



# Taxation of Gifts u/s 56(2)(x)

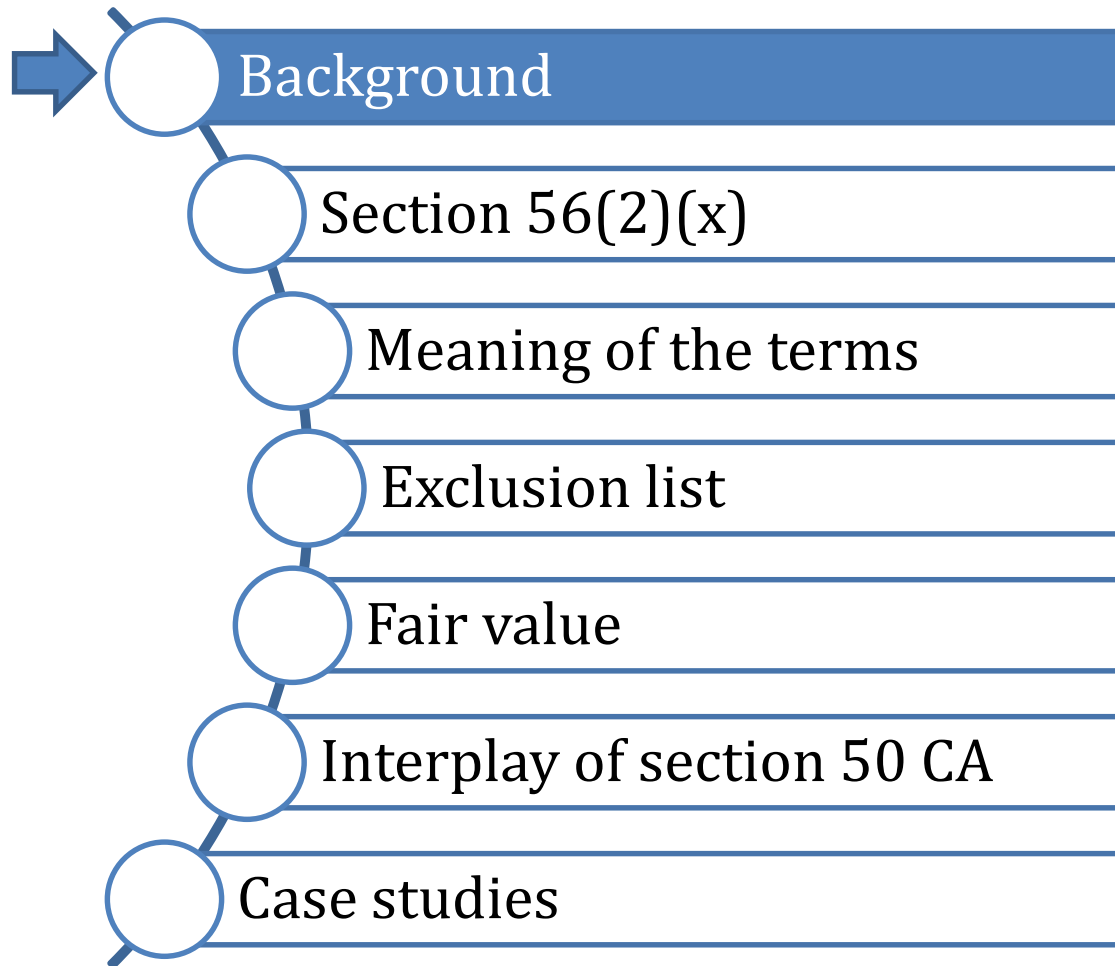
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Bombay Chartered Accountants' Society  
Direct tax Study Circle Meeting  
9 October 2017

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# Background (1/4)

Taxability of gifts were governed  
by Gift Tax Act, 1958;

Taxed in the hands of the donor

Abolition  
of Gift Tax  
Act w.e.f.  
1.10.1998

Introduction of section  
56(2)(v) by Finance (No. 2)  
Act, 2004

Taxed in the hands of  
recipient

# Background (2/4)

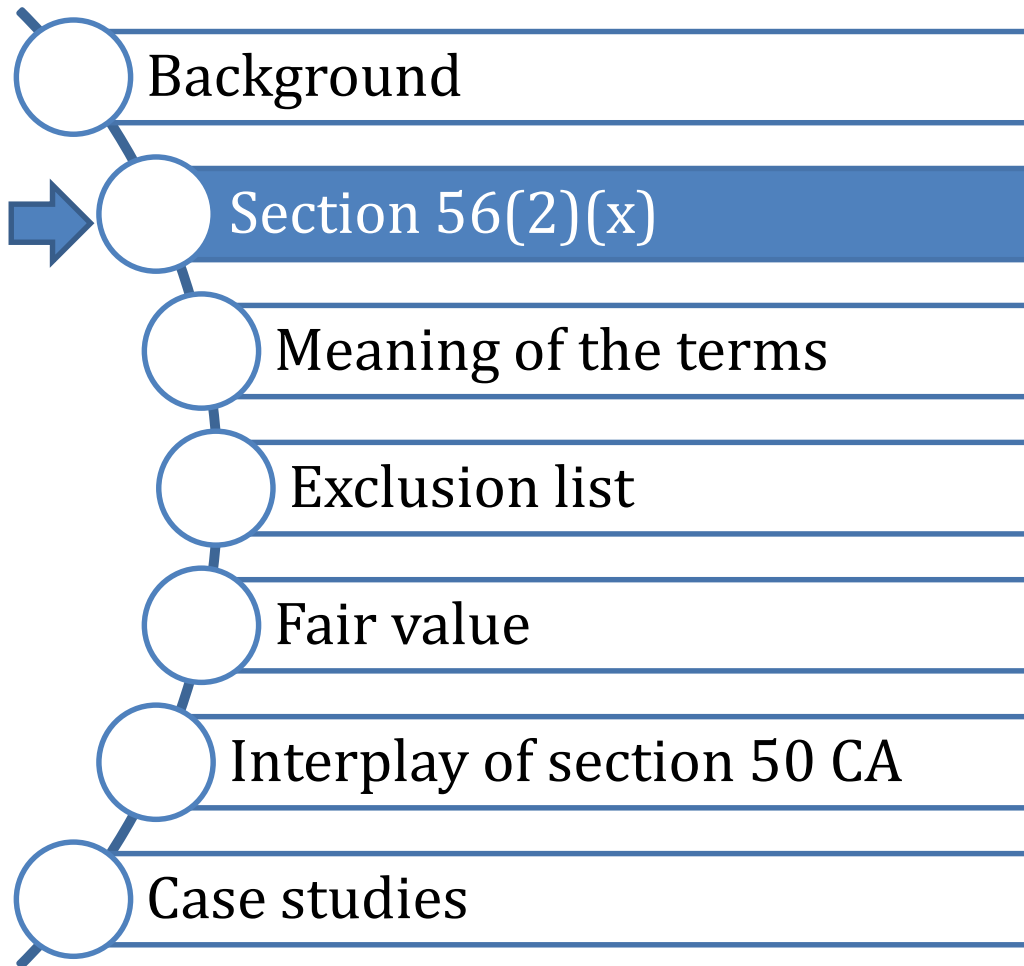
Section	Received From	Persons covered	Property	Period
56 (2) (v) Finance Act, 2004	Any person	Individual /HUF	Sum of money > Rs 25,000 received without consideration	On/after 1/9/2004 to 1/4/2006
56 (2) (vi) Taxation Laws (Amendment) Act, 2006	Any person	Individual /HUF	Any aggregate sum of money > Rs 50,000 received without consideration	On/after 1/4/2006 to 1/10/2009
56 (2) (vii) Finance Act, 2009	Any person	Individual /HUF	Same as 56 (2) (x)	On/after 1/10/2009 to 1/4/2017

