CFO World and Forum of India's Chartered Accountant Firms (FICAF)

## Income Tax Expert Study Group Meeting 17

# Deeming Fictions & Fair Valuation

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# Deeming Fiction & Valuation Provisions in Income Tax

Multiple sections of the Income-tax Act create statutory valuation mechanisms, based on **deeming fictions**, to determine the taxable value of different types of assets such as land, building, shares, business undertakings etc.

It is a settled position, that only a real income can be brought to tax and there is no scope of taxation of hypothetical income within the normal meaning of word income defined in section 2(24) of the Act.

**What Are Deeming Fictions?**

A deeming provision creates an **artificial legal assumption** treating something **as if it were true**, even though it may not be factually so.

> 50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being 72land or building or both, is less than the value adopted or assessed 73[or assessable] by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed 74[or assessable] shall, for the purposes of section 48, be **deemed to be the full value of the consideration** received or accruing as a result of such transfer :

# Deeming Fiction & Valuation Provisions in Income Tax

It is, therefore, only where there statue provides for a deeming fiction, that an unreal/hypothetical/notional income may be brought to tax.

## Scope of Deeming Fictions and Their Applicability under the Act

Deeming fiction provisions are incorporated in the Act to mandate the application of statutory valuation rules, ensuring that fair market value (FMV) or prescribed valuation benchmarks replace the actual consideration wherever:

- consideration is **understated**,
- consideration is **not ascertainable**, or
- assets are **received without / for inadequate consideration**.

# Deeming Fiction & Valuation Provisions in Income Tax

- **Fallout of Deeming Fiction Provisions:**
  - **Substitution of Real Consideration:** Actual transaction value becomes irrelevant once the deeming provision is triggered; FMV or statutory benchmark replaces it.
  - **Possible Taxation of Unreal Income:** Assessees may be taxed on notional gains/income that they have **not actually received**, creating cash-flow and fairness issues.
  - **Overreach in Genuine Transactions:** Even bona fide transactions, especially in case of Bonafide internal business restructuring or family settlements, that deeming fictions may cause hurdle or higher taxation.
  - **Litigation Spike:** Frequent disputes arise regarding FMV determination, safe-harbour applicability, valuation methods, and interpretation of conditional triggers.

# Deeming Fiction & Valuation Provisions in Income Tax

- **Fallout of Deeming Fiction Provisions**

  - **Administrative Discretion:** AO's reliance on stamp duty values or valuation reports can lead to inconsistent outcomes across cases.

  - **Compliance & Valuation Burden:** Necessitates detailed documentation, certified valuations (especially for shares and undertakings), and increased professional involvement.

  - **Potential Double Taxation:** Overlap between provisions (e.g., 43CA & 56(2)(x), 50CA & 56(2)(x)) etc. may lead to income being taxed **both in the hands of the transferor and recipient**.

# Deeming Fiction & Valuation Provisions in Income Tax

## Example 1: Double Taxation in Case of Gift (Between Non-Relatives)

### Facts

- Mr. A gifts a property to Mr. B (not a "relative").
- Stamp Duty Value (SDV) = Rs. 80 lakh
- Actual consideration = ₹0 (gift)

### Tax Impact on Donor (Mr. A) – Section 50C

- Since SDV is substituted for consideration: Deemed sale consideration = ₹80 lakh
- Capital Gain = ₹80 lakh – Cost of acquisition
- Mr. A pays tax even though he received nothing.

### Tax Impact on Donee (Mr. B) – Section 56(2)(x)

- Gift from non-relative taxable. Taxable income = FMV/SDV of ₹80 lakh as "Income from Other Sources".

**Result: Double Taxation**

# Scope of Deeming Fiction

**Section 52 of the Act [Omitted by the Finance Act, 1987, w.e.f. 1-4-1988]**

*52. Consideration for transfer in cases of understatement.—(1) Where the person who acquires a capital asset from an assessee is directly or indirectly connected with the assessee and the Income-tax Officer has reason to believe that the transfer was effected with the object of avoidance or reduction of the liability of the assessee under section 45, the full value of the consideration for the transfer shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be the fair market value of the capital asset on the date of the transfer.*

*(2) Without prejudice to the provisions of sub-section (1), if in the opinion of the Income-tax Officer the fair market value of a capital asset transferred by an assessee as on the date of the transfer exceeds the full value of the consideration declared by the assessee in respect of the transfer of such capital asset by an amount of not less than fifteen per cent of the value so declared, the full value of the consideration for such capital asset shall, with the previous approval of the Inspecting Assistant Commissioner, be taken to be its fair market value on the date of its transfer:*

*....*

# Judicial Interpretation of Deeming Provisions

- ***K.P. Varghese v. ITO* - [1981] 131 ITR 597 (SC)**

**Facts:**

- The assessee had purchased a house property in 1958 for Rs. 16,500/- and sold it in 1965 to his daughter-in-law and her sister for the **same amount**.

- The Department invoked Section 52(2) on the assumption of undervaluation, despite having **no evidence** that the assessee received any consideration over and above the declared Rs. 16,500/-.

**Relevant Finding of *K.P. Varghese v. ITO* - [1981] 131 ITR 597 (SC):**

***18.*** *We must, therefore, hold that sub-section (2) of section 52 can be invoked only where the consideration for the transfer has been understated by the assessee or, in other words, the consideration actually received by the assessee is more than what is declared or disclosed by him and* ***the burden of proving such understatement or concealment is on the revenue. This burden may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the assessee has not correctly declared or disclosed the consideration received by him and there is understatement or concealment of consideration in respect of the transfer. Sub-section (2) has no application in case of an honest and bona fide transaction where the consideration received by the assessee has been correctly declared or disclosed by him, and there is no concealment or suppression of the consideration. We find that, in the present case, it was not the contention of the revenue that the property was sold by the assessee to his daughter-in-law and five of his children for a consideration which was more than the sum of Rs. 16,500 shown to be the consideration for the property in the instrument of transfer and there was understatement or concealment of the consideration in respect of the transfer****. It was common ground between the parties and that was a finding of fact reached by the income-tax authorities that the transfer of the property by the assessee was a perfectly honest and bona fide transaction where the full value of the consideration received by the assessee was correctly disclosed at the figure of Rs. 16,500.* ***Therefore, on the construction placed by us, sub-section (2) had no application to the present case…..***

## *K.P. Varghese v. ITO* - [1981] 131 ITR 597 (SC)

**Held:**

- **Deeming provisions cannot be applied mechanically**; they operate only when statutory conditions are clearly fulfilled.
- **Applied Heydon Rule and Finance Minister Speech to read the object behind Section 52(2)**
- **Purpose of valuation-based deeming** (like Section 52 at that time) is to prevent **tax evasion through understatement of consideration**, **not to tax every bona fide transaction.**
- To invoke a deeming fiction, the **Revenue must demonstrate** that the assessee received **more than what is declared**, or that there was **understatement of consideration**.
- The Supreme Court held that **mere difference between FMV and declared consideration is not sufficient** to trigger deeming valuation.
- **Burden of proof lies on the Department** to show that there was an intention to evade tax by understating consideration.
- The Court emphasized that **deeming fictions must be strictly construed and** cannot be expanded beyond their specific statutory purpose.

