

Income from Other Sources

Some Key Points : Recent Amendments

Any sum of money or property received by a HUF without consideration or for inadequate consideration from its members to be exempt from tax [Explanation to Section 56(2)(vii)]

- (i) As per section 56(2)(vii), any sum of money or property received without consideration or for inadequate consideration, by an individual or HUF shall be chargeable to tax, subject to certain conditions. However, if such sum of money or property is received from a relative, then, the provisions of section 56(2)(vii) are not applicable.
- (ii) The definition of "relative" as per the *Explanation* to section 56(2)(vii) for applicability of exclusion provision only contains reference to relatives in relation to an individual, though the taxability provisions under section 56(2)(vii) are attracted both in the case of individuals and HUFs.
- (iii) Therefore, to remove the unintended inequity, the existing definition of "relative" is replaced with a new definition including therein, in case of a HUF, any member thereof, as its relative. Therefore, if a Hindu Undivided Family receives any sum of money or property from its member without consideration or for inadequate consideration, then, the same shall not be chargeable to tax as per the provisions of section 56(2)(vii).

Consideration received in excess of FMV of shares issued by a closely held company to be treated as income of such company, where shares are issued at a premium [Section 56(2)(viib)]

- (i) New clause (viib) has been inserted in section 56(2) to bring to tax the consideration received from a resident person by a company, other than a company in which public are substantially interested, which is in excess of the fair market value (FMV) of shares.
- (ii) Such excess is to be treated as the income of a closely held company taxable under section 56(2) under the head "Income from Other Sources", in cases where consideration received for issue of shares exceeds the face value of shares i.e. where shares are issued at a premium.
- (iii) However, these provisions would not be attracted where consideration for issue of shares is received:
 - (1) by a Venture Capital Undertaking (VCU) from a Venture Capital Fund (VCF) or Venture Capital Company (VCC); or
 - (2) by a company from a class or classes of persons as notified by the Central Government for this purpose.

- (iv) Fair market value of the shares shall be the higher of, the value as may be –
- (a) determined in accordance with the prescribed method; or
 - (b) substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets on the date of issue of shares.

For the purpose of computation of FMV, the value of assets would include the value of intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

- (v) Consequently, sub-clause (xvi) is inserted to section 2(24) defining “income” to provide that, any consideration received for issue of shares as exceeds the fair market value of the shares referred to in section 56(2)(viib) shall be considered as income in the hands of the company.

Transfer of property without consideration or for inadequate consideration [Section 56(2)(vii)]

Any immovable property received by an individual or HUF **without any consideration** is chargeable to tax as income under the head ‘Income from other sources’ if the stamp duty value of such property exceeds ₹ 50,000. A property, other than immovable property received by an individual or HUF without any consideration would also be chargeable to tax under this head, if the aggregate fair market value exceeds ₹ 50,000.

Transfer of immovable property for inadequate consideration is not liable to tax in the hands of the transferee.

Transfer of property, other than immovable property, for inadequate consideration would, however, attract the provisions of section 56(2)(vii), if the difference between the aggregate fair market value and the consideration received exceeds ₹ 50,000.

Meaning of the term ‘property’

“Property” means the following **capital asset of the assessee** namely:–

- (a) Immovable property being land or building or both;
- (b) Shares and securities;
- (c) Jewellery
- (d) Archaeological collections;
- (e) Drawings
- (f) Paintings;
- (g) Sculptures;
- (h) Any work of art; or
- (i) Bullion

Question 1

Dhaval is in business of manufacturing customized kitchen equipments. He is also the Managing Director and held nearly 65% of the paid-up share capital of Aarav Ltd. A substantial part of the business of Dhaval is obtained through Aarav Ltd. For this purpose, Aarav Ltd. passed on the advance received from its customers to Dhaval to execute the job work entrusted to him.

The Assessing Officer held that the advance money received by Dhaval is in the nature of loan given by Aarav Ltd. to him and accordingly is deemed dividend within the meaning of provisions of section 2(22)(e) of the Income-tax Act, 1961. The Assessing Officer, therefore made the addition by treating advance money as the deemed dividend income of Dhaval.

Examine whether the action of the Assessing Officer is tenable in law.

Answer

As per section 2(22)(e), in case a company, not being a company in which the public are substantially interested, makes payment of any sum by way of advance or loan to a shareholder holding not less than 10% of voting power/share capital of the company, then, the payment so made shall be deemed to be dividend in the hands of such shareholder to the extent to which the company possesses accumulated profits.

