hardship faced by tax payers in genuine cases, substitution of the SDV by FMV is permitted in certain cases by following certain procedure. Similar provisions are incorporated in the respective clauses of section 56(2).

**3. Basics of section 56(2)(x) of the Act:**

3.1 In order to attract the provisions of section 56(2)(X) of the Act, the following are the requirements.

a) During the year, the assessee must have received

i) Sum of money, without consideration;

ii) Specified movable property, without consideration,

iii) Specified movable property, for inadequate consideration.

iv) Immovable property, without consideration,

v) Immovable property, for inadequate consideration,

b) The aggregate value of the benefit in each of the above mentioned first three categories must exceed ~ 50000/- per annum.

c) In case the benefit in each of the above mentioned first three categories exceeds ~ 50000 per annum, the whole of such benefit would be taxable under the head "IFOS". Deduction for the first ~ 50000/- cannot be claimed.

d) For the fourth and fifth categories, namely, the receipt of immovable properties being land or building or both, either without consideration or for inadequate consideration, the limit of ~ 50000/- is to be applied qua each property received taxation Aspects - special consideration to Section 56(2)(x) of the IT Act

e) In case of receipt of immovable properties for inadequate consideration, taxability would arise only if the stamp duty value exceeds consideration by more than 5% of the consideration or <' 50000/- whichever is higher. (10% from AY.2021-2022)

f) In case where the SDV varies between the date of agreement and the date of registration of the immovable property and the consideration, part or full, has been paid by way of a/c payee cheque/draft or ECS through a Bank Account on or before the date of agreement, the SDV on the date of the agreement shall be substituted for the SDV on the date of the registration of immovable property.

g) In case the SDV is disputed by the assessee on the grounds mentioned in sec 50C(2), the

procedure prescribed in sec 50C(2) read with sec 155 would be applied here also.

h) In case of receipt of specified movable properties without consideration or for inadequate consideration, the FMV has to be determined in accordance with Rules 11 U and 11 UA of the IT Rules, 1962.

i) Exceptions are provided for receipt by / from certain type of persons.

3.2 It may be pertinent to note that the five categories mentioned above are independent and all of them are not required to be aggregated for the purpose of triggering the taxation under clause (x) of the section 56(2).

3.3 Consider the following case:

Mr. A has the following (capital) transactions during the FY 2019-20:

i) Received cash gift of <' 40,000 per annum from an unrelated person

ii) Received jewellery as gift from his friend on his birthday, the FMV of which is <' 45,000/-

iii) Purchased shares for <' 10,00,000 and the FMV of the said shares (as per Rule 11 U and Rule 11 UA) on the date of purchase was <' 10,48,000/-

Since the benefit received in each of the category does not exceed <' 50,000/-, the entire amount would not be taxable as income under IFOS.

3.4 Consider the following case:

Mr. B has the following (capital) transactions during the FY 2019-20:

a. Received a piece of land from his friend by way of gift the stamp duty value of which is 45,000/-

b. Purchased a piece of land for 5,00,000 and the stamp duty value of the said land was 5,42,000/-.

c. Purchased another land for 7,00,000 where the stamp duty value was 7,40,000/-

Since the benefit received in each of the ro erty does not exceed <' 50,000/-, amount taxable under this clause would be NIL - -

3.5 In respect of immovable property being land or building or both received for inadequate consideration, with effect from 1-4-2018, the threshold of <' 50000/- per annum is revised to be the higher of <' 50000/- or 5% of the consideration for acquisition of

Taxation Aspects - special consideration to Section 56(2)(x) of the IT Act

3.6 Consider the following case:

Mr. C purchased the following vacant lands (as fixed assets) during the FY 2018-19: (~ lakh)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Items | Consideration | SDV | Diff | 10% of the Consideration | Taxable Amt |
| A | 100.00 | 111.00 | 11.00 | 10.00 | 11.00 |
| B | 50.00 | 51.00 | 1.00 | 5.00 | 0 |
| C | 7.50 | 7.75 | 0.25 | 0.75 | 0 |
| D | 60.00 | 67.50 | 7.5 | 6.00 | 7.50 |

If all the transactions are aggregated, the inadequacy in the consideration paid as compared to the stamp duty value would be less than 5% of the total consideration paid. However, for the purpose of acquisition of immovable property being land or building or both for inadequate consideration, higher of ~ 50000/- or 5% of consideration paid needs to be identified property wise and not in aggregate. Therefore, in the given case, the amount taxable under 56(2)(x) would be ~ 6 lacs.

**4. Sec 56(2)(x) vs sec 56(2)(vii)/(viia):**

4.1 As noted from the memorandum explaining the provisions of the Finance Bill extracted in Para 2.10 above and the table presented in Para 2.11 above, the provisions that existed upto 31-3-2017 charged to tax the sum of money received without consideration or specified property received either without consideration or for inadequate consideration only in respect of individual, HUFs. Firms and companies. The same did not apply to other type of assessees.

4.2 Prior to 1-4-2017, **a firm or a company** not being a company in which public are substantially interested, **receiving shares of another company** not being a company in which public are substantially interested was alone liable for taxation u/s. 56(2) (viia). For these two types of assessees, only one asset was specified namely, shares of company in which public are not substantially interested. Shares of listed companies, other securities of listed or unlisted companies, immovable properties, jewellery, archaeological collections, etc. received either without consideration or for inadequate consideration by these two type of entities were not liable for taxation.

4.3 Similarly, upto 31-3-2017, an assessee **other than individual or HUF** (like AOP or BOI, firm, LLP or company, AJp, etc) receiving shares and securities of a listed or unlisted company or immovable properties, etc., either without consideration or for inadequate consideration was not liable to tax'.

4.4 Section 56(2) (x) seeks to tax the sum of money received without consideration or other specified properties received either without consideration or for inadequate consideration **by any person from any person** or persons except to the extent the exceptions provided in the said clause.

4.5 As a result, in case of receipts of specified assets on or after 1-4-2017, the status of the recipient would not make any difference in the taxability of such receipt.

4.6 Person is defined in section 2(31) of the Act to include "an individual, a HUF, a company, a firm, an AOP/BOI, a local authority and every AJP".

4.7 In view of the above, on or after 1-4-2017, all the above type of persons, receiving the sum of money without consideration or specified assets either without consideration or for inadequate consideration would be liable for tax u/s. 56(2)(x) subject to the exceptions provided therein.

4.8 The newly inserted provision seeks to tax the receipts from any person or persons.

4.9 In the undernoted case", a question arose whether the Government is a person within the -, meaning of sec 2(31) of the Act more particularly person resident in India. Hon. High Court has held that Government cannot be regarded as person.

4.10 In view of the above, one needs to examine whether the sum of money or specified property received from Government may be considered as not taxable u/s. 56(2) (x) on the ground that 'Government is not a "person".