# Revisiting KP Varghese: Its Continuing Relevance to Modern Anti-Abuse Provisions under Sections 50C, 43CA, 50CA & 56(2)(x)

- Recently many tax fictions are introduced for eliminating tax avoidance and tax evasion.

- Every deeming provision under the Income Tax Act is created with certain intent, purpose or objective sought to be achieved and that can be gathered from applying the ***Hayden's Rule or Mischief Rule of Interpretation*** i.e. what was the problem sought to be remedied or by reading memorandum explaining the provisions introduced in the finance bills or sometimes the speech of Finance Minister while presenting the provisions.

- Though the words 'deem/ed' or 'as if' etc. are used to denote deeming, it serves variety of purposes and thus it becomes essential to understand the real intent behind introducing deeming provision.

**K.P. Varghese on Heydon's Rule:**

*T**his becomes clear if we have regard to the object and purpose of the introduction of sub-section (2) as appearing from travaux preparatoire relating to the enactment of that provision. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case [1584] 3 Co. Rep. 7 a was decided that** "... for the sure and true interpretation of all statutes in general ... four things are to be discerned and considered: (1)What was the common law before the making of the Act, (2)What was the mischief, and defect for which the common law did not provide, (3)What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth. And (4)The true reason of the remedy ; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy'……..*

***This rule being a rule of construction has been repeatably applied in India in interpreting statutory provisions. It would, therefore, be legitimate in interpreting sub-section (2) to consider what was the mischief and defect for which section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) or in other words, what was the object and purpose of enacting that sub-section. Now in this connection the speech made by the Finance Minister while moving the amendment introducing subsection (2) is extremely relevant, as it throws considerable light on the object and purpose of the enactment of sub section (2)... .....***

**Meaning of word "deemed" was interpreted by the Hon'ble Supreme Court in the case of *Consolidated Coffee Ltd. & Another v. Coffee Board, Bangalore, (1980) 3 SCC 358***

*"… The word "deemed" is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail,* ***but in each case it would be a question as to with what object the legislature has made such a deeming provision****. In St. Aubyn v. Attorney-General, 1952 AC 15, 53: (1951) 2 All ER 473, 498, Lord Radcliffe observed thus: "The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."*

**To discern the legislative intent behind introducing these deeming fictions under the Income-tax Act, it is essential to examine the Budget Speech, the Memorandum to the Finance Bill, and the Notes on Clauses**

- **Budget Speech at the time of introducing Section 56(2)(v):**

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

- **Budget Speech at the time of introducing Section 56(2)(viib):**

*"155. I propose a series of measures **to deter the generation and use of unaccounted money**. To this end, I propose….*

♦ *Increasing 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."*

# Purpose behind Deeming Fictions of Section 56

- On perusal of the budget speech at the time of insertion of different provisions in section 56 relating to gifts, the intent was to curb routing of unaccounted money.

- Thus, applying the Heydon Rule and decision of Supreme Court in the case of KP Verghese (supra), the deeming fictions in those sections should be attracted only where the AO has material on record suggesting money laundering and not otherwise.

- **Favour**

  Cinestaan Entertainment (P.) Ltd. v. ITO: [2019] 106 taxmann.com 300 (Delhi - Trib.)

- **Against**

  West End Investment and Finance Consultancy Ltd. vs. DCIT: 160 taxmann.com 679 (Mumbai - Trib.)[26-02-2024]

# SECTION 50C

**Section 50C is reproduced below:**

***Special provision for full value of consideration in certain cases.***

***50C.*** *(1) Where the consideration received or accruing as a result of the transfer by an assessee of 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 (hereafter in this section referred to as the "stamp valuation authority") 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 section 48****, be deemed to be the full value of the consideration received or accruing as a result of such transfer*

# Understanding - Section 50C

- Section 50C is applicable if the following conditions are satisfied:
    - There is a transfer of a capital asset being land or building or both. The assets may be long term capital asset or short term asset.
    - The declared sale consideration is less than value adopted (or assessed or assessable) by any authority of a State Government for the purpose of payment of stamp duty (hereinafter referred to as “Stamp Duty Authority”) in respect of such transfer.
    - Section 50C is not a charging provision, but substitutes actual consideration for the purposes of computation of capital gains under section 48 of the Act.

# Section 50C – Computation and Not Charging Provision

- Section 50C only modifies the mode of computation for the purposes of section 48 of the Act and do not create independent charge

- If the transfer of capital asset, is not chargeable to tax under section 45 or is exempt under section 47, there can be no notional taxation under section 50C of the Act.

**Illustrations**

- Transfer of 'agricultural land', not being a capital asset under section 2(14), and outside the ambit of section 45, shall not be subject to tax under section 50C at the Circle Rate [Refer: Kanchanben Maheshbhai Patel v. Income - tax Officer [2025] 172 taxmann.com 49 (Surat-Trib.)]

- Transfer of capital asset by way of gift or family settlement, etc., which is not regarded as 'transfer' under section 47 and consequently exempt under section 45, shall also not be chargeable to tax at Circle Rate under section 50C of the Act. [Shirish S. Maniar [2008] 167 Taxman 81 (Mumbai) (MAG.)]

# Meaning of – "Being Land OR Building"

- Section 50C is applicable on Transfer of Land or Building or Both and not rights in the Land or Building.

- The expression "Land or Building" is different from Rights in Land or Building. Ownership in Land/Building is different from holding Limited Leasehold rights in the Land/Building

- Illustrations of sections using different language:

  - Sec. 54D deals with certain cases in which capital gain on compulsory acquisition of land and building is charged. Sub-sec.(1) of sec. 54D opens with: "Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking…..".

