The Law On Taxability Of Gifts Under The Income-tax Act, 1961

By CA Abhishek Chordiya

INTRODUCTION

It is always a pleasure to give gifts and more pleasure to receive it. Gifts means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth. Thus a gift does not have the character of income. Accordingly, in the hands of donee, ordinarily a gift does not come within the definition of "Income". Generally gift receiving was not subject to income tax. But it was found that many individuals used the loopholes in this act, to launder money. Therefore, Ministry of Finance introduced a New Provision u/s 2(24)(xii) r.w.s. 56(2)(vii). Therefore, after 1st September, 2004, as per Income Tax Act, 1961 receiver of gift is charged to taxation u/s 56(2)(vii) under the head "Income from Other Sources". Giver/Donor of gift is not chargeable to tax except few situations. Let's understand the various situations relating to gifts & the provisions of Income Tax Act, 1961 for those situations.

GIFT RECEIVED IN FORM OF CASH OR CASH EQUIVALENTS

At the time of Making Gift:

Taxability in hands of Donee-Sec. 56(2)(vii):

If any individual/HUF receives any sum of money, without consideration, the aggregate value of which exceeds Rs.50,000 than whole of the aggregate value of such sum shall be taxable. If the value of Cash gift does not exceed Rs. 50,000 then nothing is taxable in hands of Donee.

Taxability in hands of Donor-

No tax implication for Donor of Cash Gift.

After Making Gift:

Clubbing of Income

If donee is spouse or son's wife of the Donor, then any income arising from the use/investment of such cash will be clubbed in the hands of Donor. [Sec. 64(1)].

Further, if the donee is minor child of donor, then any income arising from the use/investment of such cash will be clubbed in the hands of Parents. [Sec. 64(1A)]

Please Note: Cash Gift upto Rs. 50,000 in a year is Exempted. However if any

Individual/HUF receive cash gift exceeding Rs. 50,000 then whole of such amount will be taxable. In Other words, Exemption of Rs. 50,000 is available only if you receive Cash gift upto Rs. 50,000 in a whole year.

GIFT RECEIVED IN THE FORM OF MOVEABLE PROPERTY (WITHOUT CONSIDERATION)

At the time of Making Gift:

Taxability in hands of Donee-Sec. 56(2)(vii):

If any individual/HUF receives any movable property, without consideration, the aggregate fair market value of which exceeds Rs.50,000 than whole of the aggregate fair market value of such movable property shall be taxable. If aggregate fair market value of movable property does not exceed Rs. 50,000 then nothing is taxable in hands of Donee.

Taxability in hands of Donor-Sec.47(iii):

No Capital gain will arise if transferred property is Capital Asset because, it is not considered as transfer u/s 47(iii).

After Making Gift:

Clubbing of Income

If transfer of movable property is made to spouse, son's wife or any other person for immediate/deferred benefit of spouse or son's wife of the Donor, then any income/benefit arise from the use/investment of such property will be clubbed in the hands of Donor(i.e. Transferor). [Sec. 64(1)]

Further, if the donee is minor child of donor, then any income arising from the use/investment of such movable property will be clubbed in the hands of Parents. [Sec. 64(1A)]

Taxability in hands of Donee at the time of sale of such immovable property-Sec. 49(1) & 49(4):

1. Cost of acquisition for the purpose of computation of Capital Gain will be Cost of previous owner if nothing has been taxed under sec.56(2)(vii).***[Sec. 49(1)]***

   However, Where the capital gain arise from the transfer of a property, the value of which has been subject to income tax under section 56(2)(vii) or 56(2)(viia), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purpose of the said section. ***[Sec. 49(4)]***
2. Holding period for such asset will be counted from the date of acquisition of the previous owner [***As per the decision by Bombay High Court in the case of Manjula J. Shah***]. Here Previous owner means –a person who have acquired such asset by way of otherwise than gift.

MOVEABLE PROPERTY RECEIVED FOR INADEQUATE CONSIDERATION

At the time of Making Gift:

Taxability in hands of Donee-Sec. 56(2)(vii):

If any individual/HUF receive any movable property, for a consideration which is less than the aggregate fair market value of such property by an amount exceeding Rs.50,000, the aggregate fair market value of such property as exceeds such consideration shall be taxable in the hands of receiver.

Taxability in hands of Donor-Capital Gain/Business Income:

Donor will be liable to tax under the Capital Gain/Business Income. Income for Donor will be calculated as Follow:

(i) IN CASE INCOME IS CHARGEABLE TO TAX UNDER HEAD BUSINESS OR PROFESSION:

Income for Donor will be Sale Consideration - Purchase Cost- other allowable expense in relation to such property.

(ii) IN CASE INCOME IS CHARGEABLE TO TAX UNDER HEAD CAPITAL GAIN:

Income for Donor will be

Sale Consideration xxx

Less: Indexed Cost of Acquisition/Cost of Acquisition xxx

Less: Cost of Improvement xxx

After Making Gift:

Clubbing of Income

If transfer of movable property is made to spouse, son's wife, or any other person for immediate/deferred benefit of spouse or son's wife of the Donor, then any income/benefit arise from the use/investment of such property will be clubbed in the hands of Donor (i.e. Transferor) proportionately. [Sec. 64(1)]

Further, if the donee is minor child of donor, then any income arising from the use/investment of such movable property will be clubbed in the hands of Parents. [Sec. 64(1A)]

Taxability in hands of Donee at the time of sale of such immovable property-Sec. 49(4):

1. Where the capital gain arise from the transfer of a property, the value of which has been subject to income tax under section 56(2)(vii) or 56(2)(viia), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purpose of the said section. ***[Sec. 49(4)]***
2. Holding period for such asset will be counted from the date of acquisition of asset by the Donee.

