8.1 Introduction

Any income, profits or gains includible in the total income of an assessee, which cannot be included under any of the preceding heads of income, is chargeable under the head ‘Income from other sources’. Thus, this head is the residuary head of income and brings within its scope all the taxable income, profits or gains of an assessee which fall outside the scope of any other head. Therefore, when any income, profit or gain does not fall precisely under any of the other specific heads but is chargeable under the provisions of the Act, it would be charged under this head.

8.2 Incomes chargeable under this head [Section 56]

(i) The following income shall be chargeable only under the head ‘Income from other sources’:

1. Dividend income [covered by sections 2(22)(a) to (e)].

2. Casual income in the nature of winning from lotteries, crossword puzzles, horse races, card games and other games of any sort, gambling, betting etc. Such winnings are chargeable to tax at a flat rate of 30% under section 115BB.

3. Any sum of money or value of property received without consideration or value of property, other than immovable property, received for inadequate consideration to be subject to tax in the hands of the recipient, being an individual or HUF [Section 56(2)(vii)]

   (i) Section 56(2)(vii) brings to tax any sum of money or the value of any property received by an individual of HUF without consideration or the value of any property, other than immovable property, received for inadequate 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.

   (ii) If an immovable property is received without consideration, the stamp duty value of such property would be taxed as the income of the recipient if it exceeds ₹ 50,000.

   (iii) In order to prevent tax avoidance by transferring immovable property at prices significantly lower than the circle rates, section 56(2)(vii) has been amended.

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with effect from A.Y.2014-15 to provide that where any immovable property is received for a consideration which is less than the stamp duty value of the property by an amount exceeding ₹ 50,000, the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the individual or HUF as “Income from other sources”.

(iv) **Taking into consideration the possible time gap between the date of agreement and the date of registration, the stamp duty value may be taken as on the date of agreement instead of the date of registration, if the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, provided at least a part of the consideration has been paid by any mode other than cash on or before the date of agreement.**

(v) If the stamp duty value of immovable property is disputed by the assessee, the Assessing Officer may refer the valuation of such property to a Valuation Officer. In such a case, the provisions of section 50C and section 155(15) shall, as far as may be, apply for determining the value of such property.

(vi) If movable property is received without consideration, the aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient, if it exceeds ₹ 50,000. In case movable property is received for inadequate consideration, and the difference between the aggregate fair market value and such consideration exceeds ₹ 50,000, such difference would be taxed as the income of the recipient. The CBDT would prescribe the method of determination of fair market value of a movable property.

(vii) The provisions of section 56(2)(vii) would apply only to property which is the nature of a capital asset of the recipient and not stock-in-trade, raw material or consumable stores of any business of the recipient. Therefore, only transfer of a capital asset, without consideration and transfer of a capital asset, other than immovable property, for inadequate consideration would attract the provisions of section 56(2)(vii).

(viii) The table below summarises the scheme of taxability of gifts –

<table>
<thead>
<tr>
<th>Nature of asset</th>
<th>Particulars</th>
<th>Taxable value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Money</td>
<td>Without</td>
<td>The whole amount if the same exceeds consideration ₹ 50,000.</td>
</tr>
</tbody>
</table>
2 Movable property Without consideration The aggregate fair market value of the property, if it exceeds ₹ 50,000.

3 Movable property Inadequate consideration The difference between the aggregate fair market value and the consideration, if such difference exceeds ₹ 50,000.

4 Immovable property Without consideration The stamp value of the property, if it exceeds ₹ 50,000.

5 Immovable property Inadequate consideration The difference between the stamp duty value and the consideration, if such difference exceeds ₹ 50,000.

(ix) However, any sum of money or value of property received -

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

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

(e) from any local authority as defined in the Explanation to section 10(20); or

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

(g) from any trust or institution registered under section 12AA would be outside the ambit of section 56(2)(vii).

(x) The term “relative” for the purpose of section 56(2)(vii) would mean –

(a) in case of an individual –

   (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 any of the persons referred to above.