4.11 With effect from 1-4-2016, in the definition of income under section 2(24) a new sub-clause (xviii) was inserted to include the following "assistance in the form of a subsidy or grant, or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or any body or any agency in cash or kind to the assessee other than those subsidies covered in Explanation 10 to section 43(1) and subsidy given by the Central Government for the purpose of corpus of a trust or institution established by Central or State Governments".

4.12 In view of the above, the receipt of money or specified property by the assessee from the Government may become taxable u/s. 2(24) (xviii) itself.

**5. Meaning of "consideration":**

5.1 It may be noted that the provisions of section 56(2) (x) would apply only when the transaction results in receipt of sum of money "without consideration" or receipt of specified property either "without consideration or for inadequate consideration".

5.2 The term "consideration" is used in several places in the Income tax Act. However, the same is not defined in the Income tax Act. In the explanation to section 54F(1) the term "net consideration" is only defined to mean the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer. c. Amount received for not contesting the probate of the Wills

5.3 Also, in the General Clauses Act, the term consideration is not defined. This leaves us to refer the definition of the term in the Indian Contract Act, 1872.

5.4 Section 2(d) of the Indian Contract Act, 1872 defines the term "consideration" 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"

5.5 The moot question arises here is whether the definition of consideration given in section 2(d) of the Indian Contract Act 1872 can be pressed into service in the absence of a definition in the Income tax Act. The courts in the undernoted cases endorsed the view".

5.6 It is worth noting that the provisions of the Wealth tax Act and Gift tax Act contained the phrase "consideration in money or money's worth". The legislature in its wisdom, consciously omitted the phrase "in money or money's worth" and used the phrase "consideration" only in section 56(2) .

5.7 Section 25 of the Indian Contract Act 1872 provides for three exceptions to the rule that there must be consideration to have a valid contract. One such exception is gift on account of natural love and affection. Other is agreeing to repay a time barred debt. Third one is promise to compensate something already done by the promisee to the promisor. Barring these three cases, in all other cases, there must be consideration to constitute a valid, enforceable contract.

5.8 Therefore, one may take a view that except for the three cases specified in section 25 of the Indian Contract Act 1872, wherever there is a valid consideration as per the provisions of the Indian Contract Act, any receipt of money from such contact may not fall within the provisions of section 56(2) of the Act.

5.9 Keeping the above principles in mind, one needs to examine whether the amount received in following cases would be hit by section 56(2)(x) of the Act.

a. Lump sum Alimony received under a decree of divorce'

b. Amount received by the partner from the firm upon retirement or change in constitution of the firm5

d. Compensation received before taking up the employment'

e. Loan borrowed"

f. Shares received by an employee under ESOP/Sweat equity?

g. Asset transferred by a fiancee to a fiance on a promise to marry'?

h. Amount/asset received upon family arranqement"

i. Claims received from insurance companies on account of Road/Rail accidents"

j. Amount received by hospitals towards patient's account in response to public appeal

k. Subvention money received by the company from its JV Partner/ parent company to recoup the losses"

I. Gift received from parent company"

m. Waiver of the term loan/working capital loan"

n. Requisition compensation paid by government before proceeding for the acquisition of the property"

o. Forfeiture of share application money by the company"

p. Damages received for breach of development aqreernent"

q. Interest subsidy given for the purpose of payment of loan acquired for the acquisition of capital asset"

r. Payment by the professional firm for the ex-partners and spouse of deceased partners'?

s. Compensation received for cancellation of the auction even after payment of auction price fixed by DRF1

t. Surplus resulting assignment of loan to third party by making a payment in terms of present value of future liability"

u. Money received by an author for publishing the letter he received from another eminent author and preserved for several years23

**6. earning of "receives"**

6.1 The taxing event arises under this clause only when the assessee receives the sum of money or specified property from any other person.

6.2 Section 43(2) defines the term "paid" to mean "actually paid or incurred according to the method of accounting upon the basis of which the profit is computed under the head "Profits and gains of business or profession". In other words, the term "paid" includes "payable" also, if mercantile system is followed. It may be noted that this definition applies only to Chapter IV-D - namely "Profits and gains of business or profession". Similar to this, there is no provision defining the term "received" to include "receivable" also, if the assessee follows mercantile system of accounting.

6.3 Section 5 talks about receipts of income or accrual of income. Explanation 2 of that section also clarifies that the income once taxed under accrual basis would not be again taxed on receipt basis. This proposition clearly indicates that accrual is different from receipt. In other words, receipt of income does not include accrual of income but not received yet.

6.4 Section 145 provides for method of accounting to be followed by assessees for computing the income under the head "profits and gains of business or profession" or "income from other sources". Accrual and receipt basis are permitted methods. The choice is available to the assessee in the year in which the source of income comes into existence.

6.5 Taxable event under clause 56(2)(x) can arise if the assessee receives a) sum of money b) immovable property and c) specified movable property. The question of method of accounting would not generally arise in case of receipt of sum of money. However, in the case of receipt of immovable and specified movable properties, the issue arises about the availability of the choice of method of accounting to assessee.

6.6 The phrase "receives" given in the clause, may, at the first sight, give an impression that the income under this clause needs to be computed only under cash basis and NOT under accrual basis.

6.7 However, on a conjoint reading of the first and second proviso to sub-clause (b) to this clause dealinq with immovable property, it can be gathered that accrual system of accounting is permissible. The said provisos clearly state that when the date of agreement and the date of registration are not the same, the SDV on the date of agreement shall be considered as against the SDV on the date of registration upon satisfaction of the conditions mentioned in the said provisos.

6.8 Assume a case where the assessee purchased a property for consideration less than the SDV of the property and consideration is yet to be fully settled. However, the parties chose to register the property. In such a case, the date of registration of the document would generally trigger the taxation and in case where the conditions mentioned in the second proviso is satisfied, the SDV on the date of registration would be substituted by the SDV on the date of the agreement. This implies that taxable event under this clause can arise upon accrual of income itself and it need not always be only upon receipt of such income.

**7. Sum of money**

7.1 Sub-clause (a) under 56(2)(x) deals with taxability of sum of money received without consideration.

7.2 Gift tax Act levied tax only on the donor and not on the donee. Section 10(3) of the Income tax Act, upto 31-3-2003, provided exemption upto ( 5000 in aggregate, for any receipts which are of a casual or non-recurring nature. Question arose whether gifts received by an assessee would fall under sec 10(3) of the Act and therefore liable for tax.

7.3 CBDT Circular no: 158 [F. No. 173/2/73-IT(A-I)] dated 27-12-1974 stated as under:

"2. Receipts which are of a casual and non-recurring nature will be liable to income-tax only if they can properly be characterised as "income" either in its general connotation or within the extended meaning given to the term by the Income-tax Act. Hence, gifts of a purely personal nature will not be chargeable to income-tax except when they can be regarded as an addition to the salary or when they arise from the exercise of a profession or vocation"

7.4 Relying on the above circular in the undernoted cases, the Hon. Courts have held as follows:

a) Receipt unconcerned with and not the result of remuneration of services rendered but is

strictly in nature of personal gift for the personal qualities of the assessee, cannot be said to

be income liable to tax"

b) Amount presented to a member of political party by the donors in recognition of his personal qualities is not liable to tax25

c) Amount received from friends and well-wishers as donation is not liable for tax26

d) 33.38 acres agricultural lands gifted by the patient in favour of the doctor in addition to the fees charged by the doctor should be treated only as a gift made out of personal esteem and arising out of the personal qualities of the assessee doctor and therefore would not be taxable in the hands of the doctor"

7.5 In all the above cases, the receipts were regarded as personal gifts being capital in nature and • hence held as not chargeable to tax.