GENERAL POINTS FOR MOVEABLE PROPERTY

1. ***Gift received in the Form of Movable property upto Rs. 50,000 in a year is Exempted.***

However if any Individual/HUF receive movable property as gift exceeding Rs. 50,000 then whole of such amount will be taxable. In Other words, Exemption of Rs. 50,000 is available only if you receive movable property upto Rs. 50,000 in a whole year.

2. Meaning of movable property means

   (i) Shares & securities

   (ii) Jewellery & Bullion;

   (iii) Archaeological collection;

   (iv) Drawings;

   (v) Paintings;

   (vi) Sculptures & any work of art.

   Therefore any movable property other than above will not be liable to tax under Income Tax Act, 1961.

3. **CLARIFICATION FROM FINANCE MINISTRY:**
   Section 56(2)(vii) shall apply if Property is in nature of capital asset in the hands of recipient. It means if property is Stock-in-Trade, Raw Material & Consumable stores for receiver then section 56(2)(vii) has no application.

GIFT RECEIVED IN THE FORM OF IMMOVEABLE PROPERTY (WITHOUT CONSIDERATION)

At the time of Making Gift:

Taxability in hands of Donee-Sec. 56(2)(vii):

If any individual/HUF receives any immovable property, without consideration, the stamp value of which exceeds Rs.50,000 than stamp duty value of such immovable property shall be taxable. If stamp duty value of immovable property does not exceed Rs. 50,000 then nothing is taxable in hands of Donee.

Taxability in hands of Donor-Sec.47(iii):

No Capital gain will arise if transferred property is Capital asset because, it is not considered as transfer u/s 47(iii).

After Making Gift:

Clubbing of Income

If transfer of immovable property is made to spouse, son's wife, or any other person for immediate/deferred benefit of spouse or son's wife of the Donor, then any income/benefit arise from the use/investment of such property will be clubbed in the hands of Donor (i.e. Transferor) proportionately. [Sec. 64(1)]

Further, if the donee is minor child of donor, then any income arising from the use/investment of such immovable property will be clubbed in the hands of Parents. [Sec. 64(1A)]

Taxability in hands of Donee at the time of sale of such immovable property-Sec. 49(1) & 49(4):

1. Cost of acquisition for the purpose of computation of Capital Gain will be Cost of previous owner if nothing has been taxable under sec.56(2)(vii).***[Sec. 49(1)]***
   However, Where the capital gain arise from the transfer of a property, the value of which has been subject to income tax under section 56(2)(vii) or 56(2)(viia), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purpose of the said section. ***[Sec. 49(4)]***
2. Holding period for such asset will be counted from the date of acquisition of the previous owner [***As per the decision by Bombay High Court in the case of Manjula J. Shah***]. Here Previous owner means – a person who have acquired such asset by way of otherwise than gift.

IMMOVEABLE PROPERTY RECEIVED FOR INADEQUATE CONSIDERATION

At the time of Making Gift:

Taxability in hands of Donee-Sec. 56(2)(vii): [Amended by FA,2013, w.e.f. A.Y.2014-2015]

If any individual/HUF receive any immovable property, for a consideration which is less than Stamp duty value, and the difference between stamp duty value & consideration paid exceeds Rs.50,000, than difference between consideration paid and stamp duty value of such immovable property shall be taxable in the hands of donee. However, If the difference between stamp duty value & consideration paid does not exceed Rs.50,000 then nothing is taxable in hands of Donee.

Taxability in hands of Donor-Sec.50C & 43CA:

Sec. 50C of Income Tax Act, 1961 will be applicable for Donor if such immovable property is Land & Building, & such land & building is capital asset for the Donor. If such land & building is not capital asset then sec.43CA will be applicable for donor. According to Sec. 50C & 43CA, if any Land or Building is transferred for a consideration which is less than Stamp Duty value, then Sale consideration will be Stamp Duty value for the purpose of calculation of Capital Gain/Business income.

Please Note: It is prescribed that if the date of agreement fixing the value of consideration of the asset and the date of registration of such transfer is not the same (in other words, if there is a time-gap in-between the date of agreement & date of registration), the Stamp Duty Value as on the date of agreement may be taken as sale consideration. But this provision shall apply

only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement.

<u>After Making Gift:</u>

<u>Clubbing of Income</u>

If transfer of immovable property is made to spouse, son's wife, or any other person for immediate/deferred benefit of spouse or son's wife of the Donor, then any income/benefit arise from the use/investment of such property will be clubbed in the hands of Donor (i.e. Transferor) proportionately. [Sec. 64(1)]

Further, if the donee is minor child of donor, then any income arising from the use/investment of such immovable property will be clubbed in the hands of Parents. [Sec. 64(1A)]

<u>Taxability in hands of Donee at the time of sale of such immovable property- Sec. 49(1) & 49(4):</u>

1. Where the capital gain arise from the transfer of a property, the value of which has been subject to income tax under section 56(2)(vii) or 56(2)(viia), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purpose of the said section. ***<u>[Sec. 49(4)]</u>***
2. Holding period for such asset will be counted from the date of acquisition of asset by the Donee.

POINT TO REMEMBER IN CASE OF IMMOVEABLE PROPERTY

Limit of Rs. 50,000 should be checked for each transaction sparely. That means if in a single transaction, the difference between stamp duty value & consideration paid exceeds Rs.50,000, than difference between consideration paid and stamp duty value of such immovable property shall be taxable. Otherwise nothing is taxable.

