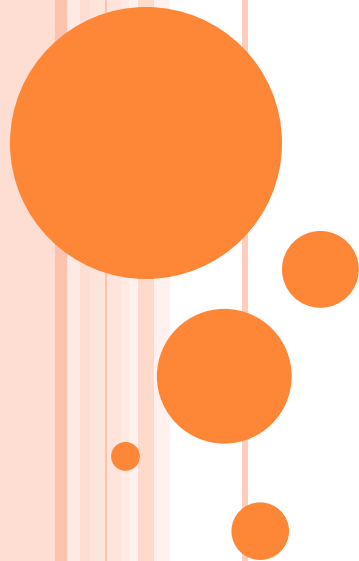


SECTION 56(2)(X)

TAXATION OF CERTAIN GIFTS UNDER IT ACT



Presented by:

Chythanya K.K., B.com, FCA, LLB



INCOME FROM OTHER SOURCES

Section 56 (2)(x)

Inserted by the Finance Act, 2017, w.e.f. 1-4-2017.

CLAUSE (x) OF SECTION 56(2)

- Where any person receives,
- in any previous year,
- from any person or persons
- on or after the 1st day of April, 2017,—



SUB CLAUSE (a) OF SECTION 56(2) (x)

- any sum of money,
- without consideration,
- the aggregate value of which exceeds Rs. 50,000/-,
- the whole of the aggregate value of such sum;



SUB CLAUSE (b) OF SECTION 56(2)(x)

○ any immovable property,—


Item	Consideration	Value
(A)	Without consideration, the stamp duty value of which exceeds Rs. 50,000/-	the stamp duty value of such property;
(B)	(Applicable upto 31.03.2019) For a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50,000/-	the stamp duty value of such property as exceeds such consideration
(B)	<u>(Applicable w.e.f 31.03.2019)</u> <i>For a consideration, if the amount of such excess is more than the higher of the following amounts, namely:—</i> <i>(i) the amount of Rs.50,000/-; and</i> <i>(ii) the amount equal to 5% of the consideration:</i>	<i>the stamp duty value of such property as exceeds such consideration</i>

FIRST PROVISIO TO SECTION 56(2)(x)(b)

- where the **date of agreement fixing the amount of consideration** for the transfer of immovable property and
- **the date of registration**
- **are not the same,**
- **the stamp duty value on the date of agreement**
- may be taken for the purposes of this sub-clause :



SECOND PROVISO TO SECTION 56(2)(x)(b)

- that the provisions of the first proviso shall apply only in a case
 - where the **amount of consideration** referred to therein, **or a part thereof**,
 - has been **paid** by way of
 - an **Account payee** cheque / bank draft or by use of ECS through a bank account,
 - **on or before the date of agreement** for transfer of such immovable property:
- 

THIRD PROVISO TO SECTION 56(2)(x)(b)

- that where the stamp duty value of immovable property
- is disputed by the assessee
- on grounds mentioned in 50C(2),
- the Assessing Officer may refer
- the valuation of such property
- to a Valuation Officer, and



THIRD PROVISIO TO SECTION 56(2)(x)(b) (CONT.)

- the provisions of sections 50C and 155(15) shall, as far as may be, apply
- in relation to the stamp duty value of such property for the purpose of this sub-clause
- as they apply for **valuation of capital asset under those sections;**




SUB CLAUSE (c) OF SECTION 56(2) (x)

- any property, other than immovable property,-

Item	Consideration	Value
(A)	Without consideration , the aggregate fair market value of which exceeds Rs. 50,000/-,	The whole of the aggregate fair market value of such property;
(B)	For a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs. 50,000/-,	The aggregate fair market value of such property as exceeds such consideration :



PROVISO TO SECTION 56(2)(x)

- **Provided** that **this clause shall not apply** to any sum of money or any property received—
 - I. From any **relative**; or
 - II. On the occasion of the **marriage of the individual**; or
 - III. Under a **will** or by way of **inheritance**; or
 - IV. In **contemplation of death** of the payer or donor, as the case may be; or
- 

PROVISO TO SECTION 56(2)(x) (CONT..)


- v. from any **local authority** as defined in the *Explanation* to section 10 (20); or

- vi. 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

- vii. from or by **any trust or institution** registered under section 12A or section 12AA; or



PROVISO TO SECTION 56(2)(x) (CONT..)

- VIII. by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clauses (iv) / (v) / (vi) / (via) of section 10 (23C);
or
 - IX. by way of transaction not regarded as transfer under clauses (i) / (iv) / (v) / (vi) / (via) / (viaa) / (vib) / (vic) / (vica) / (vicb) / (vid) / (vii) of section 47;
or
 - X. from an individual by a trust created or established solely for the benefit of relative of the individual.
- 

EXPLANATION TO SECTION 56(2)(x)

- For the purposes of this clause, the expressions
- "assessable",
- "fair market value",
- "jewellery",
- "property",
- "relative" and
- "stamp duty value"
- shall have the same meanings
- as respectively assigned to them in the *Explanation* to clause (vii).



MEANING OF THE TERMS AS MENTIONED IN EXPLN.
TO SECTION 56(2)(x) IN REFERENCE TO CLAUSE (vii)

- a) "assessable" shall have the meaning assigned to it in the *Explanation 2* to section 50C (2);
- b) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;
- c) "jewellery" shall have the meaning assigned to it in the *Explanation* to Section 2(14)(ii);



MEANING OF THE TERMS AS MENTIONED IN EXPLN. TO SECTION 56(2)(x) IN REFERENCE TO CLAUSE (vii)

d) "**property**" means the following capital asset of the assessee, namely:—

- i. immovable property being land or building or both;
- ii. shares and securities;
- iii. jewellery;
- iv. archaeological collections;
- v. drawings;
- vi. paintings;
- vii. sculptures;
- viii. any work of art; or
- ix. bullion;



MEANING OF THE TERMS AS MENTIONED IN EXPLN.
TO SECTION 56(2)(x) IN REFERENCE TO CLAUSE (vii)

e) "relative" means,—

(i) in case of an **individual**—

- A. spouse of the individual;
- B. brother or sister of the individual;
- C. brother or sister of the spouse of the individual;
- D. brother or sister of either of the parents of the individual;
- E. any lineal ascendant or descendant of the individual;
- F. any lineal ascendant or descendant of the spouse of the individual;
- G. spouse of the person referred to in items (B) to (F); and

(ii) in case of a **Hindu undivided family**, any member thereof;



MEANING OF THE TERMS AS MENTIONED IN EXPLN.
TO SECTION 56(2)(x) IN REFERENCE TO CLAUSE (vii)

f) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;



SECTION 56(2)(X)- COMMENTS

- New entities caught – AOP / BOI / AJP / widely held companies
- Earlier 56(2)(vii) only dealt with shares of a closely held company and applied only to a firm / closely held company
- Now it applies to all types of 'share' and other 'properties' as defined in Explanation (d) to 56(2)(vii) : shares & securities, jewellery, archaeological collection, drawing, painting, sculpture, work of art or bullion
- Potential double taxation 50C/50CA/43CA vs 56(2)(x)



SECTION 56(2)(X)- COMMENTS

- Certain transactions exempt under section 47 are exempt [47(i)-HUF partition/47(iv)/47(v)/47(vi)-amalgamation/47(via) foreign company amalgamation /47(viaa)- banking amalgamation/47(vib)-demerger/47(vic)-foreign demerger/47(vica)co-op bank/47(vicb)/47(vid)/ 47(vii)]
- Other transactions though exempt under sec 47 are covered
- If tax is suffered, stepped cost benefit is available under sec 49



Section 56(2)(x) – Receipt

Income triggers only upon “receiving”

- 1. Actual receipt v. constructive receipt**
- 2. Receipt v. deemed receipt [sections 7 and 198]**
- 3. Receipt v. Accrual/arisal/Deemed accrual/arisal**
- 4. Does sec 56(2)(x) override section 5(2) as latter is made subject to provisions of the Act? Sedco Forex 399 ITR 1**
- 5. Is NR/NOR/R receiving abroad outside tax net?**
- 6. Section 9 is inapplicable : Section 9(1)(i) :**
 - a) Income from Business connection – [getting business gifts as cash or business perks
 - b) Income from a source of income in India – Is an Indian donor a source in India

Section 56(2)(x) – Receipt

Indirect transfer under Explanation 5 to section 9(1)(i) v.
Section 56(2)(x)