# Background (3/4)

Section	Received From	Persons covered	Amount	Period
56 (2) (vii) Finance Act, 2010	Any person	Firm / closely held company	Shares of closely held company <ul style="list-style-type: none"> <li>Without consideration – the aggregate FV &gt; 50,000 – then the full FV is taxable</li> <li>For consideration &lt; aggregate FV &amp; D &gt; 50,000 --&gt; FV-consideration is taxable</li> </ul>	On / after 1/6/2010 to 1/4/2017

# Background (4/4)

Section	Received From	Persons covered	Property	Period
56 (2) (viib) Finance Act, 2012	Any person being resident	Closely held company	Receives consideration for the issue of shares; consideration > FV of the share; then consideration – FMV is taxable	





# Introduction

- Introduced by **Finance Act 2017** effective from **AY 2018-19** onwards
  - ✓ Covers all categories of person (including listed and widely held companies)
  - ✓ Rest of the provisions similar to section 56(2)(vii)
- The receipts could be from any person
- The receipts must be received **on or after 1/4/2017**
- Considered as income u/s 2(24)(xviiia)

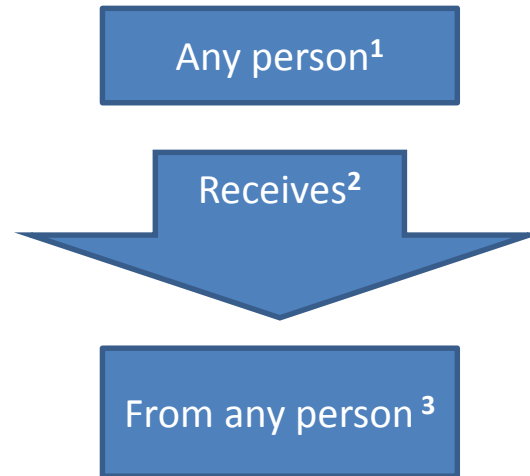
# Why Amendment ?

- The Memorandum explaining the provisions of the Finance Bill 2017 states as under :

*“The existing definition of the property for the purpose of this section includes immovable property, jewellery, shares, painting, etc. These anti-abuse provisions are applicable only in case of individual or HUF and firm or company in certain cases. Therefore, receipt of sum of money or property without consideration or for inadequate consideration does not attract these anti-abuse provisions in case of other assessee.”*

- Inserted to widen the scope

# Section 56(2)(x)



✓ Any sum of money <sup>4</sup>, without consideration <sup>5</sup>, the aggregate value of which > 50,000 – the whole of such sum

✓ Any immovable property <sup>6</sup>

- Without consideration – Stamp value > 50,000- then the stamp value of such property
- With consideration – consideration < stamp duty – difference >50,000- (stamp duty – consideration)

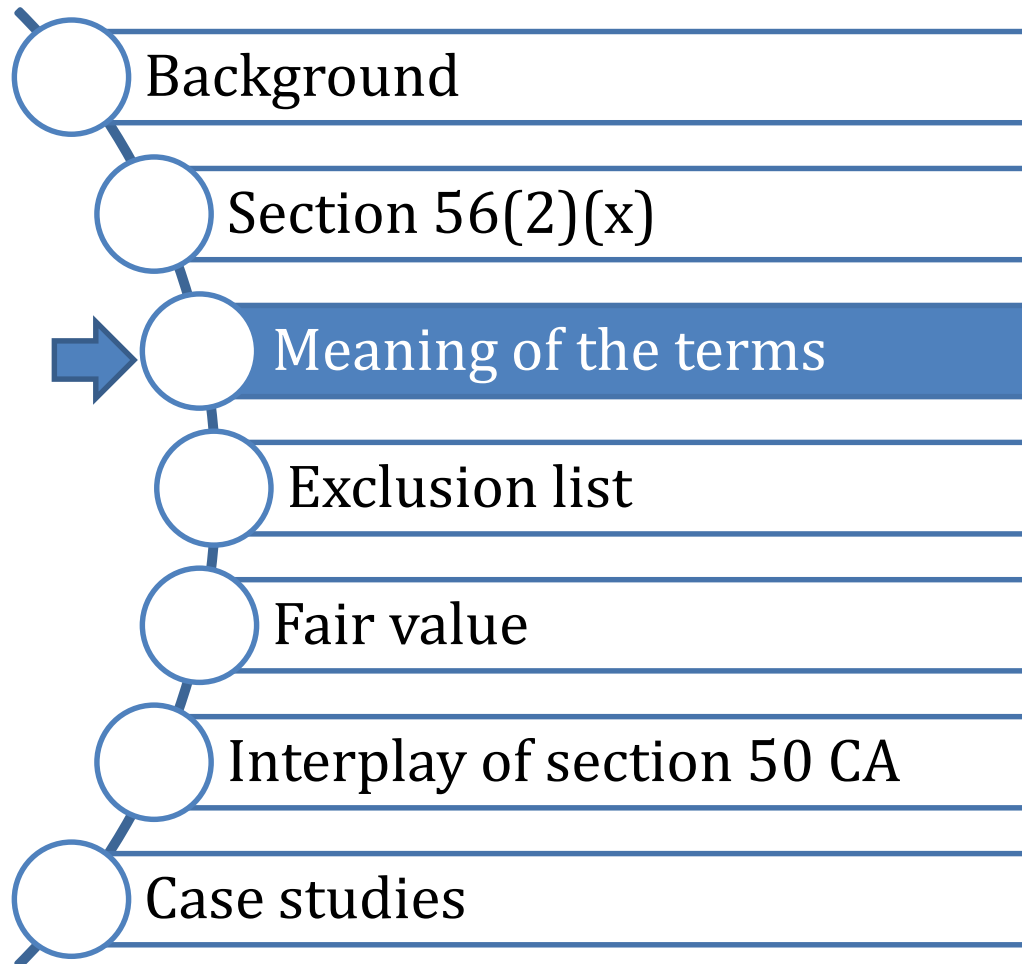
✓ Any property other than immovable property <sup>7</sup>-

- Without consideration – Fair value > 50,000- then aggregate Fair value of such property
- With consideration – consideration < Fair Value – difference >50,000- (Fair Value – consideration)

# Salient Features

- Receipts i.e. any sum of money or immovable property or movable property > Rs 50,000 are taxable

Property	Mode of receipt	Amount liable to tax
Sum of money	W/o consideration	Whole of aggregate value received
Immovable property	W/o consideration	Stamp duty value ; if its > Rs 50,000
Immovable property	Inadequate consideration ; For a consideration < the Stamp duty value by Rs 50,000	Stamp duty value in excess of the consideration
Movable property	W/o consideration	FMV; if its > Rs 50,000
Movable property	Inadequate consideration ; For a consideration < the FMV by Rs 50,000	Aggregate FMV in excess of the consideration



# 1. Person

- Defined u/s 2(31) of the IT Act and includes:-
  - An individual
  - A HUF
  - A Company
  - A Firm (including LLP)
  - An association of persons or body of individuals, whether incorporated or not;
  - A local authority
  - Every artificial juridical person, not falling within any of the above
- Residential status is not relevant- Taxable in all cases

## 2. Receives (1/2)

- Taxable event - **receipt** of money or immovable property or any other property
- Ordinarily, 'receive' means : to take as, something, i.e., offered, given, committed, sending, paid or the like; to accept. It could also mean to take **possession of**.
- Supreme Court while interpreting the words 'is received' or 'are received' has held that:
  - The word receipt of income refers to the **first occasion** when the recipient gets the money under his own control. [Keshav Mills Ltd. v. CIT [1953] 23 ITR 230 (SC)]

## 2. Receives (2/2)

- The meaning of 'receives' must be construed having regard to the following :
  - The receipt is to be treated as income.
  - The receipt must be of money/ IP/ other property as specified.
  - The receipt must be without consideration or for an inadequate consideration
  - The receipt must be from any person(s) (which implies that the person divest his ownership -legal/beneficial -and control in favour of recipient).