EXEMPTIONS

Now you must be wondering that in each situation gift is taxable. Isn't our government against gifts? Don't worry certain exemptions are also there to keep you happy. In below circumstances, gifts are not taxable even if value is greater than Rs.50,000:

1. Gift received from any relative; or
2. Gift received on the occasion of the marriage of individual; or
3. Gift received under a will or by way of inheritance; or
4. Gift received in contemplation of death of the payer or donor, as the case may be; or
5. Gift received from any local authority as defined in explanation to clause(20) of Sec. 10; or

6. Gift received from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause(23C) of Sec.10; or

7. Gift received from any trust or institution registered u/s 12AA.

MEANING OF "RELATIVE"

Term relative is very confusing & complex under Income Tax Act, 1961. Since receipt of any gift is exempted therefore it becomes important to understand meaning of "Relative". Here is the meaning of Relative for the purpose of Sec. 56(2):

A. IN CASE OF INDIVIDUAL—

1. Spouse of Individual;
2. Brother or sister of the individual;
3. Brother of sister of the spouse of the individual;
4. Brother or sister of either of the parents of the individual;
5. Any lineal ascendant or descendant of the individual;
6. Any lineal ascendant or descendant of the spouse of the individual;
7. Spouse of the person referred to in clause (ii) to (vi).

B. IN CASE OF HUF—

Any member thereof

TABULAR PRESENTATION OF "RELATIVES" U/S 56(2)(VII) [IN RELATION TO INDIVIDUAL]

From the above list you can understand that, "Relative" u/s 56(2) have very wide meaning. To understand the meaning of Relative in an easy manner a tabular presentation is given below (Hindi connotation has also been mentioned):

Great Grand Father (Bade Dada	Great Grand Mother (Badi Dadi)	Wife's Father (Sasur)	Husband's Father (Sasur)	Husband's Brother's Wife (Devrani/Jethani)
Grand Father (Dada)	Grand Mother (Dadi)	Wife's Mother (Saas)	Husband's Mother (Saas)	Mother's Brother's Wife (Mami)
Father	Mother	Husband's	Husband's	Wife's Brother's

(Papa)		Brother (Dever/Jeth)	Sister (Nanad)	Wife
Brother	Brother's Wife (Bhabhi)	Wife's Brother (Saala)	Wife's Sister (Saali)	Mother's Sister's Husband (Mausa)
Sister	Sister's Husband (Jija)	Mother's Brother (Mama)	Mother's Sister (Maasi)	Father's brother's Wife (Chachi)
Wife	Husband	Father's Brother (Chacha)	Father's Sister (Bhua)	Father's Sister's Husband (Funfa)
Son	Son's Wife (Bahu)	Wife's Grand Father (Dada Sasur)	Husband's Grand Father (Dada Sasur)	Husband's Great Grand Mother (Badi Dadi Saas)
Daughter	Daughter's Husband (Jawai)	Wife's Grand Mother (Dadi Saas)	Husband's Grand Mother (Dadi Saas)	Wife's Great Grand Mother (Badi Dadi Saas)
Grand Son (Pota)	Grand Son's Wife	Wife's Great Grand Father (Bade Dada Sasur)	Husband's Great Grand Father (Bade Dada Sasur)	Husband's Sister's Husband
Wife's Sister's Husband	Grand Son's Son/Daughter	Grand Daughter's Daughter/son	Wife/Husband of Grand Son's Son/Daughter	Husband/Wife of Grand Daughter's Daughter/son

WHAT IS THE MEANING OF HINDU UNDIVIDED FAMILY?

Generally, HUF is same as Joint Hindu Family. It is a body consisting of persons lineally descendant from a common ancestor, including their wives and unmarried daughters, who are staying together jointly; joint in food, estate & worship.

WHAT WILL HAPPEN IF A MEMBER OF HUF GETS MARRIED WITH NON-HINDU?

According to Hindu Law if any member of HUF, get marry with any Non-Hindu individual, then he/she cease to be member of such HUF. Therefore under the definition of Relative u/s 56(2)(vii), from the perspective of HUF, such member will not be treated as relative.

It is to be noted that, just because of provision under Hindu Law in relation to HUF, it will not affect the status of such member as relative from the

perspective of Individual. Therefore, Such member shall be considered as "Relative" from the perspective of individual, if covered under the definition, under Sec. 56(2)(vii).

WHAT WILL BE THE STATUS OF CHILD OF A MEMBER OF HUF WHO GOT MARRIED WITH NON-HINDU & BRINGING UP HIS/HER CHILD AS NON-HINDU?

As decided by Madras High Court in the case of ***Add.CIT V/s G. Venkataraman [(1977) 109-ITR-247]***, if any child is not brought up/baptised as Hindu, then such child cannot be treated as Hindu & accordingly such child cannot be a member of HUF.

ILLEGITIMATE CHILD

Whether illegitimate child can be considered as relative or lineal descendent under I.T.Act, 1961 for the purpose of levying tax?

This issue was considered first for the purpose of Sec. 5(1)(xii) of Gift tax Act [***GTO v. A.K.C. Natarajan (1986) 16 ITD 359 (Mad.)***]. It was held that word *"child"* used in Sec. 5(1)(xii) cannot refer to an illegitimate child. It was further argued that Sec. 2(15B) of Income Tax Act,1961 defines child includes a step-child & adopted child of individual. However it does not include illegitimate child.

Therefore illegitimate child is not relative u/s 56(2)(vii) of Income Tax Act, 1961.

GIFTS IN CONTEMPLATION OF DEATH

These gifts cannot be considered as receipt liable to tax under the section. The concept is defined and explained in section 191 of the Indian Succession Act, 1925, which reads as follow:

"Section 191: Property transferable by gift made in contemplation of death –

1. A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will.

2. A gift said to be made in contemplation of death where a man, who is ill and expect to die shortly because of his illness, delivers to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.