In the present case, Dhaval is holding 65% of the paid-up capital of Aarav Ltd. Aarav Ltd. has passed on advance received from its customers to Dhaval for execution of job work entrusted to Dhaval.

Assuming that Aarav Ltd. is not a company in which public are substantially interested, the applicability of the provisions of section 2(22)(e) in respect of such transaction has to be examined. In *CIT v. Rajkumar (2011) 318 ITR 462 (Del.)*, it was held that trade advance given to the shareholder which is in the nature of money transacted to give effect to a commercial transaction, would not be deemed to be dividend in the hands of the shareholder under section 2(22)(e). The Delhi High Court ruling in *CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376* also supports the above view.

In the present case, the payment is made to Dhaval by Aarav Ltd. for execution of work is in the course of commercial business transaction and therefore, it shall not be deemed as dividend in the hands of Dhaval under section 2(22)(e). Hence, the action of the Assessing Officer is not tenable in law.

Note - The above answer is based on the assumption that Aarav Ltd. is a company in which public are not substantially interested. In case it is assumed that Aarav Ltd., being a public limited company, is a company in which the public are substantially interested, then, the provisions of section 2(22)(e) shall not be applicable and the said amount paid to Dhaval shall not be treated as dividend under section 2(22)(e) in the hands of Dhaval.

Question 2

Mr. X received the following gifts / amounts during the previous year 2012-13 :

- (i) Gift of bullion worth ₹ 60,000 on his birthday from his friend.
- (ii) Received a car from his cousin on payment of ₹ 1 lac, fair market value of which was ₹ 4 lacs.
- (iii) Received cash gift of ₹ 18,000 each from three of his friends A, B & C on 24-09-2012.
- (iv) Acquired an office building on 22-11-2012 from his friend Q for a consideration of ₹ 10 lacs, stamp value of which is ₹ 20 lacs.
- (v) In respect of land of Mr. X acquired by Railways in the year 2010, he received the following amount on 25-12-2012 as interest on enhanced compensation on the order of the court -

Relating to previous year	₹
2010-11	1,45,000
2011-12	1,75,000
2012-13	1,10,000

You are required to compute the income of Mr. X chargeable under the head "Income from other sources" for the Assessment Year 2013-14 assuming that he has no other income.

Answer**Computation of "Income from other sources" of Mr. X for the A.Y.2013-14**

	Particulars	₹
(i)	Since bullion is included in the definition of "property", therefore, when bullion is received without consideration, the same is taxable under section 56(2)(vii), as the aggregate fair market value of bullion exceeds ₹ 50,000	60,000
(ii)	Since car is not included in the definition of property, therefore the difference of ₹ 3 lakh between fair market value and purchase price of car is not taxable under section 56(2)(vii)	Nil
(iii)	Cash gift received from friends is taxable under section 56(2)(vii), since its aggregate value exceeds ₹ 50,000 (₹ 18,000 × 3)	54,000
(iv)	Immovable property purchased for inadequate consideration is outside the scope of section 56(2)(vii). Therefore the difference of ₹ 10 lakh between stamp duty value and purchase price of building is not taxable under section 56(2)(vii).	Nil
(v)	Interest received during the year on enhanced compensation is taxable under section 145A in the year of receipt, irrespective of the method of accounting followed by Mr. X. The interest is taxable under section 56(2)(viii). (₹ 1,45,000 + ₹ 1,75,000 + ₹ 1,10,000)	₹ 4,30,000

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Less: Deduction under section 57 @50% of ₹ 4,30,000	₹ 2,15,000	2,15,000
Income from Other Sources		<u>3,29,000</u>

Question 3

Mr. X transferred his residential house to Y for ₹ 10 lakh on 1st April, 2012. The value of the said house as per Stamp Valuation Authority was ₹ 16 lakh. Mr. Y is a childhood friend of Mr. X.

Mr. X gifted a plot of land (purchased by him on 1st August, 2009) to Mr. Y on 1st July, 2012. The value as per Stamp Valuation Authority is ₹ 8 lakh. Mr. Y sold the land on 1st March, 2013 at ₹ 14 lakh.

Cost Inflation Index - 2009-10: 632; 2012-13: 852.

Compute the income of Mr. Y chargeable under the heads "Capital Gains" and "Income from other sources" for Assessment Year 2013-14.