  - Similarly, section 5(1)(xxxii) of Wealth Tax Act also refers to ……"not being any land or building or any rights in land or building……..".

# Meaning of – "Being Land OR Building"

- **Favorable Case Laws**

- Transfer when rights held at the stage of Agreement to Sell [V.S. Chandra Shekhar vs. ACIT (2021) (129 taxmann.com 273)(Karnataka High Court]

- Transfer of Leasehold rights is not covered in the scope of section 50C
  - Rajesh Kumar Sharma Vs CIT(A)/NFAC, Delhi [ITA No. 1785/Del/2025]
  - Noida Cyber Park Pvt. Ltd., Vs ITO; ITA NO. 165/DEL/2020; dt. 12/10/2020
  - Ritz Suppliers Pvt. Ltd. vs. ITO, 2020-TIOL-307-ITAT-KOL
  - Atul G. Puranik Vs ITO; [2011] 11 taxmann.com 92 (Mumbai ITAT)

  Against
  - Vidharbha Vineer Industries Ltd. vs. ITO in tax appeal no.24/2022 (Bom)

## ➢ Section 50C – Adoption of notional consideration for investment under section 54/54F

- No issue in section 54 as the amount of capital gain needs to be invested.
- There is a issue on applicability of benefit of section 54F on notional gain arising applying section 50C
- Definition of net consideration in section 54F:
  "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.
- Issue – Whether substituted full value of consideration can be adopted for section 54F

**Favour**

- Gouli Mahadevappa vs. Income-tax Officer, Ward 2, Hospeth [2013] 33 taxmann.com 47 (Karnataka)

**Contra**

- Gyan Chand Batra v. Income-tax Officer [2010] 133 TTJ 482(JP)

## Section 50C

***Special provision for full value of consideration in certain cases.***

***50C.*** *(1) ……*

***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 or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer*

# Variance in Circle Rate – Agreement v. Sale Deed

- Where the date of allotment or agreement to sell precedes the actual date of registration, the Circle Rate on the former date needs to be adopted

- However, payment on the date of allotment/ATS must be made only through Banking Channel and not otherwise

- Circle Rate to be date as on the date of ATS or Allotment Letter:
    - Balkrishna Venkappa Bhandary [2024] 169 taxmann.com 76 (Mumbai - Trib.) (Circle Rate as per the date of Allotment Letter)
    - Modipon Ltd. [2015] 154 ITD 369 (Delhi - Trib.)
    - Thomson Press (India) Ltd. [2025] 176 taxmann.com 237 (Delhi)
    - A.V.V.N. Prasad Reddy [2020] 118 taxmann.com 537 (Visakhapatnam - Trib.) [Allowed even despite objection raised by the Revenue doubting in case of unregistered ATS]

# Safe Harbor of 10%

- Where the Circle Rate is 110% of the Actual Consideration, No Substitution Required.

- 110% Substituted for 105% w.e.f. AY 2021-22 and Safe Harbor of 5% was inserted w.e.f. 01.04.2019 i.e., AY 2019-20.

- The aforesaid amendment being Curative in nature shall have retrospective effect even to old transactions
  - Maria Fernandes Cheryl [2021] 85 ITR(T) 674 (Mumbai Trib.)
  - Deluxe Recycling India (P.) Ltd. [2025] 178 taxmann.com 701 (Mumbai - Trib.)

## Section 50C(2) – Reference to DVO

*50C. (1) ……*

***(2) Without prejudice to the provisions of sub-section (1), where-***

***(a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer;***

***……***

***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 sub-sections (2), (3), (4), (5) and (6) of section 16A, ……. shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.***

***……***

***(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.***

# Reference to DVO

- The Assessee has an option to dispute the Circle rate as FMV of the Property
- The initial onus is on the Assessee to dispute the Circle Rate as FMV and support the dispute with evidence on record, like bringing an Approved Valuer Report on record
- Thereafter, the onus is on the Revenue to refer the matter to DVO, in terms of section 50C(2)(a)
- Once the dispute is raised by the Assessee, the AO has to mandatorily make a reference to the DVO. If the AO adopts Circle Rate as FMV without rejecting the Report submitted by the assessee or making reference to the DVO, the addition will have no legs to stand
  - Bhupendrabhai Bhikhalal Patel [2025] 179 taxmann.com 422 (Ahmedabad - Trib.)
  - Ram Bhuvan Yadav [2025] 176 taxmann.com 363 (Raipur - Trib.)

# Reference to DVO

- Should AO await Report of DVO or pass assessment order pending DVO Report?

  - While section 50C(2) empowers the AO to make a reference to DVO, the AO can also resort to section 142A for making such reference.

  - Where the AO invokes section 142A for making reference, he gets extension to complete assessment with the time taken in furnishing of Valuation report in terms of clause (v) of Explanation 1 to section 153 of the Act.

  - Given the extension of time limit under section 153, the AO should await DVO Report before passing the assessment order.

  - No provisional assessment can be made by the AO subject to DVO's report in a reference u/s 142A as the Act does not contemplate an incomplete assessment. Darshan Buildcon v. ITO [2019] 111 taxmann.com 12/416 ITR 66 (Guj)

# Reference to DVO

- Should AO await Report of DVO or pass assessment order pending DVO Report?

  - Various courts held that such a reference to the DVO does not become invalid on the completion of the assessment proceedings. The report would become part of the record which may enable the income tax authorities to take action as permissible under the Act, such as section 147, section 263, appellate power u/s. 250 or section 251, etc. The validity of such action will, of course, be open to challenge by the assessee in appropriate legal proceedings. ACC Ltd. v. DVO [2012] 21 taxmann.com (Delhi); Bawa Abhai Singh v. Dy. CIT [2002] 253 ITR 83 (Delhi) and ICBI (India) (P.) Ltd. v. Jt. CIT [2008] 166 Taxman 123 (Bang.)(Mag.)