7.6 The question that arises for consideration is whether such a defence is still possible, even after the introduction of section 56(2)(v)/(vi)/(vii)/(x).

7.7 When a leader of the political party received genuine gifts from the party members and such gifts were not falling under any of the exceptions provided in section 56(2), it was held to be taxable as mcorne=. .

7.8 One may also refer to section 10(17 A) which deals with exemption relating to awards and rewards. It reads as under: any payment made, whether in cash or in kind,-

a) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or

b) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest.

7.9 It may be noted that this clause (17 A) of section 10 only deals with the award or reward by the Central or any State Government. It does not deal with the award instituted by any authority or body or agency or reward given by any person in appreciation of the achievements made.

7.10 CBDT circular no: .447 [F. No. 199/86-IT(A-1) dated 22nd January, 1986 reads as under:

"Subject: Taxability of awards for sportsmen - Clarification regarding.

1. The Central Board of Direct Taxes had occasion to consider the question whether the award received by a sportsman, who is not a professional, will be taxable in his hands or not. In the case of a sportsman who is a protessionei, the award received by him will be in the nature of a benefit in exercise of his profession and, therefore, will be liable to tax under the provisions of the Income-tax Act. 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 cases 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.

2. In cases where such receipt is in the nature of gift, the chargeability to gift-tax will be considered separately."

7.11 One needs to examine whether the benefit granted under this circular can be availed even after amendment made in section 10(17A) and introduction of sec 56(2)(v)/(vi)/(vii)/(x).

7.12 When such a question came up before the Hon. I TAT, in the undernoted case, it was held that even after introduction of section 56(2)(v) and amendment made in section 10(17 A), the benefit granted under the circular cannot be denied since the circular is not withdrawn by the CBDF9. This view was also endorsed in the undernoted case" for the reason that the recipient is not a professional sportsman and he is only an amateur sportsman.

**8. Immovable properties:**

"8.1 Sub-clause (b) of section 56(2)(x) deals with receipt of immovable properties either without consideration or for inadequate consideration

**8.2 Meaning of immovable property:**

8.2.1 Property is defined in clause (d) of the Explanation to section 56(2)(vii) and the same is applied for section 56(2)(x) as well. This definition is exhaustive and not illustrative, meaning, the assets specified in the clause (d) of the explanation alone would be chargeable to tax and no other assets would be chargeable tax under this clause. Further, the definition also, states that the assets must be "capital assets". One of the items found therein is "immovable property being land or building or both".

8.2.2 Section 50C also uses the language "capital assets being land or building or both".

8.2.3 In contrast, section 269UA(d) defines the term immovable property as under: immovable property means

(i) any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also.

Explanation.- For the purposes of this sub-clause, land, building, part of a building, machinery, plant, furniture, fittings and other things include any rights therein ;

(ii) any rights in or with respect to any land or any building or a part of a building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement of whatever nature), not being a transaction by way of sale, exchange or lease of such land, building or part of a building ;

8.2.4 The phrase, immovable property has wider meaning as compared to land or building or both. Section 50C and sec 56(2) deal with only land or building or both. Both these sections do not deal with any right or interest in the land or building.

8.2.5 A question therefore arises as to the applicability of section 50C/56(2) in respect of Lease hold riqhts'", Development rights, etc in relation to the immovable properties.

8.2.6 If one concludes that the provisions of section 50C/56(2) would not apply to the rights/interest in immovable properties, consequently one may hold a view that acquiring these rights for a consideration less than its SDV or without consideration would also not trigger the provisions of section 56(2) (x) of the Act.

**8.3 Immovable property - Capital assets vs Current Assets:**

8.3.1 Section 50C applies only for a transfer of land or building or both being capital assets. If the said assets are kept as stock in trade, then the provisions of section 43CA would apply. In the hands of the recipient, if the land or building or both is received as a capital asset, either without consideration or for inadequate consideration, then the provisions of section 56(2)(x) would apply. If the recipient of the said property receives it in the course of carrying on his business as stock in trade, then section 56(2) (x) would not apply".

8.3.2 The definition of the term "property", when introduced in the Finance Act 2009, did not contain the phrase "being capital assets". Subsequently, Finance Act 2010, introduced the phrase retrospectively.

8.3.3 The memorandum explaining the provisions of Finance Bill 2010, dealing with this amendment read as follows:

The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, proposed to amend the definition of property so as to provide that section 56(2)(vii) wi/l have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

8.3.4 The term "capital asset" is defined in section 2(14) of the Act to mean property of any kind held by an assessee whether or not connected with his business or profession but does not include stock in trade, consumable stores, raw materials held for the purpose of business or profession, personal effects (Other than excluded items) agricultural land situated outside specified area, etc.

8.3.5 This definition applies to the whole of the Act. Therefore, the meaning given for the phrase "capital asset" in this section should be applicable for section 56(2)(x) also. The definition of capital asset excludes not only raw materials, consumable stores, stock in trade but also agricultural land situated outside specified area.

8.3.6 A question arises as to when the assessee receives the agricultural land situated outside specified area for inadequate consideration, whether the provisions of section 56(2) (x) would trigger. On a closer scrutiny of the provisions of section 56(2) read with section 2(14), it would appear that the asset received is not a capital asset and therefore, one can take a view that the section should not apply to the assessee. However, it was held that, going by the memorandum explaining the provisions of the Finance Bill, the term "capital asset" used in this section must be understood to be in contrast to "current asset - i.e., stock in trade, etc.," only and therefore, the provisions of section 56(2) would apply in case of receipt of agricultural lands situated outside specified area".

**B.4 Substitution of SOY:**

8.4.1 In case of purchase of land or building or both for inadequate consideration, first proviso to section 56(2)(x)(b)(B) states that when the SDV between the date of agreement and the date of registration of property varies, the SDV as on the date of agreement shall be taken into account. As per the second proviso, the beneficial provisions of the first proviso can be applied only when the consideration, wholly or in part, had been paid by the purchaser to the seller by way of account payee crossed cheque or draft or ECS through a bank account on or before the date of aqreement> .

• 8.4.2 The introduction of the first and second proviso was made prospectively. Since this is a curative amendment granting benefit to the assessee, it can be considered as retrospective in nature.