Answer

Computation of income of Mr. Y chargeable under the heads "Capital Gains" and "Income from other sources" for A.Y. 2013-14

Particulars	₹
Income chargeable under the head "Capital Gains"	
Sale consideration	14,00,000
Less: Cost of acquisition (deemed to be the stamp value charged to tax under section 56(2)(vii) as per section 49(4) (See Note 3)	<u>8,00,000</u>
Short-term capital gains (See Note 4)	<u>6,00,000</u>
Income from other sources	
Stamp duty value of plot of land received without consideration (taxable under section 56(2)(vii) (See Note 2)	8,00,000

Notes:-

- (1) Transfer of immovable property for inadequate consideration is outside the scope of section 56(2)(vii). Therefore, the provisions of section 56(2)(vii) are not attracted in respect of transfer of residential house by Mr. X to Mr. Y for inadequate consideration.
- (2) The provisions of section 56(2)(vii) are, however, attracted in respect of transfer of immovable property without consideration, if the stamp duty value of such property exceeds ₹ 50,000. In this case, since Mr. Y has received a plot of land from Mr. X, a non-relative, without consideration and the stamp duty value of ₹ 8 lakh exceeds ₹ 50,000, the entire stamp duty value of ₹ 8 lakh is chargeable to tax under section 56(2)(vii).

- (3) Section 49(4) provides that where the capital gain arises from the transfer of such property which has been subject to tax under section 56(2)(vii), the cost of acquisition shall be deemed to be the value taken into account for the purpose of section 56(2)(vii). Therefore, ₹ 8 lakh would be the cost of acquisition in this case.
- (4) The resultant capital gains will be short-term capital gains since for calculating the period of holding, in a case where cost is computed under section 49(4), the period of holding of the previous owner is not to be included. As per section 2(42A), the period of holding will include the period of holding of the previous owner only in the case of a capital asset which becomes the property of the assessee in the circumstances mentioned in section 49(1) [i.e., where cost to previous owner would be deemed as the cost of acquisition].

Question 4

Discuss the taxability of the following receipts in the hands of Mr. H under the Income-tax Act, 1961 -

- (i) Gets ₹ 1,75,000 in cash as a marriage gift from his grandfather on 13.02.2013.
- (ii) Received 100 shares of B Ltd., the fair market value of which was ₹ 1,00,000 on his birthday, 21.04.2012 from his friend Mr. J.
- (iii) Received ₹ 51,000 from his sister living in UK on 21.09.2012.
- (iv) Wrist Watch valued at ₹ 60,000 from his friend on 01.12.2012.

Answer

Where any sum of money is received without consideration by an individual or HUF and the aggregate value of all such sums received during the previous year exceeds ₹ 50,000, the whole of the aggregate value would be included in the total income of the individual under section 56(2)(vii).

- (i) **Cash of ₹ 1,75,000 received from grandfather as marriage gift:** Any sum received from a relative is exempt from the applicability of section 56(2)(vii).
Relative includes ascendant or descendant of the individual. Since grandfather is a lineal ascendant, the amount of ₹ 1,75,000 received from him is not chargeable to tax.
In any case, any sum of money received on the occasion of marriage of the individual is exempt, whether or not received from a relative. So, the amount of ₹ 1,75,000 received from his grandfather is not chargeable to tax.
- (ii) **Shares received from a friend on 21.04.2012:** As per *Explanation* to section 56(2)(vii), property includes shares and securities. Value of shares of B Ltd. gifted by his friend Mr. J on 21.04.2012 is taxable since receipt of property without consideration is chargeable to tax under section 56(2)(vii) if its aggregate fair market value exceeds ₹ 50,000. In this case, since shares are included in the definition of property under section 56(2)(vii) and the aggregate fair market value exceeds ₹ 50,000, it is taxable under section 56(2)(vii).

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- (iii) **Sum of ₹ 51,000 received from sister:** Any sum received from a relative is exempt from the applicability of section 56(2)(vii). Since, sister is a relative for the purpose of this clause, the amount of ₹ 51,000 received from her would be exempt.
- (iv) **Wrist Watch valued at ₹ 60,000 received from a friend on 1.12.2012:** Receipt of property without consideration would attract the provisions of section 56(2)(vii). However, the provisions of section 56(2)(vii) are attracted only in respect of "property" as defined in that section. Since wrist watch is not included in the said definition of "property", the receipt of the same without consideration would not attract the provisions of section 56(2)(vii) and the same shall not be taxable in the hands of Mr. H.

Question 5

In July 2012, Mr. Pervez employed as Marketing Manager in a Pharma company, received a Maruti car as gift from a distributor of the company. The value of the gifted car is estimated at ₹ 2,60,000. Is the value of car taxable as income? If so, under what head it is taxable?