(b) In case of Hindu Undivided Family, any member thereof.
(ix) Rules for determination of fair market value of the property other than immovable property

(a) Valuation of jewellery

(i) the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;

(ii) in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;

(iii) In case the jewellery is received by any other mode and the value of the jewellery exceeds ₹ 50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.

(b) Valuation of archeological collections, drawings, paintings, sculptures or any work of art

(i) the fair market value of archeological collections, drawings, paintings, sculptures or any work of art (artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;

(ii) in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;

(iii) in case the artistic work is received by any other mode and the value of the artistic work exceeds ₹ 50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.

(c) Valuation of shares and securities

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

(i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

(ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,-

(1) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and

(2) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange.
exchange, in cases where on the valuation date, there is no trading in such shares and securities on any recognized stock exchange.

(b) the fair market value of unquoted equity shares shall be the value on the valuation date, of such unquoted equity shares as determined in the following manner namely:-

The fair market value of unquoted equity shares = \( \frac{(A - L)}{PE} \times PV \), where,

\( A = \text{Adjusted book value of assets i.e., book value of assets in the balance sheet as reduced by certain specified deductions, namely, -} \)

1. any amount of tax paid as deduction or collection at source; or
2. advance tax payment reduced by the amount of tax claimed as refund under the Income-tax Act, 1961; and
3. any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.

\( L = \text{Adjusted book value of liabilities, i.e., book value of liabilities shown in the Balance Sheet drawn up on the valuation date but not including the following amounts:-} \)

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 tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, 1961, to the extent of excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
(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.

\( PE = \text{Total amount of paid up equity share capital as shown in Balance Sheet.} \)

\( PV = \text{the paid up value of such equity shares.} \)

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange.
shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

Illustration 1

Mr. A, a dealer in shares, received the following without consideration during the P.Y.2013-14 from his friend Mr. B. -

1. Cash gift of ` 75,000 on his anniversary, 15th April, 2013.
2. Bullion, the fair market value of which was ` 60,000, on his birthday, 19th June, 2013.
3. A plot of land at Faridabad on 1st July, 2013, the stamp value of which is ` 5 lakh on that date. Mr. B had purchased the land in April, 2007.

Mr. A purchased from his friend Mr. C, who is also a dealer in shares, 1000 shares of X Ltd. @ ` 400 each on 19th June, 2013, the fair market value of which was ` 600 each on that date. Mr. A sold these shares in the course of his business on 23rd June, 2013.

Further, on 1st November, 2013, Mr. A took possession of property (building) booked by him two years back at ` 20 lakh. The stamp duty value of the property as on 1st November, 2013 was ` 32 lakh and on the date of booking was ` 23 lakh. He had paid ` 1 lakh by cheque as down payment on the date of booking.

On 1st March, 2014, he sold the plot of land at Faridabad for ` 7 lakh.

Compute the income of Mr. A chargeable under the head “Income from other sources” and “Capital Gains” for A.Y.2014-15.

Solution

Computation of “Income from other sources” of Mr. A for the A.Y.2014-15

<table>
<thead>
<tr>
<th>Particulars</th>
<th>`</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Cash gift is taxable under section 56(2)(vii), since it exceeds ` 50,000</td>
<td>75,000</td>
</tr>
<tr>
<td>(2) Since bullion is included in the definition of property, therefore, when bullion is received without consideration, the same is taxable, since the aggregate fair market value exceeds ` 50,000</td>
<td>60,000</td>
</tr>
<tr>
<td>(3) Stamp value of plot of land at Faridabad, received without consideration, is taxable under section 56(2)(vii)</td>
<td>5,00,000</td>
</tr>
<tr>
<td>(4) Difference of ` 2 lakh in the value of shares of X Ltd. purchased from Mr. C, a dealer in shares, is not taxable as it represents the stock-in-trade of Mr. A. Since Mr. A is a dealer in shares and it has been mentioned that the shares were subsequently sold in the course of his business, such shares represent the stock-in-trade of Mr. A.</td>
<td>-</td>
</tr>
<tr>
<td>(5) Difference between the stamp duty value of <code>23 lakh on the date of booking and the actual consideration of</code> 20 lakh paid is taxable under section 56(2)(vii).</td>
<td>3,00,000</td>
</tr>
</tbody>
</table>