8.4.3 The benefit given in the first and second proviso would apply when the consideration either in full or in part was paid by way of account payee instruments or through ECS before the agreement is entered into. If such payment is made by way of account payee instruments or through ECS after the agreement is entered into, it appears that the benefit of substitution of the SDV on the date of the agreement would not be available to the assessee. However, whether the SDV on the date of such payment can at least be substituted is a moot question to be debated.

8.4.4 Consider the following case:

a) The assessee entered into agreement on 1-6-2017 for purchase of property for ~ 49.50 lakh.

b) On that date, the SDV was ~ 72 lakh.

c) On 1-6-2017 itself, the assessee paid ~ 10 lacs by ECS as advance also.

d) The State Government on 8-6-2017 revised the SDV across the State by reducing flat 33% in all cases.

e) Effectively, the SDV after 8-6-2017 became ~ 48 lacs.

f) On 31-8-2017, as agreed between parties, the sale took place for ~ 49.50 lacs and the balance consideration of ~ 39.50 lacs was paid by ECS.

g) The assessee in this case had complied with the conditions of first and second proviso to section 56(2) (x) (b) (B).

h) Therefore, the SDV as on the date of agreement needs to be substituted for the SDV on the date of registration.

i) If it is done, it may prove to be detrimental to the assessee. The beneficial provision turns to be detrimental to the assessee.

j) Can the assessee say that the substitution of SDV as on the date of agreement on the SDV as on the date of registration is not mandatory?

**8,5 Transactions between firm/AOP/BOI and partners/Members - Interplay between section 45(3), 45(4), 50C, 56(2)**

8.5.1 As per section 45(3), when a capital asset is introduced into the firm or AOP or BOI by a partner or member it is a taxable event in the year of such introduction and the amount recorded in the books of the firm/AOP/BOI as the value of the capital asset shall be deemed to be full value of consideration for computing capital gain.

8.5.2 In certain States, the contribution of the immovable property by the partner to the firm requires registration and without registration, the transfer is invalid. In other States, registration of such transfers is not compulsory.

8.5..3 In case of compulsory registration of immovable properties contributed by the partner to the firm, from the view point of the partner, the applicability of section 45(3) and section 50C would be a controversy. In case there is no such requirement of compulsory registration, the partner may contend that the provisions of section 45(3) would prevail over section 50C.

8.5.4 In either of the cases, the treatment given in the books needs to be tested for the applicability of section 56(2)(x). In case the amount recorded in the books of the firm/AOP/BOI, is lesser than the SDV, the firm/AOP/BOI would be liable for tax u/s. 56(2)(x).

8.5.5 As per section 45(4), when a capital asset is distributed by the firm or AOP or BOI to a partner or member, it is a taxable event in the year of such distribution and the fair market value (FMV) of the capital asset as on the date of such distribution shall be deemed to be full value of consideration for computing capital gain.

8.5.6 Section 2(22B) defines the term "fair market value" which is as follows: "fair market value", in relation to a capital asset, means-

(i) the price that the capital asset would ordinarily fetch on sale in the open market on the

relevant date ; and

(ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be

determined in accordance with the rules made under this Act

8.5.7 In the hands of the firm/AOP/BOI, a controversy may arise as to whether section 45(4) would override section 50C or vice versa.

8.5.8 Prior to introduction of section 56(2)(vii)/(x), a question arose as to what would be the cost of such assets distributed in the hands of the recipient partner/member. Divergent views were endorsed in this aspect. One view is that the amount recorded in the books is to be considered as cost because that was the cost for which the asset was taken over and the tax treatment in the hands of the firm/AOP/BOI is irrelevant. Another view is that the firm/AOP/BOI already paid tax treating the FMV as the consideration and therefore, the same should be considered as the cost of acquisition in the hands of the partner/member.

8.5.9 Post introduction of section 56(2)(vii)/(x), the receipt of immovable properties by the partner/ member from the firm/AOP/BOI is to be tested for the applicability of section 56(2)(vii)/(x). In the event of the FMV being less than the amount recorded in the books of the firm/AOP/BOI, the excess of FMV over the amount recorded in the books would be liable for tax in the hands of the recipient partner/member.

8.5.10 When a firm receives the capital asset from its partner or when a firm distributes capital assets to its partner, the provisions of section 45(3) and section 45(4) would apply respectively. In case the firm receives the current asset from its partner or the partners receive the current asset from the firm either or account of dissolution or otherwise, the provisions of section 45(3)/45(4) would not apply. The transaction between the partner and firm are not separate and distinct and therefore there is no machinery provision to tax such transactions in the hands of the partners/firm. One may therefore take a position that the provisions of section 43CA/56(2) (x) would not apply in the hands of the firm / partners both at the time of introduction of current asset and withdrawal of current asset as well.

8.5.11 Section 45(4) uses the phrase "dissolution of firm/AOP/BOI or otherwise". The term "or otherwise" would include occasions like, retirement, change in constitution, etc. In the recent days, the judicial thinklnq'" emerges in such a way that the term "or otherwise" would not include such events. Consequently it was held that in the event of partners receiving capital assets from the firm upon retirement, the firm is not liable for tax u/s. 45(4) and correspondingly the partners are also not liable to pay tax on the assets received by them for the reasons that what they receive is only for and in lieu of their pre-existing rights. If such a judicial thinking is upheld, then receipt of the money/property by partners would always be considered as for adequate consideration and the provisions of section 56(2) (x) would not apply in all such cases.

**8.6 Cost stepping up:**

8.6.1 Any amount treated as income ut». 56(2) (x) would qualify as cost u/s. 49(4) of the Act, when the capital gain is computed while transferring such property subsequently.

8.6.2 Consider the following case:

a. Mr. A (Individual) sold an agricultural land situated within specified area (hereinafter called as urban agricultural land) on 12-12-2018 and the capital gain worked out to ~ 50 lakh

b. To claim a benefit u/s. 54B, he purchased another urban agricultural land on 15-3-2019 for ~ 40 Lakh (The SDV of the said land was ~ 50 Lakh)

c. By applying the provisions of section 56 (2)(x), Mr. A is ready to offer ~ 10 lakh as income from other sources. The cost of the land thereafter, as per section 49(4) would be ~ 50 Lakh.

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d. Therefore he would like to claim this revised cost of (' 50 Lacs as invested in acquisition of another agricultural land u/s. 54B.

e. Whether such a claim is permissible?"

**8.7 Dispute in SDV:**

8.7.1 In section 50C(2), where an assessee claims that the SOV adopted or assessed or assessable is in excess of the FMV of the property and the SOV has not been disputed in appeal/revision or no reference has been made before any authority or Court or High Court, the Aa may refer the valuation of the capital asset to the Valuation officer.

8.7.2 Usually, the buyer pays the stamp duty. He may either agree with or dispute the SOY. In case the SOV is disputed in the stamp duty proceedings in an appeal/revision or reference before any authority or court or High Court, the provisions of section 50C(2) would not trigger. In such a case the SOV ultimately decided in the stamp duty proceedings would be final. The intimation or assessment order passed treating the original SOV as consideration for computing capital gains would be amended u/s. 154 for giving effect to the value so revised in appeal/revision/ reference - Section 1,55(15).