Answer

Mr. Pervez, an employee of a Pharma company, has received a car as a gift from a distributor of the company. Since there is no employer-employee relationship in this case between the distributor and Mr. Pervez, the value of gift is **not** a perquisite chargeable to tax under the head "Salaries".

Section 56(2)(vii), brings within its scope the value of any property received by an individual or Hindu Undivided Family without consideration. For this purpose, "property" means immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

Therefore, for the purpose of attracting the provisions of section 56(2)(vii) for chargeability under the head "Income from Other Sources", an individual should be in receipt of property as defined therein. Since, car is not included in the definition of "property", the provisions of section 56(2)(vii) would not be attracted in the hands of Mr. Pervez.

Question 6

The land of Ganesh was acquired by NHAI in the year 2009 and since then the litigation was going on for enhancement of compensation. The issue was resolved on 11.09.2012 and the court ordered finally to make payment to Ganesh of the enhanced compensation and the following amounts for interest on such enhanced compensation:

Financial Year	Amount (₹)
2009-2010	1,15,000
2010-2011	2,25,500
2011-2012	3,75,000
2012-2013	2,14,500

Explain the provisions of the Act and also work out the amount of interest and the assessment year in which the same shall be taxed.

Answer

Clause (b) of section 145A provides that the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be the income for the year in which it is received, irrespective of the method of accounting followed by the assessee.

Clause (viii) inserted in section 56(2) provides that income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as "Income from other sources" in the year in which it is received.

Clause (iv) inserted in section 57 allows a deduction of 50% of such income. It is further clarified that no other deduction would be allowable under any other clause of section 57 in respect of such income.

Therefore, the entire interest income of ₹ 9,30,000 received by Ganesh for the different years would be taxable under the head "Income from other sources" in the year of receipt i.e., P.Y.2012-13 (A.Y. 2013-14) :-

Particulars	₹
Interest on enhanced compensation taxable under section 56(2)(viii)	9,30,000
Less: Deduction under section 57(iv) @ 50%	<u>4,65,000</u>
Interest chargeable under the head "Income from other sources"	<u>4,65,000</u>

Question 7

Explain in brief about the treatment to be given in the following case under the Income-tax Act, 1961 for the A.Y. 2013-14:

Radhe received on 11.9.2012 gifts each of ₹ 21,000 from his two friends Shiva and Krishna and of ₹ 51,000 from his sister living in UK.

Answer

Section 56(2)(vii) provides that where any sum of money is received without consideration by an individual or a Hindu undivided family from any person or persons and the aggregate value of all such sums received during the previous year exceeds ₹ 50,000, the whole of the aggregate value of such sum shall be included in the total income of such individual or Hindu undivided family under the head "Income from other sources". However, any sum received from a relative would be exempted from the taxability provisions under section 56(2)(vii). Sister of an individual is a relative for the purpose of section 56(2)(vii). Therefore, the gift received by Radhe from sister living in UK would be exempted from the applicability of section 56(2)(vii). Further, gifts received by Radhe on 11.9.2012 from his two friends of ₹ 21,000 each shall not be included in the total income of Radhe since, the aggregate value of all such sums received during the previous year does not exceed ₹ 50,000.

Question 8

Mr. Ganesh received the following gifts during the P.Y.2012-13 from his friend Mr. Sundar, -

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- (1) Cash gift of ₹51,000 on his birthday, 19th June, 2012.
- (2) 50 shares of Beta Ltd., the fair market value of which was ₹60,000, on his birthday, 19th June, 2012.
- (3) 100 shares of Alpha Ltd., the fair market value of which was ₹70,000 on the date of transfer. This gift was received on the occasion of Diwali. Mr. Sundar had originally purchased the shares on 10.8.2012 at a cost of ₹50,000.

Further, on 20th November, 2012, Mr. Ganesh purchased land from his sister's mother-in-law for ₹5,00,000. The stamp value of land was ₹7,00,000.

On 15th February, 2013, he sold the 100 shares of Alpha Ltd. for ₹1 Lac.

Compute the income of Mr. Ganesh chargeable under the head "Income from other sources" and "Capital Gains" for A.Y.2013-14.