Income from Other Sources | 9,35,000 |
Computation of “Capital Gains” of Mr. A for the A.Y.2014-15

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale Consideration</td>
<td>7,00,000</td>
</tr>
<tr>
<td>Less: Cost of acquisition [deemed to be the stamp value charged to tax under section 56(2)(vii) as per section 49(4)]</td>
<td>5,00,000</td>
</tr>
<tr>
<td><strong>Short-term capital gains</strong></td>
<td>2,00,000</td>
</tr>
</tbody>
</table>

**Note** – The resultant capital gains will be short-term capital gains since for calculating the period of holding, the period of holding of previous owner is not to be considered.

**Illustration 2**
Discuss the taxability or otherwise of the following in the hands of the recipient under section 56(2)(vii) the Income-tax Act, 1961 -

(i) Akhil HUF received ₹ 75,000 in cash from niece of Akhil (i.e., daughter of Akhil’s sister). Akhil is the Karta of the HUF.

(ii) Nitisha, a member of her father’s HUF, transferred a house property to the HUF without consideration. The stamp duty value of the house property is ₹ 9,00,000.

(iii) Mr. Akshat received 100 shares of A Ltd. from his friend as a gift on occasion of his 25th marriage anniversary. The fair market value on that date was ₹ 100 per share. He also received jewellery worth ₹ 45,000 (FMV) from his nephew on the same day.

(iv) Kishan HUF gifted a car to son of Karta for achieving good marks in XII board examination. The fair market value of the car is ₹ 5,25,000.

**Solution**

<table>
<thead>
<tr>
<th>Taxable/ Non-taxable</th>
<th>Amount liable to tax (₹)</th>
<th>Reason</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Taxable</td>
<td>75,000</td>
<td>Sum of money exceeding ₹ 50,000 received without consideration from a non-relative is taxable under section 56(2)(vii). Daughter of Mr. Akhil’s sister is not a relative of Akhil HUF, since she is not a member of Akhil HUF.</td>
<td></td>
</tr>
<tr>
<td>(ii) Non-taxable</td>
<td>Nil</td>
<td>Immovable property received without consideration by a HUF from its relative is not taxable under section 56(2)(vii). Since Nitisha is a member of the HUF, she is a relative of the HUF. However, income from such asset would be included in the hands of Nitisha under 64(2).</td>
<td></td>
</tr>
</tbody>
</table>
| (iii) Taxable        | 55,000                   | As per provisions of section 56(2)(vii), in case the aggregate fair market value of property, other than immovable property, received without consideration exceeds ₹ 50,000, the whole
of the aggregate value shall be taxable. In this case, the aggregate fair market value of shares (₹ 10,000) and jewellery (₹ 45,000) exceeds ₹ 50,000. Hence, the entire amount of ₹ 55,000 shall be taxable.

<table>
<thead>
<tr>
<th>(iv) Non-taxable</th>
<th>Nil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Car is not included in the definition of property for the purpose of section 56(2)(vii), therefore, the same shall not be taxable.</td>
<td></td>
</tr>
</tbody>
</table>

**Illustration 3**

Mr. Hari, a property dealer, sold a building in the course of his business to his friend Rajesh, who is a dealer in automobile spare parts, for ₹ 90 lakh on 1.1.2014, when the stamp duty value was ₹ 150 lakh. The agreement was, however, entered into on 1.7.2013 when the stamp duty value was ₹ 140 lakh. Mr. Hari had received a down payment of ₹ 15 lakh by cheque from Rajesh on the date of agreement. Discuss the tax implications in the hands of Hari and Rajesh, assuming that Mr. Hari has purchased the building for ₹ 75 lakh on 12th July, 2012.

Would your answer be different if Hari was a share broker instead of a property dealer?

