

Income tax Act, 1961 and Provisions related to Valuation



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Agenda

- Concept, Analysis and Critical Issues of Section 56, 50C, 50CA, 50D
- Deemed Full Value of Consideration
 - Section 50C – Land & Building
 - Section 50CA – Transfer of Unquoted Shares, Not-regularly traded quoted shares
 - Section 50D – Consideration not ascertainable
- Section 56(x) – Deemed Income from Other Sources by any person
 - Without Consideration / Inadequate Consideration
 - receives Immovable Property
 - receives any other Property

Section 45 – A Recap

Section 50C –

Where

- I. the **consideration received** or accruing as a result of the transfer by an assessee of capital asset,-
- II. **being land or building or both** ,is less than the **value adopted or assessed by or assessable** any authority of a state government for the purpose of payment of **stamp duty** in respect of such transfer.

In such Situation ,the value so adopted or assessed or assessable shall , for the purpose of section 48 ,be **deemed to be the full value of consideration** received or accruing as result of such transfer.

Provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of agreement may be taken for the purposes of computing full value of consideration for such transfer:

Provided further that the first proviso shall apply only in a case where the amount of consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of the agreement for transfer.

Reference to the valuation officer in certain cases.- Sub section (2)

without prejudice to the provisions of Section 50C(1) and takes care of situation where-

- a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under Section 50C(1) exceeds the fair market value of the property as on the date of transfer;
- b) the value so adopted or assessed or assessable by the stamp valuation authority under Section 50C(1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court.

**In such situation ,
the Assessing Officer may refer the valuation of the
capital asset to a Valuation Officer and
where any such reference is made , the provisions of
valuation of the Wealth-tax Act,1957 applies**

For the purpose of section 50C, as per Explanation 2 to section 50C (2) ‘**assessable**’ means the price which the stamp valuation authority **would have**, notwithstanding any thing 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.**

3. Subject to the provisions contained in sub-section (2), where the value **ascertained under sub-section (2) exceeds** the value adopted or assessed or assessable by the stamp valuation authority referred to in sub-section (1), the value so adopted or assessed or assessable by **such authority shall be taken as the full value of the consideration** received or accruing as a result of the transfer.

Finance Bill 2018

In section 50C of the Income-tax Act, in sub-section (1), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April 2019, namely

Provided also that where the **value** adopted or assessed or assessable **by the stamp valuation authority does not exceed one hundred and five per cent of the consideration received** or accruing as a result of the transfer, **the consideration so received** or accruing as a result of the transfer shall, for the purposes of section 48, be **deemed to be the full value of the consideration**

➤ Provisions of Section-50C are mandatory-

Where section 50C is invoked ,then there is no scope of any discretion and the Assessing officer is duty bound to adopt the valuation made by stamp valuation authority if it is higher than the sale consideration shown by the assessee.

However ,section 50C(3) does provide some latitude . Where valuation made by DVO is higher ,then the valuation by stamp valuation authority will be adopted for sale consideration declared but where the valuation made by DVO is less than the valuation made by stamp valuation authority , then he may adopt such fair market value to be the full value of consideration.

➤ **SECTION-50C would override section 45(3).?**

Section 45(3) is a general provision and section 50C is a special provision which would override section 45(3)

if the sale deed is sought to be registered by paying stamp duty.

But where such registration does not take place by paying stamp duty that case would only be covered under section 45(3) (*Carlton Hotel (P.) Ltd v. Asst. CIT*, (2009) 122 TTJ (Luck) 515,526).

45(3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of [section 48](#), the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset

SECTION-50C would override section 50?

Special provision for computation of capital gains in case of depreciable assets.

50. Notwithstanding anything contained in clause (42A) of section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 1922), the provisions of sections 48 and 49

Notional taxation
on Non-listed shares
Section 50CA

(Section 50CA) (w.e.f. 1 April 2018)

- Notional taxation, if non-quoted shares are transferred for less than prescribed FMV
- Applicable to transferor who holds shares as capital asset and not as stock-in-trade
- Applies to shares which are not quoted.
 - Even if the company is listed and widely held.
 - Also, the shares can be of a subsidiary of a listed company.
 - The shares can be of a foreign company
- Extends to any form of shares whether equity or preference. But does not cover convertible debt instrument such as CCD or warrants or right entitlement
- FMV is to be determined in a prescribed manner
 - The prescribed manner need not match with Rule 11UA valuation
- The quoted shares is defined to mean shares listed on a recognised stock exchange and quoted with regularity and such quotation is based on current transaction made in the ordinary course of business.
 - Only covers regularly traded shares

- Applies to share which even if quoted:
 - Is not quoted with regularity
 - Quotation is not based on current transaction in the ordinary course of business
- Transactions which are not likely to be covered by section 50CA include:
 - Rights offer where some of the shareholders do not subscribe to the rights
 - Transfer by way of gift which is exempted under section 47(iii)
 - Any transfer which can qualify for exemption under section 47 or under the treaty
- Section 50CA is different from section 50D as taxation under section 50D is triggered only when consideration is unascertained while section 50CA is in respect of ascertained consideration which is less than prescribed FMV
- The recipient of share may liable to tax u/s 56(2)(x)

50CA. Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being **share of a company other than a quoted share, is less than the fair market value** of such share determined in such manner as may be prescribed, the **value so determined shall, for the purposes of Section 48, be deemed to be the full value of consideration** received or accruing as a result of such transfer.

Explanation.-

For the purposes of this section, "quoted share" means

the share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

SECTION - 50D

Fair market value deemed to be full value of consideration in certain cases.

50D. Where the consideration received or accruing as a result of the transfer of a **capital asset by an assessee is not ascertainable or cannot be determined**, then, for the purpose of computing income chargeable to tax as capital gains, **the**

Section 56(2)(x)- Transfer for
no/ inadequate consideration

- The Finance Act, 2017 has widened the scope of taxation of property or any sum received with or without or for inadequate consideration
- Provision up to 31 March 2017
 - Individual/HUFs taxable if any sum of money or property received without or for inadequate consideration in excess of INR 50,000 [Section 56(2)(vii)]
 - Firm or closely held company (CHC) taxable on receipt of issue of shares of a CHC if the same is without or for inadequate consideration in excess of INR 50,000 [Section 56(2)(viia)]
- The erstwhile anti-abuse provisions were applicable only in case of individual or HUF and firm or company in certain cases.
- Thus, in order to extend the scope to all taxpayers irrespective of residential status, a new section 56(2)(x) has been introduced, replacing section 56(2)(vii) and section 56(2)(viia)

- Consequential amendment made in section 2(24) to include the receipts covered under section 56(2)(x)
- Provision w.e.f. 1 April 2017 - Widened scope now extends to:
 - Firm, Limited Liability Partnership (LLP), Association of Persons (AOP), Body of Individuals (BOI), Companies (including WHC)
 - Discretionary Trust with corporate members
 - Place of Effective Management (POEM) infected resident foreign companies
 - Foreign companies unless protected by treaty
- Scope of "property" is not widened under section 56(2)(x) but kept same as defined under Section 56(2)(vii)

Sum of money; and Capital assets being shares, securities, immovable properties, jewellery, archaeological collection, drawings, paintings, sculptures, any work of art or bullion

- Scope of property does not includes :
 - Motor car
 - Concession in rendering of service
 - Grant of interest free loan
 - Intellectual property

- Applicable valuation norms continue to get governed by Rule 11U/ 11UA

Exclusion :