3. Such a gift may be resumed by the giver; and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made"

SYNOPSIS OF VALUATION RULES FOR DETERMINING "FAIR MARKET VALUE OF GIFTS"

Fair Market Value is the price, at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

Rule 11U & 11UA prescribed the different methods for the purpose of valuation of specified assets. The FMV of the specified asset needs to be determined on a date on which such specified assets are received by the assessee. The determination of FMV, under this rule, will be only for the purpose of section 56 of the Income Tax Act [Notification No. 23/2010, which shall come into force from 1st October, 2009]. Specified assets received from relative are not covered by the provisions of sections 56(2)(vii) of the act

METHOD OF VALUATION

1. VALUATION OF SPECIFIED ASSETS (OTHER THAN SHARES & SECURITIES)

DESCRIPTION OF THE PROPERTY	BASIS OF DETERMINATION OF FMV
Specified assets (Other than Shares & Securities)	Estimated price which specified asset will fetch if sold in the open market on the valuation date.
In case if specified assets are received by way of purchase on the valuation date from the registered dealer (means a dealer who is registered under Central Sales-Tax Act/General Sales-Tax Law for the time being in force in any state)	FMV is the Invoice Value of the asset.
In case if specified assets are received by any other mode and the value of specified assets exceeds Rs. 50,000	The assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date. *****A registered valuer is a person who is entitled to function as registered valuer for the purpose of the Wealth Tax Act.***

Here Specified Assets means:-

1. Jewellery & Bullion;
2. Archaeological Collections;
3. Drawings

4. Paintings;
5. Sculptures; &
6. Any Work or art.

2. VALUATION OF SHARES & SECURITIES

VALUATION OF QUOTED SHARES & SECURITIES

DESCRIPTION OF THE PROPERTY	BASIS OF DETERMINATION OF FMV
If Quoted shares & securities are received by way of transaction carried out through any Recognized Stock Exchange (RSE).	Transaction Value recorded in such Recognized Stock Exchange.
If quoted shares & securities are received by way of a transaction carried out ***other than*** through Recognized Stock Exchange (RSE).	Lowest Price quoted on any RSE on the valuation date. If in case there is no trading on the valuation date, then, FMV will be lowest price on the date immediately preceding the valuation date when trading happened. *****Which value should be taken if Shares & Securities are Quoted on more than one Stock Exchange?*** ***Lowest Price quoted on that stock exchange will be taken who have higher value of transactions for such security on the valuation date.***

VALUATION OF UNQUOTED EQUITY SHARES

Unquoted Equity Shares	Value as per the Balance Sheet (including notes thereon) on the Valuation date in terms of the following formula: $\frac{(A-L) \times PV}{PE}$ Where, **A**= Book Value of the assets in the Balance Sheet **Less** (i) Any amount of tax paid as TDS/TCS; or (ii) Advance income tax paid, (iii) Any amount shown in Balance Sheet as asset which does not represent the value of any asset, including debit in Balance in Profit & Loss Account **L**= Book value of Liabilities in Balance Sheet **Less**

	(i) Paid up Equity Capital; (ii) Amount set aside for undeclared dividends; (iii) Reserves, other than towards depreciation; (iv) Credit balance in Profit & Loss Account; (v) Amount of provision for tax, other than advance tax paid in excess of tax payable with reference to book profits (under MAT); (vi) Provisions towards unascertained liabilities; (vii) Provisions towards contingent liabilities; **PE**= Total amount of paid-up Equity Share Capital **PV**= Paid-up value of such equity shares received
VALUATION OF UNQUOTED SHARES OTHER THAN EQUITY SHARES	
Unquoted Shares other than Equity Shares in a Company which are not listed on any Recognized Stock Exchange	Price it would fetch if sold in open market on the valuation date & the assessee is required to obtain a report from a Merchant Banker or a Chartered Accountant in support of the FMV.

RECEIPT OF GIFT/EMPLOYEE AWARD BY EMPLOYEE FROM EMPLOYER [SEC.17]

Although Gift Received are exempted under Income Tax Act, however gift received by employee from employer have separate tax treatment under section 17. Any Gift received by the employee from employer is treated as Perquisite and included in the Income of employee under the head "Income from Salary". Gift may be received in the form of Gift or Employee Award. Further, Gift may be in the form of Cash or Kind.

However, if the aggregate value of gift received by the employee from employer, during the previous year, does not exceeds Rs. 5,000/- then such Gift is not taxable in the hands of employee. If gift received during the previous year exceeds Rs. 5,000, then whole amount of gift received will be chargeable to tax.

From the Gems of Judiciary –

1. C. Lakshmi Rajyam V/s CIT [(1960) 40 ITR-340 (Mad.)]

Madras High Court held that where the payment is made to an employee was purely voluntary and gratuitous and was purely a testimonial gift for his past services, that is a gift of money represented as a mark of esteem or acknowledgement of his services, then such amount of gift will not be tax as Income from Salary. Such Gift will be taxable as Income from Other Sources.

2. Devid Mitchel V/s CIT [(1956) 30 ITR-701 (Cal.)]
Calcutta High Court held that a voluntary payment in appreciation of services rendered otherwise than as an employee would not be come within the ambit of Salary and as such would not be taxable as Income from Salary.

RECEIPT OF GIFT UNDER BUSINESS OR PROFESSION [SEC.28]

A Gift may constitute as income from Business or Profession u/s 28(iv) of the Income Tax Act, 1961. Such a gift has to be distinguished from a personal gift which is not covered by these provisions. Taxability of Business/Professional gifts is governed by Section 28(iv).

As per section 28(iv), the value of any benefit or perquisite whether convertible into money or not, arising from business or the exercise of a profession is taxable as income from Business or Profession.