Receive



Receipt



Constructive



Actual



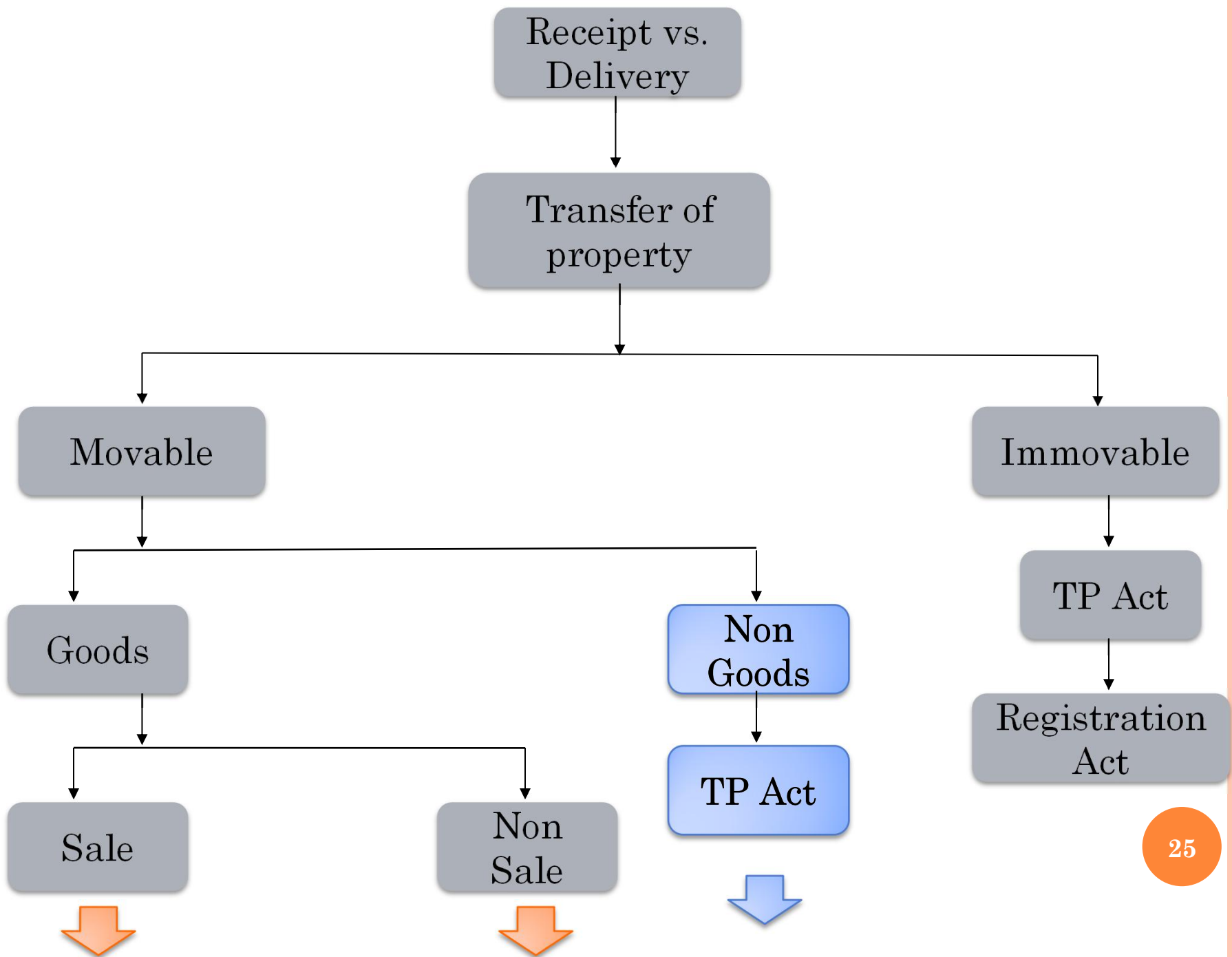
Deemed

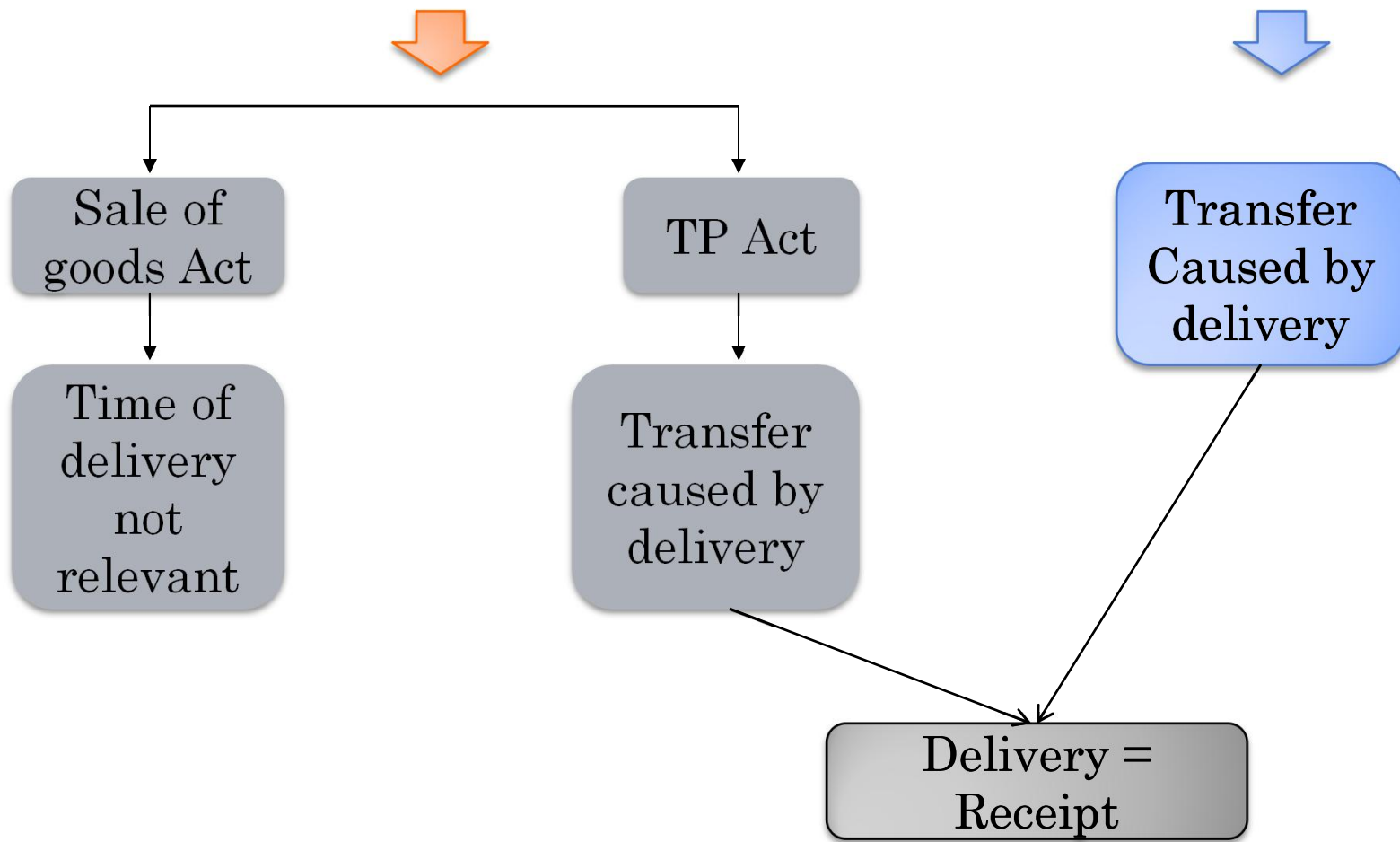
1. Agent receiving
2. Creditor receiving
3. Banker receiving
4. Direct credit to bank account
5. Book adjustment
6. Credit in books
125 ITR 525 SC
44 ITR 720 SC

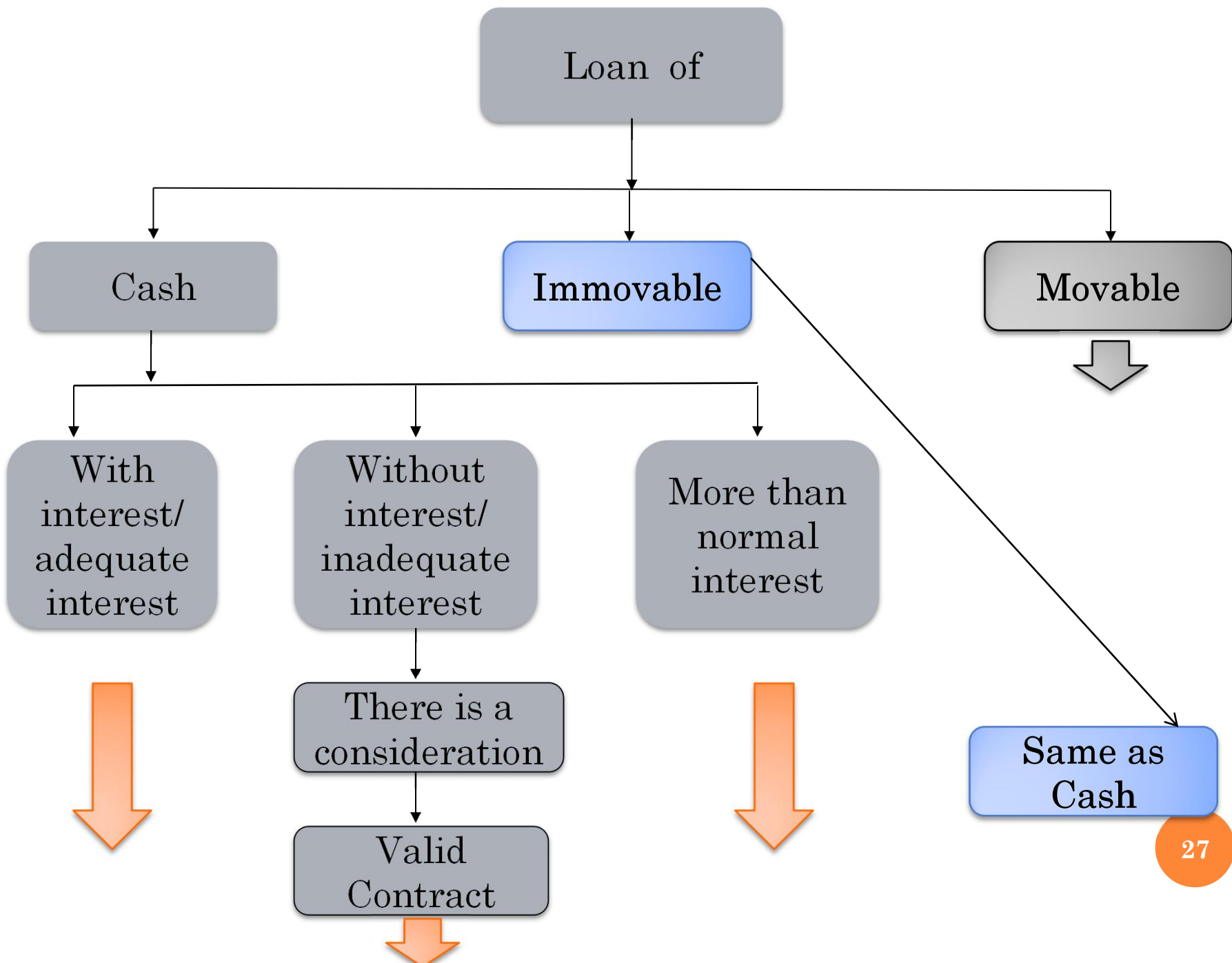
1. Section 7 & Sec 198
2. No other provision

Notes:

- 1. Receipt from any person/persons – Suggests plurality**
- 2. Giver vs. taker**
- 3. Self giving is not a receipt**









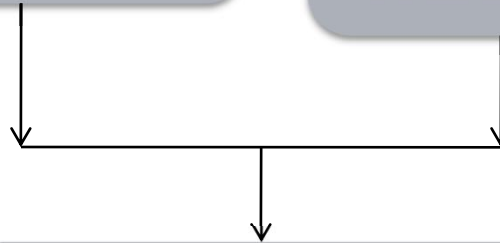
Case of
adequate
consideration



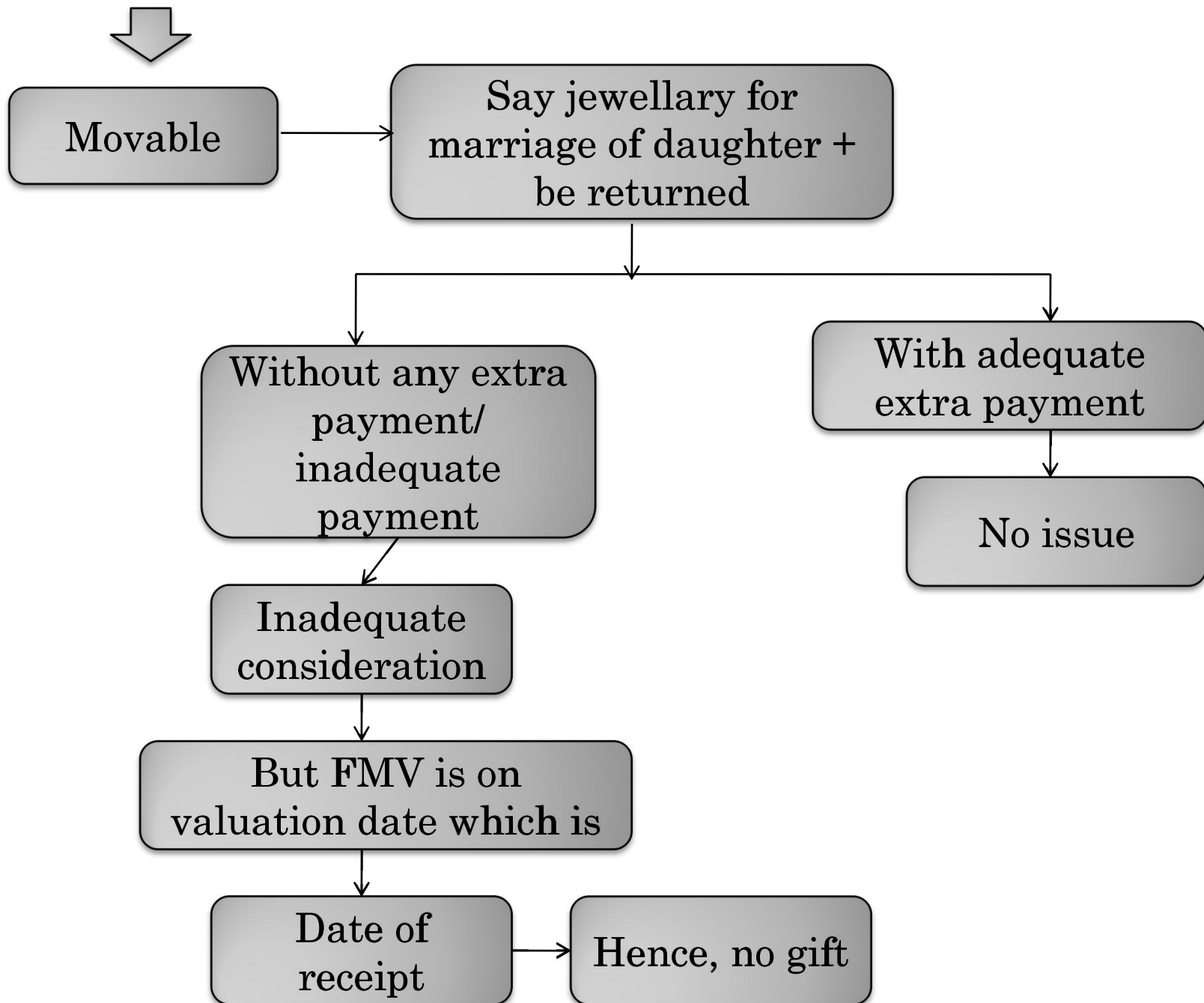
Case of
inadequate
consideration



Case of reverse
inadequate
consideration



No issue as inadequate
consideration is not
dealt with by Sec 56
(2)(x)(a)



Notes:

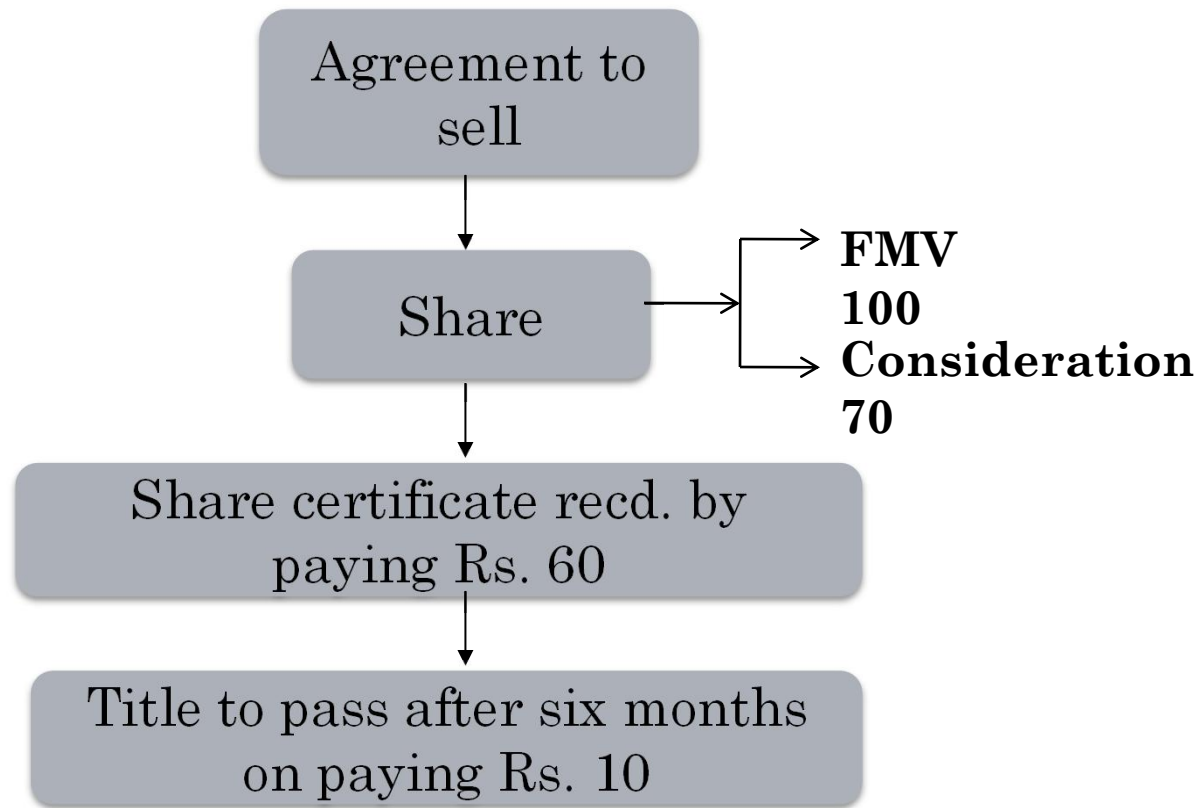
1. Creation vs. receipt/ Possession vs. receipt/ Conversion vs. receipt
2. Can a non legal entity like HUF receive?
3. In a lending example