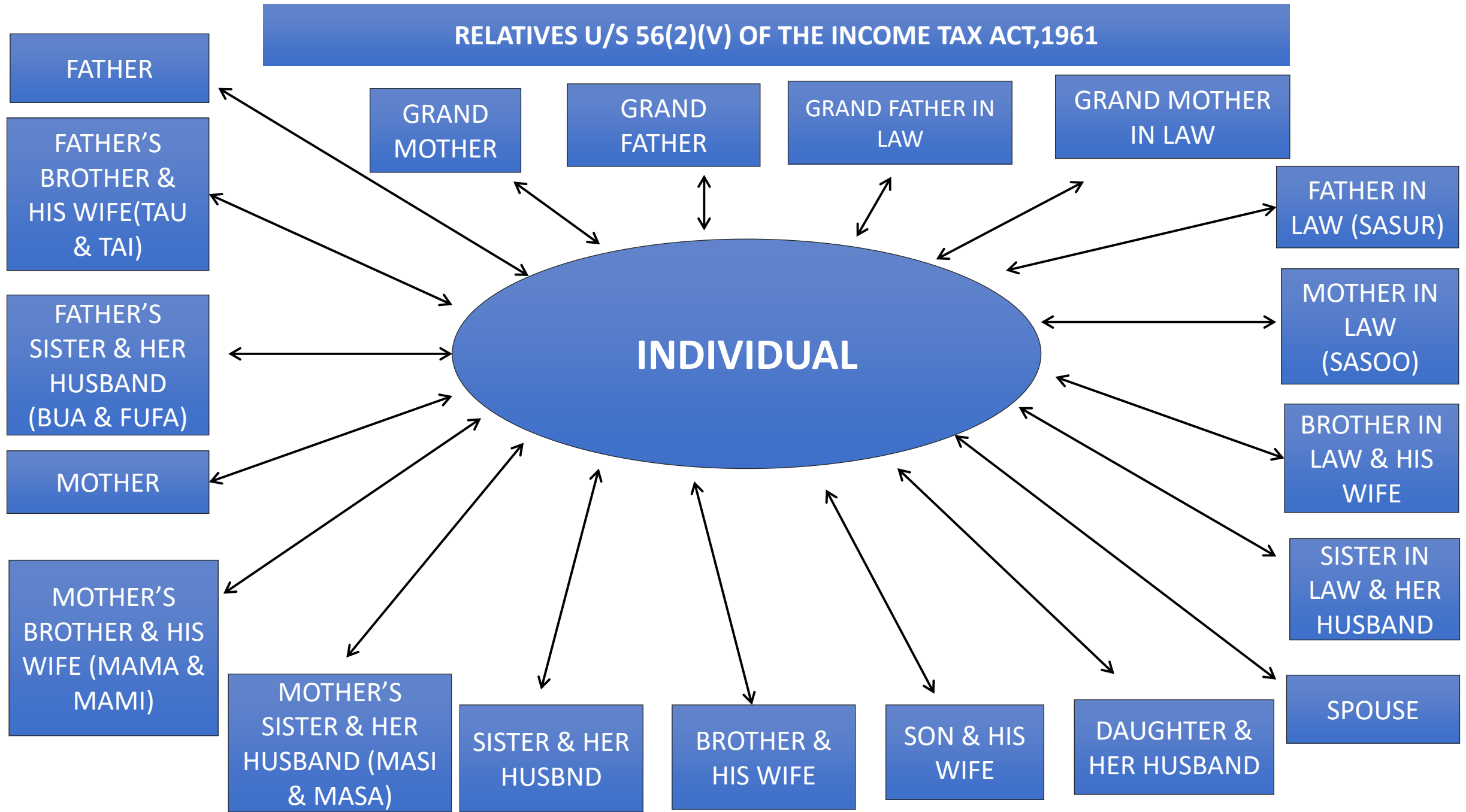
- **Any property received from any relative**
- Any property received on occasion of marriage
- Any property received by way of will or inheritance
- Any property received in contemplation of death of the payer or donor
- From any local authority as defined under explanation to section 10(20)
- Any property received from the taxpayers mentioned under section 10(23C)
- Any property received from or received by the trust registered under section 12A or 12AA
- Any property received by the taxpayer mentioned under section 10(23C)(iv),(v),(vi) and (via)
- Any property received by way of following transfers:
 - - Distribution of capital assets on total or partial partition of HUF
 - - Tax neutral merger and demerger as mentioned under 47(vi), 47(via), 47(vib), 47(vic), 47(vid), 47(vii)
 - - Other tax neutral re-organization specific to banking sectors [section 47 (viaa), (vica), (vicb)]
- Any property received by the trust from the transferor solely for the benefit of relatives of the transferor

"relative" means,—

(i) in case of an individual—

- spouse of the individual;
- brother or sister of the individual;
- brother or sister of the spouse of the individual;
- brother or sister of either of the parents of the individual;
- any lineal ascendant or descendant of the individual;
- any lineal ascendant or descendant of the spouse of the individual;
- spouse of the person referred above

(ii) in case of a Hindu undivided family, any member thereof;]



56(X) Where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—

(a) any sum of money, without consideration, the **aggregate value** of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) Any immovable property,—

(A) without consideration, the stamp duty value of which exceeds **Fifty Thousand Rupees**, the stamp duty value of such property;

(B) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the **date of agreement may be taken** for the purposes of this sub-clause:

Provided further that the provisions of the first proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement for transfer of such immovable property:

Provided also that where the stamp duty value of immovable property is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, **the Assessing Officer may refer the valuation** of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of this sub-clause as they apply for valuation of capital asset under those sections;

(c) any property, **other than immovable property**, -
(A) without consideration, **the aggregate fair market value** of which exceeds **fifty thousand rupees**, the whole of the aggregate fair market value of such property;
(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :

Provided that this clause shall not apply to any sum of money or any property received—

- (I) from any relative;
- (II) or on the occasion of the marriage of the individual; or
- (III) under a will by way of inheritance; or
- (iv) in contemplation of death of the payer or donor, as the case may be; or
- (v) from any local authority as defined in the Explanation to clause (20) of section 10 ;or

(vi) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10 ; or

(vii) from or by any trust or institution registered under section 12A or section 12AA; or

(viii) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or

clause (1) or clause (vi) or clause (via) or clause (viaa) or clause (vib) or clause (vic) or clause (vica) or clause (vicb) or clause (vid) or clause (vii) of section 47; or

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

Explanation.—For the purposes of this clause, the expressions "assessable", "fair market value", "jewellery", "property", "relative" and "stamp duty value" shall have the same meanings respectively assigned to them in the Explanation to clause(vii).

Implications of section 56(2)(x) on HUFs

Sr No	Event	Implications under section 56(2)(x)
1	Transfer of shares/ specified property by member to HUF	▶ Receipt from relative specifically carved out ▶ Relative in terms of HUF defined to mean members ▶ By virtue of the carve out, section 56(2)(x) not applicable
2	Transfer of property from HUF to members on partition or otherwise	▶ Receipt by member from HUF not specifically protected ▶ Property from HUF may be considered exempt u/s 10(2) ▶ HUF can be considered to be a group of relatives and accordingly, gift received from HUF may be exempt under section 56(2)(x)- Rajkot ITAT in case of VineetKumar Raghavjibhai Bhalodia vs ITO [(2011) 46 SOT 97]
3	Receipt of specified property by smaller HUF from a person other than member, though relative of member Mr X is a Karta of H HUF with Mrs X as co-parcener. X HUF receives gift from Mr A (father of Mr X)	▶ In the context of HUF, relatives include only members of HUF ▶ It may be argued that during subsistence of HUF, joint property is held by members of HUF ▶ Members are lineal descendants of the donor, therefore section may not be applicable as it falls under exemption for relatives

Other points or Issues

50C vs 26AS ,

AIR (reporting in different year or different amount of stamp duty value,

Stamp value u/s 50C - transfer as per provision income tax, when not registration and registered with sub-registrar in subsequent year

Reference to DVO for valuation u/s 50C (2) for date of agreement vs date of registration.