From the Gems of Judiciary –
***** CIT V/s Bhavanagar Bone & Fertiliser Co. Ltd. [(1987) 166 ITR-316 (Guj.)]***
Gujarat High Court held that in order to attract the provisions of section 28(iv), there must be a nexus between the business of the assessee & the benefit which the assessee has derived. In this case the Gujarat High Court held that the amount received by the assessee company had no connection or nexus with the business of the assessee company and therefore it didn't represent value of any benefits or perquisite arising from the business of the assessee company. Therefore such amount cannot be includible in the total income of the assessee company under Section 28(iv) of Income Tax Act, 1961.

FREQUENTLY ASKED QUESTIONS IN RELATION TO GIFTS

1. DONATION MADE BY DONOR WOULD ATTRACT SECTION 80G DEDUCTION OR NOT?

Gifts to charities are given special treatment under section 80G of Income Tax Act. If a trust or institution is recognized as such, the donation to such trust or institution, the donor is entitled deduction of such donation u/s 80G.
Donations by Charitable Trust is a valid donations by it, if is for the purpose of and in the course of fulfilment of any of the objects of the charitable trust, donation to trusts having similar objects would be for fulfilment of its objects provided it is out of the current year's income.

2. WHETHER GIFT DONE BY TRANSFEROR WOULD ATTRACT CAPITAL GAIN?

Though gift is a transfer in actual; however it is excluded from the definition of transfer u/s 47(iii). Therefore Gift is not a transfer under Income Tax Act, 1961. Further, Capital Gain pre-suppose any consideration for transfer and in case of Gift, it is transfer without consideration. Section 50C will also be not attracted as the same is applicable only to transfers of land & building for inadequate consideration.

3. WHETHER GIFT TO EMPLOYEE WOULD ATTRACT CAPITAL GAIN?

As far as employee is concerned any perquisite value under Section 17(2) & 17(3) will be taxable as "Income from Salary". Therefore Gift received by Employee will be taxable as Salary Income.

Further, Employer will be eligible to claim such gift as Business Expense under Business head. Therefore, there will be no Capital Gain if employer make gift to employee in the course of employment.

4. WHETHER SECTION 56(2)(VII) WILL APPLY TO INTERNATIONAL TRANSACTIONS ALSO?

It is submitted that to international transactions covered by transfer pricing particularly, to Arms Length Pricing Provisions. Therefore provisions of Gift u/s 56(2)(vii) will not have any application on this case. However if any international transaction of gift, which is not covered by the provisions of Arms Length Pricing Provisions, such transaction will be covered u/s 56(2)(vii).

CERTAIN INTER-LINKING PROVISIONS IN BRIEF

GIFT EXCLUDED FROM TRANSFER [SEC.47(III)]

Section 47 provides that following transactions shall not be regarded as transfer for the purpose of section 45 and therefore no capital gain shall arise:

"Any transfer of a capital asset under a gift"

Therefore no capital gain shall arise on transfer of a capital asset under a gift.

COST OF ACQUISITION [SEC.49(1)]

Section 49(1) deals with the cost of acquisition provides that where a capital asset become the property of the assessee under a gift, then the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner acquired it. Therefore, the cost of acquisition in hands of donee shall be the cost of acquisition in the hands of donor.

COST OF ACQUISITION [SEC.49(4)]

Where the capital gain arise from the transfer of a property, the value of

which has been subject to income tax under section 56(2)(vii) or 56(2)(viia), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purpose of the said section.

HOLDING PERIOD OF THE ASSET FOR THE PURPOSE OF DETERMINING THE NATURE OF CAPITAL GAIN –[SEC.2(42A)]

Sec. 2(42A) which deals with period of holding provides that for determining the nature of capital gains in the hands of the assessee who acquired the asset by way of transaction referred to section 49(1), the period for which the asset was held by the previous owner shall also be considered.

HOLDING PERIOD OF THE ASSET FOR THE PURPOSE OF INDEXATION BENEFIT – CIT V/S MANJULA J. SHAH.

As per Explanation 1 to section 2(42A), in case the capital asset becomes the property of the assessee in the circumstances mentioned in section 49(1), inter alia, by way of gift by the previous owner, then for determining the nature of the capital asset, the aggregate period for which the capital asset is held by the assessee and the previous owner shall be considered.

As per the provisions of section 48, the profit and gains arising on transfer of a long-term capital asset shall be computed by reducing the indexed cost of acquisition from the net sale consideration. The indexed cost of acquisition meant the amount which bears to the cost of acquisition the same proportion as Cost Inflation Index (CII) for the year in which the asset is transferred bears to the CII for the year in which the asset was first held by the assessee transferring it i.e., the year in which the asset was gifted to the assessee in case of transfer by the previous owner by way of gift.

In the present case, the Bombay High Court held that by way of 'deemed holding period fiction' created by the statute, the assessee is deemed to have held the capital asset from the year the asset was held by the previous owner and accordingly the asset is a long term capital asset in the hands of the assessee. Therefore, for determining the indexed cost of acquisition under Section 48, the assessee must be treated to have held the asset from the year the asset was first held by the previous owner and accordingly the CII for the year the asset was first held by the previous owner would be considered for determining the indexed cost of acquisition.

Hence, the indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.

SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS OTHER THAN CAPITAL ASSETS IN CERTAIN CASES [SEC.43CA)]

1. Where the consideration received or accruing as a result of the transfer by an assessee of an asset [other than a Capital Asset], being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of consideration received or accruing as a result of such transfer.
2. Provisions of Sec.50C(2) & 50C(3) shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).
3. Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a SG for the purpose of payment of stamp duty in respect of such transfer on the date of agreement.
4. The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than case on or before the date of agreement for transfer of the asset.