**Solution**

**Case 1: Tax implications if Mr. Hari is a property dealer**

<table>
<thead>
<tr>
<th>In the hands of Mr. Hari</th>
<th>In the hands of Mr. Rajesh</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the hands of Hari, the provisions of section 43CA would be attracted, since the building represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value on the date of agreement. Therefore, ₹ 65 lakh, being the difference between the stamp duty value on the date of agreement (i.e., ₹ 140 lakh) and the purchase price (i.e., ₹ 75 lakh), would be chargeable as business income in the hands of Mr. Hari.</td>
<td>Since Mr. Rajesh is a dealer in automobile spare parts, the building purchased would be a capital asset in his hands. The provisions of section 56(2)(vii) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration. Therefore, ₹ 50 lakh, being the difference between the stamp duty value of the property (i.e., ₹ 140 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(vii) in the hands of Mr. Rajesh.</td>
</tr>
</tbody>
</table>
Case 2: Tax implications if Mr. Hari is a stock broker

<table>
<thead>
<tr>
<th>In the hands of Mr. Hari</th>
<th>In the hands of Mr. Rajesh</th>
</tr>
</thead>
<tbody>
<tr>
<td>In case Mr. Hari is a stock broker and not a property dealer, the building would represent his capital asset and not stock-in-trade. In such a case, the provisions of section 50C would be attracted in the hands of Mr. Hari and ₹ 75 lakh, being the difference between the stamp duty value on the date of registration (i.e., ₹ 150 lakh) and the purchase price (i.e., ₹ 75 lakh) would be chargeable as short-term capital gains. It may be noted that under section 50C, there is no option to adopt the stamp duty value on the date of agreement, even if the date of agreement is different from the date of registration and part of the consideration has been received on or before the date of agreement otherwise than by way of cash.</td>
<td>There would be no difference in the taxability in the hands of Mr. Rajesh, whether Mr. Hari is a property dealer or a stock broker. Therefore, the provisions of section 56(2)(vii) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration. Therefore, ₹ 50 lakh, being the difference between the stamp duty value of the property (i.e., ₹ 140 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(vii) in the hands of Mr. Rajesh.</td>
</tr>
</tbody>
</table>

(4) Transfer of shares without consideration or for inadequate consideration to attract the provisions of section 56(2) in case of recipient firms and companies also [Section 56(2)(viia)]

(i) Section 56(2)(viia) provides that the transfer of shares of a company without consideration or for inadequate consideration would attract the provisions of section 56(2), if the recipient is a firm or a company. The purpose is to prevent the practice of transferring unlisted shares at prices much below their fair market value.

(ii) If such shares are received without consideration, the aggregate fair market value on the date of transfer would be taxed as the income of the recipient firm or company, if it exceeds ₹ 50,000. If such shares are received for inadequate consideration, the difference between the aggregate fair market value and the consideration would be taxed as the income of the recipient firm or company, if such difference exceeds ₹ 50,000.

(iii) However, the provisions of section 56(2)(viia) would not apply in the case of transfer of shares -

1. of a company in which the public are substantially interested; or
2. to a company in which the public are substantially interested.

(iv) Certain transactions are exempted from the application of the provisions of this clause, namely, transactions covered under the following sections:
<table>
<thead>
<tr>
<th>Section</th>
<th>Transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>47(via)</td>
<td>Transfer of shares held in an Indian company, in a scheme of amalgamation, by the amalgamating foreign company to an amalgamated foreign company.</td>
</tr>
<tr>
<td>47(vic)</td>
<td>Transfer of shares held in an Indian company, in a scheme of demerger, by the demerged foreign company to a resulting foreign company.</td>
</tr>
<tr>
<td>47(vicb)</td>
<td>Transfer by a shareholder, in a business reorganization, of shares held in the predecessor co-operative bank, in consideration of the allotment of shares in the successor co-operative bank.</td>
</tr>
<tr>
<td>47(vid)</td>
<td>Transfer or issue of shares by the resulting company, in a scheme of demerger, to the shareholders of the demerged company in consideration of demerger of the undertaking.</td>
</tr>
<tr>
<td>47(vii)</td>
<td>Transfer by a shareholder, in a scheme of amalgamation, of shares in the amalgamating company in consideration of allotment to him of shares in the amalgamated Indian company.</td>
</tr>
</tbody>
</table>

(5) 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) Section 56(2)(viib) brings 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.
Rule 11UA(2) prescribes the manner of determination of FMV of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to section 56(2)(viib).