45(3) vs 50C

50 vs 50C

Valuation date under section 56 (x)

56 VS 50C DOUBLE TAXATION (buyer and seller paying tax on same amount)

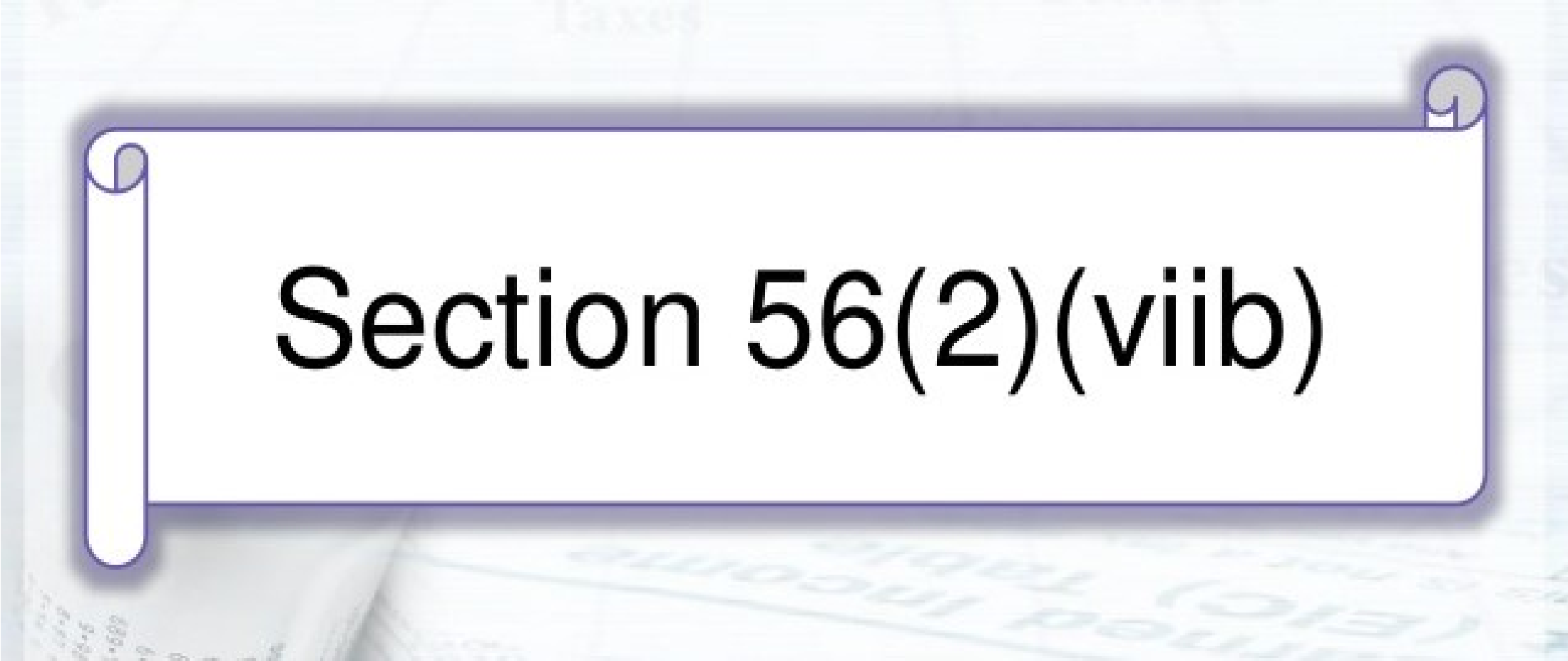
Section 43CA, 50C and 56 (x)

Stock in trade converted into capital assets (43CA or 56 (X))

Capital assets converted in to stock in trade (section 50C)

Section 148 and 263 when assessment completed u/s 143(3) without considering the section 50C.

Valuation of unquoted shares when one company have shares in other company and similar that company have in another company and so on .



Section 56(2)(viib)

Tax on issue of share More than fare Market value

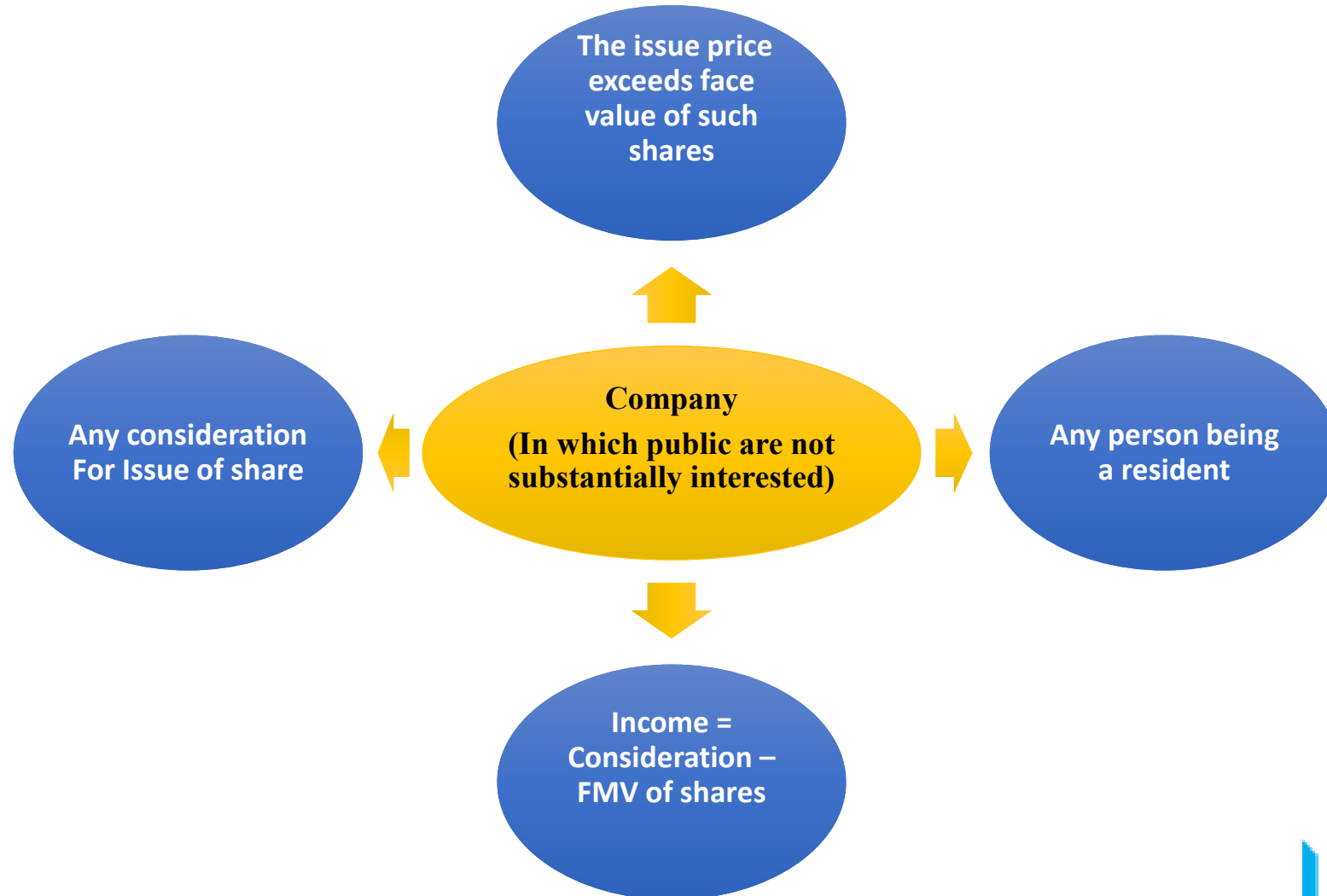
Purpose of Insertion of this section

- ❖ Section 56(2)(viib) was inserted by the Finance Act, 2012 w.e.f. 1 April 2013
- ❖ The Finance Minister in the Budget Speech 2012 explained the object of introduction of section 56(2)(viib) as follows: -
- ❖ “..... to deter the generation and use of black money, I propose to... increase the onus of proof on closely held companies for funds received from shareholders as well as taxing share premium in excess of fair market value”