8.7.3 Alternative!y, when there is no dispute in the stamp proceedings the transferor can request the Aa to refer the property for valuation u/s. 50C(2). Although the language used in 50C(2) is "may", it should be construed as "shall" and therefore, Aa has to mandatorily refer the property to Valuation officer".

8.7.4 Third proviso to section 56(2)(x)(ii)(B) dealing with receipt of immovable property for inadequate consideration provides that in case the SOV is disputed by the assessee on the grounds mentioned in sub-section (2) of section 50C, the provisions of section 50C(2) and section 155(15) shall, as far as may be, apply in relation to SOV as they apply to valuation of the concerned capital asset received.

8.7.5 This proviso would appear to be applicable only when the SOV is disputed before the Aa by the assessee on the grounds mentioned in section 50C(2). This, in other words, means that the SOV • is not disputed in stamp proceedings and therefore the assessee requests the Aa to refer the property for valuation to Valuation officer. In case the assessee disputed the stamp duty value in the stamp duty proceedings, then the grounds mentioned in section 50C(2) would not apply to him. In such case, what would be the remedy to the assessee? The phrase "and section 155(15)" in the third proviso would suggest that the order passed considering the SOV initially available would be amended u/s. 154 read with section 155(15) based on the outcome in the appeal/revisions reference in the stamp duty proceedings. .

**8.8 Others:**

8.8.1 When a property is sought to be transferred between relatives, the documentation has to be carefully done. In the undernoted case", the gift on immovable property by the mother to the daughter was made through a sale deed resulting to invoking of section 50C in the hands of the mother although the provisions of section 56(2) (x) was not applicable in the hands of the daughter since the property comes to her from the relative.

8.8.2 When a flat is purchased, the price is paid for certain common pathways, etc. The argument of the assessee that the SOV attributable for the common pathway should not be considered while invoking section 56(2) was not accepted in the undernoted case=.

8.8.3 When the immovable properties are purchased in auction sale by bankers, at times, the price paid may be less than the stamp duty value. There is no explicit provision in the law to accept the price paid in action as FMV of the property. If the FMV is not accepted inthe first instance, the assessee needs to undergo the process of disputing the SOV as per the third proviso to section 56(2)(x)(b)(ii)

**9. Specified movable properties:**

9.1 Section 56(2)(x)(c) deals with receipt of specified movable properties either without consideration or for inadequate consideration.

**9.2 Specified movable assets covered vs assets not covered:**

9.2.1 As per explanation (d) to section 56(2)(vii), movable property means, the following capital assets namely

a) shares and securities;

b) jewellery;

c) archaeological collections;

d) drawings;

e) paintings;

f) sculptures;

g) any work of art; or

h) bullion;

9.2.2 In the definition of capital asset mentioned in section 2(14), personal effects are excluded. The following are excluded from personal effects:

a) jewellery;

b) archaeological collections;

c) drawings;

d) paintings;

e) sculptures; or

f) any work of art.

9.2.3 From the above, it could be gathered that in addition to the excluded personal effects, only bullion and shares and securities are included in the list of specified movable properties for the purpose of section 56(2) (x) of the Act.

9.2.4 Section 56(2)(x) applies only to the assets specified and not for any other assets. For example, if a motor car is given as gift by an unrelated person to an assessee, the same would not be liable for tax in the hands of the assessee because it is not a specified movable asset as per section 56(2)(x) read with Explanation (d) to section 56(2)(vii).

9.2.5 When an assessee transferred the plant and machinery from his individual status to his HUF status for an amount which is less than WDV of the plant and machinery, the asset under consideration is not a specified asset and therefore, provisions of section 56(2) should not be applicable. However in the undernoted case, the Hon. ITAT held otherwise":

9.2.6 If one holds a view that the list of specified assets given in clause (d) of the Explanation is exhaustive, then one may need to examine whether the receipt of the following assets would not trigger the provisions of section 56(2).

a. Undertaking or unit as a going concern under slump sale

b. Interest in partnership firm

c. Interest in LLP

9.2.7 One of the items of specified assets is "shares and securities". Securities is defined in Rule 11 U(h) as having the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

9.2.8 Under section 2(h) of Securities Contracts (Regulation) Act, 1956, the term "securities" is defined to include "shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate.

9.2.9 Interest in a partnership firm is not an interest in body corporate. However, interest in an LLP can be said to be an interest in a body corporate. Also, one has to examine whether such an interest is freely transferable or marketable. If there are restrictions in the LLP Deed, then it may not be considered as marketable security in a body corporate.

**9.3 Interplay between Sec 50CA vs 56(2):**

9.3.1 As per section SOCA, in case of transfer of shares of a company in which public are not substantially interested for a consideration less than its FMV, the FMV shall be substituted over the actual consideration. In case of transfer of all other specified movable assets (other than the shares in a company in which public are not substantially interested), held as capital assets by the transferor, for a consideration less than its FMV, the consideration actually received is not required to be substituted by its FMV. In case the specified movable assets are gifted, the same would not be liable for capital gain in view of the specific provision contained in section 47.

9.3.2 However, in the hands of the recipient, when these specified assets are received as capital assets, either without consideration or for inadequate consideration the provisions of section 56(2) would apply.

9.3.3 The fair market value of the specified asset needs to be determined in accordance with Rule 11 U/11 UA.

9.3.4 If a partner gifts the shares of a listed company held by him to the firm in which he is partner, then, by virtue of section 47, the same would not be liable for tax in his hands. If the firm receives the said shares of the listed company as stock in trade, the provisions of section 56(2) also would not apply to the firm. It may require mention that treatment given by the transferor for a particular asset (say as capital asset) does not compel the transferee to treat the asset in the same manner.

9.3.5 When a partner contributes the shares held by him in a company in which public are not. substantially interested, as his capital to the firm in which he is a partner, a controversy could arise about the applicability of the provisions of section 45(3) or section 50CA. However, in the hands of the firm, the FMV test under Rule 11 UA needs to be satisfied in order not to trigger the provisions of section 56(2) (x).

9.3.6 Similarly, when the firm distributes the shares held by it in a company in which public are not substantially interested to its partner on account of dissolution or otherwise, a controversy could arise about the applicability of section 45(4) or section 50CA. Although the FMV is the basis for both the sections, the FMV as defined in section 2(228) would apply for the former and the FMV as per Rule 11 UA would apply for the latter. For a partner who receives such shares, the FMV test under Rule 11 UA needs to be satisfied in respect of amount recorded in the books of the firm/withdrawing partner on account of withdrawal of shares of the companies in which public are not substantially interested.

**9.4 Receipt vs transfer for inadequate consideration:**

9.4.1 The term used in section 56(2)(x) is "receipt" and not "transfer". Therefore, a question arises whether the issue of the shares by an existing company to its shareholders at a price less than its book value would result in applicability of section 56(2)(x). Technically, the term transfer presupposes the existence of the asset in the hands of the transferor. However, the term "receives" does not require an existence of the asset in the hands of the giver before giving. So it was held that the term "receives" includes right issue as well. So is the case in respect of bonus shares. Also, is the case in respect of other type of securities issued by the company upon conversion of other type of securities.