## 3. From Any Person (1/2)

- **Any person** - covered under the section
  - ✓ Gift received from Government ?  
CIT v. Dredging Corporation of India [1988] 39 Taxman 301 (AP)
  - ✓ Gift received by sportsmen
    - Gift received by amateur sportsman is not nature of income  
CBDT Circular No 447 dated 22.1.1986
    - Benefit of circular extended in Abhinav Bindra v Dy CIT (2013) 35 taxmann.com 575/59 SOT 87
    - Circular No 2/2014 clarifies that the circular no 447 stands over ridden by the legislative amendments.
    - Awards by Central and State Governments are exempt u/s 10(17A)

### 3. From Any Person (2/2)

- Gift received by politicians as token for appreciation of work are covered by clause (x)  
Dy CIT v Mayawati (2010) 7 Taxmann.com 45/42 SOT 59 (Delhi Trib)

## 4. Receipt of sum of money- 56 (2)(x)(a)

- Aggregate sum – chargeable to tax
- Nature of receipts
  - Capital receipts are also included – Compensation received in injuries, death etc, Earth quake or any natural calamity, etc..
  - Insurance claims, compensation/ damages under contracts are not income.

# 5. Consideration

- Section 2(d) of the Indian Contract Act-

“ When, at the desire of the promisor , the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise”.

- Whether 56 (2)(x) is applicable on subvention money?- is it a receipt without consideration ?
- SC in case of Siemens Public Communication Network P.Ltd v. CIT [2017]- it's a capital receipt
- Family settlement – certain amount is paid for peace, resolve disputes- such receipt is not without consideration – [Dy. CIT v. Paras D Gundecha [2015] 62 taxmann.com 170/155 ITD 880 (Mumbai Trib.)

# 6. Receipt of Immovable property 56 (2)(x)(b) (1/2)

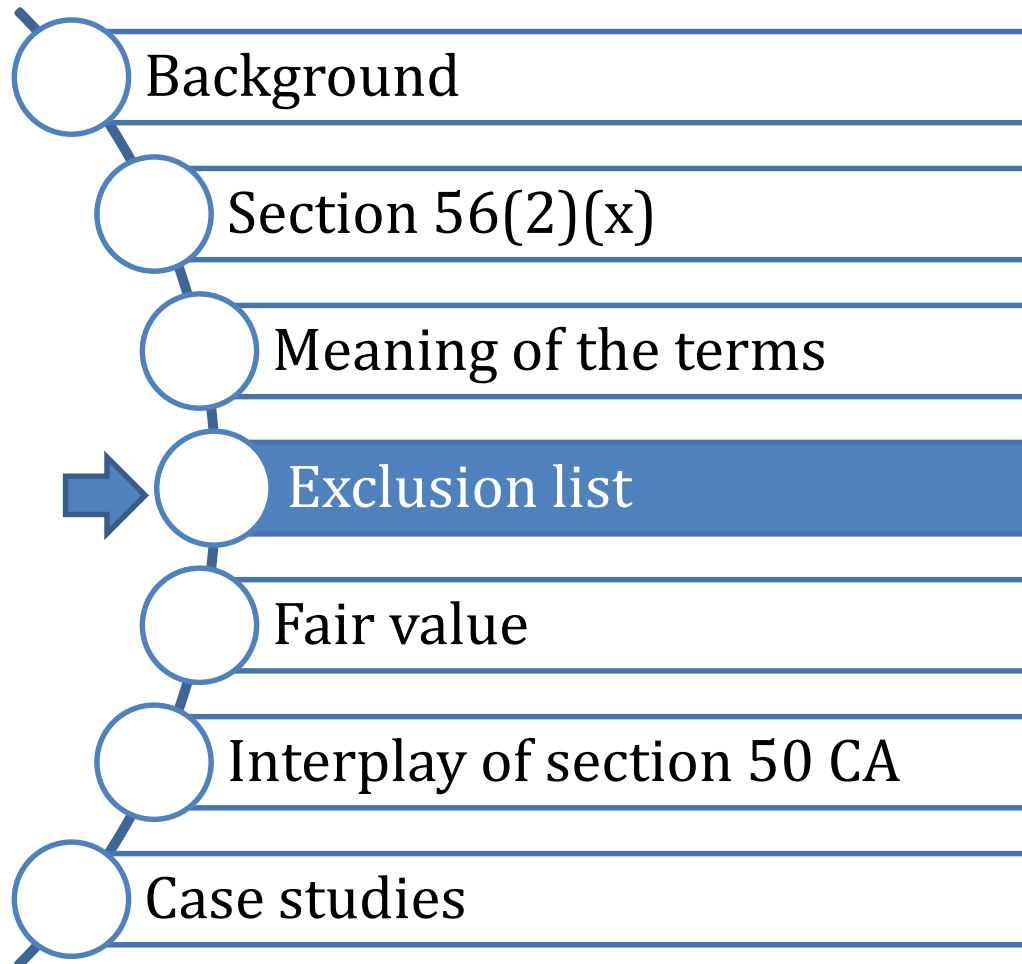
- Following properties, **being capital asset**, are covered:
  - immovable property being land or building or both;
  - shares and securities;
  - jewellery;
  - archaeological collections;
  - drawings;
  - paintings;
  - sculptures;
  - any work of art; or
  - bullion; (taxable if received on or after 1-6-2010).

# 6. Receipt of Immovable property 56 (2)(x)(b) (2/2)

- Immovable property means – land or building or both
- Land or building-
  - Whether rights in land or building, such as tenancy, lease, license in or with respect to land or building or both, are covered ?
- Agricultural land-
  - Definition of capital asset 2(14) – excludes rural agricultural land
- Date of adoption of stamp duty –where the date of agreement fixing the amount of consideration for the transfer& date of registration are not the same- stamp duty value on the date of agreement may be taken- part of consideration has been paid before the date of agreement
- Aggregation requirement – not stipulated

# 7. Receipt of movable property 56 (2)(x)(c)

- For the purpose of S. 56(2)(vii) the term 'property' has been defined to mean 'capital asset' of the assessee- stock in trade not included
- Other points
  - Aggregation clause – applicable
  - What about aggregation under different clauses? – not required



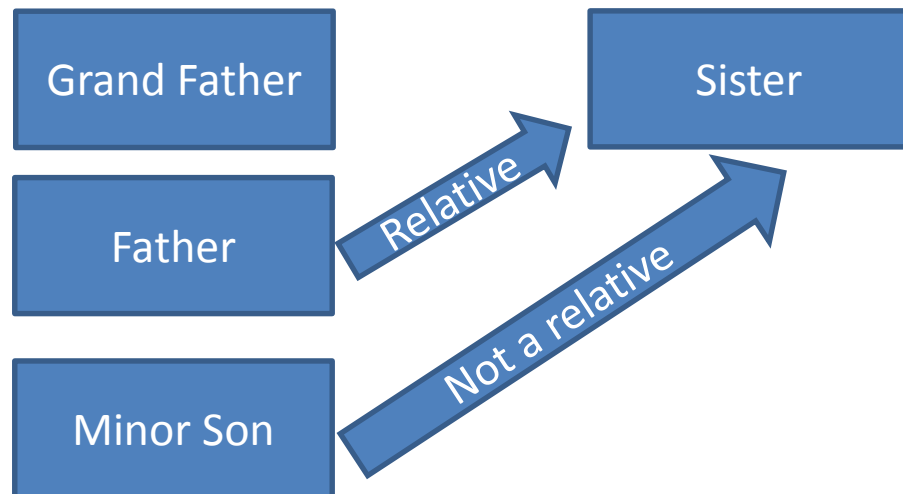


# Section 56(2)(x)- Exclusion list (1/6)

- Exclusion list :
  1. Relative (same as Explanation to clause (vii) to sec 56)
    - ✓ In case of individual
      1. Spouse
      2. Brother/Sister
      3. Brother/sister of the spouse
      4. Brother/ Sister of either of the parents
      5. Lineal ascendants/ descendant of individual and of spouse
      6. Spouse of persons from 2 to 5
    - ✓ In case of HUF----- any member
  - ✓ Mother's sister's son – not a relative -Asst CIT v. Masanam Veerakumar [2013] 34 taxmann.com 267/143 ITD 664 (Chennai- Trib)

# Section 56(2)(x)- Exclusion list (2/6)

- ✓ Relative of Karta of HUF – is a relative Harshadbhai Dahyalal Vaidhya (HUF) v. ITO  
[2013] 33 taxmann.com 483/144 ITD 605 (Ahd- Trib.)
- ✓ In case of minors, relationship of donor should be with reference to the minor who is to be treated as an ‘individual’ and not his parents  
Asstt. CIT v. Lucky Pamnani  
[2011] 9 taxmann.com 146 (Mum-Trib.)