SPECIAL PROVISION FOR FULL VALUE OF CONSIDERATION FOR TRANSFER OF ASSETS WHICH IS CAPITAL ASSETS IN CERTAIN CASES [SEC.50C)]

1. **NATURE OF ASSET**: Land or Building or both
2. **CONSIDERATION FOR TRANSFER**: Amount is less than the value adopted or assessed by the State Government Authority (referred to as the "Stamp Valuation Authority" for the purpose of payment of stamp duty.)
3. **VALUE TO BE ADOPTED FOR CAPITAL GAINS**: Value adopted by the Stamp Valuation Authority.
   Further, new Explanation 2 has been inserted to section 50C(2) so as to clarify the meaning of the term '***assessable***'.
   EXPLANATION 2 — For the purposes of this section, the expression "assessable" means the 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'.
4. **REFERENCE TO VALUATION OFFICER**:
   (a) The assessee can claim that the value adopted or assessed by the Stamp Valuation Authority exceeds the Fair Market Value of the

property as on the date of transfer.

(b) Value adopted by the Stamp Valuation Authority is not disputed before any authority or Court.

(c) In such case, the Assessing Officer may refer the case to the Valuation Officer.

(d) Where the value determined by the Valuation Officer ***exceeds the value adopted by the Stamp Valuation Authority***, the Capital Gain shall be considered as follows– Capital Gains = Value adopted by Stamp Valuation Authority **Less** Cost or Indexed Cost of Acquisition.

CLUBBING PROVISIONS IN BRIEF

TRANSFER OF INCOME WITHOUT TRANSFER OF ASSET [SEC.60]

If any person transfers any income arising from any asset, without transferring the asset, then such income will be clubbed in the hands of transferor.

Please Note: Section 60 does not have any application where corpus itself is transferred – *[CIT Vs. Grandhi Narayan Rao (1988) 173 ITR 593 (AP)]***

REVOCABLE TRANSFER OF ASSETS [SEC.61 & 62]

Where any asset is transferred to any person, subject to condition that such transferred can be revoked anytime on the Marcy of transferor, then Income arising from such transferred asset will be clubbed in the hands of transferor.

Exception	Transfer is not revocable during the life time to transferee/beneficiary. However Transferor should not derive any direct/indirect benefit from such transferred asset. **Please Note:** Income shall be taxable as & when the Power to revoke arises. From that day income will be clubbed in the hands of transferor. It is irrelevant whether such power has been exercised or not.

TRANSFER OF ASSET TO SPOUSE/ SON'S WIFE/ TO ANY OTHER PERSON FOR THE BENEFIT OF SPOUSE/SON'S WIFE [SEC.64(1)]

If any asset is transferred, directly or indirectly, to Spouse/Son's Wife/ to any other person for the immediate/deferred benefit of Spouse/ Son's wife, for a consideration which is less than adequate consideration, then income/benefit arising from such transferred asset to Spouse/Son's wife will be clubbed in the hands of transferor.

Exception	1. Provision of Section 64 is ***applicable to Individual only***. Therefore persons other than individuals are not subject to clubbing under this section. 2. Transfer of asset is made under an agreement to live-apart. 3. Transfer is made before marriage. 4. If any property is acquired by PIN Money by the Spouse then income arising from such asset cannot be clubbed. [Delhi High Court Decision]
Remarks	1. Natural love & affection may be a good consideration under contract act but it is not considered as adequate consideration under Income Tax Act, 1961 -[***Tulsidas Kilachand Vs. CIT (SC)***] 2. If transferred asset is House Property then Sec. 27(1) is applicable first. By virtue of Sec. 27(1) the transferor is Deemed owner of House Property & Annual value is taxable in the hands of Transferor itself. Clubbing Provisions will not applicable in this situation. 3. Transfer can be direct or indirect. However this is difference between indirect transfer & voluntary transfer by the transferee. 4. Relation of Spouse/ Son's Wife must be exists on the date of transfer & at the time of accrual of Income. It is not necessary that after the transfer of asset such relation should be continuing forever. If relation is exist on both the date then income will be clubbed. 5. Transferred asset may be hold be the transferee in the same form or may be in different form. 6. Provision of this section is applicable to Non-Resident as well. 7. Word Spouse means Legal Spouse only. Therefore, if any marriage is not legal in the eyes of law, such spouse will not be covered under the provisions of clubbing chapter. 8. Payment made to spouse to obtain her consent is prohibited under Hindu Law, hence such payment will be considered as Gift to Spouse & accordingly clubbing provisions will be applicable – ***[Bansilal Vyas Vs. CIT (1978) 113 ITR 537 (AP)]***

INCOME OF MINOR CHILD[SEC.64(1A)]

All the Income arising to minor child will be clubbed in the hands of Parents.

Exception	1. Any income arising to minor child on account of (i) Manual Work; (ii) Activity involving application of skills, talent or special knowledge & experience. Will not be clubbed in the income of parents. 2. If Minor Child is suffering from any disability of the nature specified u/s 80U then provision of section 64(1A) is not applicable. 3. If both the parent have equal Income then, Provisions of Clubbing chapter will not be applicable – [***CIT V/s S.S. Gulati 179 ITR 62 (P&H)***]. 4. If any House Property is transferred to minor child, then Sec. 27(1) is applicable. By virtue of Sec. 27(1) the transferor is Deemed owner of House Property & Annual value is taxable in the hands of Transferor itself. Clubbing Provisions will not applicable in this situation. 5. In case, where parents of minor child is not alive and such minor child is maintained by the legal guardian, income of such minor child ***cannot be clubbed*** in the hands of Legal Guardian

Remarks

1. Clubbing will be made in the following manner:

Where both parents are alive		**Where only one parent is alive**
If Marriage Relationship of Parents Subsist	If Marriage Relationship of Parents does not Subsist	
Clubbing will be made in the income of that parent who have higher "Total Income" before clubbing the Income of Minor Child"	Clubbing will be made in the income of that parent who maintains the Minor Child during the Previous Year.	Clubbing will be done in the income of that parent who is alive.