- ❖ Section is an anti-abuse provision aimed at arresting circulation of unaccounted money in the economy
- ❖ The section seeks to tax the aggregate receipt on shares of a company (in which public are not substantially interested) issued for a consideration which is more than the Fair Market Value (FMV) of shares.
- ❖ Section 56(2)(viib) is applicable on receipts from **residents** only. Accordingly, residential status of person is to be seen as per the Income-tax Act, 1961 (Act).
- ❖ Treaty residence would not be relevant. **Resident would include Not Ordinary Resident (NOR)**

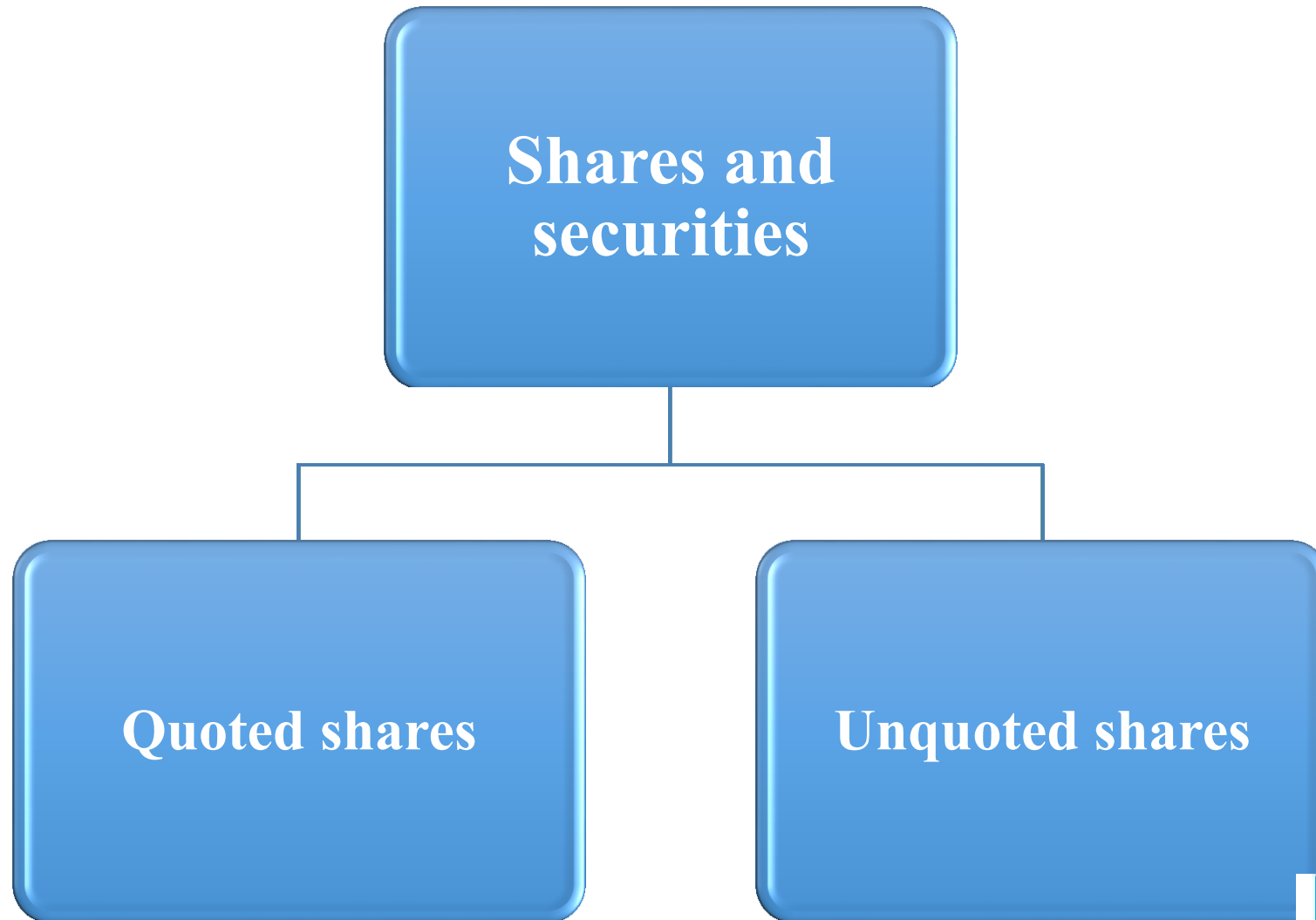
Taxability under section 56(2)(viib)



Exclusions

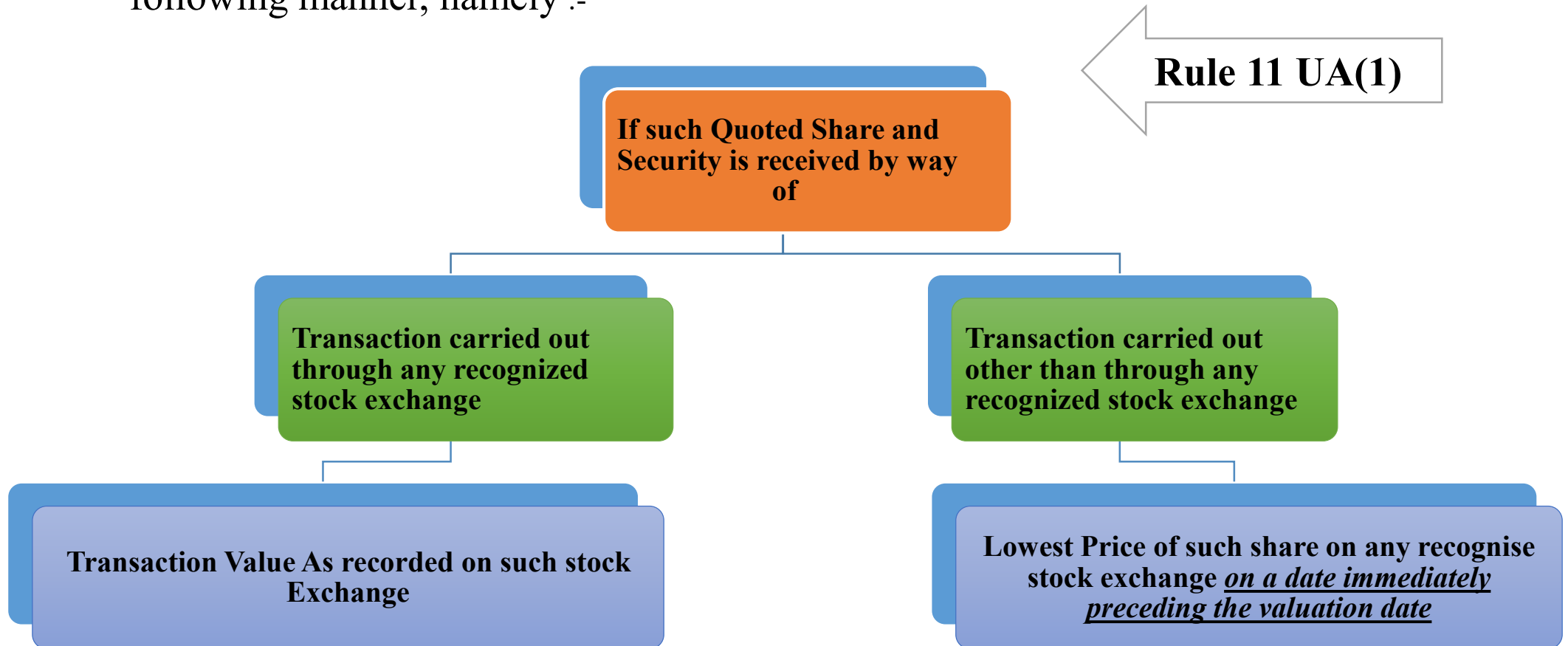
- ❖ Issue of shares by a widely held company (Company in which public are substantially interested)
- ❖ Issue of shares to a Non Resident
- ❖ Issue by Venture Capital Units to Venture Capital Company/
Venture Capital Fund
- ❖ Issue of securities other than shares – CCDs, warrants etc