# Section 56(2)(x)- Exclusion list (3/6)

- 2 On the occasion of marriage of the individual (same as Explanation to clause (vii) to sec 56)
  - ✓ applies to the individual receiving the gift on his own marriage
  - ✓ Whether the gifts received on engagement / remarriage are also exempt ?
  - ✓ Gift received post marriage on occasion of marriage whether covered within the exception
    - ✓ A Rudrakoti v. CIT 149 CTR 81 (Mad) – a gift given 4 years after marriage was held to be entitled to exemption
    - ✓ CGT v. G Venkataswamy 236 ITR 539 (Mad) - gift given after 14 years of marriage was held to be exempt.

# Section 56(2)(x)- Exclusion list (4/6)

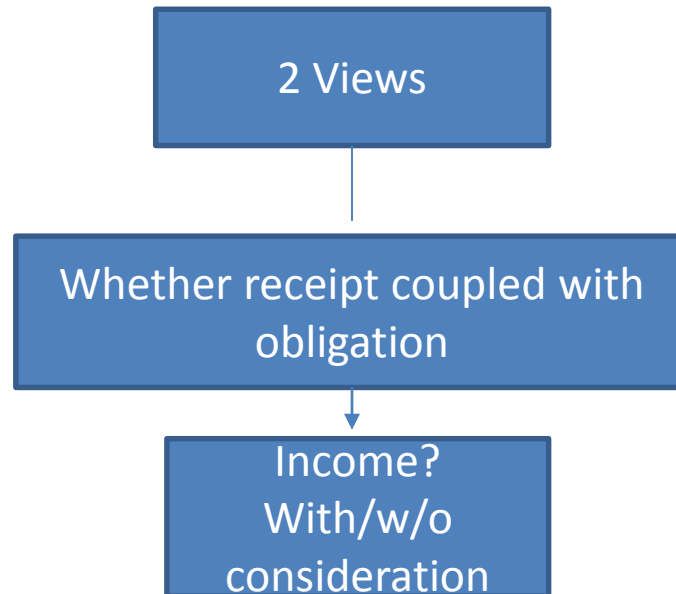
3. Under a will or by way of inheritance (same as 56(vii))
  - ✓ The term “Will” is defined in ***section 2(h) of the Indian Succession Act, 1925***
  - ✓ “Will” means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.”
  
4. In contemplation of death of the payer or donor as the case may be (same as 56(vii))
  - ✓ Not defined in the Act or Rules
  - ✓ Definition as per Black’s Law Dictionary  
‘the thought of dying, not necessarily from imminent danger, but as the compelling reason to transfer property to another’
  - ✓ Section 191 of Indian Succession Act, 1925 deals with transfer of property in contemplation of death
  - ✓ Gift received from non-relative also exempt

# Section 56(2)(x)- Exclusion list (5/6)

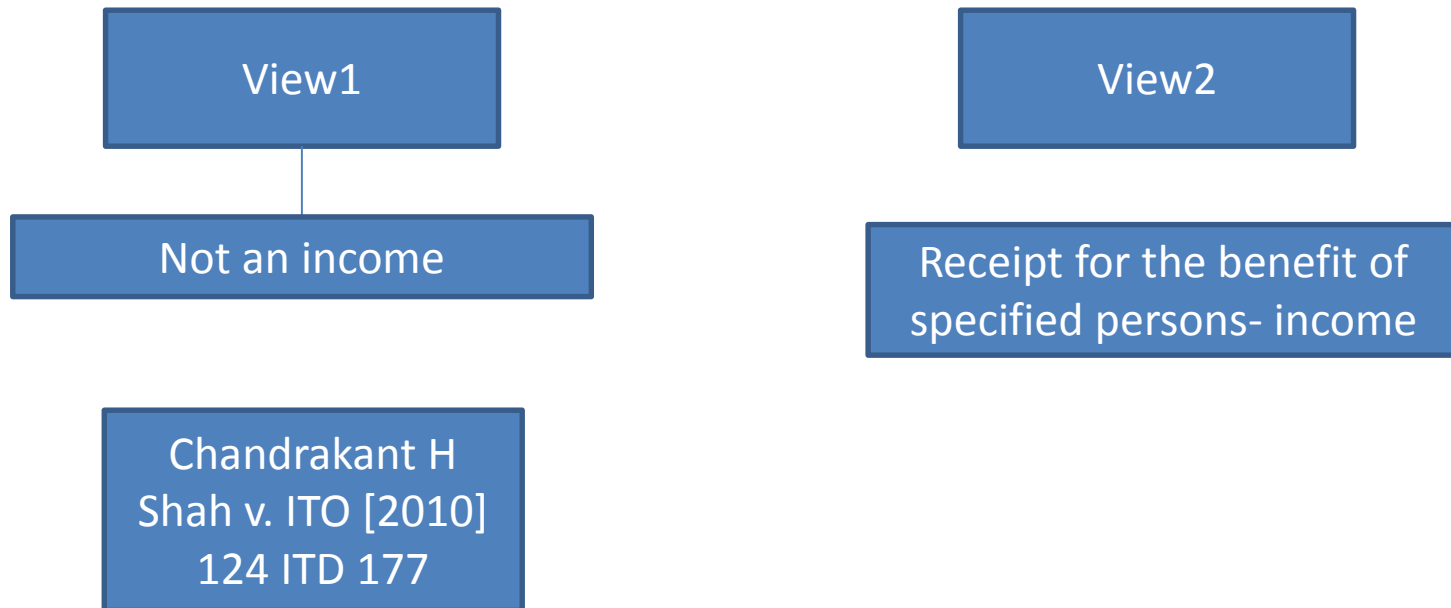
- 5 From any local authority as defined in the Explanation to the clause (20) of Section 10 (same as 56(vii))
- 6 ***From any fund/ trust /university/ other educational institutions/ hospitals / other medical institution referred to in section 10(23C)(iv)/(v)/(vi)/(iva)***
- 7 gift received by the trust registered under section **12A/ 12AA**
- 8 ***Receipt by a trust from an individual – created for the benefit of relative of individual***

# Settlement Trust (1/2)

- Whether receipt by Trust or by beneficiary upon settlement of trust property?
  - ✓ Debate under old as well as new provision- whether property received by trustee under specific or discretionary trust could be regarded as – received w/o consideration / inadequate consideration?