# SECTION 43CA

**Section 43CA is reproduced below:**

*Special provision for full value of consideration for transfer of assets other than capital assets in certain cases.*

*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 the consideration received or accruing as a result of such transfer:*

*Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty does not exceed one hundred and ten 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 computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration:*

**Section 43CA is reproduced below:**

***Provided further*** *that in case of transfer of an asset, being a residential unit, the provisions of this proviso shall have the effect as if for the words "one hundred and ten per cent", the words "one hundred and twenty per cent" had been substituted, if the following conditions are satisfied, namely:—*

*(i) the transfer of such residential unit takes place during the period beginning from the 12th day of November, 2020 and ending on the 30th day of June, 2021;*

*(ii) such transfer is by way of first time allotment of the residential unit to any person; and*

*(iii) the consideration received or accruing as a result of such transfer does not exceed two crore rupees.*

*(2) The provisions of sub-section (2) and sub-section (3) of section 50C 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 State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.*

**Section 43CA is reproduced below:**

*(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 way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed on or before the date of agreement for transfer of the asset.*

*Explanation.—For the purposes of this section, "residential unit" means an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.*

## ➢ Applicability of Section 43CA

- The provisions of section 43CA are exactly similar to section 50C, except that the latter is applicable to transfer of land or building, being a capital asset held by the assessee, the former was inserted in the statute vide Finance Act, 2013, w.e.f. 1-4-2014 to cover transfer of immovable property held as stock in trade (Cases of Developers and Traders). [***CIT v. Kan Construction and Colonizers (P.) Ltd.*** **[2012] 208 Taxman 478 (Allahabad);** ***ITO v. Champaben C Patel. (ITA No. 5686/Mum/2012)*** **– ITAT Mumbai]**

- In case of Developers following POCM method for recognition of Revenue will need to apply section 43CA while recognizing revenue as per the said method from the year in which the agreement is entered, although registration takes place later [Kolte Patil Developers Ltd. vs. DCIT 167 taxmann.com 385 (Pune - Trib.)[12-08-2024]

- In case of transfer of leasehold rights by a builder, the application of section 43CA can be challenged on same grounds as discussed in slides of section 50C supra

- In case of transfer of land under JDA, the land owner steps into shoes of the Developer and the Revenue shall be recognized as per section 43CA, when the underlying property is sold to the Developer. [DCIT vs. Ritman Commercial (P.) Ltd. [2024] 168 taxmann.com 322 (Kolkata - Trib.)]

# Section 50 CA

## ➢ Understanding of Section 50CA

**Extracts of Section 50CA is reproduced below:**

*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:*

***Provided*** *that the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.*

***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 50CA: Special provision for substituting full value of consideration for transfer of unquoted share.

- Akin to section 50C, the provisions of section 50CA seeks to substitute actual consideration with FMV in case of sale of unquoted shares, held as capital asset.
- The said section was inserted in the statute by the Finance Act, 2017 (effective from 1 April 2018, i.e. AY 2018-19).
- The said provision shall not be applicable to shares held as stock in trade
- Similar to discussion in section 50C, section 50CA is also a computation provision and not a charging provision; therefore, in case of exempt transfers, like gifts, the FMV cannot be brought to tax in the hands of the transferor

## ➢ Transfer without consideration-Gift

A Company can also transfer shares by way of gift, provides Company has such powers under the Articles of Associated and is supported by board Resolution

- Asian Satellite Broadcast (P.) Ltd v. Income Tax Officer 119 taxmann.com 481 (Bombay High Court)
- Prakriya Pharmacem v. Income-tax Officer 66 taxmann.com 149 (Gujarat High Court)

## ➢ Valuation u/s 50CA- FMV Determination-Rule 11UAA

- **Rule 11UAA** specifies that, for the purposes of **Section 50CA**, the FMV of unquoted shares must be determined using the valuation methodology prescribed under **sub-clauses (b) and (c) of Rule 11UA(1)(c)**.

- The term **"valuation date"** in Rule 11UA shall specifically refer to **the date on which the unquoted share is transferred**.

## ➢ FMV Determination-Rule 11UA(1)(c)(c) in the case of unquoted shares and securities other than unquoted equity shares

- The **FMV of unquoted shares and securities** (other than unquoted equity shares) of a company shall be **estimated at the price they would fetch in the open market on the valuation date**.

- For determining this value, the assessee **may obtain a valuation report** from a **merchant banker or an accountant**.
- Accordingly, the method of valuation in such cases is not restricted to NAV method

Valuation u/s 50CA

# VALUATION OF UNQUOTED EQUITY SHARES

## [Rule 11UA(1)(c)(b)]

$$\text{Fair Market Value (FMV)} = \left(A + B + C + D - L\right) \times \frac{(PV)}{(PE)}$$

### A (Book Value of Assets)

Book value of all assets in the balance sheet (excluding jewellery, artistic work, shares, securities, and immovable property)

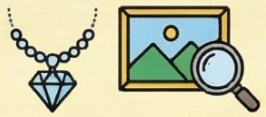
**REDUCED BY:**

(i) Income tax paid less refund claimed, and

(ii) Deferred expenditure not representing asset value.

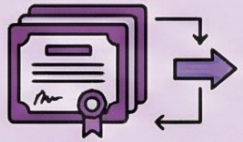

### B (Jewellery & Artistic Work)

Price that jewellery and artistic work would fetch in the market (based on Registered Valuer's report).



### C (Shares & Securities)

FMV of shares and securities as determined in the manner provided in this rule.



### D (Immovable Property)

Value adopted/ assessed/assessable by Government authority for Stamp Duty.

### L (Book Value of Liabilities)

Book value of liabilities in the balance sheet

**EXCLUDING:**

(i) Equity paid-up capital,
(ii) Undeclared dividends,
(iii) Reserves & surplus (except depreciation),
(iv) Excess provision for taxation,
(v) Unascertained liabilities,
(vi) Contingent liabilities (except arrears of cumulative preference dividends).


### PV (Paid-up Value)

Paid-up value of such equity shares.

### PE (Total Paid-up Equity)

Total amount of paid-up equity share capital as shown in the balance sheet.

Note: The valuation date is the date on which the assets are transferred. Requires report from Registered Valuer for specific assets.

