

F.No.173/616/2018-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
(ITA-I Division)

New Delhi, the 04 January, 2019

Sub: Withdrawal of Circular No. 10/2018 dated 31.12.2018 on applicability of section 56(2)(viiia) of the Income-tax Act, 1961 for issue of shares by a company in which public are not substantially interested- reg.

Reference is invited to the Circular No. 10/2018 dated 31.12.2018 on the captioned subject.

2. It has been brought to the notice of the Board that the matter relating to interpretation of the term "receives" used in section 56(2)(viiia) of the Income-tax Act, 1961 (the Act) is subjudice in certain higher judicial forums. Further, representations have been received from stakeholders seeking clarification on other similar provisions in section 56 of the Act.

3. Accordingly, the matter has been reconsidered by the Board. Given the fact that the matter relating to interpretation of the term 'receives' used in section 56(2)(viiia) of the Act is pending before judicial forums and stakeholders have sought clarifications on similar provisions in section 56 of the Act, the Board is of the view that the matter is required to be examined afresh so that a comprehensive circular on the matter can be issued.

4. In view of the above, the Circular No. 10/2018 dated 31st December, 2018 issued from file No. 173/616/2018-ITA-I is hereby withdrawn and the said circular shall be considered to have been never issued.

5. A fresh comprehensive circular on the subject shall be issued in due course.

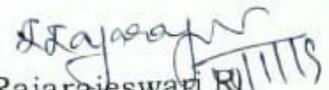
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(Rajarajeswari R)

Under Secretary to the Government of India

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- ii. PS to Secretary (Revenue)
- iii. Chairman, CBDT & All Members, CBDT
- iv. All Pr.CCsIT/ Pr.DsGIT
- v. All Joint Secretaries/CsIT, CBDT
- vi. CIT (M&TP), Official Spokesperson of CBDT


(Rajarajeswari R)

Under Secretary to the Government of India

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi, the 31st of December, 2018

Subject: Clarification regarding applicability of section 56(2)(viiia) of the Income-tax Act, 1961 for issue of shares by a company in which public are not substantially interested-reg.

Section 56(2)(viiia) of the Income-tax Act, 1961 ('Act') provides for taxation of income where a company in which public are not substantially interested ('specified company') or a firm receives shares of a specified company from a person for no or inadequate consideration.

2. It has been represented before the Board that the term '**receives**' used in section 56(2)(viiia) of the Act, being of wider import and might lead to taxation of income in the cases where the shares are received by a firm or a specified company as a result of the fresh issuance of shares including by way of issue of bonus shares, rights shares and preference shares or transactions of similar nature by the specified company.

3. The matter has been examined. Clause (viiia) was inserted in the section 56(2) of the Act vide Finance Act, 2010. The Memorandum explaining the provisions of Finance Bill, 2010 *inter alia* provided the following legislative intent for insertion of the said clause:-

*".....In order to prevent the practice of **transferring** unlisted shares at prices much below their fair market value, it is proposed to amend section 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested).....".*

4. It is apparent from the legislative intent that clause (viiia) was inserted in section 56(2) of the Act as an anti-abuse provision to prevent the practice of transferring shares of a specified company for no or inadequate consideration. Thus, the intention was never to apply these provisions of said clause (viiia) to the fresh issuance of shares as mentioned in para 2 above, by the specified company. Keeping in view the legislative intent to apply anti-abuse provision contained in section 56(2)(viiia) to transfer of shares for no or inadequate consideration, it is hereby clarified that section 56(2)(viiia) of the Act shall apply in cases where a specified company or firm receives the shares of the specified company through transfer for no or inadequate consideration. Hence, the provisions of section 56(2)(viiia) of the Act shall not be

applicable in cases of receipt of shares by the specified company or firm as a result of fresh issuance of shares as mentioned in para 2 above, by the specified company.

5. Hindi version to follow.

-sd-

(Vinay Sheel Gautam)
Under Secretary-ITA.I, CBDT

(F.No. 173/616/2018-ITA.I)

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- 3) Chairman, CBDT & All Members, CBDT
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V.S. Gauk

(Vinay Sheel Gautam)
Under Secretary-ITA.I, CBDT