Lender's act = Borrowers act

L1 To lend

B1 to return
B2 to pay interest

B1 & B2 cannot be
vivisected as attaching to
different transactions



Section 56(2)(vii) – Consideration

1. Consideration is to be as understood in Indian Contract Act : Tata Yodogawa v. CIT 335 ITR 53 Jharkhand

2. Section 2(d) of Contract Act

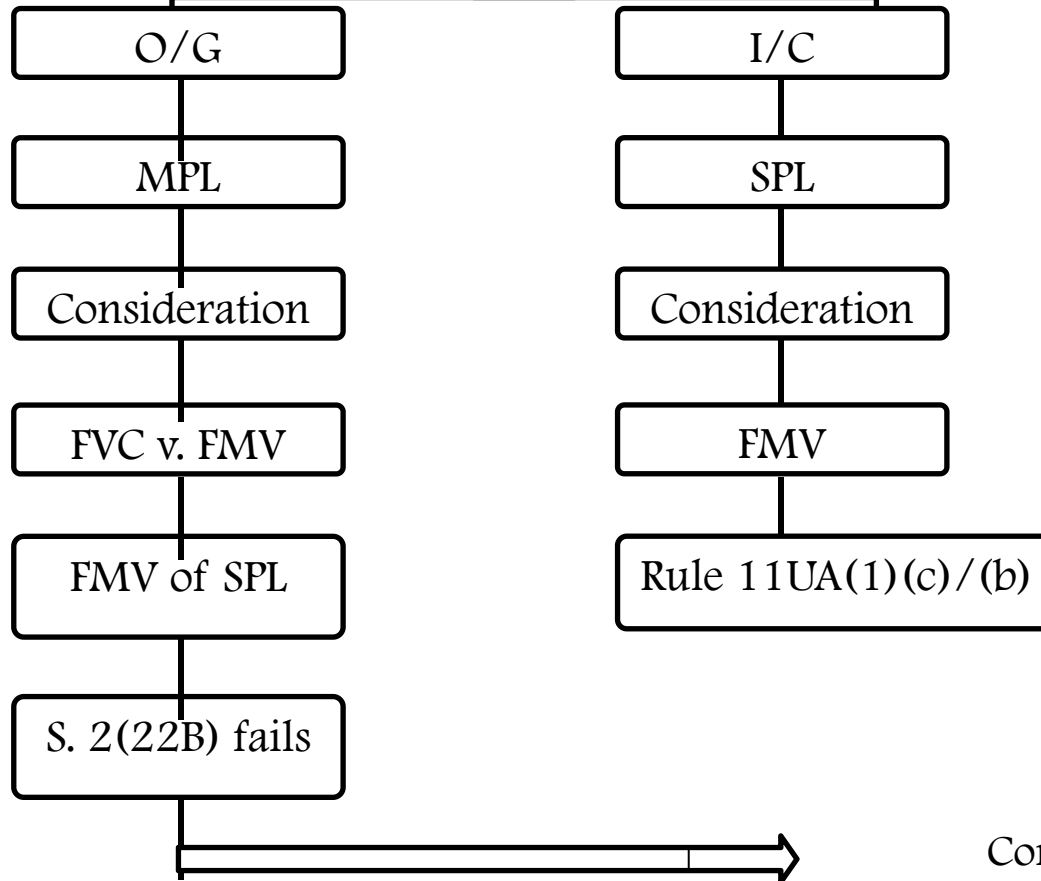
When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

3. Mr Purvez A Poonawalla Vs ITO 138 TTJ (Mumbai) 673 : Assessee has abstained from contesting will and this constitutes consideration for payment by other person. Such receipt is not without any consideration.

Section 56(2)(vii) – Consideration

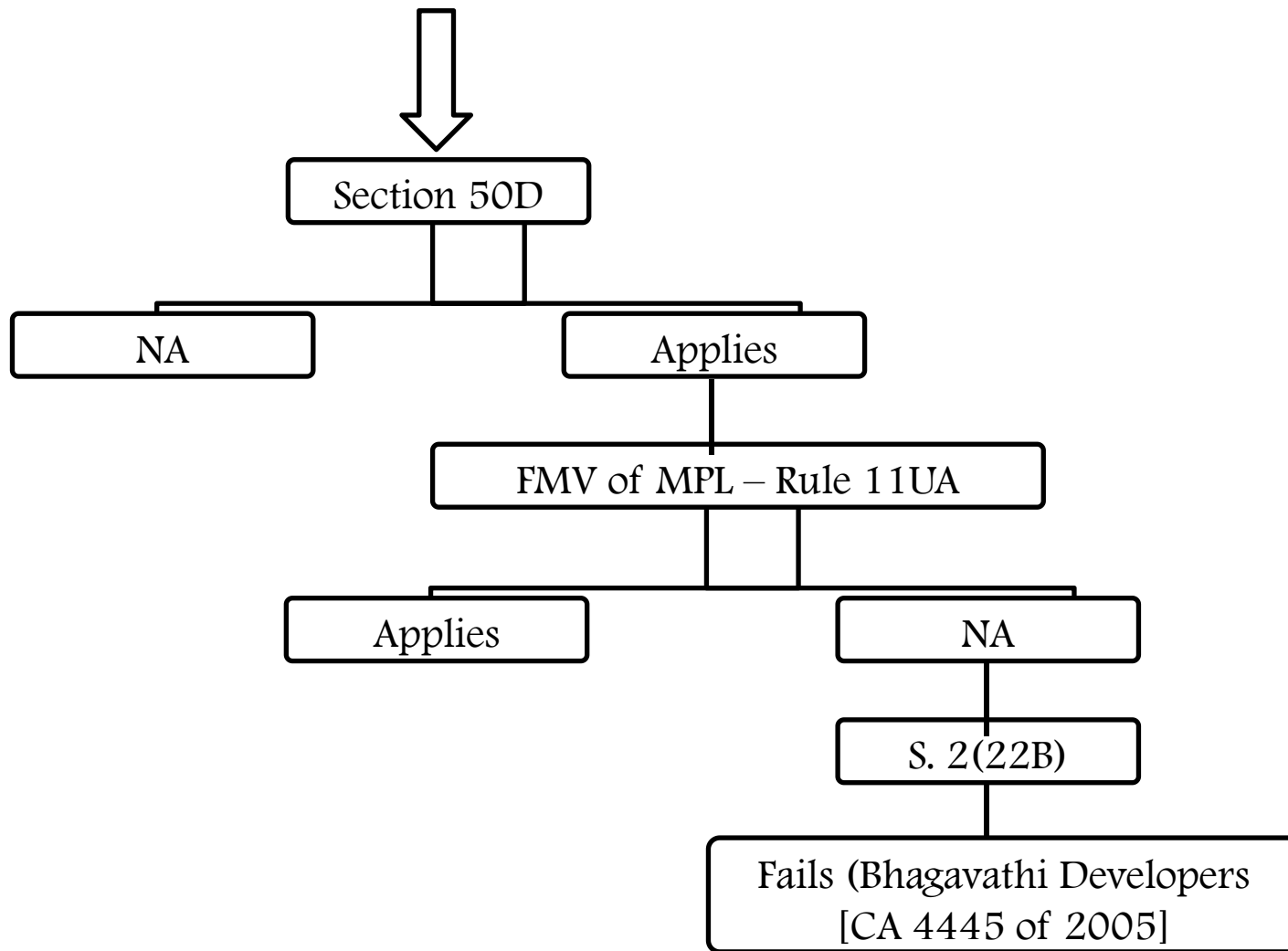
1. Consideration and FMV are two essential pre-requisites for application of this section [PNB Finance 307 ITR 75 SC]
2. Exchange of one ‘property’ for another ‘property’ of the same kind or of a different kind. Eg Exchange of share of a private limited company with share of another private limited company
3. Exchange of one ‘property’ for another ‘non property’. Eg Exchange of share of a private limited company with an iPhone

A exchanges shares in MPL with shares in SPL of B



Continued....





A exchanges IPRs with shares in SPL of B

O/G

IPR

Consideration

FVC v. FMV

FMV of SPL

S. 2(22B) fails

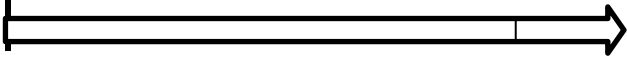
I/C

SPL

Consideration

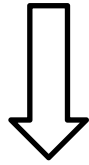
FMV

Rule 11UA(1)(c)/(b)



Continued....





Section 50D

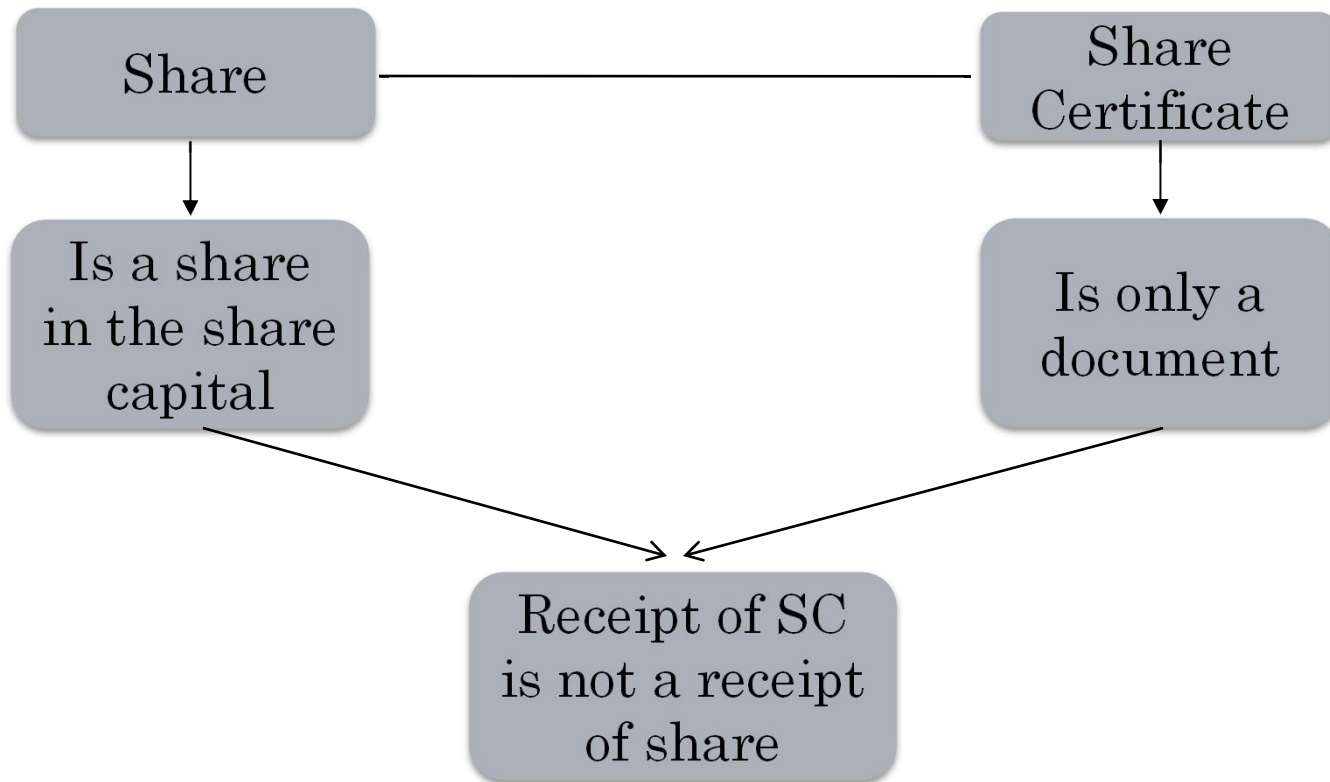
FMV of IPR

S. 2(22B)

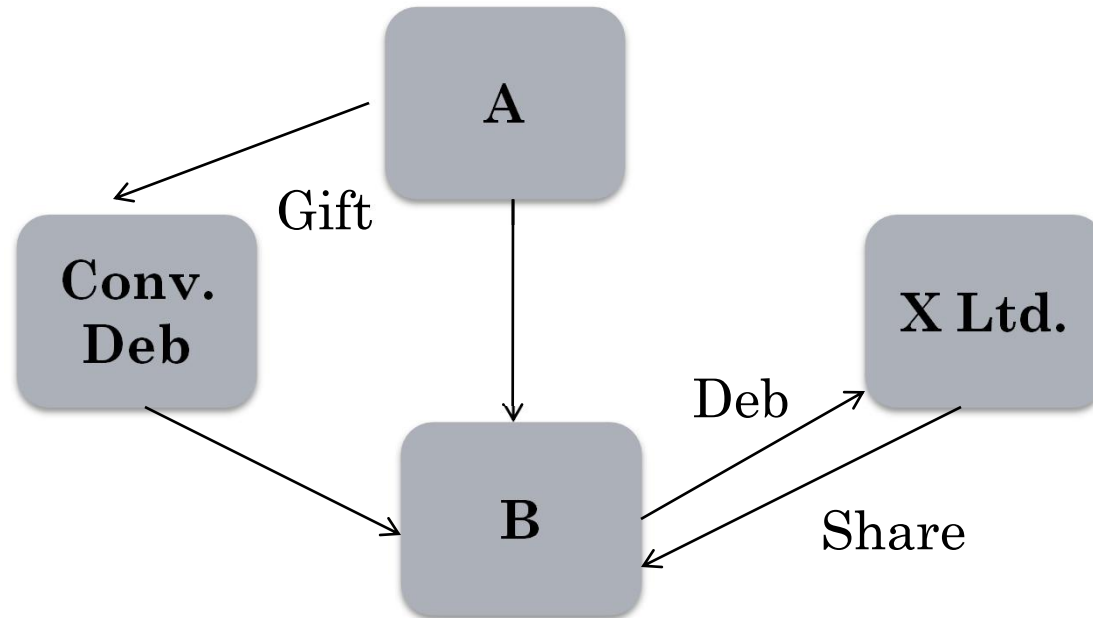


Some more examples

1. Purchase of property where consideration is discharged in both cash and in kind. Eg Exchange of share of a private limited company with land and cash
2. Exchange of IPRs for shares
3. Section 45(3) for partner and section 56(2)(x) for the firm
4. Receipt by partner towards his pre-existing right is for a consideration : Vasumati Prafullachandra TS-599-ITAT-2017 Pune
5. Purchase of a composite property for a lumpsum cash consideration Eg Slump purchase/exchange of a business undertaking