Answer

Computation of "Income from other sources" of Mr. Ganesh for the A.Y.2013-14

	Particulars	₹
(1)	Cash gift received on 19.06.2012 is taxable under section 56(2)(vii)	51,000
(2)	Value of shares of Beta Ltd. gifted by Mr. Sundar on 19 th June, 2012 is taxable	60,000
(3)	Fair market value of shares of Alpha Ltd. is taxable	70,000
(4)	Purchase of land for inadequate consideration on 20.11.2012 would not attract the provisions of section 56(2)(vii), since there is consideration and only where the consideration is fully absent, it is chargeable to tax.	Nil
Income from Other Sources		1,81,000

Computation of "Capital Gains" of Mr. Ganesh for the A.Y.2013-14

Particulars	₹
Sale Consideration (15.02.2013)	1,00,000
Less: Cost of acquisition [deemed to be the fair market value charged to tax under section 56(2)(vii)]	70,000
Short-term capital gains	30,000

Question 9

Mrs. Harini Rao, who draws a salary of ₹12,000 p.m. received the following gifts during the previous year 2012-13 -

- (i) Gift of ₹1,50,000 on 15.5.2012 from her close friend.
- (ii) Gift of jewellery worth ₹3,00,000 on 1.8.2012 from her fiancée.

- (iii) Gifts of ₹ 51,000 each received from her two friends on the occasion of her marriage on 30.10.2012.
- (iv) Gift of ₹ 51,000 on 1.11.2012 from her father's sister.
- (v) Gift of ₹ 21,000 from her husband's friend on 1.1.2013.
- (vi) Gift of ₹ 25,000 on 12.1.2013 from her family friend.
- (vii) Gift of ₹ 11,000 on 12.2.2013 from her brother's mother-in-law.
- (viii) Gift of ₹ 75,000 from her sister-in-law.

Compute her gross total income for the assessment year 2013-14.

Answer

Computation of gross total income of Mrs. Harini Rao for the A.Y.2013-14

Particulars	₹	₹
Salary		
Salary ₹ 12,000 x 12		1,44,000
Income from other sources		
(i) Cash Gift from close friend is taxable	1,50,000	
(ii) Gift of jewellery is taxable [Jewellery is included in the definition of property as per <i>Explanation</i> to section 56(2)(vii) and the fair market value exceeds ₹ 50,000]	3,00,000	
(iii) Gifts received from her two friends are exempt as they have been received on the occasion of her marriage	-	
(iv) Gift from her father's sister is exempt as the donor is covered in the definition of 'relative'	-	
(vi) Gift from her husband's friend is taxable	21,000	
(vii) Gift from her family friend is taxable	25,000	
(viii) Gift from her brother's mother-in-law is taxable as the donor is not covered in the definition of 'relative'	11,000	
(ix) Gift from her sister-in-law (husband's sister) is exempt as the donor is covered in the definition of 'relative'	-	
		5,07,000
Gross Total Income		6,51,000

Question 10

Explain in the context of provisions of the Act, whether the income derived during the year ended on 31.03.2013 in the following case shall be subject to tax in the A.Y. 2013-14:

Chitra received gifts of ₹ 1,00,000 from her father-in-law and of ₹ 11,000 each from her 10 friends at the time of her marriage on 11.03.2013.

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Answer

The cash gifts received by Chitra at the time of her marriage shall not be subject to tax by virtue of clause (b) of the second proviso to section 56(2)(vii). Therefore, gifts of ₹ 1 Lac received from her father-in-law and ₹ 1.10 Lacs received @ ₹ 11,000 each from her 10 friends shall not be taxable as all such gifts were received by her on the occasion of her marriage.

Question 11

MNO Ltd. is a company in which the public are not substantially interested. K is a shareholder of the company holding 15% of the equity shares. The accumulated profits of the company as on 31.3.2012 amounted to ₹ 10,00,000. The company lent ₹ 1,00,000 to K by an account payee bank draft on 1.10.2012. The loan was not connected with the business of the company. K repaid the loan to the company by an account payee bank draft on 30.3.2013. Examine the effect of the borrowal and repayment of the loan by K on the computation of his total income for the assessment year 2013-14.

Answer

As per section 2(22)(e), any payment by a company, in which the public are not substantially interested, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, shall be treated as dividend to the extent to which the company possesses accumulated profits.

In the instant case, MNO Ltd. is a company in which the public are not substantially interested. The company has accumulated profits of ₹ 10,00,000 on 31.3.2012. The loan given by the company to K was not in the course of its business. K holds more than 10% of the equity shares in the company. Therefore, assuming that K has voting power equivalent to his shareholding, section 2(22)(e) comes into play and the sum of ₹ 1,00,000, representing the amount lent by the company to K, is includible as dividend in the total income of K for the assessment year 2013-14.