Determination of FMV of shares and securities [Rule 11UA]



FMV of Quoted shares

- ❖ the fair market value of quoted shares and securities shall be determined in the following manner, namely :-



FMV of Unquoted shares

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graph TD; A[FMV of Unquoted shares] --> B[Other than equity share]; A --> C[Equity Share]; C --> D[Option-1]; C --> E[Option-2];
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Other than equity share

FMV determined as per
Rule 11UA(1)

Equity Share

Option with assessee to
adopt any of the two for
FMV of equity shares

Option-1

Option-2

Option-1

- FMV of equity shares =
$$(A-L)/(PE) \times (PV)$$
- **A** = Book value of assets in the balance sheet – [(TDS/ TCS/ Advance Tax) – (Refund + Deferred expenditure)]
- **L** = Book value of liabilities – (paid up equity capital + undeclared dividends + reserves & surplus + provision for taxation + provision for unascertained liabilities + contingent liabilities)
- **PE** = Total paid up equity share capital
- **PV** = Paid up value of such equity shares

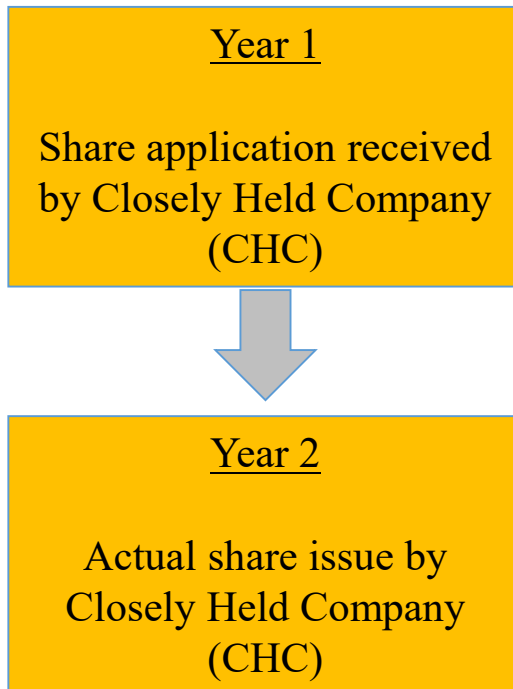
Option-2

- FMV determined by merchant banker* or an accountant as per Discounted Free Cash Flow Method (DCF)

* Category 1 merchant banker (registered with SEBI) or a FCA (other than present statutory/ tax auditor)

Issue – 1 : Year of Taxability – allotment date or receipt date

Section 56(2)(viib) to trigger in year of receipt of share application ('Year 1') or in the year of issue of shares ('Year 2')?

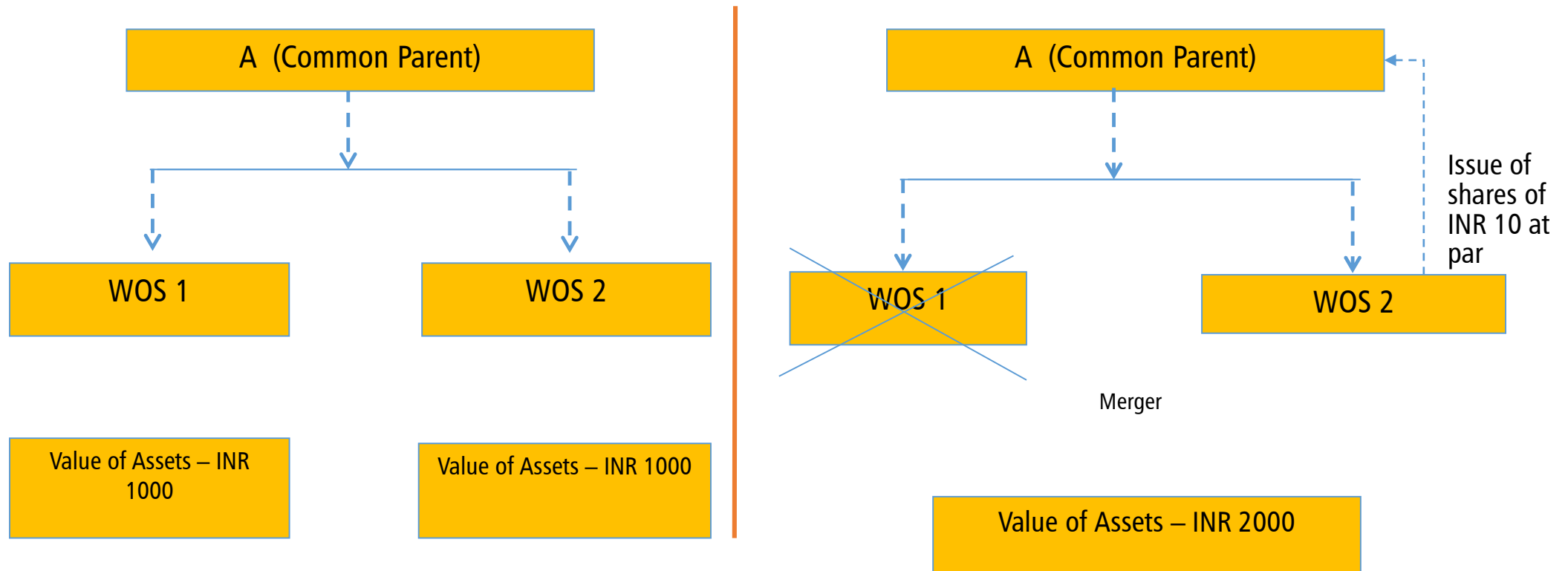


Section 56(2)(viib) to trigger in Year 2 because:

- ▶ Allotment represents acceptance of offer by shareholders to constitute a binding contract;
- ▶ Application money becomes property of company after allotment [*Sesa Goa Ltd v. State of Maharashtra (2009) 151 Com Case 358*]
- ▶ Compulsory refund if the allotment is not within a reasonable time
- ▶ In case of liquidation, share application money is treated as unsecured creditor and is not treated at par with share capital
- ▶ The receipt referred to in Section 56(2)(viib) represents funds of the company and which is not the liability of the company

Issue 2 – Amalgamation involving nominal issue of shares

Will section 56(2)(viib) be applicable on corporate re-organisations?