The FMV shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:—

(a) the fair market value of unquoted equity shares = \( \frac{(A - L)}{PE} \times PV \)

\( A = \) The book value of the assets in the balance sheet as reduced by the following -

1. any amount of tax paid as deduction or collection at source minus the amount of tax claimed as refund under the Income-tax Act, 1961.
2. any amount of advance tax payment
3. any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

\( L = \) book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

1. the paid-up capital in respect of equity shares;
2. 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;
3. reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
4. any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
5. any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
6. any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

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

\( PV = \) the paid up value of such equity shares
(b) the fair market value of the unquoted equity shares determined by a merchant banker or an accountant as per the Discounted Free Cash Flow method.

**Meaning of certain expressions, used in determination of Fair Market Value, amended [Rule 11U]**

Consequent to insertion of sub-rule (2) in Rule 11UA, the meaning of certain expressions, defined in Rule 11U and used in determination of Fair Market Value, have been amended. The new definitions are as follows -

<table>
<thead>
<tr>
<th>For the purpose of sub-rule (2) of Rule 11UA</th>
<th>In any other case</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition of “accountant”</strong></td>
<td><strong>Meaning as assigned in the Explanation below section 288(2) i.e., Chartered Accountant within the meaning of the Chartered Accountants Act, 1949.</strong></td>
</tr>
<tr>
<td>A fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949, who is not appointed by the company as an auditor under –</td>
<td></td>
</tr>
<tr>
<td>(i) section 44AB of the Income-tax Act, 1961 or</td>
<td></td>
</tr>
<tr>
<td>(ii) section 224 of the Companies Act, 1956</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Definition of “Balance Sheet”</strong></th>
<th><strong>“Balance sheet”, in relation to any company, means the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) –</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>“Balance sheet”, in relation to any company, means the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) –</td>
<td></td>
</tr>
<tr>
<td>- as drawn up on the valuation date</td>
<td></td>
</tr>
<tr>
<td>- which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956.</td>
<td></td>
</tr>
</tbody>
</table>

Where the balance sheet on the valuation date is not drawn up, the expression “Balance Sheet” in relation to any company, would mean the balance sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company;

---

1 Section 139 of the Companies Act, 2013
Illustration 4

The following are the details of the shares issued by Ray (P) Ltd. Discuss the applicability of provisions of section 56(2)(viib) in the hands of the company:

<table>
<thead>
<tr>
<th></th>
<th>Face value of shares (₹)</th>
<th>FMV of shares (₹)</th>
<th>Issue price of shares (₹)</th>
<th>Applicability of section 56(2)(viib)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>100</td>
<td>120</td>
<td>130</td>
<td>The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium (i.e., issue price exceeds the face value of shares). The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). ₹ 10 (₹ 130 - ₹ 120) shall be treated as income in the hands of Ray (P) Ltd.</td>
</tr>
<tr>
<td>(ii)</td>
<td>100</td>
<td>120</td>
<td>110</td>
<td>The provisions of section 56(2)(viib) are attracted since the shares are issued at a premium. However, no sum shall be chargeable to tax under the said section as the shares are issued at a price less than the FMV of shares.</td>
</tr>
<tr>
<td>(iii)</td>
<td>100</td>
<td>90</td>
<td>98</td>
<td>Section 56(2)(viib) is not attracted since the shares are issued at a discount, though the issue price is greater than the FMV.</td>
</tr>
<tr>
<td>(iv)</td>
<td>100</td>
<td>90</td>
<td>110</td>
<td>The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium. The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). Therefore, ₹ 20 (₹ 110 - ₹ 90) shall be treated as income in the hands of Ray (P) Ltd.</td>
</tr>
</tbody>
</table>

(6) Interest received on compensation/enhanced compensation deemed to be income in the year of receipt and taxable under the head “Income from Other Sources” [Sections 56(2)(viii)]

(i) As per section 145(1), income chargeable under the head “Profits and gains of business or profession” or “Income from other sources”, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(ii) Further, the Hon'ble Supreme Court has, in Rama Bai v. CIT (1990) 181 ITR 400, held that arrears of interest computed on delayed or on enhanced compensation shall be taxable on accrual basis. The tax payer is facing genuine difficulty on account of this ruling, since the interest would have accrued over a number of years, and consequently the income of all the years would undergo a change.
(iii) Therefore, to remove this difficulty, clause (b) has been inserted in section 145A to provide that the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.