Under section 2(22)(e), the liability arises the moment the loan is borrowed by the shareholder and it is immaterial whether the loan is repaid before the end of the accounting year or not. Therefore, the repayment of loan by K to the company on 30.3.2013 will not affect the taxability of the sum of ₹ 1,00,000 as dividend in his hands.

Question 12

Discuss the taxability or otherwise of the following gifts received by M, an individual, during the financial year 2012-13:

- (i) ₹ 24,000 each from his four friends on the occasion of his birthday.
- (ii) Wrist watch valued at ₹ 60,000 from his friend.
- (iii) Acquired a vacant site from a friend (non-relative). The stamp duty value of the land was ₹ 5 Lacs but the consideration paid and agreed was ₹ 3 Lacs.
- (iv) Received a gift of vacant land from grandfather's younger brother, the stamp duty value of the land being ₹ 1,50,000.

Answer

- (i) Section 56(2)(vii) provides that where any sum of money is received without consideration by an individual or a Hindu undivided family from any person or persons exceeding ₹ 50,000 in aggregate in any previous year, the whole of the aggregate value of such sum will be liable to tax. In the instant case, M has received ₹ 24,000 from each of his four friends. The aggregate amount of gifts received works out to ₹ 96,000. The entire amount of ₹ 96,000 is taxable under the head "Income from other sources".
- (ii) Section 56(2)(vii) brings within its scope, in addition to any sum of money, the value of property received without consideration. For this purpose, "property" means immovable property being land and building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion. Therefore, the gift of wrist watch valued at ₹ 60,000 received by M from his friend is not covered by the term 'property'. Accordingly, it is not chargeable to tax.
- (iii) As per sub-clause (b) of section 56(2)(vii), where any immovable property is obtained without consideration and if the stamp duty value of the property exceeds ₹ 50,000, the stamp duty value of such property is chargeable to tax as income. In this case, there was some consideration but it was less than the stamp duty value. Only in the absence of consideration, is a transaction in respect of immovable property received from a non-relative chargeable to tax. Therefore, the difference between stamp duty value and actual consideration is not chargeable to tax in the hands of Mr. M.
- (iv) There is no consideration on receipt of gift of land from the younger brother of grandfather. Since the younger brother of grandfather is not a 'relative' as per *Explanation* to section 56(2)(vii), the stamp duty value is chargeable to tax as income under the head 'Income from other sources'.

Question 13

D, a lady, received the following gifts during the year ending 31.3.2013:

- (i) ₹ 30,000 from her elder sister.
- (ii) ₹ 1,25,000 from various friends on the occasion of her marriage.
- (iii) ₹ 50,000 from the daughter of her elder sister.

Discuss the taxability or otherwise of these gifts in the hands of D.

Answer

- (i). Section 56(2)(vii) provides for taxation of gifts exceeding ₹ 50,000, received by an individual from any person other than those specified, under the head "Income from other sources". The proviso states that gifts received from any relative would not be so taxed. *Explanation* to section 56(2)(vii) defines the term "relative". Sister of the individual is included in the said definition. Therefore, gift of ₹ 30,000 received by D from her elder sister is not taxable.

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- (ii) The proviso to section 56(2)(vii) stipulates that gifts received by an individual on the occasion of the marriage of the individual, is not taxable. Therefore, gifts amounting to ₹ 1,25,000 received by D from her friends on the occasion of her marriage are not taxable.
- (iii) Daughter of the elder sister of an individual is not a "relative" within the definition of the term as contained in *Explanation* to section 56(2)(vii). Since the amount received from the daughter of her elder sister is exactly ₹ 50,000 and the gifts received in (i) and (ii) above are not chargeable, the whole of the amount gifted shall not be included in D's total income. Therefore, the entire sum of ₹ 50,000 is not taxable in the hands of D.

Question 14

M, an individual, is 70 years of age. He is a sitting member of the State Assembly of Karnataka and for the financial year 2012-13 received the following amounts from the Assembly Secretariat :

- | | |
|-----------------------------|--|
| (i) Basic pay | ₹ 16,000 p.m. |
| (ii) Constituency allowance | ₹ 8,000 p.m. |
| (iii) Telephone allowance | ₹ 4,000 p.m. |
| (iv) Electricity allowance | ₹ 3,000 p.m. [from June, 2012 onwards] |

He owns a house in Delhi which has been let out at ₹ 15,000 p.m. He received rent for 10 months only, the house having remained vacant for two months. Municipal taxes of ₹ 12,000 were paid by the tenant. Interest of ₹ 50,000 was paid by M on the amount borrowed by him to buy the house.

Compute his total income for the assessment year 2013-14.

