

Budget 2010

Finance Bill, 2010: Deemed gifts

1. Existing Provision

Clause (vii) has been inserted in section 56(2) by the Finance (No. 2) Act, 2009. Under this clause if an individual or a HUF receives on or after October 1, 2009 a gift (which falls in any of the following five categories), it is chargeable to tax in the hands of the recipients under the head “Income from other sources”.

A gift is chargeable to tax under section 56(2)(vii) if it satisfies the following conditions —

- It is received by an individual or a HUF.
- It is received on or after October 1, 2009.
- The gift falls in any of the following five categories.
- The gift does not fall in the exempted category.

The five categories are as under:

- Any sum of money (gift in cash or by cheque or draft).
- Immovable property without consideration
- Immovable property for a consideration which is less than the stamp duty value
- Movable property without consideration
- Movable property for a consideration which is less than fair market value

While calculating the above monetary limit of Rs. 50,000 in any of the five categories, any sum of money or property received from the following shall not be considered—

- Money/property received from a relative.
- Money/property received on the occasion of the marriage of the individual.
- Money/property received by way of will/inheritance.
- Money/property received in contemplation of death of the payer.
- Money/property received from a local authority.
- Money/property received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10(23C).
- Money received from a charitable institute registered under section 12AA

2. Proposed amendments

(i) Amendment of section 2

3. In section 2 of the Income-tax Act,—

(b) in clause (24), in sub-clause (xv), after the words, brackets and figures “value of property referred to in clause (vii)”, the words, brackets, figures and letter “or clause (viia)” shall be inserted with effect from the 1st day of June, 2010.

From Notes on Clauses:

The existing provision contained in sub-clause (xv) of clause (24) of the aforesaid section provides that any sum of money or value of property referred to in clause (vii) of sub-section (2) of section 56 will fall within the definition of “income”.

Sub-clause (b) proposes to amend sub-clause (xv) to also make a reference therein to value of property referred to in the proposed clause (viia) to sub-section (2) of section 56. This amendment is consequential to the amendment made *vide* sub-clause (b) of clause 21 of the Bill.

This amendment will take effect from 1st June, 2010 and will, accordingly, apply in relation to the assessment year 2011-2012 and subsequent years.

(ii) Amendment of section 49

In section 49 of the Income-tax Act,—

(b) in sub-section (4), after the word, brackets and figures “clause (vii)”, at both the places where they occur, the words, brackets, figures and letter “or clause (viia)” shall be

inserted with effect from the 1st day of June, 2010.

From Notes on Clauses:

Under the existing provision contained in sub-section (4) of section 49, where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (vii) of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (vii).

Sub-clause (b) proposes to amend the aforesaid sub-section so as to provide that the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purpose of clause (viia) of sub-section (2) of section 56 also.

This amendment is consequential to the amendment made *vide* sub-clause (b) of clause 21 of the Bill and will take effect from 1st June, 2010 and will, accordingly, apply to the assessment year 2011-2012 and subsequent years.

(iii) Amendment of section 56

In section 56 of the Income-tax Act, in sub-section (2),—

(a) in clause (vii),—

(i) for sub-clause (b), the following sub-clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2009, namely:—

(b) **any immovable property, without consideration,** the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;”;

(ii) in the *Explanation*, in clause (d),—

(a) in the opening portion, for the word “means—”, the words “means the following capital asset of the assessee, namely:—” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 2009;

(b) in sub-clause (vii), the word “or” shall be omitted with effect from the 1st day of June, 2010;

(c) in sub-clause (viii), the word “or” shall be inserted at the end with effect from the 1st day of June, 2010;

(d) after sub-clause (viii), the following sub-clause shall be inserted with effect from the 1st day of June, 2010, namely:—

“(ix) bullion;”;

(b) after clause (vii), the following shall be inserted with effect from the 1st day of June, 2010, namely:—

(vii a) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47.

Explanation.—For the purposes of this clause, “fair market value” of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the *Explanation* to clause (vii)

From Notes on Clauses:

Clause 21 of the Bill seeks to amend section 56 of the Income-tax Act relating to income from other sources.

Under the existing provisions contained in sub-clause (b) of clause (vii) of sub-section (2) of the aforesaid section, if an assessee being an individual or a Hindu undivided family receives any immovable property without consideration or for inadequate consideration, the value of the said property shall be treated as income in the hands of assessee and shall be liable to tax.

It is proposed to substitute the aforesaid sub-clause (b) of clause (vii) of sub-section (2) of the aforesaid section so as to provide that clause (vii) of sub-section (2) of section 56 would apply only if the immovable property is received without any consideration and to remove the stipulation as regards inadequate consideration.