# Settlement Trust (2/2)



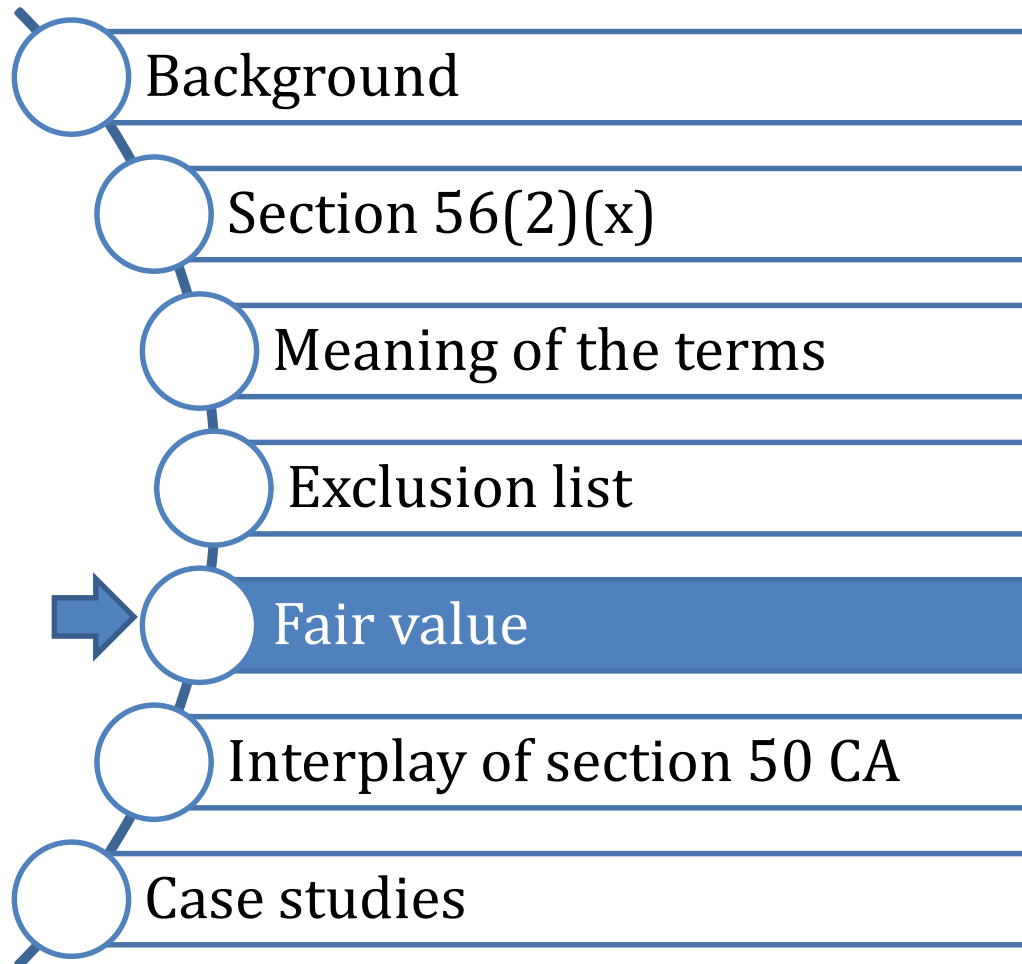
# Section 56(2)(x)- Exclusion list (6/6)

Section	Particulars
47(i)	Distribution of capital assets on partition of HUF
47(vi)	Transfer by amalgamating company to amalgamated Company
47(via)/ (vic)	Transfer of Indian company's shares by a foreign company to another foreign company in a scheme of amalgamation/ Demerger
47(viaa)	Transfer in case of amalgamation of banking company
47(vib)	Transfer in a demerger
47(vica)/ (vicb)	Transfer in a business reorganization of a co-operative bank
47(vid)	Transfer/ issue of shares by resulting company
47(vii)	Transfer of shares by shareholder in amalgamation



# Other Points

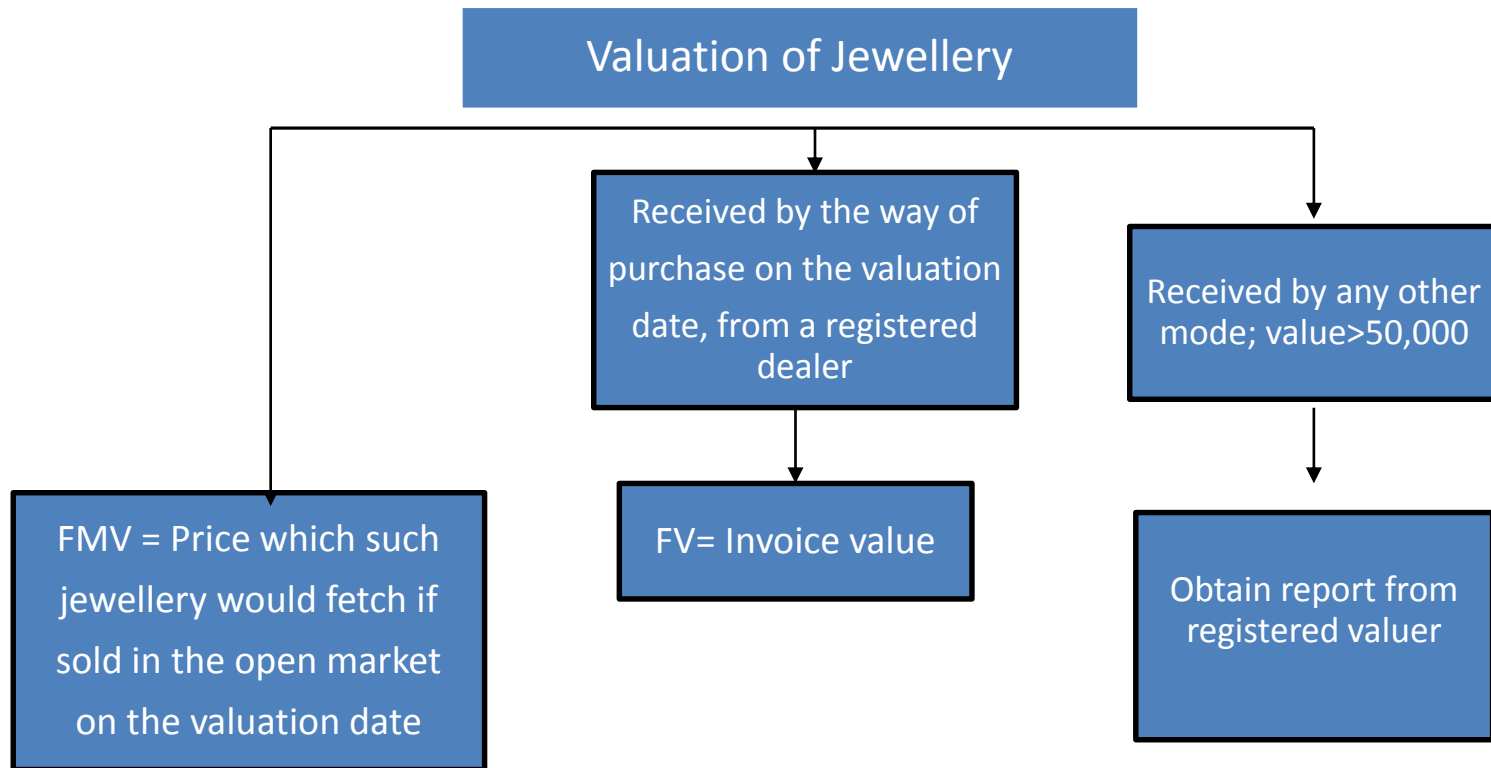
- Cost of acquisition of property in the hands of the recipient
  - Section -49(4) -Value considered for the purposes of section 56(2)(vii)/(vii-a)/(x)
  - Capital asset became the property of the recipient by way of gift – cost of the previous owner to be considered
- Holding period – date of acquisition of the previous owner  
Bombay High Court in the case of Manjula J. Shah ] ITA No.3378 of 2010,dt.11.10.2011.