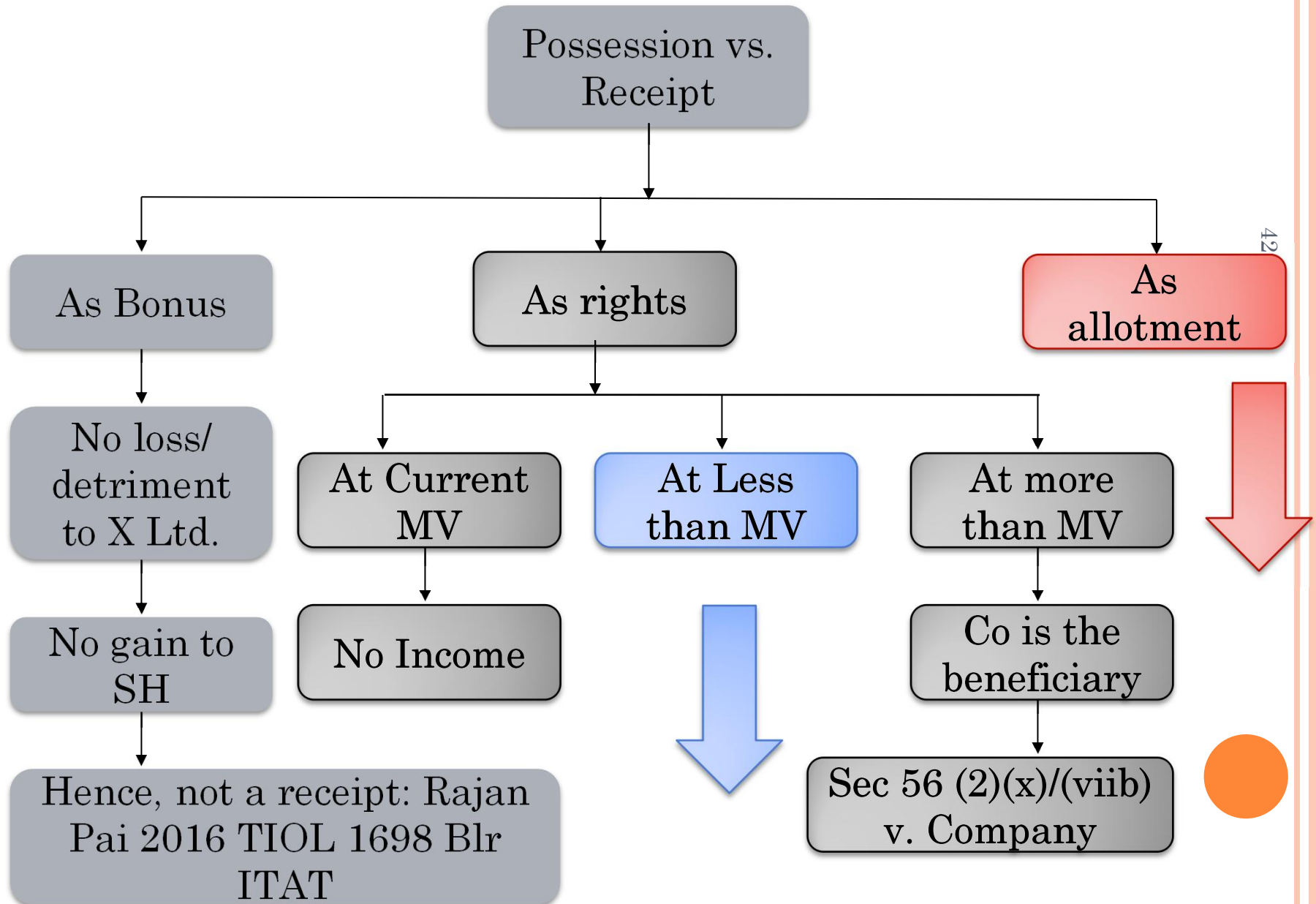
GIFTS OF CONVERTIBLE DEBENTURE

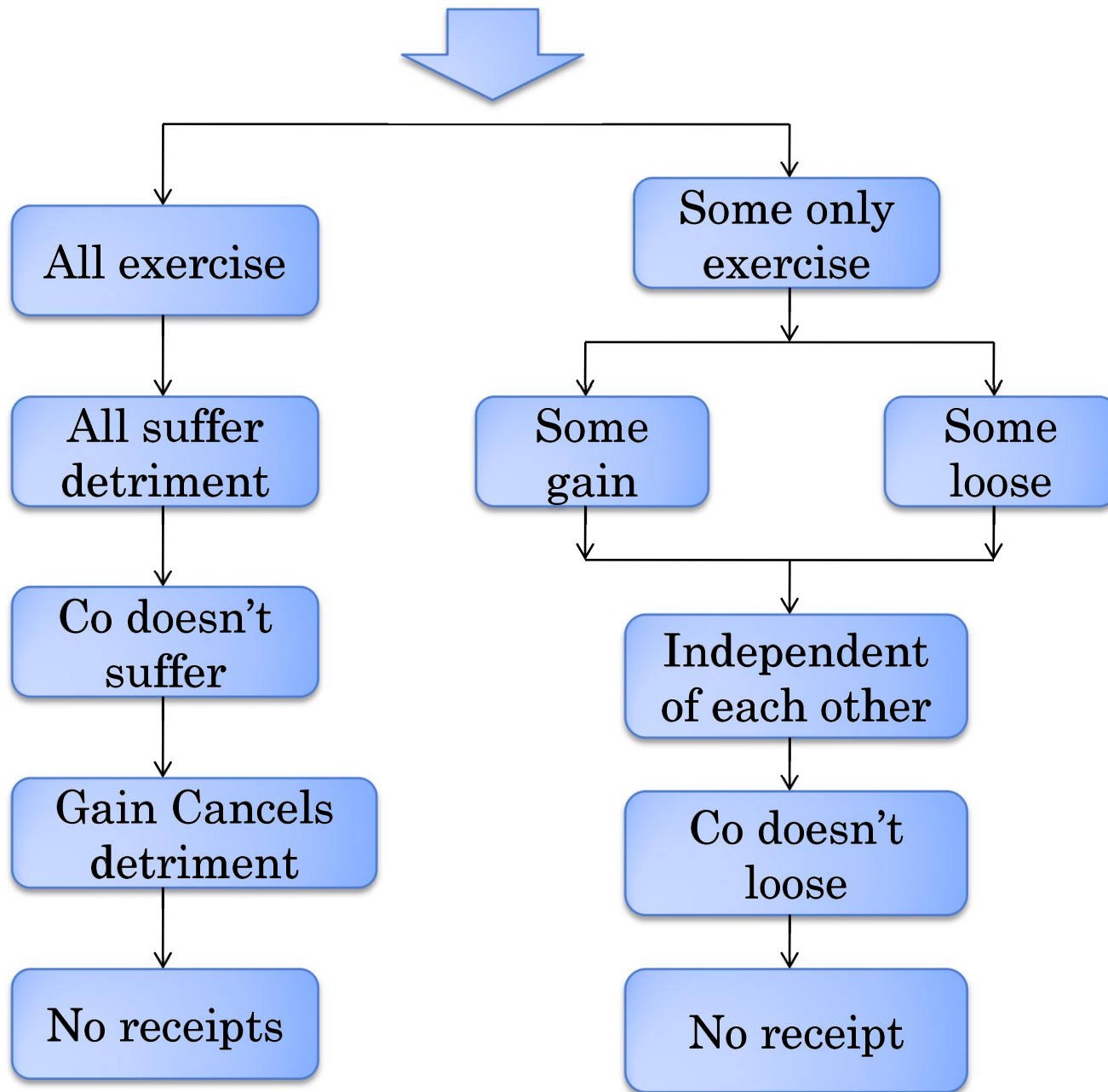


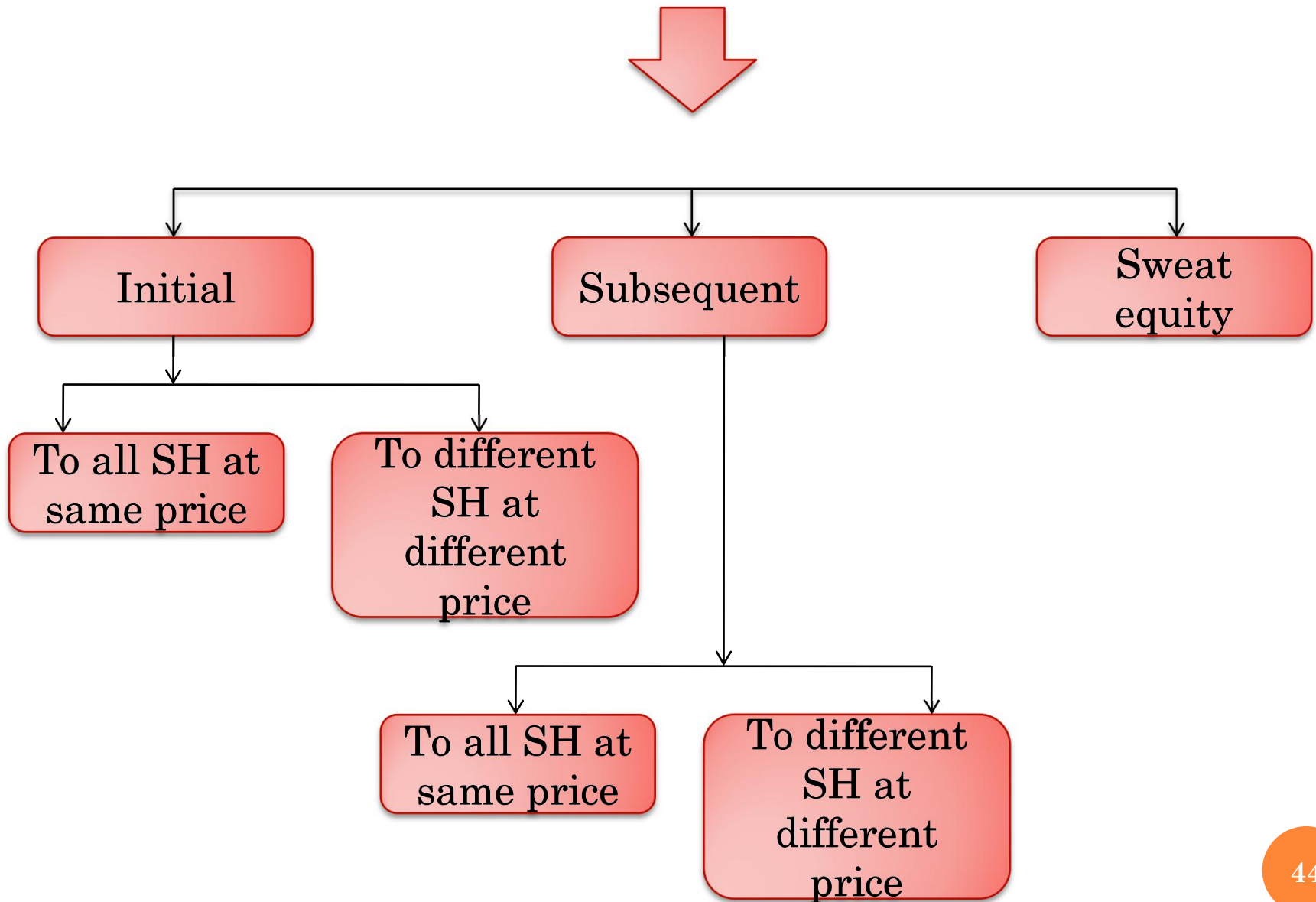
- 1. A to B = Transfer of debenture which is also a property**
- 2. B & X Ltd. = 1) Exchange of debenture for share being for a consideration.**
 - 2) Value of asset on date of receipt is relevant.**
- 3. Although exempt under section 47(x), taxable under sec 56(2)(x) in the hands of both B and X Ltd.**
- 4. B can argue on principles of Khodayas 307 ITR 312 SC and X Ltd., and on impossibility of it lending to itself**



CREATION VS. RECEIPT







Notes:

When share are allotted, shares are created . Shares are created in the hands of SH upon allotment. Hence there is no receipt. If shares are understood as created ahead of receipt, the Co. may own the share for a while which is prohibited/ impermissible.

Receipt pre supposes an existing property. Use of words, 'receives from any person' makes this obvious. 'From any person' is different from 'of any person.'