This amendment will take effect retrospectively from 1st October, 2009, and will, accordingly, apply in relation to the assessment year 2010-2011 and subsequent years.

Under the existing provisions contained in clause (d) of the *Explanation* to clause (vii) of sub-section (2) of the aforesaid section, certain properties have been enumerated within the definition of “property”.

It is proposed to amend the aforesaid clause (d) of the *Explanation* to clause (vii) of sub-section (2) so as to specify that clause (vii) of sub-section (2) of the aforesaid section will have application to “property” which is in the nature of capital asset of the assessee.

This amendment will take effect retrospectively from 1st October, 2009, and will, accordingly, apply in relation to the assessment year 2010-2011 and subsequent years.

It is also proposed to amend clause (d) of the said *Explanation* to insert a new sub-clause (ix) so as to include “bullion” within the specified categories of property.

This amendment will take effect from 1st June, 2010, and will, accordingly, apply in relation to the assessment year 2011-2012 and subsequent years.

Under the existing provisions contained in clause (vii) of sub-section (2) of the aforesaid section, if an assessee who is an individual or a Hindu undivided family receives specified property without consideration or for inadequate consideration from persons other than relatives defined in the said section, the value of the said property shall be treated as income in the hand of assessee and shall be taxed.

It is proposed to insert a new clause (viia) in sub-section (2) of the aforesaid section so as to include the transactions undertaken in shares of a company not being a company in which the public are substantially interested where the recipient is a firm or a company not being a company in which the public are substantially interested.

This amendment will take effect from 1st June, 2010, and will, accordingly, apply in relation to the assessment year 2011-2012 and subsequent years.

(iv) Amendment of section 142A

In section 142A of the Income-tax Act, in sub-section (1), for the words, figures and letter “section 69B is required to be made”, the words, figures, letter and brackets “section 69B or fair market value of any property referred to in sub-section (2) of section 56 is required to be made” shall be substituted with effect from the 1st day of July, 2010.

From Notes on Clauses:

Clause 33 of the Bill seeks to amend section 142A of the Income-tax Act relating to estimate by Valuation Officer in certain cases.

The existing provisions contained in sub-section (1) of the aforesaid section provide that where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required for the purpose of making an assessment or re-assessment under the Act, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

It is proposed to amend the said sub-section (1) so as to also enable the Assessing Officer to make reference to the Valuation Officer for making an estimate of fair market value of any property referred to in sub-section (2) of section 56 of the Act.

This amendment will take effect from 1st July, 2010.

3. From Explanatory Memorandum

Taxation of certain transactions without consideration or for inadequate consideration

Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income tax in the hands of recipient under the head ‘income from other sources’. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.

The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archeological collection, drawings, paintings, sculpture or any work of art.

A. These are anti-abuse provisions which are currently applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision

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

being a company in which public are substantially interested). Section 2(18) provides the definition of a company in which the public are substantially interested.

It is also proposed to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act.

Consequential amendments are proposed in—

- (i) section 2(24), to include the value of such shares in the definition of income;
- (ii) section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56 (2).

These amendments are proposed to take effect from 1st June 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

B. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, proposed to amend the definition of property so as to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

C. In several cases of immovable property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential. It is, therefore, proposed to amend clause (vii) of section 56(2) so as to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property.

These amendments are proposed to take effect retrospectively from 1st October, 2009 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

D. It is proposed to amend the definition of 'property' as provided under section 56 so as to include transactions in respect of 'bullion'.

This amendment is proposed to take effect from 1st June, 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

E. It is proposed to amend section 142A(1) to allow the Assessing Officer to make a reference to the Valuation Officer for an estimate of the value of property for the purposes of section 56(2).

This amendment is proposed to take effect from 1st July, 2010.

4. Highlights of the amendment

- A new clause (viia) is inserted in Section 56(2) to include within its ambit transactions undertaken in shares of a closely held company either for inadequate consideration or without consideration where the recipient is a firm or a closely held company.
- If the property received by way of gift constitutes stock in trade of the recipient, it shall not be liable to tax. (w.r.e.f. 01.10.09)
- The deemed gift concept introduced by the Finance (No.2) Act, 2009 in case of immovable properties purchased at less than the stamp duty value has been removed w.r.e.f. 01.10.09.
- W.e.f. 01.06.10, even gift of bullion is liable to tax as income u/s. 56(2)(vii).
- Assessing Officer has been conferred with the power to make reference to the Valuation Officer u/s. 142A for the purpose of ascertaining fair market value for taxability of gifts u/s. 56(2)(vii).