## ➢ FMV Determination-Rule 11UA(1)(c)(b)

- For equity shares, there is no provision of considering DCF or any other method for determining FMV of unlisted equity shares.
- Thus, the AO cannot consider underlying value of intangible assets, not recorded in the books of account, to determine the FMV of equity shares.
- Preference Share Capital and **Convertible Debentures** (until converted into equity shares) shall be considered as liabilities for reduction while determining NAV of the equity shares
- However, Rule 11UA should not be mechanically applied and value of underlying assets should be pragmatically considered. For instance, the Assessee can challenge Circle Rate to be FMV of immoveable property held as asset by the underlying Company, in the same manner as available under section 50C or 56(2)(x) of the Act. [Refer: ACIT, Central Circle-1, Aurangabad vs. Dwarkaprasad Bhikulal Soni (ITAT Pune, ITA 1188/PUN/2024]

## ➢ Section 50CA – Date of Valuation

- Whether a Company can be valued on the date of transfer or can be valued on the basis of last available audited balance sheet?
  - **As per strict reading of the provisions, a Balance Sheet would need to be prepared on the date of transfer**
- What shall be the date of transfer – date of agreement, where principal sale price is agreed or date of sale deed, when payment is received and share are transferred to the buyer?
  - **Applying the analogous provisions of section 50C and 43CA, it can be argued to be date of ATS.**

## ➢ Cases where Sections 50CA do not Apply

**Background**

- Finance (No. 2) Act, 2019 empowered CBDT to notify **classes of persons/transactions** exempt from Sections **50CA**.
- CBDT issued Notification No. **42/2020 dated 30.06.2020** introducing **Rule 11UAD** specifying cases where these sections **shall not apply** to transferor of **unquoted shares**.

## ➢ Cases where Sections 50CA do not Apply

- **Mandatory Conditions for Claiming the Exemption**
  - The Central Government must have filed an application under **Section 241 of the Companies Act, 2013** alleging oppression/mismanagement.
  - Based on this application, the **NCLT suspends the existing Board** and appoints **new directors nominated by the Central Government** under **Section 242**.
  - The jurisdictional **Principal Commissioner/Commissioner of Income Tax** must be given a **reasonable opportunity of being heard**.
  - A **resolution plan** must be formally **approved by the NCLT**.
  - Transfer or receipt of **unquoted shares** must be **in pursuance of the NCLT-approved resolution plan**, covering the company itself, its subsidiaries, and subsidiaries of such subsidiaries.

# SECTION 50D

## 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 fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer**."

# Understanding – Section 50D

- Section 50D is a residuary provision, which deems FMV of an asset to be the sale consideration, where the consideration for the transfer is either not ascertainable or cannot be determined.

- Akin to section 50C/50CA, 50D is also a machinery provision for computation of capital gains in case of transfer of capital asset and is not an independent charging provision

- Section 50D is applicable where consideration is not determinable/ascertainable and not where cost is indeterminate. The legal proposition laid down by Supreme Court in case of CIT vs. B.C. Srinivasa Setty: 128 ITR 294 for failure of computation mechanism in case of indeterminable cost of acquisition of Goodwill and in PNB Finance Ltd. vs. CIT 307 ITR 75 with reference to business undertaking, remain intact

# Understanding – Section 50D

- Section 50D can have application to cases of transfer of asset by way of 'exchange', where while cost of asset transferred is ascertainable but there was no mechanism for computing value of consideration in the form of asset received. [Refer: Asstt. CIT v. KB Investment & Finance Co. Ltd. [1995] 53 ITD 410 (Del.)]

- The situation of transfer of land in case of JDA could attract computation of FMV of corresponding asset received under section 50D (may be for years where section 45(5A) is not applicable) [Refer: PCIT vs. CPC Logistics Ltd. 286 Taxman 38 (Karnataka)]

- While no specific method of valuation has been prescribed, but reference can be made to the definition of "fair market value" under section 2(22B) which defines as follows:

  "fair market value" , in relation to a capital asset, means-

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

  (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with the rules made under this Act ;

# SECTION 50B

- **Section 50B – Computation of Capital Gains in case of Slump Sale**

  **Special provision for computation of capital gains in case of slump sale.**

  50B. (1) Any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place :

  Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assessee for not more than thirty-six months immediately preceding the date of its transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

- **Section 50B – Computation of Capital Gains in case of Slump Sale**

**Special provision for computation of capital gains in case of slump sale.**

…….

(2) In relation to capital assets being an undertaking or division transferred by way of such slump sale,-

(i) the "net worth" of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48;

(ii) fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

- **Section 50B – Computation of Capital Gains in case of Slump Sale**

  **Special provision for computation of capital gains in case of slump sale.**

  ……

  Explanation 1.-For the purposes of this section, "net worth" shall be the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account :

  Explanation 2.-For computing the net worth, the aggregate value of total assets shall be,-

  (a) in the case of depreciable assets, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (c) of item (i) of sub-clause (c) of clause (6) of section 43;

  (aa) in the case of capital asset being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner, nil;]

  ……..

  (c) in the case of other assets, the book value of such assets.]]]

- **Understanding Section 50B**

  - Section 50B brings to charge capital gains arising from slump sale of business undertaking for lumpsum consideration.

  - The expression 'slump sale' has been defined in section 2(42C) as the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

  - 'Undertaking' has the same meaning as in Explanation 1 to section 2(19AA) defining 'demerger'. As per Explanation 1 to section 2(19AA), 'undertaking' shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

  - Capital gains arising on transfer of an undertaking are deemed to be long-term capital gains. However, if the undertaking is 'owned and held' for not more than 36 months immediately before the date of transfer, gains shall be treated as short-term capital gains.

- **Understanding Section 50B**

  - Capital gains arising on slump sale are calculated as the difference between sale consideration and the net worth of the undertaking. Net worth is deemed to be the cost of acquisition and cost of improvement for section 48 and section 49 of the Act.

  - As per section 50B, no indexation benefit is available on cost of acquisition, i.e., net worth.

  - In case of slump sale of more than one undertaking, the computation should be done separately for each undertaking.

- **Understanding Section 50B**

  **Computation Mechanism – Cost of Acquisition**

  - For computing capital gains, cost of acquisition of the undertaking is adopted as Net worth of the undertaking, which is defined in Explanation 1 to section 50B as the difference between 'the aggregate value of total assets of the undertaking or division' and 'the value of its liabilities as appearing in books of account'.

  - The 'aggregate value of total assets of the undertaking or division' is the sum total of:

    - WDV as determined u/s.43(6)(c)(i)(C) in case of depreciable assets.

    - The book value in case of other assets.

- **Understanding Section 50B**

## Computation Mechanism – Sale Consideration

- FMV of the undertaking is deemed as Sale Consideration of the Undertaking
- The method of computing FMV is prescribed in Rule 11UAE of the Rules.
- Rule 11UAE provides for FMV being higher of – (i) NAV of the undertaking, which is similar to computation mechanism of Rule 11UA, or (ii) sum total of value of money consideration received and fair value of other assets received (to be determined in same manner as applicable to other assets under Rule 11UA, like Circle Rate of immovable property, NAV of shares, etc.
- Where shares of the resulting company are received pursuant to slump sale of undertaking, the FMV of shares will now be deemed as sale consideration for Section 50B of the Act.