9.4.2 If one takes a view that these transactions are falling within the meaning of "receives", then the next question which arises for consideration is whether the said assets are received without consideration or for inadequate consideration.

a. In case of bonus shares, the reduction in the value of the existing shares held is the consideration and hence no taxable event arises u/s 56(2) (x) 41 •

b. In case of right shares, if all the existing shareholders apply in the same ratio, there is no loss or gain to any shareholder. In such a case, even if the issue price is less than FMV of the shares issued, it cannot be said that the shares are received for inadequate consideratiorr",

c. In case of right shares, if there is disproportionate subscription, for the shareholders who subscribed to the extent of their entitlement or those who subscribed for less than their entitlement, there is no question of receipt of shares for inadequate consideration. For those who subscribed for the shares renounced by other shareholders, to the extent of their existing shareholding, there is no question of receipt of shares for inadequate consideration. Only to the extent of shares subscribed from out of the share subscription renounced by others, the provisions of section 56(2)(x) would apply".

d. In case the right shares are subscribed in disproportionate manner but however, the beneficiary and sacrificing persons are relatives, the provisions of section 56(2)(x) would not apply",

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d. In case the right shares are subscribed in disproportionate manner but however, the beneficiary and sacrificing persons are relatives, the provisions of section 56(2)(x) would not apply4

in case of buy back of shares, the company does not receive shares of any other company. Does not receives its own shares and therefore the provisions of section 56(2)(x) would not apply45.

9.4.3 The Following transactions in connection with issue of shares / securities may pose challenges in application of section 56(2) (x):

1. Shares subscribed in pursuance of the order of NCLT where the FMV of the shares taken over (after taking into account the sacrifice by the lenders, creditors, etc) is more than the price for which the shares were subscribed ' .
2. Shares are issued upon conversion of the bonds or debentures and the conversion rate agreed upfront.
3. Receipts of shares/securities or other specified assets by a shareholder upon reduction of capital/liquidation of the company.
4. Issue of redeemable preference shares as bonus shares to the equity share holders.

**10. Exceptions:**

10.1 Proviso to section 56(2)(x) deal with the exceptional cases to which the said clause would not apply. Totally eleven items are prescribed in the proviso.

**10.2 From relative:**

10.2.1 The first item is receipt from a relative. A separate definition for relative is given for the purpose of this clause.

10.2.2The term "relative" is defined in section 2(41) to mean, in relation to an individual, the husband, wife, brother or sister or any lineal ascendant or descendant of that individual

10.2.3 Since there is a specific definition given for the purpose of this clause, the definition given in section 2(41) would not apply for this clause.

10.2.4 Following chart depicts a pictorial presentation of the relative as defined.

10.2.5 From the picture, it can be seen that the amount/asset received by an assessee from his father's brother would be considered as received from relative and therefore, section 56(2) (x) would not apply to that receipt. However, when the reverse transaction takes place, namely, when the assessee receives amount/asset from this brother's son, the same would be considered as received from non-relative and accordingly chargeable to tax u/s. 56(2) (x). Similarly mother's sister's son is not a relative and hence the amount received from him by the assessee is chargeable to tax": Brother or sister need not be blood brother/sister. Adopted son/daughter and biological son/daughter can also be brother / sister".

10.2.6 Earlier the definition of the term relative was given only in relation to individual. So a question arose as to when an HUF receives gift from its members, whether the same would be considered as received from relative or otherwise. An assessee favourable decision was delivered in the undernoted case". Subsequently, amendment was made to state that in respect of HUF, all the members are relatives.

10.2.7 A question now arises, when the member receives from the HUF, any amount or asset, whether the transaction would fall under u/s. 56(2)(x) or it would be exempt u/s. 10(2). An assessee favourable view was endorsed in the undernoted case".

10.2.8Any amount/specified asset received by an HUF from the relative of karta would not qualify for exemption":

10.2.9 For the amount / specified asset received from relative, occasion is not required to be specified.

**10.3 On the occasion of the marriage:**

10.3.1 Next exception is about the receipt on the occasion of the marriage of the individual. This exception would apply only in relation to individual and NOT for HUF.

10.3.2 Further the receipt by the bride or groom would alone qualify for the benefit and the receipt by the parents of the bride or groom would not qualify for the benefit in the hands of the parents",

10.3.3The term "on the occasion of marriage" has wider meaning as compared to "at the time of marriage". Therefore, any amount/property received few days prior to/succeeding the marriage would also qualify as receipts on the occasion of the rnarrtaqe".

10.304Also, the amount need not necessarily be received only from relatives.

**10.4 By will / inheritance / in contemplation of death of donor:**

1004.1 The next item is receipt under a Will or by way of inheritance.

1004.2Another item is receipt in contemplation of death of payer or donor. To fall under this clause, the payer must be ill at the time of giving the money / specified asset and possession of the asset must have been handed over to the recipient during the life time of the donor".

**10.5 Interplay between section 68 and sec 56(2):**

10. 5.1 In the above mentioned four categories, in order to claim the benefit, the test of genuineness has to be satisfied. If the test of genuineness fails, the receipt may become taxable u/s. 68, 69 series54. Merely because the claim falls under any of the above mentioned four categories, one may not be in a position to say that the test to be satisfied u/s. 68/69 can be dispensed with.

10.5.2In other words, the first test to be satisfied is under section 68/69 series and thereafter the exception provided in the proviso to section 56(2)(x). In a case where the assessee satisfied the conditions of section 68 and thereafter proved that the amount received is from a relative, the AO cannot make addition of such sum to the income of the assessee for the reason that the assessee could not furnish the occasion in respect of which the amount was received":

**10.6 Local authority/ institutions:**

10.6.1 The next series of the exceptions are receipts from local authority as defined in section 10(20), fund or trust or institution or medical or educational institution referred to in section 10(23C) or trust or institution registered u/s. 12A or 12AA.

10.6.2The next series of the exceptions are receipts by fund or trust or institution or medical or educational institution' referred to in section 10(23C)(iv)/(v)/(vi)/(via) or trust or institution registered u/s. 12A or 12AA.

10.6.3 These institutions, funds or trusts, either recognised u/s. 10(23C) or registered u/s. 12A/12AA, would generally be engaged in public charitable or religious activities. Therefore, the receipt of money/specified assets by these trusts, funds, institutions, etc., without consideration, would otherwise qualify for exemption u/s. 10(23C) or u/s. 12A/12AA subject to satisfaction of the conditions mentioned in the respective sections. However, if the specified assets are received by the trust or fund or institution, etc., for inadequate consideration, the provisions of section 56(2)(x) would otherwise trigger. Because of this explicit exception provided, any receipt of the specified assets by these institutions, etc., for inadequate consideration also would not be liable for tax u/s. 56(2)(x).