**Khodaya 307 ITR 312 SC v.
Sonia Gandhi 407 ITR 594**

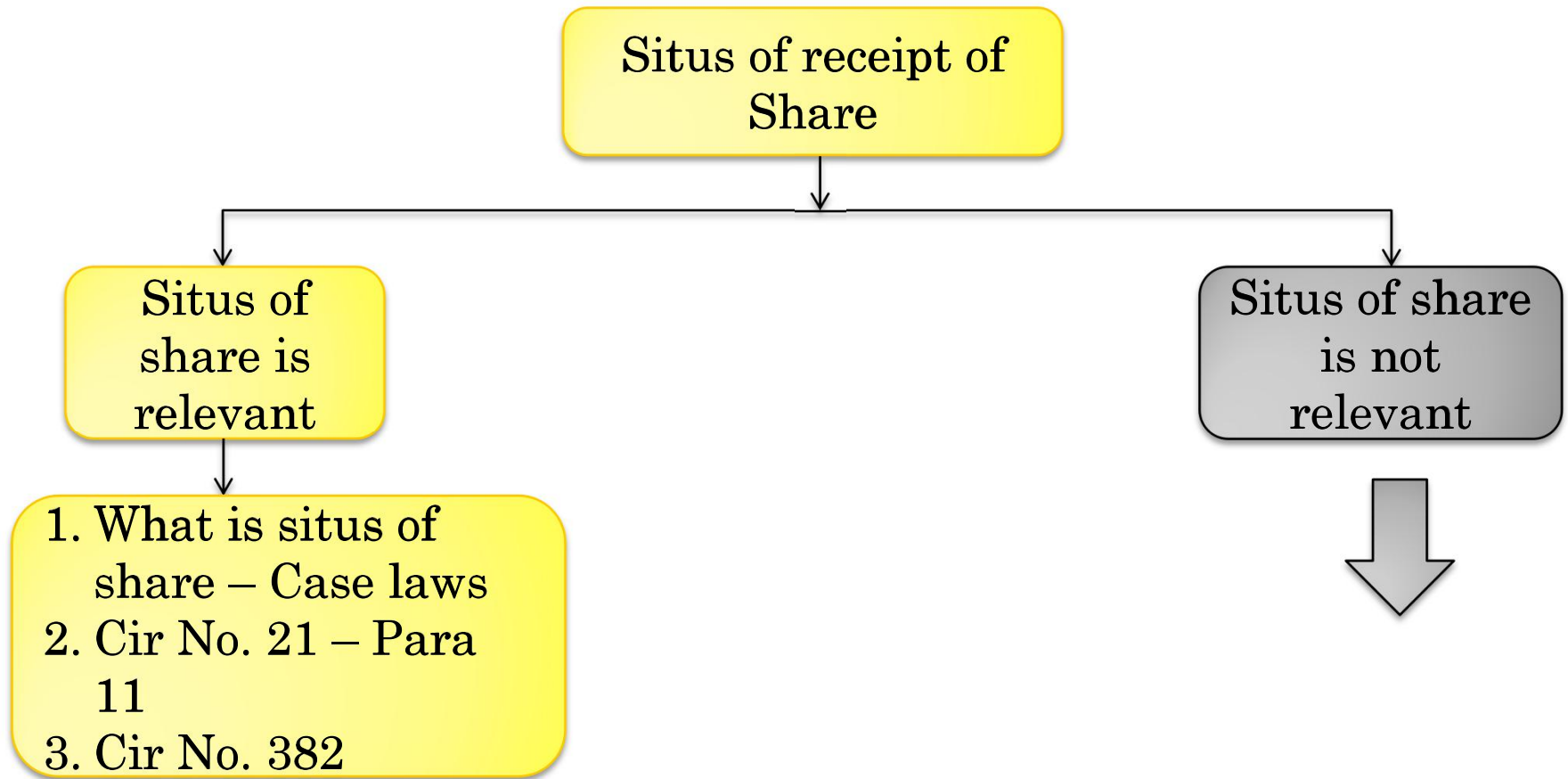
Shares

1. When rights issue was made, only assessee picks up and others do not respond, as all are relatives, section 56(2)(x) is not applicable : Kumar Pappa Singh 174 ITD 465 Visakha :
2. Only when a higher than a proportionate allotment is received by a shareholder the provisions of section 56(2)(vii) get attracted“ : **Subhodh MenonTS-718-ITAT-2018(Mum)**
3. Sec. 56(2)(vii) being anti-abuse provision would not apply to bona fide business transaction, notes that in case of assessee, rights issue and share allotment was done to comply with loan agreement covenant as a matter of business exigency, **Subhodh MenonTS-718-ITAT-2018(Mum)**

Shares

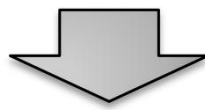
1. *Surrender of the rights of the close relatives in favour of the another close relative is covered for exemption u/s 56(2)(vii)(c) of the Act : 101 Taxmann.com 122 SRI KUMAR PAPPU SINGH*
2. Section 56(2)(vii)(c) does not apply to bonus shares –[2016-TIOL-1698-ITAT-BANG](#) **DCIT Vs Rajan Pai**
3. ITAT explains that “In the case of amalgamation, it cannot be said that there is a transfer of shares as there is only statutory vesting of the assets by virtue of the Scheme” **Aamby Valley TS-80-ITAT-2019(DEL)**





1. R. Viswanthan v. Rukun-ul-Mulk Syed Abdul Wajid AIR 1963 SC 1 : situs depends on place where register of members is kept or the place where company issuing the shares is resident

2. Sir Lawrence Collins, Sweet & Maxwell 2006 Edition, Vol 2




1. Delivery of SC o/s India makes receipt o/s India
2. See Sec 9(1)(iv) – Dividend paid by Indian Co. o/s India
 - There is no need to deem if shares are considered situated in India
 - Conflict b/w Sec 9(1)(i) vs. Sec 9(1)(iv)
 - Asset/ SOI in India vs. Dividend paid o/s India
3. Depository situation – ADR/ GDR – Fungible
 - Sec 47(viia) providing for exemption need not make one think it is otherwise taxable
 - Sec 47 (viia) is giving only obvious exemption like security lending/ gift

Other movables – Some issues

1. Allotment of debenture at a discount - in the hands of the allottee
2. Bullion [uncoined mass of gold or silver] v. gold or silver coins



Cash gifts – Some issues

1. Any sum of money – Meaning of money
 - Does it include forex?
 2. Is reimbursement of personal expenses covered?
 3. Whether sum paid to third party in respect of personal obligation is covered? 223 ITR 271 SC
 4. Whether credit sale and subsequent write off is covered? 404 ITR 1 SC
 5. Is making a FD/gifting of FD by donor covered?
 6. Are NSC/KVP etc covered?
- 

Cash gifts – Some issues

7. Whether loan is covered?

- a) Repayment obligation is itself a consideration :
Chandrakant H Shah v. ITO 3 ITR (Tri) 398 Mum
- b) Loans are not covered : CIT v. Saranapal Singh
(HUF) 237 CTR 60 (P&H): [2011] 42-B BCAJ 586
- c) Loan given as such but later converted into gift by
way of waiver
- d) In such year of loan conversion, there may not be
actual receipt – Is there a constructive receipt? 223
ITR 271 SC

Cash gifts – Some issues

8. Are the following covered?

a) Scholarships exempt under sec 10(16)

b) Awards/rewards - both covered under sec 10(17A) or otherwise

c) Public help proceeds

d) Proceeds of benefit match: cbdt circ 447 following GR Vishwanath 29 ITD 142 Bang and Abhinav Bindra 28 ITR Tri 376 Delhi : Sameer Sudhakar Dighe 50A BCAJ 638 Mum

e) Unequal distribution on dissolution of Firm/AOP/HUF : *Getti Chettiar's* case (1971) 82 ITR 599 (SC)

Cash gifts – Some issues

8. Are the following covered?

- f) Gifts by book entries - CIT v. RS Gupta 165 ITR 36 SC**
- g) Compensations received from Government on accidents/deaths/floods**
- h) Sale of any goods/property for more than FMV
–In the hands of seller : is there a receipt of cash to the extent of excess over FMV?**
- i) Subsidy – particularly capital subsidy [sec 2(24)(xviii)]**


Cash gifts – Some issues

9. Value of such sum

- a) What is the value of a sum of money
- b) Is it the money itself or its economic value?
- c) As Rule 11UA does not provide for valuation, should this clause fail?



Cash gifts – Some issues

10. “Any sum of money” v. “aggregate value”
 - a) Does ‘any sum’ indicate each sum or various sums? – Meaning of ‘ANY’
 - b) Does ‘aggregate value’ refer to each sum?
 - c) “Any person or persons” is not followed by “any sum or sums”
 - d) Section 40A(3) and section 269SS have made explicit provisions taking care of aggregate
- 

Cash gifts – Some issues

- 11. Cash gifts and section 269ST**
- 12. Gifts and transfer pricing**
- 13. Secondary adjustment and gift**
- 14. Gifts v. clubbing**
- 15. Cash gifts v. Cash credits**
- 16. Loan waiver : Mahindra and Mahindra 404 ITR 1 SC – loan waiver amounts to cash receipt and hence sec 28(iv) is not applicable para 11,13**



Cash gifts – Some issues

17. Cash received by a retiring partner much above his balance in capital account

18. Paras D. Gundecha 62 Taxmann.com 170 Mum: sum recd as family settlement is not a gift : 155 ITD 880

19. Corporate subventions



Immovable – Some issues

- 1. In the absence of word 'aggregate', Rs.50,000 limit is applicable with reference to each and every immovable property**
- 2. If stamp duty value > Rs.50,000, no initial relief of Rs.50,000 is available**
- 3. Transfer for inadequate consideration is also covered**
- 4. Transferor comes under Sec 50C**



Immovable – Some issues

Receipt of immovable property

- **Only upon registration?** Gurbux Singh v. Kartar Singh [2002] 254 ITR 112 (SC)
- **What about transactions referred to in sec 2(47)(v) and (vi)**



Immovable – Held as stock

- Sec 56(2)(x)(b) refers to ‘any immovable property’
- Explanation (d) defines property as certain capital assets which are named
- Sec 56(2)(x)(b) should have referred to ‘any property being immovable property’
- Inappropriate wording could rope in immovable property held as stock
- Although, this is not the intention as per Memorandum to Finance Bill 2010 [Risk : Trilokchand TS-8-ITAT-2019 Jaipur

Immovable – Some issues

Some interesting questions

- Is landlord liable when tenant builds on landlord's land which will revert back to landlord upon expiry of lease term?
- Will immovable property include interest/rights in land and building?
- Immovable property is defined as land or building or both
- Explanation 2(a) to sec 35(2), Explanation (a) (i) & (ii) to section 35D, Section 54D, section 54G and section 54GA , Explanation to section 269UA(d)(i) provide inclusion of rights, leaseholds, interests etc.



Immovable – Some issues

- If any immovable property is received in a slump sale of business undertaking, is section 56(2)(x)(a) applicable?
- **Will the answer be different in the case of a slump exchange?** Bharat Bijlee 2014 TIOL 730 Bby v. Srei Infrastructure Finance Ltd 20 taxmann.com 476 (Delhi)
- **JDA and implications of section 56(2)(x) on landlords and developers**



Agricultural Land

1. Section 2(1A) read with Explanation 1
2. Tax on recipient and not on the giver and hence sec 2(1A) may not apply
3. Concept of 'derived from' used in section 2(1A) is alien to gift
4. Property can mean only capital asset and should not include stock in trade and property not falling under sec 2(14)
5. Sri Trilok Chand Sain [\[TS-8-ITAT-2019\(JPR\)\]](#) Jaipur ITAT holds agricultural lands are covered under the ambit of Sec. 56(2)(vii)(b) taxability, rejects assessee's stand that agricultural lands being excluded as capital assets u/s 2(14) cannot come under the purview of Sec. 56(2)(viib)

Immovable – Some issues

- 1. Purchase of a composite property for a lump sum consideration may enable escaping the tax net. Eg : Purchase of land, standing crops, building, tools, irrigation system etc. for a lumpsum consideration**
- 2. Shri Satendra Koushik TS-243-ITAT-2019(JPR Jaipur ITAT rules that Sec.56(2)(vii)(b)(ii) cannot be invoked with respect to land purchased by assessee-individual (engaged in real estate business), which is part of his stock-in-trade**
- 3. Land, building or both v. Interests in land like easement rights, leasehold rights, tenancy rights etc.**



Relative

Subodh Gupta (HUF)(TS-10-ITAT-2018(DEL) the proviso to Sec. 56(2)(vii) provides definition of 'relatives' in case of individual and HUF separately, clarifies that the 'relatives' mentioned with respect to an individual cannot be considered when the recipient of the property is an HUF; ITAT observes that Karta's mother was not member of assessee-HUF and accordingly not covered by the 'relative' definition for HUF, thus rejects assessee's stand that gift from karta's mother amounts to gift from relative; Also rejects assessee's stand that where all the members of the HUF are individuals related to the donor, then they very much also fall within the definition of the term 'relative' on collective basis



In contemplation of death

F. Susai Raju 163 ITD 533 Chennai : Merely because gift was given by donor at time of illness, or it was occasioned while donor was undergoing treatment, would not by itself make it a gift in contemplation of death



Trusts

- Charitable trust may get exemption de hors section 11 in respect of voluntary contribution
- Receipt in the capacity of beneficiaries on dissolution of trusts cannot be taxed u/s 56(2)(vi) as the money received is not "without consideration" **Mrs. Sandhya A. Pratap (2017) TaxCorp(LJ) 12218 (ITAT)**
- Exemption in respect of receipt from trust would not apply to shares allotted by section 25 company : Sonia Gandhi 407 ITR 594 Delhi para 65

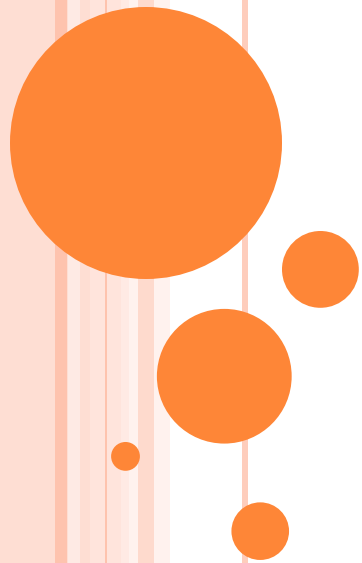


Trusts

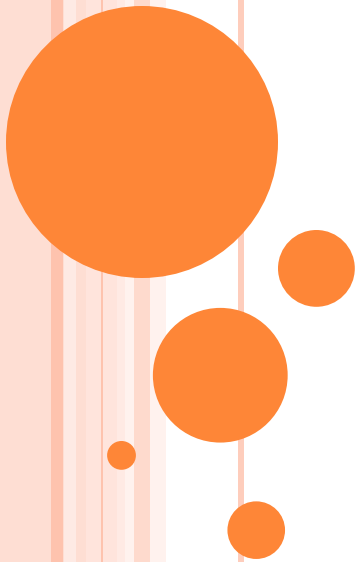
- Relying on SC ruling in Managing Trustees, Nagore Durgaha 57 ITR 321 it was held that “what was received by the assessee as a beneficiary from the thirteen trusts were nothing but his own income in his status as a beneficiary of the said trust.... the character of the income in the hands of the beneficiary takes the same colour as that of the income in the hands of the trust : [2016-TIOL-964-ITAT-BANG](#) Sharon Nayak Vs DCIT



CASE STUDIES



*TOPIC UNDER DISCUSSION: GIFTS
UNDER SECTION 56(2)(X) –
TAXABILITY THEREOF*



CASE STUDY I:

- Mr. N gifts Rs. 1,00,000 from his first salary to his uncle Mr. U (father's brother) in appreciation of the help and support rendered by the uncle.