# Fair Value

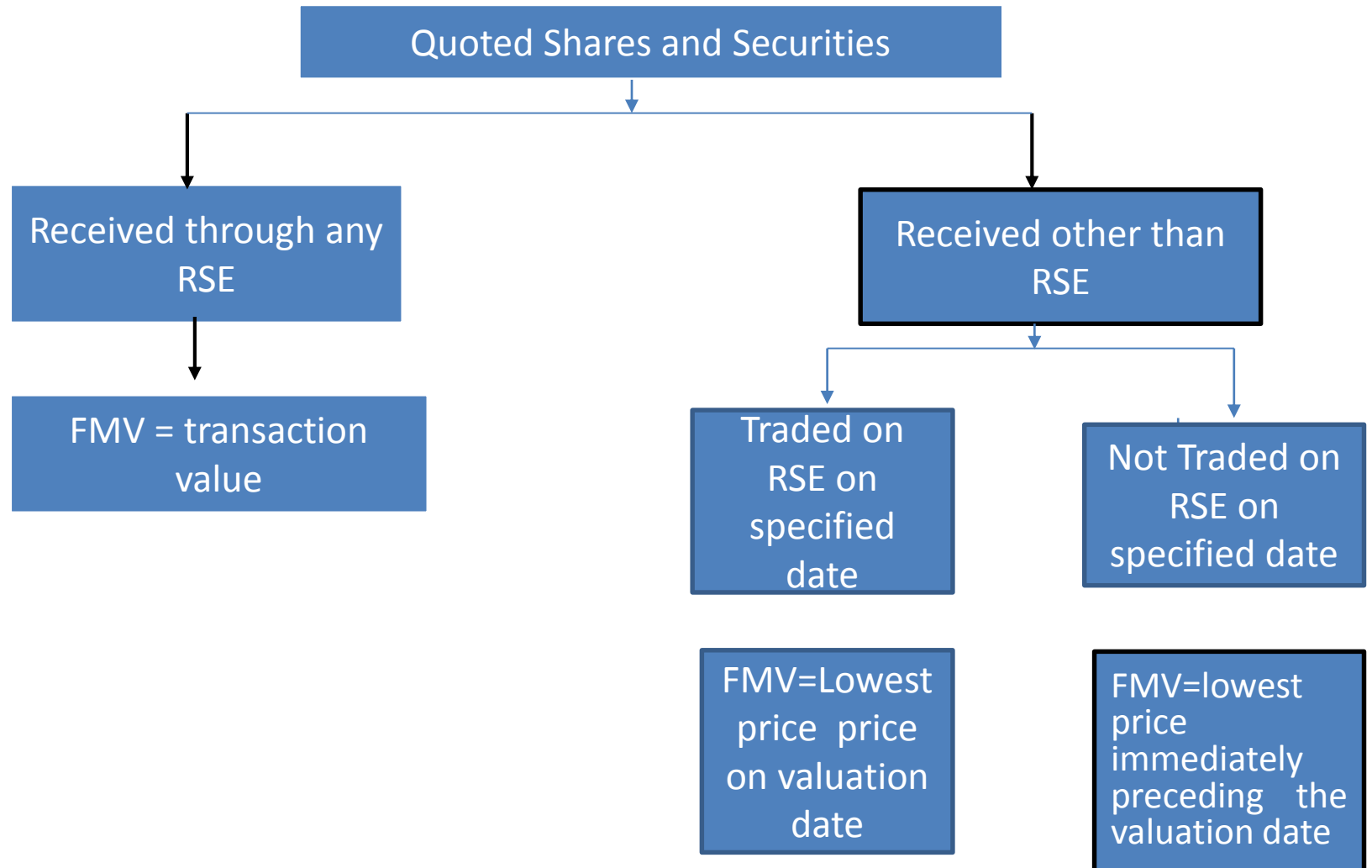
- Fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed.....
- New rule – w.e.f from FY 17-18
- Considers adjusted Net Asset value Method with certain assets on FMV and remaining assets based on book value.
- Rule 11U – Meaning of expressions used in determination of FMV
- Rule 11 UA- Valuation of jewellery, archaeological collections, drawings, paintings, sculptures or any work of art, shares & Securities

# Rules for determining FMV – 11UA (1/2)

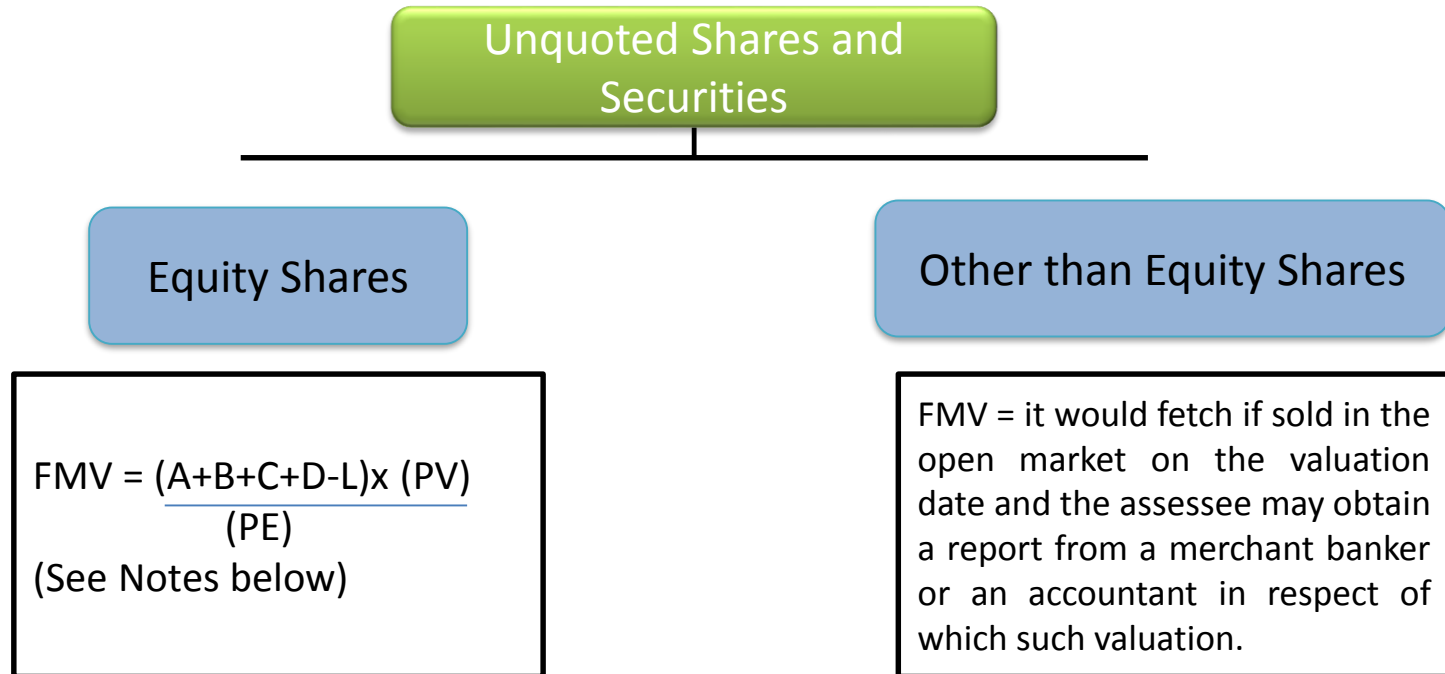


The same rule applies to valuation of archaeological collections, drawings, paintings, sculptures or any work of art- 11UA(ii)

# Rules for determining FMV – 11UA (2/2)



# Rules for determining FMV (1/3)



## Note :

A = Book value of the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,—

- (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and
- (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset

# Rules for determining FMV (2/3)

## **Note (contd...) :**

- B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;
- C = fair market value of shares and securities as determined in the manner provided in this rule;
- D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;
- L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—
- (i) the paid-up capital in respect of equity shares;
  - (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
  - (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
  - (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