10.6.4Since there is a specific provision providing exception in the case of a trust or institution recognised u/s. 10(23C) or registered ul». 12A/12AA, a question arises about the applicability of the section in the case of trust not registered u/s. 12A/12AA or not recognised ule. 1 0(23C). Needless to say, the income of these unregistered institutions would otherwise be chargeable to tax under normal provisions. However, one has to examine the applicability of the provisions on the corpus donations received by these unregistered trusts. Earlier, when the section was applicable only to an Individual or HUF, the judicial decisions were to the effect that corpus donations received by an unregistered trust would not be liable for tax because they are capital receipts. The ratio of these decisions needs to be tested in the light of the amendment made in section 56(2) by making this section applicable to AOP/BOI/AJP as well.

**10.7 By a private trust:**

10.7.1 In case of private trust, receipts from an individual would qualify for the exception only if the trust is created or established for the benefit of the relative of the individual. Here the beneficiary of the trust is the relative of the individual who is giving money or specified assets. For such a beneficiary, the contributing individual need not be relative. The exception provided in this item has to be examined from the stand point of individual contributing for the relative and not from the recipient's perspective.

10.7.2In case the beneficiary happens to be falling outside of the definition of the relative, then the receipts by the private trust would not qualify for the exception provided in this item. Similarly, if the money/asset comes to the trust from a person who is unrelated to the beneficiary, the exception provided in this item would not be applicable.

10.7.3If a private trust is created for the sole benefit of unregistered public charitable trust, the same would not qualify for the benefit under this item and consequently, the receipts by the private trust would not be eligible for the exception provided under this item.

10.7.4 The receipt by the beneficiaries from a private specific trust would be considered to be distribution of the amount/asset to the beneficiaries against which the beneficiaries already have a right or interest in it. Therefore, the same could not be considered as receipt by the beneficiaries without consideration. Consequently, there would not be any tax incidence in the hands of the beneficiaries when there is distribution of property or income by the private trust".

**10.8 Reorganisation related cases:**

10.8.1 Since the scope of section 56(2)(x) has been enlarged to include companies (irrespective of whether they are listed, unlisted, public or private) and all other type of entities, exceptions have been provided for the following transactions:

Section ref.

47(i) Dealing with Remarks

47(iv) Distribution on total or partial partition of HUF New insertion

47(v) By a holding company to its 100% subsidiary company New insertion

47(vi) By a subsidiary company to its 100% holding company New insertion

47(via) In amalgamation where the amalgamated company in Indian company New insertion

47(viaa) Transfer of shares of Indian company held by a foreign company to another foreign company in a scheme of amalgamation Existing

47(vib) Transfer of capital asset by a banking company with a banking institution in a scheme of amalgamation New insertion

47(vic) Transfer of capital asset by a demerged company to a resulting Indian company in the scheme of demerger New insertion

47(vica) Transfer of shares in Indian company held by a foreign demerged company to a foreign resulting company New insertion

47(vicb) Transfer of capital asset by a predecessor coop bank to a successor coop bank Existing

47(vid) Transfer of shares held in predecessor coop bank in lieu of allotment of shares in successor coop bank Existing

47(vii) Transfer of shares held in amalgamating company in lieu of the shares in amalgamated company Existing

10.8.2For few other clauses of section 47, there is no specific exception provided in law. For example, in case of conversion of firm/proprietorship into a company or conversion of limited company into an LLp, there is no exception provided in law. These transactions need to pass the test of adequate consideration.

10.8.3 Also, the exception is provided only for tax neutral amalgamation satisfying the conditions of section 2(1 B) of the Act. Exception would not be available for the non-tax neutral amalgamation cases. In such cases of non-qualifying amalgamating/amalgamated and demerged/resulting companies, what is transferred between them was only an undertaking which is not a specified asset and therefore the provisions of section 56(2) (x) would not apply even if there is no specific exception. However, one needs to examine the impact in the hands of the shareholders of such companies.

**11. Valuation of specified assets:**

11.1 Rule 11 U provides for definition of certain terms used in Rule 11 UA. Rule 11 UA provides for detailed methodology for valuation of various specified assets.

**11.2 Valuation of art work, etc:**

11.2.1In the case of archaeological collections, drawings, paintings, sculptures or any work of art, (hereinafter referred to as "art work") the FMV shall be determined as follows:

a) The invoice value if the art work is purchased from a registered dealer

b) The value mentioned in the valuation report obtained from the registered valuer in case the art work, etc., are obtained in any other mode. Such requirement of obtaining the valuation report from the registered valuer would arise only if the value of the specified assets obtained exceeds ~ 50000/-.

**11.3 Jewellery:**

11.3.1 In the case of jewellery, the FMV shall be determined as follows:

a) The invoice value if the same is purchased from a registered dealer

b) The value mentioned in the valuation report obtained from the registered valuer in case the jewellery are obtained in any other mode. Such requirement of obtaining the valuation report from the registered valuer would arise only if the value of the jewellery obtained exceeds ~ 50,000.

**11.4 Quoted shares and securities:**

11.4.1 In case of quoted shares and securities, shall be determined as follows:

a) The value shall be the transaction value as recorded in the stock exchange if they are received by way of transaction carried out thorough a recognised stock exchange

b) Lowest price of such shares and securities quoted in the stock exchange if they are received otherwise than by way of transaction carried out through a recognised stock exchange. If such shares and securities are not quoted in the recognised stock exchange on the valuation date, the quoted price on a date immediately preceding the valuation date in which the concerned shares and securities were traded shall be the value.

**11.5 Unquoted securities:**

11.5.1 In the case of unquoted shares and securities, the rule divides them into unquoted equity shares and unquoted preference shares and securities.

11.5.2In the case of unquoted preferences shares and securities, the estimated price it would fetch, if sold in the open market as on the valuation date supported by the report of merchant banker or Chartered Accountant shall be the FMV of such preference shares and securities.

11.5.3In the case on unquoted equity shares, the rule provides for valuation based on the balance sheet on the valuation date audited by the auditor appointed under the Companies Act. The transaction in the unquoted equity shares may take place on different dates in a particular financial year. Expecting the recipient of the unquoted shares of the company to have the audited balance sheet of the company on the date of receipt of the shares of the company is near impossibility. Therefore, the exercise of ascertaining the value of the shares as per the last audited balance sheet and factoring the same for the profit earned by the company from the beginning of the year till the date of receipt of the shares by the recipient was accepted in the undernoted case"

11.5.4 The value appearing in the balance sheet of the company for the following assets requires substitution of the value prescribed:

a. Jewellery & art work - the value it would fetch if sold in the open market on the valuation date supported by the registered valuer

b. Immovable property - the stamp duty value of the immovable property assessed, adopted or assessable

c. Shares and securities - the FMV as per the method prescribed in the rule.