# SECTION 56(2)(x)

***Section 56(2)(x) is reproduced below-***

***Section 56(2)(x): In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :–***

*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;*

***(a) 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, **the stamp duty value of such property as exceeds such consideration**, if the amount of such excess is more than the higher of the following amounts, namely: –*

*(i) **the amount of fifty thousand rupees; and***

***(ii) the amount equal to ten per cent of the consideration***

**Section 56(2)(x) is reproduced below-**

*(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*

## ➢ Applicability of Section 56(2)(x)

- Section 56(2)(x) of the Act deems income in the hands of recipient of gift of, or for inadequate consideration, receipt of (i) money or (ii) property (movable or immovable) if the value of such receipt or difference exceeds Rs. 50,000/-

- Introduced to curb tax evasion, this provision became effective from April 1, 2017, i.e. to receipt after 1-4-2017. Section 56(2)(x) consolidates and replaces the earlier gifting/transfer provisions contained in Section 56(2)(vii) (applicable to individuals/HUFs), Section 56(2)(viia) (applicable to receipt of shares by firms/closely-held companies).

- Thus, the new section expands the scope to receipt of any asset by any person, which was earlier restrictive.

- In case of immoveable property, the safe harbor of 10% difference between the Circle Rate and Actual Consideration has been prescribed akin to the provisions of section 50C and 43CA

- **<u>Applicability of Section 56(2)(x) if the Date of Agreement and date of transfer of asset are not same</u>**

  - Akin to section 50C, the Circle Rate has to be seen with reference to the date of Agreement to Sell and not registration of Sale Deed, provided the part consideration was paid through banking channel on the fate of ATS.

  - ***Javidbhai Ahemadbhai Mansuri vs. Income-tax Officer [2025] 179 taxmann.com 53 (Ahmedabad - Trib.) [25-09-2025],*** wherein, it was held that where assessee had purchased a property for Rs. 29.97 lakhs which had been registered at a stamp duty value of Rs. 1.04 crores on 30-10-2018, since assessee had entered into an agreement fixing amount of consideration for said immovable property in 2013 and a part of consideration had been paid by way of account payee cheques through a bank account, provisions of section 56(2)(x)(b) were not attracted.

- **Section 56(2)(x) not applicable on bonus shares/allotment of rights shares in the hands of recipient**

  - **PCIT v. Dr. Ranjan Pai [2021] 124 taxmann.com 241 (Kar.)**

    In case of issue of bonus shares, where the recipient received additional shares without cost, no benefit accrues to the recipient as the same is only split of existing value of assets, the provisions of section 56(2)(x) or erstwhile section 56(2)(vii)(c) will not be attracted.

  - **Sudhir Menon HUF vs. Assistant Commissioner of Income-tax -21(2), Bendra Mumbai [2014] 45 taxmann.com 176 (Mumbai)**

    Where additional shares of a company were allotted pro rata to shareholders including assessee based on their existing shareholding, there was no scope for any property being received on said allotment of shares and, consequently, provisions of section 56(2)(vii)(c) did not apply to difference in book value and face value of additional shares.

# Applicability of Section 56(2)(x) on allocation of right shares

## Jigar Jashwantlal Shah vs. ACIT [2022] 142 taxmann.com 200 (Ahmedabad - ITAT) [06-05-2022]

- Provisions do not apply in respect of allocation of rights shares allotted to assessee below FMV proportionate to his shareholding in company; and

- Also, cannot be invoked in respect of additional shares received by assessee on account of renunciation of rights issue by assessee's wife and father in favour of assessee, since wife/father fall within definition of 'relatives', which are excluded from purview of operation of provision.

- **Further, renunciation of rights shares by third party shareholders in favour of assessee, allowing assessee to gain controlling interest results in disproportionate allocation of rights shares in favour of assessee and therefore, in respect of these shares, provision shall apply, and income would be taxable in hands of assessee.**

## Section 56(2)(x) - Exceptions

*(c)* **... ... ... ... ...**

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

*(I) from any relative; or*

*(II) on the occasion of the marriage of the individual; or*

*(III) under a will or by way of inheritance; or*

*(IV) in contemplation of death of the payer or donor, as the case may be; or*

*…….*

*(VII) from or by any trust or institution registered under section 12A or section 12AA or section 12AB; or*

*……..*

*(IX) by way of transaction not regarded as transfer under clause (i) or clause (iv) or clause (v) 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) or clause (viiac) or clause (viiad) or clause (viiae) or clause (viiaf) of section 47; or*

*(X) from an individual by a trust created or established solely for the benefit of relative of the individual; (XI) from such class of persons and subject to such conditions, as may be prescribed;*

*(XI) from such class of persons and subject to such conditions, as may be prescribed*

*(XII) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to such conditions, as the Central Government may, by notification in the Official Gazette, specify in this behalf;*

## ➢ Exceptions to Section 56(2)(x)

- The proviso to Section 56(2)(x) of the Act carves out specific exceptions where the deeming provisions relating to the receipt of any sum of money or property without or for inadequate consideration shall not apply. These exceptions include:

  - **Receipts from relatives;**
  - The word relative is defined in Explanation to section 56(2) and means the following:-
    i. spouse of the individual;
    ii. brother or sister of the individual;
    iii. brother or sister of the spouse of the individual;
    iv. brother or sister of either of the parents of the individual;
    v. any lineal ascendant or descendant of the individual;
    vi. any lineal ascendant or descendant of the spouse of the individual;
    vii. spouse of the person referred to in clauses (ii) to (vi).