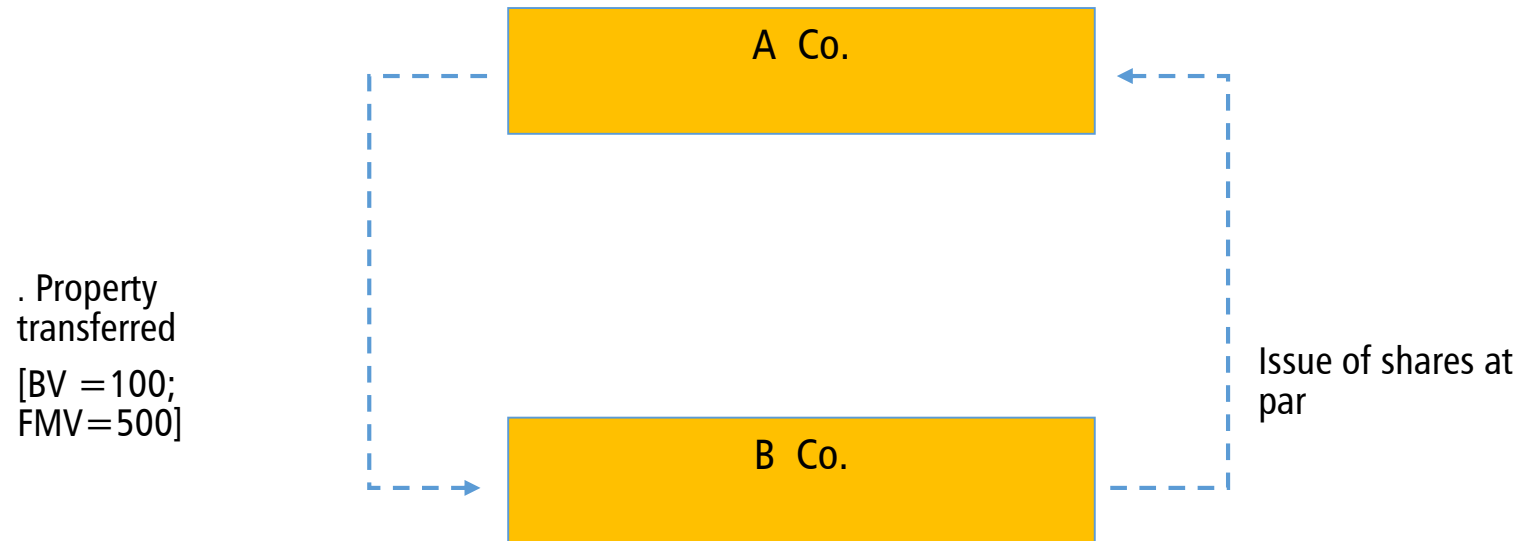
Issue 2 – Amalgamation involving nominal issue of shares

Issue – would section 56(2)(viib) apply for corporate reorganisations:

A provision could be taken that the provision is meant to apply only to bi-lateral transactions and corporate reorganisations should not get covered basis the following grounds of argument:

- Object of the provision is to counteract tax evasive tactics
- The issue of shares is a consequence of vesting of property
- Consideration for issuance of shares is extinguishment of shares of amalgamating company
- Failure of computation mechanism and consequential failure of charge
- Value determination as of appointed date while shares issued on record date

Issue 3 – Transfer of assets in lieu of shares



Issue:

A Co. transfers assets to B Co. in lieu of shares of B Co. – being a transaction in the nature of exchange

Book value of asset in the books of A Co. is 100 but the fair market value of asset is 500

B Co. issues shares of Rs.100 at par value

Would section 56(2)(viib) be applicable to B Co. on issue of shares ?

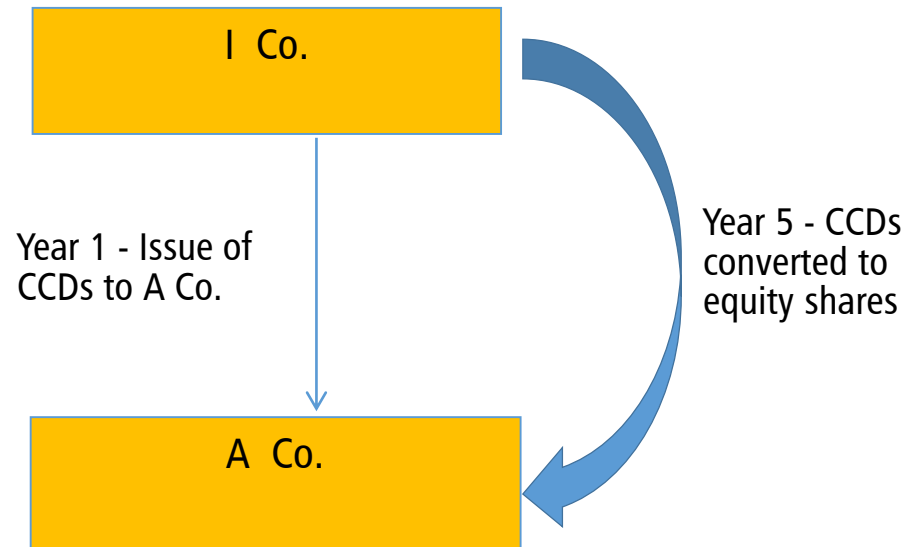
Issue 3 – Transfer of assets in lieu of shares

Will section 56(2)(viib) apply on transfer of assets in lieu of shares ?

- Reference may be taken from the SC decision in the case of Reva Investment Private Limited [(2001) 249 ITR 337]
- The SC held that in a transaction which involves exchange of property, process of evaluation of two properties need to be similar and difference needs to be found by valuing both the properties on the same basis.
- SC held that where value of shares matches the value of property transferred, no gift implications.

Issue 4 – Issue and conversion of CCDs into equity share at higher than FMV

Will Issue and conversion of CCDs into equity share at higher than FMV trigger section 56(2)(viib)



The implications under section 56(2)(viib) on conversion of CCDs into equity is evaluated basis the illustration below:

Issue:

- ICO issues CCD to ACO for INR 1,000. Fair value of shares of ICO as on the date of issue - INR 250.
- The terms of CCD – For each CCD of INR 1,000, four equity shares of par value of INR 100 would be issued at INR 250.
- The terms of CCD require compulsory conversion at the end of 5 years.
- In the backdrop of the above facts, the matrix in the subsequent slide indicates relative implications of section 56(2)(viib) depending on the value parameters which may emerge as at the end of 5 years.

Issue 4 – Issue and conversion of CCDs into equity share at higher than FMV

Will Issue and conversion of CCDs into equity share at higher than FMV trigger section 56(2)(viib)

Scenario	Value of I Co Shares as on		Number of equity shares issued	Value of all equity shares on the date of issue	Applicability of section 56(2)(viib)
	Date of Issue	Date of Conversion			
1	250	250	4	1000	No - since valuation of shares on the date of conversion matches the valuation on the date of issue there would be implications under section 56(2)(viib)
2	250	500	4	2000	No – I Co. can be regarded as having received consideration of INR 1,000 for issuance of shares which is less than the FMV of the shares.