11.5.5 Substitution of the FMV of the specified assets while determining the FMV of the shares of unquoted equity shares of the company would become onerous task to the recipient when the company's balance sheet contained number of assets falling under the above mentioned category. The task would become all the more difficult when there is wide fluctuation in the above mentioned asset portfolio between the last audited balance sheet and the valuation date.

11.5.6In case the company invested in the shares and securities of other companies, the FMV of such shares and securities must first be determined. Thereafter, the FMV of the shares of the company under transfer must be determined after taking into consideration the value determined. In a case where there is cross holding, there is no explicit provision made in the Rules 11 UA to deal with the same.

11.5.7 As per Rule 11 U listed securities means securities listed on a stock exchange in India. In other words, the securities of a foreign company listed on a foreign stock exchange also would be considered as unquoted securities only.

**12. Applicability of the section to Non-resident:**

12.1 As per the provisions of section 5, in the case of a non-resident, the income received or deemed . to be received in India or accrued or arisen or deemed to accrue or arise in India alone would be taxable under the Act.

12.2 In the case of a non-resident, if the sum of money is received in India without consideration or specified assets are received in India either without consideration or for inadequate consideration, the same shall be liable to tax subject to the exception provided in section 56(2)(x).

12.3 If the non-resident receives a sum of money or specified assets outside India, unless the same is deemed to be received or accrued or arisen in India, the same shall not be liable for tax u/s. 56(2)(x) .

12.4 To ascertain the co cept of deemed receipt, section 9 needs to be examined.

12.5 As per section 9(1 )(i), income arising from transfer of a capital asset situated in India shall be deemed to accrue or arise in India.

12.6 Consider the following case:

a) M/s. S Inc (Non-resident Company) holds 100% shares in M/s. S (P) Ltd, an Indian company.

b) M/s. S Inc gifts few shares held in M/s. S (P) Ltd to M/s. SS Inc (another NR Company) in its group

c) Since gift is exempt u/s. 47, S Inc may not invite any tax consequence in its hands.

d) However, in the hands of M/s. SS Inc, the provisions of section 56(2) (x) would apply.

e) Instead of gifting, if the shares are transferred for a consideration, the provisions of section 50CA would apply in the hands of M/s. S Inc and the provisions of section 56(2)(x) would apply in the hands of M/s. SS Inc. The consideration given by the transferee to the transferor must pass the test of FMV determined u/r 11 U & 11 UA.

12.7 As per Explanation 5 to section 9(1), a share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if it derives, directly or indirectly, its value substantially from the assets located outside India.

12.8 In the example given in Para 12.6 consider the following additional information:

a) The shares of M/s. S Inc are held by M/s. AS Inc (Parent Co)

b) The value of shares of M/s. S Inc is derived substantially from the shares of M/s. S (P) Ltd.

c) A portion of the shares of M/s. S Inc is either gifted or transferred by M/s. AS Inc.

d) The question that arises is whether the provisions of section 56(2) (x) and section 50CA would apply in the given case considering the provisions of section 5 and read with Explanation 5 to section 9(1) .

e) In case of gift of shares, the transferor would not be liable for tax because of section 47 and transferee would be liable for tax u/s. 56(2)(x)

f) In case of transfer of shares, consideration passed on to the transferor from the transferee needs to be tested for FMV in accordance with rule 11 U and 11 UA and where the FMV is more than the apparent consideration, the parties would be exposed to tax under section 50CA and 56(2) (x) respectively.

12.9 The conclusion drawn above would be subject to the provisions of applicable DTAA.

12.10 One may also take a view that in the above examples, the income from transfer of shares of foreign company is deemed to accrue or arise in India by virtue of section 9(1) and NOT deemed to be received in India. The taxable event in section 56(2)(x) is only receipt and NOT Accrual. Therefore, in the hands of the recipient, no tax can be levied u/s. 56(2)(x).

12.11 Transfer by Resident in India to Non Resident or foreign company:

12.11.1 Clause 4 of the Finance (No.2) Bill of 2019 proposed an amendment in section 9 (1) as follows:

"(viii) income of the nature referred to in sub-clause (xviia) of clause (24) of section 2, arising from any sum of money paid, or any property situate in India transferred, on or after the 5th day of July, 2019 by a person resident in India to a person outside India."

12.11.2The memorandum explaining the provisions of clause 4 of the Finance (No.2) Bill 2019 read as follows:

Section 9 of the Act relates to Income deemed to accrue or arise in India. Under the Act, non -residents are taxable in India in respect of income that accrues or arises in India or is received in India or is deemed to accrue or arise in India or is deemed to be received in India. Under the existing provisions of the Act, a gift of money or property is taxed in the hands of donee, except for certain exemptions provided in clause (x) of sub-section (2) of section 56. It has been reported that gifts are made by persons being residents in India to persons outside India and are claimed to be non-taxable in India as the income does not accrue or arise in India. To ensure that such gifts made by residents to persons outside India are subject to tax, it is proposed to provide that income of the nature referred to in sub-clause (xviia) of clause (24) of section 2, arising from any sum of money paid, or any property situate in India transferred, on or after 5th July, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India. However, the existing provision for exempting gifts as provided in proviso to clause (x) of sub-section (2) of section 56 wl!! continue to apply for such gifts deemed to accrue or arise in India. In a treaty situation, the relevant article of applicable DTAA shall continue to apply for such gifts as well.

This amendment will take effect from 1st April, 2020 and will, accordingly, apply in relation to the assessment year 2020-21 and subsequent assessment years.

12.11.3 However, when the Finance (No. 2) Bill 2019 became Finance (No. 2) Act, 2019, the amendment was made by inserting clause (viii) to section 9(1) which read as follows: "(viii) income arising outside India, being any sum of money referred to in sub-clause (xviia) of clause (24) of section 2, paid on or after the 5th day of July, 2019 by a person resident in India to a non-resident, not being a company, or to a foreign company."

12.11.4 From the above it could be noticed that the amendment made would apply only in respect of sum of money and NOT for the specified assets. Also, it could be noticed that the amendment would apply when the resident in India transfers the amount to a Non-resident or foreign company.

**13. Conclusion:**

13.1 Section 56(2) (x) is a deeming provision and also an anti-abuse provision. Therefore, strict interpretation is warranted while dealing with the provision.

13.2 Legislature cannot anticipate all possibilities / eventualities while introducing the law and law has to mature over period of time considering the need and practical ground realities.

13.3 Similar is the case of section 56 (2)(x) . Situation like auction sale, distress sale, Market command over smaller plot as against larger plot, locational advance/disadvantage, encumbrances, impediment in transfer of assets, etc are not facto red / provided for in determining FMV except for resort to valuation by valuation officer in case of immovable properties and by registered valuer in case of specified movable properties.

13.4 It may be apt to mention that the judiciary of the country, being fourth pillar, can alone come to the rescue of the tax payer, in case the provisions of the Act read with Rules do not provide remedy to the tax payer, in genuine cases.

13.5 The paper writer sincerely thanks ICAI for the opportunity given and also hopes that the discussion is mutually beneficial and rewarding.