(iv) Section 56(2)(viii) 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.

(ii) The following income are chargeable under the head “Income from other sources” only if such income are not chargeable under the head “Profits and gains of business or profession” -

1. Any sum received by an employer- assessee from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees
2. Interest on securities
3. Income from letting out on hire, machinery, plant or furniture.
4. Where letting out of buildings is inseparable from the letting out of machinery, plant or furniture, the income from such letting.

(iii) Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy is chargeable under the head “Income from other sources” if such income is not chargeable under the head “Profits and gains if business or profession” or under the head “Salaries” i.e. if such sum is received by any person other than the employer who took the policy and the employee in whose name the policy was taken.

(iv) Any income chargeable to tax under the Act, but not falling under any other head of income shall be chargeable to tax under the head “Income from other sources” e.g. Salary received by an MPs/MLAs will not be chargeable to income-tax under the head ‘Salary’ but will be chargeable as “Income from other sources” under section 56.

8.3 Bond washing transactions and dividend stripping [Section 94]

(i) A bond-washing transaction is a transaction where securities are sold some time before the due date of interest and reacquired after the due date is over. This practice is adopted by persons in the higher income group to avoid tax by transferring the securities to their relatives/friends in the lower income group just before the due date of payment of interest. In such a case, interest would be taxable in the hands of the transferee, who is the legal owner of securities. In order to discourage such practice, section 94(1) provides that where the owner of a security transfers the security just before the due date of interest and buys back the same immediately after the due date and interest is received by the transferee, such interest income will be deemed to be the income of the transferor and would be taxable in his hands.

(ii) In order to prevent the practice of sale of securities-cum-interest, section 94(2) provides that if an assessee who has beneficial interest in securities sells such securities in such a manner that either no income is received or income received is less than the sum he would have received if such interest had accrued from day to day, then income from such securities for the whole year would be deemed to be the income of the assessee.
(iii) Section 94(7) provides that where
(a) any person buys or acquires any securities or unit within a period of three months prior to the record date and
(b) such person sells or transfers –
   (1) such securities within a period of three months after such date, or
   (2) such unit within a period of nine months after such date and
(c) the dividend or income on such securities or unit received or receivable by such person is exempted,
then, the loss, if any, arising therefrom shall be ignored for the purposes of computing his income chargeable to tax. Such loss should not exceed the amount of dividend or income received or receivable on such securities or unit.

8.4 Applicable rate of tax in respect of casual income [Section 115BB]
(i) This section provides that income by way of winnings from lotteries, crossword puzzles, races including horse races or card games and other games of any sort or from gambling or betting of any form would be taxed at a flat rate of 30% plus surcharge, if applicable, plus education cess plus secondary and higher education cess.
(ii) No expenditure or allowance can be allowed from such income.
(iii) Deduction under Chapter VI-A is not allowable from such income.
(iv) Adjustment of unexhausted basic exemption limit is also not permitted against such income.

8.5 Deductions allowable [Section 57]
The income chargeable under the head “Income from other sources” shall be computed after making the following deductions:

(i) In the case of dividends (other than dividends referred to in section 115-O) or interest on securities, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee.

(ii) Where the income consists of recovery from employees as contribution to any provident fund etc. in terms of clause (x) of section 2(24), then, a deduction will be allowed in accordance with the provisions of section 36(1)(va) i.e. to the extent the contribution is remitted before the due date under the respective Acts.