Uncle



Nephew



ANSWER TO CASE STUDY I:

1. Relative as per sec 56(2)(vii) – Explanation (e) (i) read with Explanation below sec 56(2)(x)
2. Uncle is a relative of nephew [sub clause D] but nephew is not a relative of uncle



CASE STUDY II:

- Mr. X, a close friend of Mr. Y, on the occasion of marriage promises to gift a property to him. Mr. X followed up on this promise and delivered the property to Mr. Y, a year after his marriage.



ANSWER TO CASE STUDY II:

1. Mere promise to gift is not contract as it is without consideration and such contract is not enforceable.
2. When a gift is made much after the event of marriage, the same cannot be related to an unenforceable promise made on the occasion of marriage.
3. What is the occasion of marriage – time span [CGT v. Bandlamudi Subbiah 123 ITR 509 AP under the Gift Tax Act]



ANSWER TO CASE STUDY II (CONT):

4. If Y alters his position on the basis of such promise, is X bound to fulfil his promise. Doctrine of Promissory Estoppel, 108th Report of Law Commission who proposed section 25A in the Contract Act, Motilal Padampat 118 ITR 326 SC. In such case, it may relate back to the occasion of marriage.
5. Is such altering a consideration for X? If such altering is at the desire of X, it becomes consideration under sec 2(d) of Indian Contract Act. In the case of cash gifts, the moment there is consideration, it is outside sec 56(2)(x). Unlike in the case of immovable property and other property, the question of adequate consideration does not arise in the case of cash gift.



CASE STUDY III:

- Mr. X received Rs. 2,00,000 in aggregate as 'shaguns' at the time of his daughter's marriage. The gifts were received from friends and relatives. Would the implications differ in case the amount received is subsequently transferred to the account of his daughter whose marriage was solemnised?



ANSWER TO CASE STUDY III:

1. Is daughter's marriage covered in Proviso [clause II]
2. Clause II uses 'marriage of the individual' and not 'marriage of assessee'. Marriage of *the individual v. an individual*. **Does this make a difference?**
3. Clause IV of the proviso uses *payer or donor* and not individual



ANSWER TO CASE STUDY III (CONT):

4. Earlier, section 56(2)(vii) applied only to individual and HUF. Now, section 56(2)(x) applies to any person. Applying the spirit of earlier provision, one view is that unless it is on the occasion of the marriage of the assessee, the exemption is not available.
5. Even if X claims on an aggressive note, the receipts as exempt even on the occasion of his daughter's marriage, farther the degree of relationship, more remote is the possibility of acceptance of his claim.

ANSWER TO CASE STUDY III (CONT):

6. In any case, whatever X receives from his relatives, would be exempt independently as per Proviso – clause I.



ANSWER TO CASE STUDY III (CONT):

7. Aggregation

- a) Should sec 56(2)(x)(a) limit apply per receipt or per donor or per donor per day or per donor per year or all receipts from all donors in a year?
- b) For eg, X receives from his friend Y two gifts, Rs.30,000 on the occasion of his 75th birthday and Rs.33,000 on the occasion of his 50th wedding anniversary.



ANSWER TO CASE STUDY III (CONT):

- c) The critical terms in section are :
- In any previous year
 - From any person or persons
 - Any sum of money
 - The aggregate value
 - Whole of the aggregate value



ANSWER TO CASE STUDY III (CONT):

d) In support of aggregation

- Conservative view
- Mischief principle – KP Verghese 131 ITR 597 SC
- Check the change in language from sec 56(2)(v) to sec 56(2)(vi) to sec 56(2)(vii) – Taxation Amendment Act 2006 with effect from 1.4.2007. Circular 1 of 2007 which explains the amendment is silent on the nature of change.



ANSWER TO CASE STUDY III (CONT):

e) In support of non aggregation

- Each receipt is a source
- Clauses (b) and (c) use ‘any immovable property’ and ‘any property’ on an individual basis
- Proviso – clause I uses ‘from any relative’ supports separate receipt theory. For eg., A receiving first gift from her husband and second gift from her ex husband. Each receipt has to be individually seen.



ANSWER TO CASE STUDY III (CONT):

- Language adopted in sections 269SS v. 269ST v. 56(2)(x)
 - ‘Any sum’ v. Amount or aggregate in 269SS
 - Specified sum and amount of specified sum in 269SS
 - An amount of two lakh rupees or more



ANSWER TO CASE STUDY III (CONT):

- Meaning of sum
- Page 4552 of Advanced Law Lexicon – P Ramanatha Aiyar – 3rd Edition –
 - When used with reference to values “sum” imports a sum of money. (See also 27 LJ Ex. 31; 7 Ex. 58)
 - A quantity or amount of money [S. 57 (a) (1), T.P. Act (4 of 1882); S. 48 (b) , Indian Partnership Act (9 of 1932)]
 - In suit on the note, the “SUM DEMANDED” is not only the principal of the note, but also the interest of the same.
 - In acts relating to jurisdiction, “SUM IN CONTROVERSY” has precisely the same meaning as “sum demanded”. The demand of a sum is the sum in controversy

ANSWER TO CASE STUDY III (CONT):

- Meaning of sum (cont..)
- Page 1435 of Black Law Dictionary –
 - In English law, a summary or abstract; a compendium; a collection. Several of the old law treatises are called “sums.” Lord Hale applies the term to summaries of statute law.
 - The sense in which the term is most commonly used is “money”; a quantity of money or currency; any amount indefinitely, a sum of money, a small sum, or a large sum. U.S. v. Van Auken, 96 US. 366, 368, 24 L.Ed.852



ANSWER TO CASE STUDY III (CONT):

- Meaning of Amount:
- Page 244 of Advanced Law Lexicon – P Ramanatha Aiyar – 3rd Edition –
 - The substance or result of a thing; the total or aggregate sum. Quantity; to come upto, resulting equaling in effect.
 - The ‘amount’ in the dispute in the appeal under S. 87(b) of the Act, means the amount which was in dispute when the appeal was filed. Cantonment Board , Meerut v. St John’s School, AIR 202 All 313,321, para 22 [Cantonment Act (2 of 1924), S.87 (b)]



ANSWER TO CASE STUDY III (CONT):

- Meaning of Amount(Cont..):
- Page 83 of Black Law Dictionary
 - The whole effect, substance, quantity, import, result, or significance. The sum of principal and interest



ANSWER TO CASE STUDY III (CONT):

○ Meaning of Aggregate:

- Page 180 of Advanced Law Lexicon – P Ramanatha Aiyar – 3rd Edition
 - Entire number, sum, mass, or quantity of something; total amount; complete whole. One provision under will may be the aggregate if there are no more units to fall into that class. Composed of several; consisting of many persons united together; a combined whole. Sum total.
 - Formed by combining into a single whole or total (aggregate income).
 - An assemblage of particulars; an agglomeration (aggregate of interests).
 - To collect into a whole (aggregate the claims).
 - A collection of individual units or things, in order to form a whole. (Wharton)
 - The sum total [S. 2(o), Unit Trust of India Act (52 of 1963)]; collected into one. [S. 280X (2)(c), Income-tax-Act (43 of 1961)].

ANSWER TO CASE STUDY III (CONT):

- Meaning of Aggregate(Cont):
 - Page 65 of Black Law Dictionary
 - Entire number, sum, mass, or quantity of something; total amount; complete whole. One provision under will may be the aggregate if there are no more units to fall into that class. Composed of several; consisting of many persons united together; a combined whole. See also Joinder.



ANSWER TO CASE STUDY III (CONT):

- Meaning of Aggregate amount:
- Page 180 of Advanced Law Lexicon – P Ramanatha Aiyar – 3rd Edition –
 - Under the definition of turnover in the principal Act, the aggregate amount for which goods are bought or sold is taxable. This aggregate amount includes the tax as part of the price paid by the buyer..... George Oakes (P.) Ltd. v. State of Madras, AIR 1962 SC 1037, 1043.



ANSWER TO CASE STUDY III (CONT):

- Use of 'person or persons' and 'the aggregate value' applies to receipt of a single sum from multiple persons. For e.g., multiple persons making a joint gift to the assessee



ANSWER TO CASE STUDY III (CONT):

- f) If separate receipt approach is adopted, each receipt has to be tested with the limit of Rs.50k. Gifts $<$ Rs.50k would be ignored and gifts $>$ Rs.50k would be seen if exempt under the Proviso.
- g) This is on the basis of analogy of immovable property.



ANSWER TO CASE STUDY III (CONT):

8. X in turn giving gifts to his daughter will be exempt in the hands of daughter as she is getting the same from her relative.
9. However, X cannot claim that various donors have gifted the sums to his daughter unless he proves that he is only a conduit.



CASE STUDY IV:

- ABC Ltd. has transferred authentic archaeological collection to its subsidiary XYZ Ltd. on 01-04-2017 for display on their premises, with the intent of making office spaces more creative thereby building the brand value of the group. No consideration passed from the subsidiary company to the holding company in this regard.?




ANSWER TO CASE STUDY IV:

1. Sec 56(2)(x) applies to companies from AY 17-18
2. Gifts between holding and subsidiary companies would be exempt as per Proviso XIX only in situations covered by sec 47(iv) and (v) i.e. 100% holding and recipient being an Indian company.



ANSWER TO CASE STUDY IV(CONT):

3. Gifts excluded from section 45 by virtue of section 47 but are still incomes are always covered under sec 56(2)(x). This is different from an income treated under a particular head by escaping tax thereunder. For example, gift from employee is a salary under sec 17(2)(viii). However, as per rule 3(7)(iv), gift upto rs.5k is exempt. Such gift cannot be brought under section 56(2)(x). See Nalinikant Ambalal Modi 61 ITR 428 SC.
 4. All other cases including subsidiary [not 100%], are now hit
 5. Archaeological collection is a property : sec 56(2)(x)
Explanation read with Explanation (d)(iv) to sec 56(2)(vii).
- 

ANSWER TO CASE STUDY IV(CONT):

6. Is there a consideration?

- XYZ agreeing to display the same in its premises for building the group brand is itself a consideration under sec 2(d).
- However, unlike in the case of cash gift, one has to ascertain the FMV as per Rule 11UA and compare the same with consideration to see if the consideration is adequate or not.
- Refer rule 11UA(1)(b) for valuation of artistic work.



ANSWER TO CASE STUDY IV(CONT):

- In case of bullion, which is a property, no valuation is prescribed and hence charge may fail. Sec 2(22B) defines FMV and as per which, bullion has FMV. However, one cannot use sec 2(22B) for bullion as sec 56(2)(x)(c) provides for only prescribed method of valuation.
- There is no mechanism for evaluation of consideration to see if the same is adequate or not. In the absence of such mechanism, the comparison cannot be made and hence the computation fails.



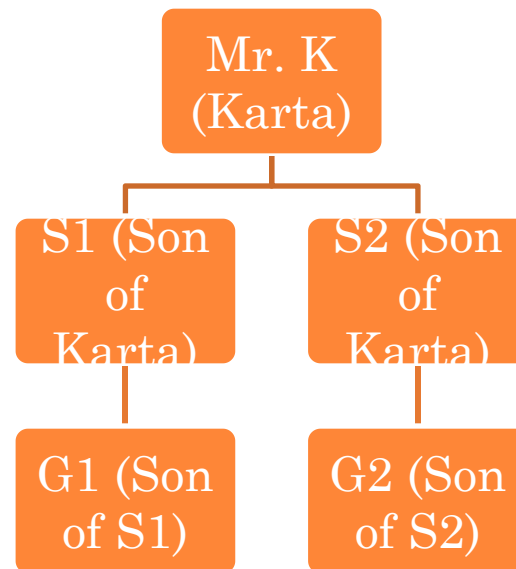
ANSWER TO CASE STUDY IV(CONT):

7. If ABC is transferring the same towards group brand building which will benefit all group companies, the same may be treated as stewardship activity for self promotion : Morgan Stanely 292 ITR 416 SC.
8. Mischief rule should not apply to stewardship activity.



CASE STUDY V:

- Mr. G1 gifts Rs. 5,00,000 to his grandfather K's HUF. The structure of the HUF is as follows:
- Would the implications be different if K, the Karta gifts Rs. 5,00,000 each to the HUF of G1 and G2, his grandsons.