Issue 5 – Issue and conversion of CCDs into equity share at lesser than FMV

Illustration - issue and conversion of CCDs into equity share at lesser than FMV
attract section 56(2)(viib)?

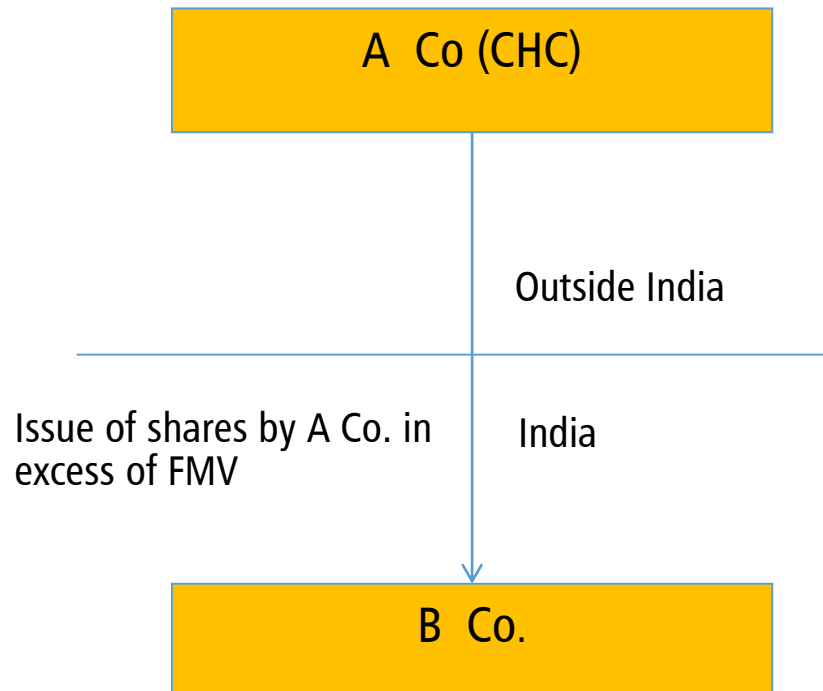
Scenario	Value of I Co Shares as on		Number of equity shares issued	Value of all equity shares on the date of issue	Applicability of section 56(2)(viib)
	Date of Issue	Date of Conversion			
3	250	125	4	500	No tax implications arise u/s 56(2)(viib). [The basis for the same is detailed below]

Issue 5 – Issue and conversion of CCDs into equity share at lesser than FMV

Issuance of shares upon conversion of bonds / CCDs at pre-agreed price is beyond provisions of S.56(2)(viib) for the following reasons:–

- Legislative objective is to apply to a case where tax avoidance is clearly noticed
- CCD terms as negotiated and agreed to initially are relevant
- Fairness of the transaction should be tested on the date of formation of contract
- Parties are merely working out their pre-existing rights and obligations.
- Shares can be considered to have been issued as soon as there is binding covenant to allot shares on agreed terms and conditions
- No consideration at the time of allotment of shares by the company
- Receipt may include only actual receipts as opposed to constructive receipts
- Issue of shares is implicitly at fair value (considering the sacrifice of debenture holders at the time of conversion)
- The above arguments equally apply to CCPs

Other cases –
Issue of shares by non-resident at higher than FMV

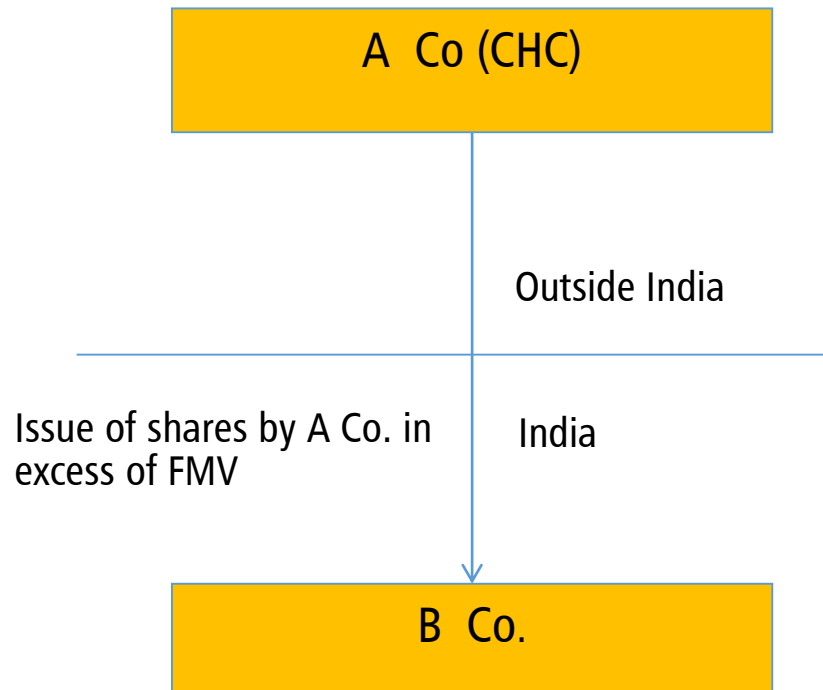


Issue:

- A Co., a CHC issues shares for a consideration in excess of FMV to B Co.
- The shares are issued outside India and the share register is also maintained outside India. Further, The remittance on issue of such shares is received outside India

Would section 56(2)(viib) be applicable to A Co. on issue of shares ?

Other cases – Issue of shares by non-resident at higher than FMV

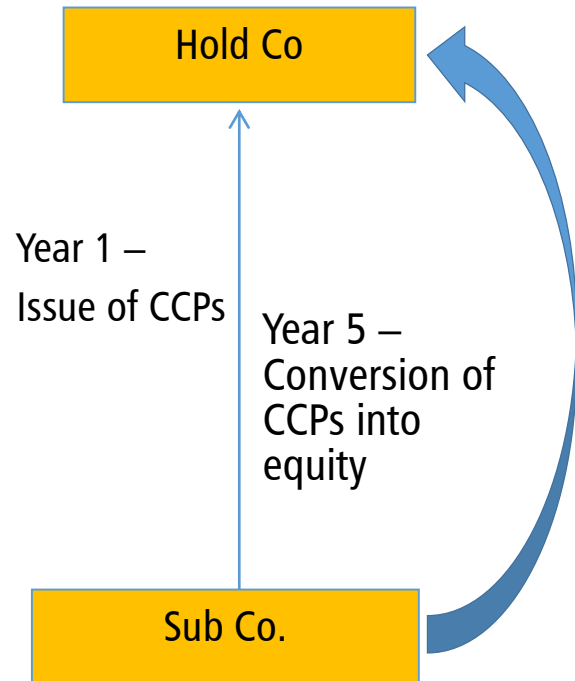


- No exemption to a foreign company receiving consideration in excess of FMV from an Indian resident
- S.56(2)(viib) evaluation depends on income accruing or arising in India or deemed to be accruing or arising in India
- No fictional income accrues or arises in India as the foreign company would issue shares and maintain its member's register outside India
- No tax trigger on the ground of receipt as remittance is made from India and there is no receipt in India.