## ➢ Exceptions to Section 56(2)(x)

- **Whether HUF can be covered within the scope of 'Relative'**

**Favorable**

- Gift by relative of individual to HUF - Where an HUF receives a gift from a person who qualifies as a relative of the Karta such as the brother or sister of either parent of the individual the gift falls within the statutory definition of "relative" and therefore does not attract tax under the said provisions. ***Harshadbhai Dahyalal Vaidya (HUF) v. ITO [2013] 144 ITD 605 [Ahmedabad Trib.]***

**Against**

- Gift by HUF to individual, being member of HUF - The definition of relatives on section 56 only talks about individuals and HUF bening distinct from individual under the scheme of the Act, receipt of gift from HUF is not exempt from tax. ***Seema Sureka v. DCIT Kolkata – ITA No. 2682/Kol/24 [ITAT Kolkata].***

- However, such gift can otherwise be exempt under section 10(2), if such sum ia gifted out of the income of the HUF

## ➢ Exceptions to Section 56(2)(x)

- **Receipt from Step-Brother or Sister**

  - Gift received by assessee from his step-sister was exempt from being taxed as income from other sources under section 56(2) as term 'relative' would include step-brother and step-sister by affinity. If the term 'brother and sister of the individual' has not been defined under the Income-tax Act, then, the meaning defined in common law has to be adopted and in absence of any other negative covenant under the Act, it is viewed that brother and sister should also include step brother and step sister who by virtue of marriage of their parents have become brother and sister. ***Rabin Arup Mukerjea vs. Income-tax Officer (International Taxation) [2025] 172 taxmann.com 855 (Mumbai - Trib.)[21-03-2025]***

- Whether the spouse of same sex would fall with in the definition of relative is pending consideration before the Hon'ble Bombay High Court in the case of ***Payio Ashiho & Anr. WRIT PETITION (L) NO.24345 OF 2025.***

## ➢ Exceptions to Section 56(2)(x)

- **On the occasion of the marriage of the individual**

  - **Exempt Receipt only by a Bride/Groom and not Parents**
    - ✓ Word 'individual' used in clause (b) of proviso to section 56(2)(vi) includes only bride or bridegroom and not to marriage of any other person related to him; therefore, amount of gift received by assessee on occasion of his daughter's marriage is not exempt from tax. ***Rajinder Mohan Lal v. Deputy Commissioner of Income-tax, Circle 1(1), Chandigarh [2012] 18 taxmann.com 91 (Chd.).*** **This decision is upheld by the Hon'ble High Court of Punjab and Haryana.**

  - Where assessee received gifts by cheque from first cousin and family friend in connection with his marriage though credited to account days after wedding, such gifts were held to be received on occasion of marriage and covered by exemption under proviso to section 56(2)(vii), as viewing credit date strictly ignores practical realities. ***Dhruv Sanjay Gupta vs. Joint Commissioner of Income-tax [2025] 181 taxmann.com 233 (Mumbai - Trib.)***

## ➢ Exceptions to Section 56(2)(x)

- **Family Settlement**

  - Receipt of property pursuant to a family settlement is not specifically exempt under section 56(2)(x) of the Act

  - The Courts have, however consistently held that, Family Settlements only involve re-alignment of existing rights of the family members in the pool of family assets, by way of pre-emotive or post dispute settlement, which can neither be considered as transfer of assets by one set of family members to others or, consequently, receipt of assets by other set of family members.

    - CIT v. R. Nagaraja Rao: (2013) 352 ITR 565 (Kar.)
    - Ziauddin Ahmed v. Commissioner of Gift Tax: 102 ITR 253 (Gauhati)
    - CIT v. Kay Arr Enterprises [2008] 299 ITR 348 (Madras)
    - CIT v. A.L. Ramanathan [2000] 245 ITR 494 (Mad.)
    - CIT v. Ashwani Chopra: (2013) 352 ITR 620 (P&H)

- **Exceptions to Section 56(2)(x)**

  - **By way of transaction not regarded as transfer under Section 47 of the Act;**

    - Clause 47(i): Distribution of Capital Assets on Partition of HUF
    - Clause (iv): Transfer Between Holding Company and 100% Subsidiary Company
    - Clause (v): Transfer by 100% Subsidiary Company to Holding Company
    - Clause (vi): Transfer Under a Scheme of Amalgamation

## ➢ Exceptions to Section 56(2)(x)

- **By way of transaction not regarded as transfer under Section 47 of the Act;**
  - **Clause (via): Transfer Under a Demerger**
    - Excess net assets acquired over purchase consideration in a demerger transaction should not be taxed as "income from other sources". Demerger transactions are specifically exempt from Section 56(2)(x) under Clause (IX) of the proviso. NCLT approved valuations cannot be challenged arbitrarily by tax authorities. ***Bharti Airtel Ltd. v. Principal CIT [2025] 171 taxmann.com 754 (Delhi- Trib.).***
  - Clause (viaa): Transfer of Shares Under a Business Reorganization (Conversion of Firm/Proprietary Concern into Company)
  - Clause (vib): Transfer of Shares Under Conversion of Company into LLP

## ➢ Exceptions to Section 56(2)(x)

- **By way of transaction not regarded as transfer under Section 47 of the Act;**
  - Clause (vic): Transfer Under Scheme of Amalgamation of Banking Entities
  - Clause (vica): Transfer in Amalgamation of Public Sector Companies
  - Clause (vicb): Transfer in Demerger of Public Sector Companies
  - Clause (vid): Transfer Under a Scheme for Conversion of Financial Institution/Banks to Banking Company
  - **Clause (vii): Transfer of Capital Asset Under a Scheme of Gift or Will or Irrevocable Trust – Amount received by a Private Trust (Irrevocable) from the Settler shall be exempt in view of section 47(vii)**

## ➢ Exceptions to Section 56(2)(x) - During Covid

- Any amount received by an individual from any person to meet expenses actually incurred for the medical treatment of COVID-19, for himself or any family member, subject to the conditions notified by the Central Government.

- Any amount received by the family of a person who died due to COVID-19 if:

  - It is received from the deceased's employer, or
  - It is received from any other person(s), up to a limit of ₹10 lakh, and
  - The payment is received within 12 months from the date of death, and
  - The conditions notified by the Central Government are complied with.

- Any compensation or payment received by a person because their employment was terminated or its terms were changed.

# Meaning of 'Property' under Section 56(2)(x)

- As per Explanation (b) to section 56(2)(x) r/w Explanation (d) to section 56(2)(vii), "property" **means the following capital asset of the assessee**
  - "immovable property" means land or building or both.
  - "movable property" means shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, bullion, and includes virtual digital asset.