# Rules for determining FMV (3/3)

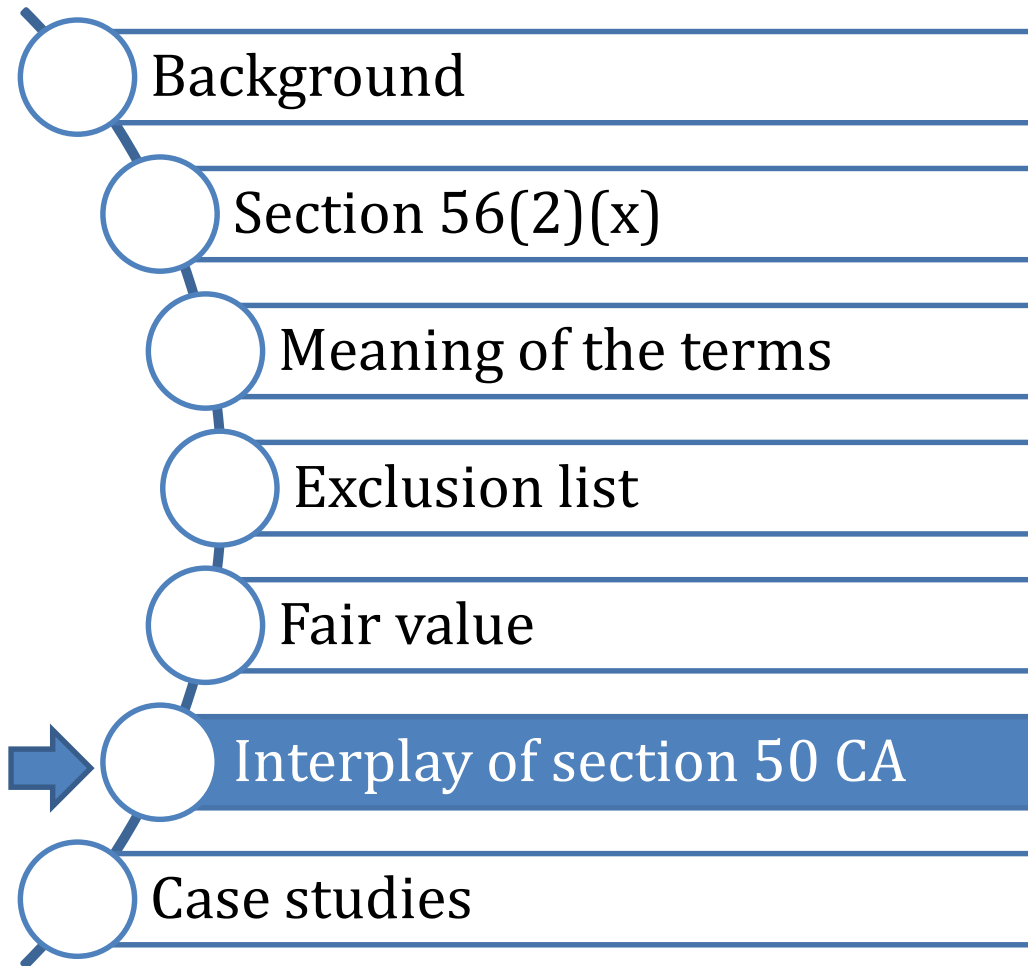
## **Note (contd...) :**

- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV = the paid up value of such equity shares;

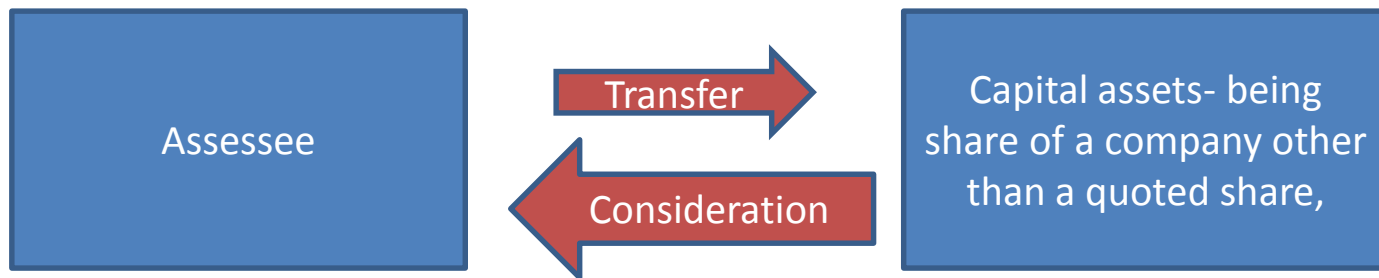
PE = total amount of paid up equity share capital as shown in the balance-sheet;





# Interplay of Section 50 CA (1/5)

- Inserted by Finance Act, 2017 w.e.f from 1.04.2018
- Applicable for shares other than quoted share in the hands of the transferor.



- FMV is the Consideration– as per Rule 11UAA

# Interplay of Section 50 CA (2/5)

- FMV shall be full value of consideration
- U/s section 50 C- the stamp duty value should be considered as full value of consideration for transfer

# Interplay of Section 50 CA (3/5)

- Example



No of shares 100

COA Rs 20

Sale price Rs 150

FMV Rs 220

Sale price for Co B Rs 300

Company A (Transferor)- 50 CA

Particulars	Old provisions	New provisions
Full value of consideration	15000 (100 shares* INR 150)	22000 (100 shares* INR 220)
Less: Cost of acquisition	2000 (100 shares* INR 20)	2000 (100 shares* INR 20)

# Interplay of Section 50 CA (4/5)

- Example (contd..)

Particulars	Old provisions	New provisions
Capital gains	13000	20000
Impact	Additional income of INR 7000 which would be chargeable to tax in the hands of transferor.	