ANSWER TO 1ST PART OF CASE STUDY V:

1. Relative means in the case of HUF, a member thereof [Explanation to 56(2)(x) read with Explanation (e)(ii) to section 56(2)(vii).
2. Therefore, HUF is exempt as per proviso – clause I.



ANSWER TO 1ST PART OF CASE STUDY V (CONT):


3. Implications in the hands of G1

- Implications under sec 64(2)
 - Income arising on such transfer will be taxed in the hands of G1 and not in the hands of family
 - Upon partition, income from so much gift as allocated to his spouse shall be included in his total income under sec 64(1)(iv)
- 

ANSWER TO 2ND PART OF CASE STUDY V:

1. Validity of gift by kartha – he can give only for pious purpose
 - The Apex Court in T. Venkat Subbamma v. T. Rattamma AIR 1987 SC 1775 held:

“There is a long catena of decision holding that a gift by a coparcener of his undivided interest in the coparcenary property is void.”



ANSWER TO 2ND PART OF CASE STUDY V (CONT):

- The Supreme Court in *Guramma Bhratar Chanbasappa Deshmukh v. Mallappa Chanbasappa*, AIR 1964 SC 510 had held that a gift of a reasonable part of the assets of the joint family on customary occasions could be given to an unmarried daughter. But where it is not reasonable, even gift to an unmarried daughter would be vulnerable. In fact, gifts to other members will be even more vulnerable.



ANSWER TO 2ND PART OF CASE STUDY V (CONT):

- It was held in CIT v. Bharat Prasad Anshu Kumar [2001] 249 ITR 755 (Delhi) that such gift may be voidable, though not void. If it is to a non-member, it may well be void. It must be remembered that the Karta of a joint family is expected to protect the property of the joint family as a guardian in a fiduciary capacity so that he cannot give away the joint family property on his own sweet will to the detriment of the interest of the other members of the family.



ANSWER TO 2ND PART OF CASE STUDY V (CONT):

If gift is not valid, right of restitution is available to HUF and sec 56(1)(x) is not attracted



ANSWER TO 2ND PART OF CASE STUDY V (CONT):

- If gift is valid
 - Is it a partial partition?
 - If yes, it is exempt under sec 47(i) if it is a capital asset. However, cash is being not a capital asset, sec 47(i) does not apply.
 - Even otherwise, such cases cannot be excluded from the purview of section 56.
 - However, receipt on account of partition is a matter of pre-existing right and hence cannot be considered as received without consideration.

ANSWER TO 2ND PART OF CASE STUDY V (CONT):

- Use case laws relating to receipt by beneficiary from the trust.
- Unequal partition is a not gift under Gift Tax Act as held in Getti Chettiar 82 ITR 599 SC.
- Implications of section 171 are to be kept in mind



ANSWER TO 2ND PART OF CASE STUDY V (CONT):

- K is not a member of HUFs of G1 and G2.
- Hence, prima facie it is not exempt in the hands of HUFs of G1 and G2
- However, K is a relative to each member of the above HUFs. If such HUFs are considered as compendiums of such relatives, is such gift exempt

Not exempt as per Subodh Gupta (HUF)(TS-10-ITAT-2018(DEL) which ruled that gift from mother who is not a member of HUF to the HUF is not exempt.



ANSWER TO 2ND PART OF CASE STUDY V (CONT):

- Is the ratio of earlier case laws diluted because of specific extension of meaning of relative?
- Yes as per Subodh Gupta (HUF)(TS-10-ITAT-2018(DEL))



ANSWER TO 2ND PART OF CASE STUDY V (CONT):

4. Section 10(2) implications

- This exemption is applicable to any sum received by an individual as a member of a HUF where such sum has been paid out of income of the family
- HUFs of G1 and G2 not being individuals, sec 10(2) is not applicable.
- Even otherwise, sec 10(2) is only in respect of payment out of income of family. This means income of current year. Any income of earlier years would be the asset of the family and payment out of the same may not be covered by section 10(2).

CASE STUDY VI:

- Mr. R, the retiring partner had a balance of Rs. 1,75,000 which included his capital and accumulated profits less drawings. The stamp duty value and fair market value of the immovable properties and movable properties [covered under 'property' definition under Explanation to 56(2)(vii)] given to him is Rs. 2,45,000 and Rs. 2,65,000 respectively in lieu of his share in the net assets of the firm.



ANSWER TO CASE STUDY VI:

1. Shared interest becoming an exclusive interest is a transfer as per Sunil Siddharthbhai 156 ITR 509 SC and it is a transfer. Section 45(4) would apply for receipt of properties from the firm.
2. Taxing a partner under sec 56(2)(x) and taxing a firm under sec 45(4) would result in double taxation and the same appears fine with the revenue as seen in Memorandum to FB 2018[page 17]



ANSWER TO CASE STUDY VI (CONT):

3. On receipt of cash, no tax is payable as per Mohanbai Pamabai 165 ITR 166 SC and Tribhuvandas 236 ITR 15 SC.
4. Any receipt by a partner from the firm is towards his pre-existing right and such receipt cannot be said to be without consideration: Vasumati Prafullachand Sanghavi(TS-599-ITAT-2017(PUN))
5. Further, as receipt of cash in lieu of pre-existing right, sec 56(2)(x) is not applicable even if disproportionate cash is received.

ANSWER TO CASE STUDY VI (CONT):

5. However, as far as receipt of property is concerned, the following points may emerge;
 - When a partner receives
 - Value of immovable property is the stamp duty value
 - Value of movable property
 - ❖ If falling in the listed categories, FMV
 - ❖ If not falling in the list, no tax



ANSWER TO CASE STUDY VI (CONT):

- Under sec 56(2)(x)(b) and (c), the consideration is compared with the stamp duty value/FMV
- When a partner receives the above in lieu of his pre-existing right, such receipt cannot be regarded as without consideration.
- When his giving up his pre-existing right is a consideration, the evaluation of such pre-existing right becomes an issue. The FMV of the same is indeterminable under sec 2(22B).

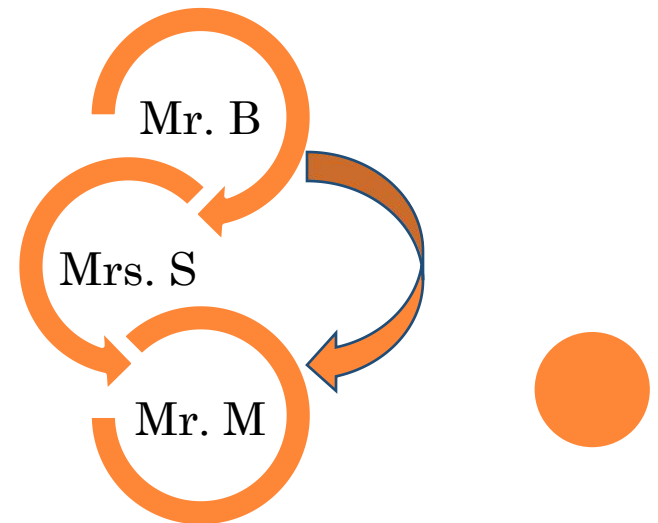


ANSWER TO CASE STUDY VI (CONT):

- When property is received for a consideration, adequacy or otherwise of the same is to be determined
- In view of non ascertainability of consideration paid by outgoing partner, the comparison with stamp duty value/FMV fails.
- Therefore, even when a partner receives properties much higher than his share of capital/goodwill, he may not have to pay tax under sec 56(2)(x)

CASE STUDY VII:

- Mr. B, a non-resident gifts a property worth 1 crore in Bangalore to his sister's father-in-law Mr. M, residing in Bangalore. Would it make a difference if the gift is given to his sister Mrs. S, residing in Mumbai and Mrs. S gifts the property to her father-in-law Mr. M.



ANSWER TO CASE STUDY VII:

Gift by B to M

- Mr. B is not a relative of Mr. M. Therefore, receipt of such gift is not exempt in the hands of Mr. M
- As the property is situated in Bangalore, ordinarily, it may be said that Mr. M has received the property in Bangalore. Hence, the same is taxable.



ANSWER TO CASE STUDY VII (CONT):

- If the gift deed is executed in USA although registered in Bangalore as a statutory compliance, can it be said that Mr. M received the gift in USA? As the immovable property is inconceivable of receipt, can we say that the place of receipt of rights over it, is the place the receipt?
- If the receipt takes place outside India, Mr. M may not be liable to tax as section 5(1) does not consider income received outside India unlike section 4 of Income tax Act of 1922.



ANSWER TO CASE STUDY VII(CONT):

Gift by B to his sister S, Mumbai and by S to her father in law M

- Gift by B to S is exempt in the hands of S as they are relatives
- Similarly gift by S to M is exempt in the hands of M as they are relatives



ANSWER TO CASE STUDY VII (CONT):

- However, such cross gift was not accepted in Keshvji Morarji 66 ITR 142 SC
- GAAR implications – section 96(1)(c) [lacks or deemed to lack commercial substance] read with section 97(1)(b)(ii) read with section 97(3) [accommodating party]



CASE STUDY VIII:

- E Ltd. transfers its investment of 10,000 shares in an unlisted company to F Ltd. at Rs. 150 each. E Ltd. had acquired such shares at the cost of Rs. 40 each. The fair market value of shares is Rs. 170 each.



ANSWER TO CASE STUDY VIII:

Implications on E Ltd.

- E Ltd., is liable to capital gains under sec 45(1)
- Section 50CA applies to E Ltd., and Rs.170 is taken as FVC
- If E Ltd., is holding share as inventory [unlikely as shares are of pvt. Company], section 50CA is not applicable.



ANSWER TO CASE STUDY VIII (CONT):

Implications on F Ltd..

- F Ltd., is taxable under section 56(2)(x) on the differential price even though E Ltd., has already paid tax
- Can F Ltd., argue that each share is a property and apply the tolerance value of Rs.50,000 per share? Explanation (d)(ii) refers to as 'shares and securities'.
- Section 28(vi) v. section 56(2)(x) – If received as capital asset, section 56(2)(x) would apply. If received as inventory, will section 28(iv) apply?

CASE STUDY IX:

- ABC & co, a partnership firm converts into a private limited company, ABC Pvt. Ltd under Part I of Chapter XXI of Companies Act, 2013. The assets of the partnership firm consist of certain Fixed and current assets recorded at Rs. 500,000. The fair market value of such assets is Rs. 7,00,000. Such assets are recorded at cost (Rs. 5,00,000) in the books of the company also.



ANSWER TO CASE STUDY IX:

1. Conversion covered under section 47(xiii) [not being Chapter XXI conversion]
 - a. Conversion of firm into company is exempt under sec 47(xiii) if certain conditions are satisfied. However, this does not preclude application of section 56(2)(x).
 - b. When section 56(2)(x) is applied, it is necessary to benchmark consideration with the stamp duty valuation/FMV.



ANSWER TO CASE STUDY IX(CONT):

- c. In the case of conversion of firm into company, the company receives the property in consideration of issue of shares to the erstwhile partners. Such property may be in the nature of a business undertaking [in case of slump sale]. Such undertaking per se is a property although may consist of basket of inferior assets. Undertaking is not a listed property for sec 56(2)(x).

- d. The outgoing consideration is in terms of shares. These shares [being outgoing consideration] are to be valued as per FMV under sec 2(22B). If these are shares of pvt company, sec 2(22B) fails. [Shares of pvt ltd company have no fair market value : Bhagwati Developers Pvt. Ltd. CA 7445 of 2005]



ANSWER TO CASE STUDY IX(CONT):

- e. The very shares [being incoming] in the hands of partners are to be valued as per Rule 11UA and not as per sec 2(22B). However, the outgoing consideration is partner's right in firm which is to be valued as per sec 2(22B). Sec 2(22B) cannot work for partner's right in firm for which there is no market as such.



ANSWER TO CASE STUDY IX (CONT):

2. Conversion not covered under section 47(xiii) [not being Chapter XXI conversion] – Same as above except that section 47(xiii) benefit is not available.




ANSWER TO CASE STUDY IX (CONT):

3. Conversion being Chapter XXI conversion
 - a. There is no transfer but succession
 - b. There is no receipt in the case of succession



ANSWER TO CASE STUDY IX (CONT):

c. CASE LAWS

- CIT Vs United Fish Nets 2014-TIOL-1818-HC-AP-IT
 - M/S. UNITY CARE & HEALTH SERVICES 106 TTJ (Bang) 1086 has been confirmed by Kar HC in ITA No.3170/2005 and followed by Madras HC in 383 ITR 258 Mad in Cadd Centre
 - Vali Pattabhirama Rao v. Sri Ramanuja Ginning & Rice Factory (P.) Ltd. [1986] 60 Comp. Cas. 568 (AP)
 - CIT v. TEXSPIN ENGINEERING AND MFG. WORKS [2003] 263 ITR 345 [Bom.]
- 

CASE STUDY X:

- I Ltd. is engaged in the business of designing and implementing software solutions. E Ltd. acquires the designing division of I Ltd. As part of this arrangement, all assets (including building), liabilities, rights, obligations, contracts and approvals pertaining to the design division of I Ltd. are transferred to E Ltd. for lump sum consideration as Rs. 10 crores. The fair market value of the designing undertaking is Rs. 15 crores, in determining which, among others, the building value is reported at 12 crores.