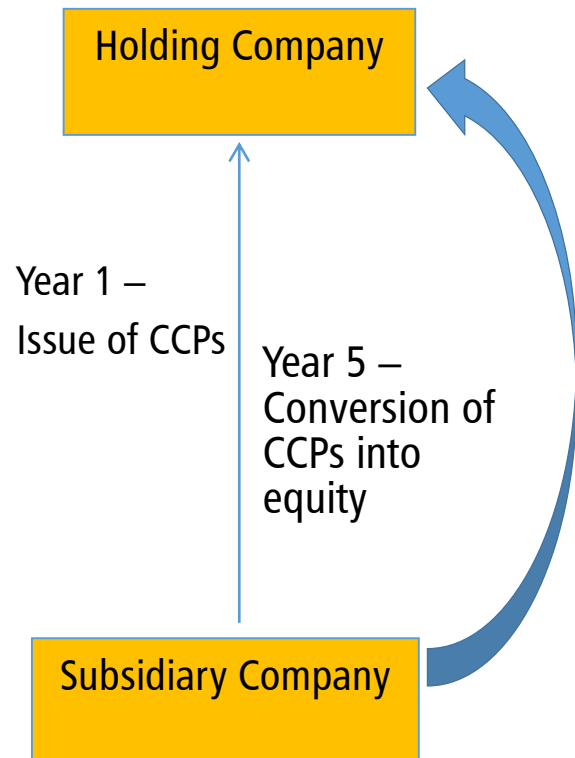
Other cases – Conversion of preference shares into equity

Issue:

- A Co. is a virtual holding company of B Co.
- A Co. holds compulsorily convertible preference shares (CPS) of INR 10,000. The preference shares are redeemable at par.
- While the shares are made compulsorily convertible, the number of equity shares to be issued is not prefixed.
- The parties desire to keep the terms of conversion flexible and believe that the economic value of A Co. would be unchanged irrespective of whether preference share capital of 10,000 is represented by 1,000 equity shares of Rs. 10 or by 500 equity shares of Rs. 10 each issued at premium of Rs. 10 per share.
- The terms of CPS contemplate compulsory conversion into equity as of 31 March 2017.
- Whether section 56(2)(viib) be applicable for on conversion of CCDs into equity.



Other cases – Conversion of preference shares into equity



- Conversion of CCPS would arguably not give rise to Section 56(2)(viib) implications as of the date on which the instrument is due for compulsory conversion as there is no consideration at the time of allotment of shares by the company
- Section 56(2)(viib) not likely to apply as the section triggers charge only in the year in which there is receipt of consideration for issue of shares.

Sunrise Academy of Medical Specialities (India) (P.) Ltd. vs. ITO (Kerala High Court) (DB)

Facts of the Case:

- The appellant, Sunrise Academy of Medical Specialities (India) (P.) Ltd. vs. ITO (Kerala High Court) (DB) is a private limited Company, incorporated under the Companies Act, and in which the public are not substantially interested.
- The applellant issued shares at a premium above the face value
- The appellant did not offer any amount so received as income for the purpose of taxation under the Income-tax Act.
- A notice under Section 143(2) was issued and the appellant is said to have disclosed the genuineness of the persons, who purchased the said shares on a premium
- The Assessing Officer then attempted to tax the amounts so received under Section 56(2)(viib) of the Income Tax Act, 1961.



Sunrise Academy of Medical Specialities (India) (P.) Ltd. vs. ITO (Kerala High Court) (DB)

Facts of the Case:

- The appellant/assessee contended before the learned Single Judge that the notice issued was only with respect to the source from which the funds were received and the same having been disclosed, there was no scope for a further proceeding, especially under Section 56(2)(viib) of the Act. The provision would not be applicable unless the test under Section 68 of the Act is satisfied, is the further argument.

Sunrise Academy of Medical Specialities (India) (P.) Ltd. vs. ITO (Kerala High Court) (DB)

Section 56(2)(viib) vs. Section 68:

- Any premium received by a Company, in which the public does not have substantial interest, on sale of shares, in excess of its face value, can be treated as income from other sources u/s 56(2)(viib).
- This is not controlled by section 68 which provides that if the assessee does not provide a satisfactory explanation for the credit, the amount can be assessed as income.
- If Section 68 is applicable, then the entire amounts credited to the books would be treated as income. If satisfactory explanation is offered as to the source, then the premium paid as revealed from the books will be brought to tax as income from other sources

Sunrise Academy of Medical Specialities (India) (P.) Ltd. vs. ITO (Kerala High Court) (DB)

The order was passed that:

- Any premium received by a Company on sale of shares, in excess of its face value; if the Company is not one in which the public has substantial interest, would be treated as income from other sources, as seen from Section 56(2)(viib) of the Act, which we do not think can be controlled by the provisions of Section 68 of the Act.
- Section 68 on the other hand, as substituted with the provisos, treats any credit in the books of accounts, even by way of allotment of shares; for which no satisfactory explanation is offered, to be liable to income-tax.
- Clause (viib) of Section 56(2) is triggered at the stage of computation of income itself when the share application money received, from a resident, by a Company, in which the public are not substantially interested; is above the face value. Then the aggregate consideration received for the shares as exceeds the fair market value will be included as income from other sources.

Sunrise Academy of Medical Specialities (India) (P.) Ltd. vs. ITO (Kerala High Court) (DB)

The order was passed that:

- However, when the resident investor is not able to explain the nature and source for the credit seen in the books of accounts of the Company or the explanation offered is not satisfactory then the entire credit would be charged to income tax for that previous year.
- If Section 68 is applicable, and the proviso is not satisfied, then the entire amounts credited to the books would be treated as income. If satisfactory explanation is offered as to the source, then the premium paid as revealed from the books will be brought to tax as income from other sources. The contentions raised are to be negatived.

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Section 56 (1)

Chargeability under Section 56(1)

- Income of Every Kind which is not exempt under this Act
- Shall be chargeable to income tax under the head “Income from other Sources”
- If it is not chargeable to income tax under any of the heads specified in Section 14, (items A to E)*.

Note*

- A. Salaries
- B. Interest on Securities omitted
- C. Income from House Property
- D. Profit and Gains of Business and Profession
- E. Capital Gains



Section 56 (2)

The following income shall be chargeable to income-tax under the head “Income from other sources”, namely :-

(i) Income from Dividend

(ia) The value of any benefits or perquisites, whether convertible into money or not, obtained from a company either by a director or by a person, who has a substantial interest in the company

(ib) winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

(ic) Any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948).

(id) Income by way of interest on securities, if the income is not chargeable to income-tax under the head “PGBP”;



Section 56 (2)

The following income shall be chargeable to income-tax under the head “Income from other sources”, namely :-

(ii) income from machinery, plant or furniture belonging to the assessee and let on hire, if the income is not chargeable to income-tax under the head “PGBP”

(iii) Income from letting out of building along with machinery, plant and furniture, where the same is inseparable (if the same is not taxable under PGBP)

(iv) Sum received under a Keyman insurance policy
(if not taxable under ‘PGBP’ or ‘Salaries’)

(v) Any Gift of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004 but before the 1st day of April, 2006 .



Section 56 (2)

The following income shall be chargeable to income-tax under the head “Income from other sources”, namely :-

(vi) Any sum of money exceeding fifty thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1 April 2006 but before 1 October 2009 .

(vii) Gift of money, immovable/ movable property exceeding Rs 50,000 received by an individual or HUF on/ after 1 October 2009 but before 1 April 2017

(viia) Receipt of shares (of a company in which public are not substantially interested) by a firm/Company(in which public are not substantially interested) without/ for inadequate consideration post 1 June 2010 but before 1 April 2017

(viib) Receipt by a company (In which public are not substantially interested) consideration for issue of shares in excess of FMV from any resident



Section 56 (2)

The following income shall be chargeable to income-tax under the head “Income from other sources”, namely :-

(viii) Income By way of interest received on compensation on enhanced compensation

(ix) Forfeiture of money received as advance or otherwise in the course of transfer of a capital asset