2. Clubbing in

   1ST YEAR: According to above table.

   SUBSEQUENT YEARS : with the same parent – unless the AO is satisfied that it should be clubbed with the other parent

3. A Deduction upto Rs.1500 per minor child is shall be allowed against such income which is clubbed in the hands of parent.

4. Agricultural income of the minor child of an assessee has to be taken into consideration for the purpose of determining that rate of tax that is applicable to his income *[Suresh Chand Talera vs. Union of India (2006) 282 ITR 341 (MP.)]*

CONCEPT OF DEEMED OWNERSHIP V/S GIFT PROVISIONS [SECTION 27]

As per section 27, following persons though not the legal owners off a property are deemed owners for the purposes of calculation of Income from House Property:

An Individual who transfers, otherwise than for adequate consideration, any house property to his/her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, transferor will be the deemed owner of the House Property.

TAX PLANNING TIPS – SAVE TAX THOROUGH GIFTS…

The first step in tax saving through family tax planning is to adopt the concept of "Divide & Rule". In case entire income a family belongs to just one member,

the tax liability is much higher than when the same income is spread among different members of the family.

Now, under the Income Tax Act, 1961 it is not possible to arbitrarily divide one's income amongst different members of the family and then pay lower tax in the names of different family members. However, this goal can be achieved by intelligent use of facility of gifts and settlements. Let's understand how...

1. Gift to relative is exempted under section 56(2)(vii). However, Clubbing Provisions are applicable if any assets if transferred to/for benefit of Spouse, Son's Wife or Minor Child. Therefore it will be suggested to make a Gift to Major Son, Major Daughter, Father or Mother. It wills neither taxable in the hands of donee nor clubbing provisions will be attracted.

2. If any person wants to give House Property as gift to Spouse, Son's Wife or Minor Child, then it will be a good decision to give Money to Spouse, Son's Wife or Minor Child & then he Purchase such house property in his name. The Provisions of Clubbing chapter will be applicable but the provisions of Sec.27 [Deemed Owner] will not get attracted. Benefit of this trick will be, donee will be allowed to claim all the exemption, deduction etc. first against his income from such house property then clubbing will be done.

3. **TAX PLANNING BY DINKS**

   Another way to avoid tax is by showing the monetary transaction as loan to spouse. Working couples who have no children are known as DINKs (Double Income No Kids). Substantial tax planning is needed for them by taking full advantage of income tax exemptions & Deductions available to both of them. So, for instance, if you buy a house in your wife's name or transfer the House Property to your spouse then provision of clubbing chapter will be attracted. However, if you give loan to your spouse & then she purchase a House Property in her name, clubbing will not be made & rental income from such house property will be taxable in the hands of Spouse itself.

   Even this can be used as a tool to transfer the Income from Higher tax paying spouse to lower tax paying spouse. Higher tax paying spouse can take loan from lower tax paying spouse & buy House Property. Interest on such loan will be paid by Higher Tax paying spouse to lower tax paying spouse. Such interest can be claimed as deduction under House property head by such spouse. And Lower tax paying spouse will treat such interest as Income.

4. **INVEST THROUGH YOUR SPOUSE**

Exhausted your 80C limit? Gift some money to your earning spouse & invest that in a tax free instrument which is eligible for deduction u/s 80C. There is no upper limit to the amount you can give as your spouse is in the list of specified relatives whom you can gift any sum without attracting Income Tax. However, the lawmaker is not foolish. If you invest the gifted money, the section 64 of Income Tax Act, 1961, a provision for clubbing income, comes into play. Therefore, the escape route is by investing in a tax-free option such as PPF.

But you have already saved some amount of money by using the limit of 80C for your spouse using your money. Similarly, you can invest in your parent's name and best part is clubbing rule will not be applicable in that case.

5. **EVEN YOUR MINOR CHILDREN MAY HELP YOU IN SAVING TAX!!!**

You must be surprised, how your minor child can help you in saving your tax liabilities?

A gift made to a minor child would similarly result in clubbing of income. Hence, from the point of view of tax planning a trust could be created for the welfare of the minor child with a specific condition that no part of income should be spent of the minor child during the period of minority.

Because of the Wording of Sec. 64(1A), if this simple technique is adopted then there will be no clubbing of income of minor child with the income of parents. The clubbing provisions do not apply when you make gifts to your major children.

"CONVERSION OF BLACK MONEY INTO WHITE MONEY THROUGH GIFTS"

Money has no colour. But it gets its colour depending upon whose hands it is in. It can be said that a person collecting money according to law and legitimate means has White Money and the person who doesn't follow has Black Money.

There is no definition of Black Money in Income Tax Act, 1961. Black money generally refers to income on which income-tax has not been paid. However this is need not be the only meaning of Black Money. Black money can be refer to money generated by violating any law. Black money is not just a stock of money. In the game of black money, the person whose black money gets exposed becomes bad man whereas the person whose black money is still hidden is deemed to be good man.

Black Money continuously changes in to white money & white money continuously changes into black money. Converting black money into white is

very common today. People use all illegal methods to covert black money to white. Black Money is not just a stock of Money. When people talk about the size of black money they really do not understand the character of the problem. Black money is also a flow, a process. A flow which constantly keeps changing. So what are the legal and common methods used to evade tax and convert black money into white? Answer is given below:

1. The popular way of converting black money into white money is getting a gift from a relative. For this modus operandi, the relative must possess white money.
   For e.g., you have some black money (say Rs. 10Lacs) which you want to convert into white money. You can ask your relative to gift you Rs. 10Lacs by way of cheque and you will in turn transfer your black money to him/her. Here 56(2)(vii) is not attracted as gift from relative is exempt.
2. Income earned by Non-resident Indians is not taxed in India. And gifts again are not taxed in some cases. If one can settle a liability of an NRI within India, then he can will "Gift Money" of equal amount, which will go untaxed.
3. Black Money can be received as Gifts, on the occasion of marriage, from the friends or relatives.