# Meaning of 'Property' under Section 56(2)(x)

- With the use of word "means", the said section provides an exhaustive definition of the word "property"; in other words, the assets/property not specified in the section shall remain outside the scope of section 56(2)(x):
    - Transfer of Business undertakings
    - It can be argued that, akin to arguments taken in section 50C, the transfer of leasehold rights in land/building are outside the ambit section 56(2)(x)
    - Transfer of assets in the nature of intangible assets/goodwill, etc.
- Further, the definition provides for receipt of property in the nature of "capital asset". Assets, like property in the nature of stock-in-trade or exempt agricultural land, can be argued to be outside the ambit of said provision. [***Utility Supply (P.) Ltd [2025] 174 taxmann.com 250 (Mumbai - Trib.)***]

**Section 56(2)(x) is reproduced below- Reference to DVO**

*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*:

## ➢ Applicability of Section 56(2)(x)

- **3rd Proviso to Section 56(2)(x) – Reference to Valuation Officer**

  - Akin to the provisions of section 50C, where the value of asset is received at less than Circle Rate, the recipient-assessee can dispute the Circle Rate to be FMV and the AO will need to accordingly refer the matter to the DVO.

- **Method of Valuation**

  - Similar to section 50C and 50CA, as per Rule 11UA

# SECTION 56(2)(viib)

***Section 56(2)(viib) is reproduced below:***

*Section 56 (2): In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, shall be chargeable to income-tax under the head "Income from other sources", namely :—*
*(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:*

*Provided that this clause shall not apply where the consideration for issue of shares is received —*
*(i) by a venture capital undertaking from a venture capital company or a venture capital fund or a specified fund; or*
*(ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf*

**Section 56(2)(viib) is reproduced below:**

*Provided further that where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause (ii) of the first proviso and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under reported the said income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year:*

***Section 56(2)(viib) is reproduced below-***

*Explanation. – For the purposes of this clause, –*

*(a) the fair market value of the shares shall be the value –*
*(i) as may be determined in accordance with such method as may be prescribed; or*
*(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,*
*whichever is higher;*
*(aa) "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulated under the 67[International Financial Services Centre Authority (Fund Management) Regulations, 2022 made under the] International Financial Services Centres Authority Act, 2019 (50 of 2019);*

***Section 56(2)(viib) is reproduced below-***

*(ab) "trust" means a trust established under the Indian Trusts Act, 1882 (2 of 1882) or under any other law for the time being in force;*

*(b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of Explanation to clause (23FB) of section 10;*

# Understanding - Section 56(2)(viib)

- The provision will get attracted if the following conditions are satisfied cumulatively—
  - Company should be a closely held company, i.e., a company in which the public are not substantially interested.
  - Such company should receive consideration in the previous year for issue of shares (whether equity shares or preference shares).
  - Such company should have received such consideration from a resident as well as non-resident.
  - Such shares are issued in excess of the face value of such shares [i.e., shares are issued at Premium.
  - Such consideration is received from the relevant person up to and including 31-3-2025, i.e., up to the assessment year 2024-25.

# Understanding - Section 56(2)(viib)

- The provisions of section 56(2)(viib), effective up to assessment year 2024-25, shall not apply in the following cases—
    - Where the consideration for issue of shares is received by a venture capital undertaking (VCU) from—
        - a venture capital company (VCC); or
        - a venture capital fund (VCF); or
        - a specified fund.
- Where the consideration for issue of shares that exceeds the face value of such shares is received by a start-up company/entity from any person (whether resident or non-resident). This exemption to the start-up company has been granted (w.r.e.f. 1-4-2023) vide Notification No. SO 2275(E)

- **Determination of FMV of shares under Section 56(2)(viib)**

  - **As per Explanation (a) to section 56(2)(viib), the FMV of the shares shall be higher of the following values—**

    - Value determined in accordance with Rule 11UA(2); or

    - Value as may be substantiated by the company to the satisfaction of the AO, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

  - **The provision seeks to enable the determination of FMV by two methods, i.e.,**

    - prescribed method as purportedly embedded in rule 11UA; and

    - FMV based on the intrinsic value of the assets both tangible and intangible on the date of issue of shares.

## ➢ Assessee's Exclusive Right to Choose Valuation Method (DCF or NAV) and AO's Obligation to Accept the Chosen Method

- Only the assessee has the discretion to select the valuation method for shares—whether DCF or NAV—and once this option is exercised, the Assessing Officer is required to accept the chosen method unless he brings cogent evidence on record to establish that the method adopted by the assessee is perverse.
- **Case Laws- Favourable**
  - Pr. CIT v. Cinestaan Entertainment [2021] 433 ITR 82 Delhi High Court
  - Vodafone M-Pesa Ltd. vs. PCIT Writ 389 of 2018 (Bombay HC)
  - Caddie Hotels (P.) Ltd. vs. PCIT [2023] 202 ITD 351 (Delhi - Trib.)
  - DCIT v. Hometrail Buildtech (P.) Ltd. [2024] 204 ITD 154 (Delhi - Trib.)

# Section 50AA

## ➢ Understanding of Section 50AA

- Section 50AA applies to the following capital assets:
    - Units of **Specified Mutual Funds** acquired on or after **1 April 2023**, and **Market Linked Debentures (MLDs)**.
    - **Unlisted bonds or unlisted debentures** that are **transferred, redeemed, or mature on or after 23 July 2024**.
- For these assets, the capital gain will always be treated as short-term capital gain, regardless of how long they were held.
- The capital gain is calculated as:

    **Full sale/redemption/maturity value less Cost of acquisition less Expenses related to transfer/redemption/maturity**.
- No deduction is allowed for **Securities Transaction Tax (STT)** while computing such capital gains.

## ➢ Understanding of Section 50AA

- The provision seeks to bring hybrid securities that combine features of plain vanilla debt securities and exchange traded derivatives, at par with pure debt instruments.
- Such securities were hitherto taxed at preferential rate of tax applicable to LTCG without indexation.
- However, to bring them in parity with debt instruments section 50AA was inserted w.e. 1-4-2024 to treat the full value of the consideration received or accruing as a result of the transfer or redemption or maturity of the "Market Linked Debentures" as reduced by the cost of acquisition of the debenture and the expenditure incurred wholly or exclusively in connection with transfer or redemption of such debenture, as capital gains arising from the transfer of a short term capital asset.

# Section 28(via)

## ➢ Section 28(via) – Conversion of Inventory to Capital Asset

Profits and gains of business or profession.

28.The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession"-

……

(via) the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner

## ➢ Understanding of Section 28(via)

- Section 28(via) deems FMV of the asset held as inventory and converted into capital asset, to be business income of the assessee in the year of conversion
- The method of computing FMV has been prescribed in Rule 11UAB of the Rules, which is akin to Rule 11UA, i.e.,
  - Circle Rate of the Immoveable Property;
  - Same method of valuation for other assets, including shares, etc.

# THANK YOU

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