Answer

Computation of total income of Mr. M for A.Y.2013-14

Particulars	₹	₹
Income from house property		
Gross Annual Value (GAV) [See Note 1 below]	1,50,000	
Municipal taxes (not allowed since it is borne by tenant)	-	
Net annual value (NAV)	1,50,000	
Less: Deduction under section 24		
(a) 30% of NAV	₹ 45,000	
(b) Interest on borrowed capital	₹ 50,000	95,000
Income from Other Sources [See Note 2 below]		
Basic Pay (₹ 16,000 x 12)	1,92,000	
Constituency allowance (₹ 8,000 x 12)	₹ 96,000	
Less: Exempt under section 10(17)	₹ 96,000	-
Electricity allowance (₹ 3,000 x 10)	30,000	

Telephone allowance (₹ 4,000 x 12)	48,000	2,70,000
Total Income		3,25,000

Notes –

1. In the absence of other information, rent received has been taken as the Gross Annual Value.
2. The pay and allowances of a member of the State Assembly would be taxable under the head “Income from other sources”, since there is no employer-employee relationship in this case.

Question 15

V.G. had placed to deposit of ₹ 10 Lacs in a bank on which he received interest of ₹ 80,000. He had also borrowed ₹ 5 Lacs from the same bank on the security of the deposit and was liable to pay ₹ 50,000 by way of interest to the bank. He, therefore, offered the difference between two amounts of ₹ 30,000 as income from other sources. Is this correct?

Answer

The interest income from deposit in the bank is assessable under the head “Income from Other Sources”. The deduction admissible against this income is any expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income. However, the interest paid on the borrowing of ₹ 5 Lacs does not fall in this category. This has been held by the Supreme Court in *CIT v. Dr. V. Gopinathan (2001) 248 ITR 449*. In that case, the Supreme Court observed that the interest received by the assessee from the bank on a fixed deposit is income in his hands and there could be no deduction there from unless there is a law permitting such deduction. The interest on a loan taken by the assessee on the security of the fixed deposit would not go to reduce the income by way of interest on the fixed deposit as there is no provision for deduction of such interest on the loan.

Therefore, in this case, the full sum of ₹ 80,000 will be liable to tax under the head “Income from Other Sources”.

Note: In case the assessee had deposited business funds and availed loan against such deposit for business use of such loan, the interest on loan against deposit is eligible for deduction.

Question 16

Parimal, Managing Director of Heavens Engg. Pvt. Ltd. holds 70% of its paid up capital of ₹ 20 Lacs. The balance as at 31.03.2012 in General Reserve was ₹ 6 Lacs. The company on 1.07.2012 gave an interest-free loan of ₹ 5 Lacs to its Supervisor having salary of ₹ 4,000 p.m., who in turn on 15.8.2012 advanced the said amount of loan so taken from the company to Shri Parimal. The Assessing Officer had taxed the amount of advance in the hands of Parimal. Is the action of Assessing Officer correct?

Answer

The company had advanced a loan to an employee who in turn had advanced the same to the Managing Director of the company holding 70% of its capital. By virtue of the provisions of section 2(22)(e), the same shall be treated as the payment by a company in which public are not substantially interested, on behalf of, or for individual benefit of any such share holder (who holds not less than 10% of the voting power), to the extent to which the company possesses accumulated profits.

In this case, the company has reserves of ₹ 6 Lacs on 31st March of the preceding year and the amount of loan advanced on 1st July is ₹ 5 Lacs. Therefore, the payment is to be treated as deemed dividend. The amount of interest-free loan of ₹ 5 Lacs given by the company to the supervisor who in turn had given the same to Mr. Parimal, shall be construed as the amount given for the benefit of Mr. Parimal and is treated as deemed dividend chargeable to tax in the hands of Mr. Parimal. This has been held by the Supreme Court in the case of *L. Alagusundaram Chettiar v. CIT* (2001) 252 ITR 893/(2002) 121 Taxman 587.

Question 17

An enterprise engaged in manufacturing of steel balls discontinued its activities and decided to lease out its factory building, plant and machinery and furniture from 1.4.2012 on a consolidated lease rent of ₹ 50,000 per month. Compute the income for Assessment Year 2013-14 of the assessee from following information:

	₹
(i) Interest received on deposits	1,00,000
(ii) Brokerage paid on hundi loan taken	2,000
(iii) Interest paid on hundi and other loans which were given as deposits on interest to others	75,000
(iv) Expenses incurred on repairs of building, plant and machinery	15,000
(v) Fire insurance premium of plant and machinery and furniture	12,000
(vi) Depreciation for the year	1,47,500
(vii) Legal fees paid to an advocate for drafting and registering the lease agreement	1,500
(viii) Factory licence fees paid for the year	1,000
(ix) There is unabsorbed depreciation of ₹ 2,75,000 of the Assessment Years 2007-08 and 2008-09.	
(x) Interest paid includes an amount of ₹ 25,000 remitted outside India on which tax was not deducted at source.	