Disclaimer: I don't recommend readers to follow these methods. I just want them to be aware regarding these false practices. I encourage open discussion regarding this issue but advices, opinions, suggestions which may land the opinion seekers into trouble later on are not encouraged. I trust that a tax planning should be done in such a way that it can stand the test of legal battle of course subject of debates.

CONVERSION OF BLACK MONEY THROUGH SHARES VIS-À-VIS SEC. 68 [AMENDMENT BY F.A. 2012]

BEFORE AMENDMENT BY FINANCE ACT, 2012:

Following Practice was used, to Convert Black Money into White, by the Companies:

100 Slum dwellers were contacted and their PAN Cards were made and their bank accounts were opened. In the current year, Rs. 2,00,000 each cash was deposited in their bank accounts and cheque of Rs. 2,00,000 was taken from them in the name of company. They were made to sign share application form that they are applying for 10,000 shares of Rs. 10 each face value at a premium of Rs. 10 each. They were also made to sign blank transfer deeds for share transfer. Each such dweller's return was filled showing income of Rs. 2,00,000 for current year and tax thereon is NIL. For

this process, each slum dwellers was paid Rs. 2,000 in cash i.e. Unaccounted Money.

In the above process company has deposited unaccounted cash of Rs. 2,00,000*100= 2Crore in slum dwellers' bank account and received cheques of Rs. 2 Crores as share application money in the Company. Fair Market value of shares of company is Rs. 20 per share.

The company either shows Rs. 2 Crore as Share application money or allots 10,000 Shares of Rs. 10 each at a premium of Rs. 10 to slum dwellers. However, physical custody of these shares is not given to the slum dwellers and company retains the same. The company is safe guarded by the blank share transfer deeds.

Now the Assessing Officer takes the case of Company into scrutiny assessment u/s 143(3) for the above mentioned year. A.O. asks explanation from the company for the nature and source of sum of Rs. 2 Crores credited by the company in its books as share application money or as share capital introduced and premium thereon. The A.O. asks for:

(i) Bank pass books of these 100 Slum dwellers;

(ii) Personal appearance of these 100 slum dwellers.

Company simply produces to the A.O.:

(i) Name & Address of slum dwellers;

(ii) PAN of Slum dwellers; &

(iii) ITR of Slum dwellers.

However, company does not produce the passbooks of these slum dwellers and does not produce them personally before Assessing Officer. On the investigation, slum dwellers is not able to offer explanation about the source of such income of Rs. 2,00,000 or the explanation offered by them are found to be unsatisfactory by A.O.

A.O. invokes section 68 since the persons from whom share application money came were not able to prove the source of money in their hands. The assessee filed appeal upto Supreme Court against the order of A.O.

Supreme Court held that, there is no onus on the company to prove the source of money in hands of shareholder or the persons making payment of share application money. If company identifies the person from whom money has been received, then section 68 cannot be invoked in the hands of Company.

Thus, Rs. 2 Crores black money has been effectively converted into white money by the company with no tax implication.

AFTER AMENDMENT BY FINANCE ACT, 2012:

Finance Act, 2012 nullifies the above tax planning. Proviso to section 68 has been added by FA, 2012 which over-ruled the Supreme Court Judgment in Lovely Exports (P) Ltd. and Provides as under:

Section 68 Provides that:

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by him, in the opinion of Assessing Officer, is not satisfactory, the sum so credited shall be charged to income tax as the income of the assessee of that previous year.

Any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) Such explanation in the opinion of Assessing Officer aforesaid has been found to be satisfactory.

FINANCE MINISTER PLEASE CONSIDER THIS....

Provisions on taxation of gifts encourage cash transactions. Gift Tax Act has been abolished in India however, the provisions of section 56(2) were inserted by the Amendment Acts with an intention to collect tax on gifts. This creates a very funny situation, as a poor patient, who requires immediate help for major ailment and has been assisted by some benefactor will have to pay tax on such assistance. As it is a common knowledge that the treatments like surgery, cancer ailment or kidney failure will cost much more than the exempt amount. Imagine a person who can't afford his treatment, will have to pay tax under compulsion, even if someone pays for his treatment out of generosity. Similarly, poor brilliant students will also have to meet the same fate if they are helped monetarily to fulfil their dream of pursuing higher studies in India or abroad. In my opinion, the aforesaid or like situations do circumstantially compel the concerned persons to transact in cash.

Since present Government is very forward looking, visionary and actions oriented, therefore it can be expected that it will look into these and related issues.

CONCLUSION

It is customary to receive and give gifts in India. Also on many occasions/events, gifts are commonly exchanged among friends & relatives. It is important to note that such gifts received could have tax implications in the hands of recipient; therefore, one needs to exercise caution so that he is not caught unawares. The provisions of Sec. 56(2)(vii) are complicating tax provisions. Taxation on deemed basis and FMV concept is not a tax-payers friendly measure.

The objection is to the manner in which the value of gift is proposed to be determined. It may be worthwhile to note that Contract between two parties for transferring any asset or right in asset, as per Indian Contract Act, 1872 has lost its essence as far as taxation under the Income Tax Act, 1961.

"Don't Forget... The Last thing that you want to think of while receiving a gift is about the tax implications of it..."

Readers are requested to send their feedback & Suggestions on this article to share their experience & improvement in Future. You may reach author @caabhi13@gmail.com or call on +919001686968.

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