ANSWER TO CASE STUDY X:

1. In the case of lumpsum consideration, vivisection is not permissible

- Mugneeram Bangur and Co. (Land Department) [1965] 57 ITR 299 SC
- PNB Finance Ltd. vs. CIT [2008] 307 ITR 75 (SC)
- Artex manufacturing Company [1997] 227 ITR 260 (SC)
- Electric Control Gear Manufacturing Company [1997] 227 ITR 278 SC



ANSWER TO CASE STUDY X (CONT):

2. Section 50B will have application only for capital gains and the same cannot be applied in the context of sec 56(2)(x)
3. Meaning of undertaking under sec 2(19AA) which includes even a part of undertaking but not a group of assets not constituting any business activity
4. Meaning of capital asset – section 2(14) – Explanation v. scope for vivisection of a superior asset into several inferior assets



CASE STUDY XI:

- Bonus shares are distributed by a company at 1:1 to its current shareholders as fully paid shares free of charge. Mr. X gets 10,000 shares as bonus against his original shares. The value of the bonus shares is Rs. 50 Lakhs.



ANSWER TO CASE STUDY XI:

1. Issue of bonus shares except to preference shareholders is not dividend – sec 2(22)(a)

2. Upon issue, the shares get created in the hands of shareholders. There is no receipt as such.
 - Shree Gopal and Company vs. Calcutta Stock Exchange Ltd. [1963] 32 Comp. Cas. 862 (SC) and
 - Khoday Distilleries Ltd. vs. CIT [2008] 307 ITR 312 (SC)



ANSWER TO CASE STUDY XI (CONT):

3. There is no transfer of bonus shares by company to shareholders
 - DCIT Vs Rajan Pai 2016-TIOL-1698-ITAT-BANG
 - Sudhir Menon HUF Vs ACIT148 ITD 260 (Mumbai - Trib.)



CASE STUDY XII:

- Mr. Old Shareholder received 1000 Right shares at Rs. 15 per share, the fair market value of which is Rs. 95 per share.



ANSWER TO CASE STUDY XII:

Same as answer to question 11.



CASE STUDY XIII:

- Ms. N, a resident was on a family tour to UK where she found her old friend Ms. O. Ms. O is a professional artist in UK. Extremely glad to see her friend, Ms. O gifts a painting to Ms. N. The fair market value of such a painting determined under Rule 11UA is Rs. 25,00,000.



ANSWER TO CASE STUDY XIII:

1. Receipt by resident overseas is not covered by sec 5(1)
2. Alternatively, O being a professional artist may raise in invoice for Re.1 as the invoice value will be FMV as per Rule 11UA(b)(ii).



CASE STUDY XIV:

- Mr. P agrees to sell his agricultural land to Mr. Q for Rs. 82,00,000 on 08-11-2016. The stamp duty value on the date of the agreement was Rs. 86,00,000. On the same day Mr. Q issued an account payee cheque of Rs. 1,00,000 in favour of Mr P as advance towards sale. The sale deed was executed on 31-12-2016 and the balance consideration was paid in cash. The stamp duty value on the date of sale was Rs. 90,00,000.




ANSWER TO CASE STUDY XIV:

1. Is agri land covered by section 56(2)(x)
 - a. Meaning of agricultural income as per sec 2(1A)
 - b. Explanation below section 2(1A) excludes only capital gains and not other income
 - c. Receipt of agri land for a consideration less than FMV v. power of Union to levy tax.



ANSWER TO CASE STUDY XIV (CONT):

- d. UOI v. Harbhajan Singh Dhillon 83 ITR 582 SC – Upheld levy of wealth tax on agri land and called it as a tax on net wealth and not tax on agri land.
 - e. Circular 550 dated 1.1.90 clarifies that the amendment to sec 2(1A) is to counter certain decisions which have held that capital gains is also income derived from agi land.
 - f. If agri land is rural, it is not a capital asset as per sec 2(14). For sec 56(2)(x)(b), even non capital asset is considered whereas for sec 56(2)(x)(c), only capital asset is considered.
- 

ANSWER TO CASE STUDY XIV (CONT):

2. Time gap between agreement and transfer
 - a. Benefit of section 50C(4) is available.
 - b. 5% bandwidth is to be applied with reference to actual consideration. Therefore, varying stamp duty does not make a difference.
 - c. 5% on consideration of rs.82L comes to rs.4.11L. If stamp duty as on agreement is taken, it is within bandwidth. If stamp duty on sale is taken, it is beyond bandwidth.

CASE STUDY XV:

- Mr. Chotu, the youngest member of the HUF receives Rs. 75,000 as a gift from the HUF on his 1st birthday.



ANSWER TO CASE STUDY XV:

1. Is gift from HUF valid?
2. Is the said payment a partial partition?
3. Is HUF, a compendium of relatives, is a relative of Chotu?
4. Is clubbing u/s 64(1A) applicable? Sec 64(1A) deals only with income accruing or arising whereas there is no such accrual in case of gift?



CASE STUDY XVI:

- Mr. J desires to purchase a Dell laptop worth Rs. 60,000 for his personal use. Mr. K, his friend is willing to help him in this regard. They have the following options:
 - Mr. K shall transfer Rs. 60,000 to Mr. J. He could thereafter purchase the laptop with the amount received.
 - Mr. K shall give a gift coupon worth Rs. 60,000 to Mr. J which can be encashed at any Dell outlet to purchase the laptop.
 - Mr. K shall directly gifts the Dell laptop to Mr. J.

ANSWER TO CASE STUDY XVI:

1. K gives cash to J

- a. Cash given without any condition is a cash gift chargeable to tax in the hands of J
- b. Cash given with a condition that J should buy the laptop and if not, he shall return the amount – possible to argue that it is essentially a gift of laptop on the basis of JB Boda 223 ITR 271 SC



ANSWER TO CASE STUDY XVI (CONT):

2. K gives gift coupon to J
 - a. Gift coupon is an actionable claim and not cash
 - b. Gift coupon is a thing bought for consideration
 - c. Gift coupon being not listed as a property is not chargeable



ANSWER TO CASE STUDY XVI (CONT):

3. K gives laptop to J

- a. Laptop is a personal effect and hence not a capital asset
- b. Even otherwise, it is not a listed property



CASE STUDY XVII:

- Mr. M received a cash gift of Rs. 12,00,000 during the year from his brother Mr. N. The AO has asked Mr. M to prove the creditworthiness of Mr. N. The assessing officer is not happy with the explanation offered.



ANSWER TO CASE STUDY XVII:

1. Cash gift from relative is exempt under sec 56(2)(x) – first proviso (I)
2. If gift from relative is not accepted, and if it is established that gift has actually moved from a non relative, sec 56(2)(x) may be invoked
3. If gift itself is doubted, it is a case of sec 68 read with sec 115BBE



CASE STUDY XVIII:

- AZ Ltd. distributes Rs. 45 lakhs out of its accumulated profits to the two shareholders of the company immediately before liquidation. The shareholders argue that the same is a receipt “*in contemplation of death of the payer*”.



ANSWER TO CASE STUDY XVIII:

1. Payment to shareholder out of accumulated profits of the company – is it the case of a payment without consideration?
2. Liquidation of a company amounts end of life of an artificial legal entity. Therefore, is liquidation a death? In *S. K. Gupta & Anr vs K. P. Jain & Anr* on 30 January, 1979, 1979 AIR 734, 1979 SCR (2)1184, it held that winding up is a civil death of a company.



ANSWER TO CASE STUDY XVIII (CONT):

3. Note the difference in 'marriage of individual' and 'death of the payer or donor'
4. If any sum is paid even in anticipation of liquidation, such payment entailing release of funds, is a dividend as per sec 2(22)(a)
5. Dividend is separately dealt with under sec 56(2)(i)



CASE STUDY XIX:

- A family dispute arose between families of two brothers, B1 and B2. Under the family settlement properties belonging to B1 were transferred to sons of B2 and properties belonging to B2 were transferred to sons of B1.



ANSWER TO CASE STUDY XIX:

1. In the case of Thilak Bahaddur Bhujil v. Debi Singh Bhujil [1966] 2 SCJ 209 (SC) the Supreme Court held that the family arrangement can be arrived orally
2. CIT v. T. Ahobala Rao [2014] 221 Taxman 39 (Karnataka)(Mag.) The said memorandum of Family Arrangement need not be registered. The oral partition effected between the members of HUF had been recorded and necessary application had been made to the Competent Authorities to mutate their names.

ANSWER TO CASE STUDY XIX (CONT):

3. Other cases

- Kale v. Dy. Director of Consolidation AIR 1976 SC 807
 - CIT v. AL. Ramanathan [2000] 245 ITR 494 Mad.
 - CIT, Bangalore Vs Shri R Nagaraja Rao 352 ITR 565 Kar HC
4. Family settlement involving several companies – no exemption as held in B.A.Mohota Textiles Traders Pvt. Ltd TS-234-HC-2017(BOM)



CASE STUDY XX:

- Shares of B Inc. (resident of Country U) are held by shareholder Company A Ltd. (resident of Country Z). B Inc. has no assets other than shares of C Ltd. in India (i.e. assets located in India). A Ltd. transfers the shares of B Inc. to D Inc. (resident of Country U) without any consideration.



ANSWER TO CASE STUDY XX:

1. A Ltd., in country Z holds shares in B Inc of country U. B Inc holds shares in C Ltd., of India. As B Inc does not have any asset, value of its shares is completely derived from assets in India i.e. shares of C Ltd.
2. In terms of Explanation 5 to sec 9(1)(i), shares of B Inc are deemed to be situated in India. However, this has limited application for sec 9 which deems income accruing or arising outside India as income accruing or arising in India.




ANSWER TO CASE STUDY XX (CONT):

3. In any case, sec 9 cannot apply to receipt based taxation.
4. Therefore, it cannot be said that D Inc received shares of B Inc from A Ltd., in India. Thus, section 56(2)(x)(c) is not applicable.



CASE STUDY XXI:

1. White Help Charitable Trust has received donations amounting to Rs. 25,00,000 (all donations in excess of Rs. 50,000 each) during the year 2017-18. The trust has also received anonymous cash donations of Rs. 10,00,000. The trust has not complied with the provisions of sections 11 to 13 of the Income-tax Act.
 2. Would it make any difference if the donations received by the trust are less than Rs. 50,000 each
- 

ANSWER TO CASE STUDY XXI:

1. Proper donations above Rs.50,000 [non compliance with sec 11 to 13]
 - a. Donation is regarded as income under sec 2(24)(iia) and 2(24)(xviiia)
 - b. Donation above rs.50k is covered by sec 56(2)(x)
 - c. However, by first proviso (VII), it is exempt



ANSWER TO CASE STUDY XXI (CONT):

- d. Thus, donation above rs.50k is reckoned and treated under sec 56(2)(x) and later exempted by first proviso (VII). Once it is treated and exempt under a particular provision, it cannot be brought to tax under any other provision [whether under the same head or different head].

- e. Therefore, donation above rs.50k cannot now be brought under sec 2(24)(iia) and taxed under section 56(1).



ANSWER TO CASE STUDY XXI (CONT):


- f. Sec 56(2) – in particular and without prejudice to generality of the provisions of sub-section 1, the following incomes shall be chargeable...
 - Use of ‘in particular’ makes the enlisted items specifically covered under sec 56(2)
 - Use of ‘without prejudice to generality....’, would only mean that generality of sec 56(1) is not affected. Its purpose is to obviate an argument that an exhaustive list of sec 56(2) should also exhaust sec 56(1). These words do not mean that an item covered under sec 56(2) but exempted there could be brought under sec 56(1)

ANSWER TO CASE STUDY XXI (CONT):


- eg. Cases similar to Nalinikanth Modi would apply



ANSWER TO CASE STUDY XXI (CONT):

2. Proper donations below Rs.50,000 [non compliance with sec 11 to 13]
 - a. Donation below Rs.50k is not reckoned under sec 56(2)(x)
 - b. Therefore, question of exemption by first proviso (VII) does not arise
 - c. Such donation is covered by sec 2(24)(iia) and not sec 2(24)(xviiia)
 - d. In terms of generality of sec 56(1), such donation is brought under sec 56(1) and taxed as provided in section 164(2)
- 

ANSWER TO CASE STUDY XXI (CONT):

3. Anonymous donations above Rs.50,000 [non compliance with sec 11 to 13]
 - a. Anonymous donation is defined in sec 115BBC(3) and it refers to voluntary contributions referred to in sec 2(24)(ia) and where the recipient does not maintain a record of identity indicating name and address of donor and other prescribed particulars
 - b. Exemption of Section 11 is not applicable to a wholly charitable trust as per section 13(7) read with sec 115BBC(1)
- 

ANSWER TO CASE STUDY XXI (CONT):

- c. Such donations are also covered under sec 56(2)(x) and exempt by virtue of first proviso [VII].
- d. In terms of analysis in the earlier para, such donations are not to be taxed under sec 56(1) read with sec 2(24)(iia). Section 115BBC is not applicable.



ANSWER TO CASE STUDY XXI (CONT):

4. Anonymous donations below Rs.50,000 [non compliance with sec 11 to 13]
 - a. Anonymous donation below rs.50k would be out of sec 56(2)(x) and hence not covered by sec 2(24)(xviiia).
 - b. The same are covered by sec 2(24)(iia) and hence brought under sec 56(1). The same are taxed under sec 115BBC(1)(i) and (ii).



ANSWER TO CASE STUDY XXI (CONT):

- c. Once the same are covered under sec 115BBC, the same cannot be brought under sec 115BBE on the basis of following arguments;
 - Sec 115BBE is general and sec 115BBC is special
 - Inability to provide satisfactory explanation is inherent in anonymous donation and hence the same are invariably covered under sec 115BBC



ANSWER TO CASE STUDY XXI (CONT):

- Even anonymous donation coming under hotchpot of total income under sec 115BBC(1)(ii) cannot be taxed under sec 115BBE. The objective of giving initial threshold is to make donation above the threshold suffer tax at 30% and within threshold to suffer tax at normal rate. It is absurd to suggest that donation within threshold would suffer 60% tax under sec 115BBE while donation above threshold suffers only 30% tax under sec 115BBC



Questions!!!



Thanks