(iii) Where the income to be charged under this head is from letting on hire of machinery, plant and furniture, with or without building, the following items of deductions are allowable in the computation of such income:
(a) the amount paid on account of any current repairs to the machinery, plant or furniture.
(b) the amount of any premium paid in respect of insurance against risk of damage or destruction of the machinery or plant or furniture.
(c) the normal depreciation allowance in respect of the machinery, plant or furniture, due thereon.
(iv) In the case of income in the nature of family pension, a deduction of a sum equal to 33\(\frac{1}{3}\) per cent of such income or ₹ 15,000, whichever is less, is allowable. For the purposes of this deduction “family pension” means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

(v) Any other 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.

(vi) 50% of income by way of compensation/enhanced compensation received chargeable to tax under section 56(2)(viii). No deduction would be allowable under any other clause of section 57 in respect of such income.

Illustration 5

Interest on enhanced compensation received by Mr. G during the previous year 2013-14 is ₹ 5,00,000. Out of this interest, ₹ 1,50,000 relates to the previous year 2009-10, ₹ 1,65,000 relates to previous year 2010-11 and ₹ 1,85,000 relates to previous year 2011-12. Discuss the tax implication, if any, of such interest income for A.Y. 2014-15.

Solution

The entire interest of ₹ 5,00,000 would be taxable in the year of receipt, namely, P.Y. 2013-14.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>₹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest on enhanced compensation taxable u/s 56(2)(viii)</td>
<td>5,00,000</td>
</tr>
<tr>
<td>Less: Deduction under section 57(iv) @50%</td>
<td>2,50,000</td>
</tr>
<tr>
<td><strong>Interest chargeable under the head “Income from other sources”</strong></td>
<td><strong>2,50,000</strong></td>
</tr>
</tbody>
</table>

Note - The Supreme Court held in CIT v. Rajindra Prasad Moody [1978] 115 ITR 519, that in order to claim deduction under section 57 in respect of any expenditure, it is not necessary that income should in fact have been earned as a result of the expenditure. In this view of the matter, the Court held that the interest on money borrowed for investment in shares which had not yielded any taxable dividend was admissible as a deduction under section 57 under the head, “Income from other sources”.

8.6 Deductions not allowable [Section 58]

No deduction shall be made in computing the “Income from other sources” of an assessee in respect of the following items of expenses:

(i) In the case of any assessee:

(1) any personal expense of the assessee;

(2) any interest chargeable to tax under the Act which is payable outside India on which tax has not been paid or deducted at source.

(3) any payment taxable in India as salaries, if it is payable outside India unless tax has been paid thereon or deducted at source.

(ii) In addition to these disallowances, section 58(2) specifically provides that the disallowance of payments to relatives and associate concerns and disallowance of payment or
aggregate of payments exceeding ₹ 20,000 made to a person during a day otherwise than by account payee cheque or draft covered by section 40A will be applicable to the computation of income under the head ‘Income from other sources’ as well.

(iii) Income-tax and wealth-tax paid.

(iv) No deduction in respect of any expenditure or allowance in connection with income by way of earnings from lotteries, cross word puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever shall be allowed in computing the said income.

The prohibition will not, however, apply in respect of the income of an assessee, being the owner of race horses, from the activity of owning and maintaining such horses. In respect of the activity of owning and maintaining race horses, expenses incurred shall be allowed even in the absence of any stake money earned. Such loss shall be allowed to be carried forward in accordance with the provisions of section 74A.

8.7 Deemed income chargeable to tax [Section 59]

The provisions of section 41(1) are made applicable, so far as may be, to the computation of income under this head. Accordingly, where a deduction has been made in respect of a loss, expenditure or liability and subsequently any amount is received or benefit is derived in respect of such expenditure incurred or loss or trading liability allowed as deduction, then it shall be deemed as income in the year in which the amount is received or the benefit is accrued.

8.8 Method of accounting [Section 145]

Income chargeable under the head “Income from other sources” has to be computed in accordance with the cash or mercantile system of accounting regularly employed by the assessee. However, deemed dividend under section 2(22)(e) is chargeable to tax on payment basis under section 8, irrespective of the method of accounting followed by the assessee.