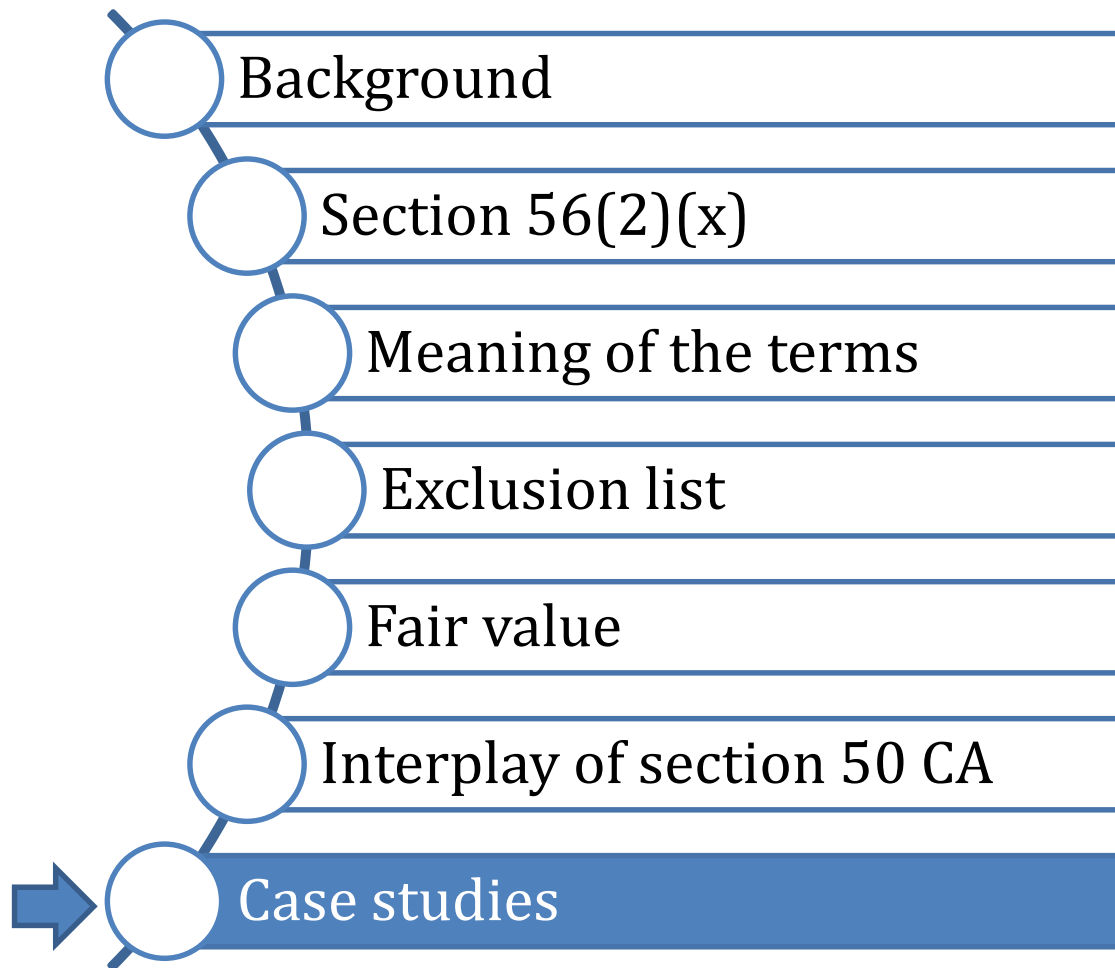
- In the hands of Company B-

Particulars	Old provisions	New provisions
Income from Other sources	22000 (220*100) (56(2)(vii a))	22000 (220*100) (56(2)(x))
Full value of consideration	30000 (300*100)	30000 (300*100)

# Interplay of Section 50 CA (5/5)

- Example (contd..)

Particulars	Old provisions	New provisions
Cost of acquisition	15000	22000
Capital gains	15000	8000



# Case Study 1 – Slump Sale

- A Ltd. transfers one of its business to B Ltd. in a slump sale transaction
- Transfer of business includes various assets immovable property, shares, jewellery, cash, etc.
- Issue 1: FMV of the manufacturing undertaking comes to INR 150 crores. Section 56(2)(x) applicable on the difference of INR 50 crores  $(150-100)$  to co B
- Issue 2 : if the value allocated by the Company B to building is INR 10 crores but the fair market value of building as per Section 56(2)(x) is INR 12 crores, can 56(2)(x) apply on receipt of building?



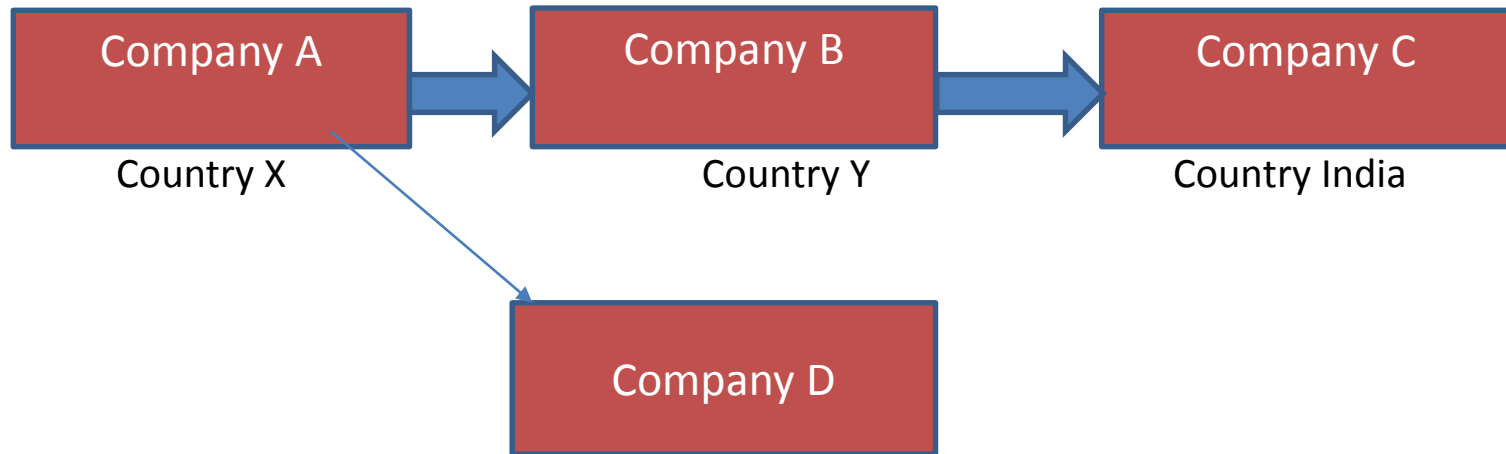
# Case Study 2 – Conversion of partnership to co & vice versa

- AB Associates, a partnership firm, converts into a private limited company, AB Pvt. Ltd.
- Suppose, AB Associates transfers assets @ Rs 2,000 (FMV Rs 6,000)
- Section 56(2)(x) applicable ?

# Case Study 3 – Indirect Transfer (1/2)

- Company A (Resident of X) holds shares in Company B ; Company Y (Resident of Y) holds in Company C (Resident of India)
- Shares of Company B are deemed to derive full value from India
- Company A decides to transfer the shares of Company B to Company D (resident of Country Y) without any consideration.
- The transfer of shares of Company B to Company D should result in indirect transfer of shares of Company C.
- Section 56(2)(x) applicable – in the hands of D?

# Case Study 3 – Indirect Transfer (2/2)



# Case Study 4 – Taxability of gifts (1/4)

- Person A transfers assets to Person B for Rs.1,50,000. Determine the taxability under section 56(2) in the AY 2017-18 & AY 2018-19

Situation	Person A	Person B	Asset	FMV/ Stamp Duty Value
1	Individual	Individual	Jewellery	2,20,000
2	Individual	Firm	Plant & Machinery	3,50,000
3	HUF	AOP	Painting	2,75,000
4	HUF	Closely held company	Equity Shares	2,10,000
5	Closely held company	Shareholders	Equity shares (at premium)	1,30,000
6	Firm	Widely held company	Cash	
7	Company	Company	Land	3,00,000

# Case Study 4 – Taxability of gifts (2/4)

Situation	Taxable amount Asset		Analysis
	AY 2017-18	AY 2018-19	
1	70,000	70,000	Taxability in case of individual and HUF remains unchanged
2	-	-	Property as defined in Explanation to section 56(2)(vii) does not include Plant & Machinery. Hence, the provisions of section 56(2) does not apply
3	-	1,25,000	AOP is not covered under 56 relating to transactions for inadequate consideration prior to 1.4.2107. The same has been covered under 56(2)(x) from AY 2018-19 onwards.

# Case Study 4 – Taxability of gifts (3/4)

Situation	Taxable amount Asset		
	AY 2017-18	AY 2018-19	Analysis
4	60,000	60,000	<p>Where a closely held company receives shares of another closely held company from any person, for a consideration less than the fair market value by Rs.50,000, such amount is taxable under 56(2)(viiia).</p> <p>Any property, other than immovable property received for a consideration less than the fair market value by 50,000 shall attract Sec 56(2)(x)( c)</p>
5	20,000	20,000	<p>Where a closely held company receives consideration for issue of shares above face value, then the difference of consideration and fair market value is taxable under section 56(2)(viib) irrespective of threshold limit.</p> <ul style="list-style-type: none"> <li>• Since, 56(2)(viib) remains to continue, the said provisions apply even for AY 2018-19.</li> </ul>

# Case Study 4 – Taxability of gifts (4/4)

Situation	Taxable amount Asset		
	AY 2017-18	AY 2018-19	Analysis
6	-	1,50,000	Clause (viiia) and (viiib) deals only with transactions of shares of closely held company. However, 56(2)(x)(b) includes all immovable property
7	-	1,50,000	56(2) does not talk about any transaction entered into by a widely held company prior to 1.4.2017. <ul style="list-style-type: none"> <li>• 56(2)(x) includes all type of persons defined under Income tax Act</li> </ul>



Thank You!

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