Answer

The income derived from leased assets shall be chargeable to tax as 'Income from other sources' under section 56(2)(iii) but the computation thereof shall be made after allowing deductions specified under sections 30, 31 and 32 subject to section 38. This is as per the provisions of section 57(ii) and 57(iii).

Income from other sources

Particulars	₹	₹
(A) Lease Rent for 12 months @ ₹ 50,000 p.m.		6,00,000
Less: Expenses and deductions allowable under section 57(ii) & 57(iii) -		
Repairs	15,000	
Fire Insurance Premium	12,000	
Legal expenses for drafting of lease agreement	1,500	
Factory License fee	1,000	
Depreciation for the year	1,47,500	
Unabsorbed depreciation of earlier assessment years – eligible for deduction (Note 1)	<u>2,75,000</u>	<u>4,52,000</u>
		1,48,000
(B) Interest on Deposits	1,00,000	
Less: Expenses allowable under section 57(i)		
Brokerage	₹ 2,000	
Interest on hundi loans (Note 2)	₹ <u>50,000</u>	<u>48,000</u>
Total Income		<u>1,96,000</u>

Note:

1. Depreciation of ₹ 2,75,000 pertains to earlier assessment years. The unabsorbed depreciation shall form part of the current year depreciation and can be set off against any other head of income. Accordingly, the amount of ₹ 2,75,000 is adjustable / allowed to be set off against 'Income from other sources'.
2. Interest paid to non-resident is not eligible for deduction as the tax has not been deducted at source.

Question 18

Shyam was contributing amount to unrecognized provident fund. On 15th March, 2013, he had finally drawn the deposited amount along with interest. He seeks your advice as to how it has to be dealt, in his computation for assessment year 2013-14.

Answer

Shyam's own contribution to the unrecognized provident fund will not attract any tax liability on its return to him. However, any payment received from an employer or former employer from

an unrecognized provident fund to the extent to which it does not consist of contribution by him or interest on such contribution will constitute profits in lieu of salary under section 17(3)(ii) and will thus be chargeable to tax on receipt.

Hence, Shyam will be advised to include in his return of income the amounts withdrawn by him from the unrecognized provident fund to the extent it constitutes the contribution by the employer and interest thereon.

Interest on own contribution to unrecognized provident fund however is taxable under the head "Income from other sources".

Self-examination Questions

1. Write short notes on -
 - a) Bond washing transactions
 - b) Dividend stripping
2. State the incomes which are chargeable only under the head "Income from other sources".
3. Which are incomes chargeable under the head "Income from other sources" only if they are not chargeable under the head "Profits and gains of business or profession"?
4. What are the deductions allowable from the following income -
 - a) Dividend
 - b) Income from letting on hire machinery, plant or furniture.
5. What are the inadmissible deductions while computing income under the head "Income from other sources".
6. Is family pension taxable under the head "Salaries" or "Income from other sources"? Is any deduction allowable from such income? Discuss.
7. Explain whether the method of accounting followed by an assessee is relevant in computing his income under the head "Income from other sources".
8. Explain the meaning and tax treatment of casual income under the Income-tax Act, 1961.
9. Mr. A has borrowed ₹ 5,00,000@10% for investment in shares of domestic companies and foreign companies. He earned dividend of ₹ 7,500 from domestic companies and ₹ 12,500 from foreign companies. He claimed that interest paid by him on money borrowed for investment is deductible from dividend income. Discuss whether the claim of Mr. A is valid in law.
10. Karan's bank account shows the following deposits during the financial year 2012-13. Compute his total income for the A.Y. 2013-14, assuming that his income from house property (computed) is ₹ 62,000.
 - (i) Gift from his sister in Amsterdam ₹ 2,30,000

(ii)	Gift from his friend on his birthday	₹	10,000
(iii)	Dividend from shares of various Indian companies	₹	12,600
(iv)	Gift from his mother's friend on his engagement	₹	25,000
(v)	Gift from his fiancée	₹	75,000
(vi)	Interest on bank fixed deposits	₹	25,000

Answer

10. ₹ 1,97,000