

SECTION 56

&

PRESUMPTIVE TAXATION



CA. PRAMOD JAIN

B. COM (H), FCA, FCS, FCMA, LL.B, MIMA, DISA

Shared at

Professional Forum & Taxation Bar Association (Regd)

16th July 2018

SECTION 56

- ✖ **S. 56(1) – Any income not taxed in any other head**
- ✖ **S. 56(2) – Specific incomes**
 - + **10 items (clauses)**
 - + **(v) – Gift - individual / HUF from 1.9.2004 till 1st April 2006**
 - + **(vi) - Gift - individual / HUF from 1st April 2006 but before 1st October 2009**
 - + **(vii) - Gift - individual / HUF from 1st October 2009 but before 1st April 2017**
 - + **(viiia) – Firm or company – shares below FMV from 1st June 2010 but before 1st April 2017**

CA. Pramod Jain

DEEMED GIFTS



DEEMED GIFTS

- ✗ **S. 56(2)(x) w.e.f. 1st April 2017**
- ✗ **Earlier**
 - + Individual & HUF covered for all assets; and
 - + Firms and Companies for shares
- ✗ **Now ANY PERSON covered for:**
 - + Money
 - + Immovable Property
 - + Property other than Immovable Property

MONEY

- ✖ **Receives any sum of money**
- ✖ **Without consideration**
- ✖ **Aggregate value of which exceeds Rs. 50000/-**
- ✖ **Income - whole of the aggregate value of such sum**
- ✖ **Exceptions – relatives, etc.. discussed later**

IMMOVABLE PROPERTY S. 56(2)(X)

- ✖ **Covers land, building or both**
- ✖ **Receives without consideration - stamp duty value exceeds Rs. 50000/-**
- ✖ **Receives through inadequate consideration – consideration less than stamp duty value – difference exceeds Rs. 50000/-**
- ✖ **Exceptions – relatives, etc.. Discussed later**
- ✖ **Where date of agreement & date of registration are not same, value on date of agreement if some payment made by a/c payee cheque /bank draft / ECS on or before date of agreement**

IMMOVABLE PROPERTY

- ✗ If value disputed by assessee u/s 50C(2) , AO may refer to Valuation Officer
- ✗ Is leasehold land covered?
 - + Transfer of leasehold rights in a building do not attract provisions of S. 50C - *DCIT v Tejinder Singh (2012) (50 SOT 391) (Kol)*
 - + Leasehold rights in plot of land is not 'land or building or both' - *Atul G. Puranik v. ITO (132 ITD 499)(Mum)*.
 - + S. 50C applies to Transfer of Development Rights - *Chiranjeev Lal Khanna v. ITO (132 ITD 474)(Mum)*

IMMOVABLE PROPERTY

- ✖ Mr. A (not a relative of Mr. B) gifts immovable property whose stamp duty value is Rs. 15 Lakhs to Mr. B.
 - ✖ Actual cost in hands of Mr. A was Rs. 18 Lakhs.
 - ✖ What would be the cost of acquisition in hands of Mr. B?
 - + S. 49(1) – cost to previous owner i.e. Rs. 18 L
 - + S. 49(4) – If subject to s. 56(2), stamp duty value i.e. Rs. 15 L
- + Rs. 15 L

OTHER THAN IMMOVABLE PROPERTY

- ✖ **Property – Expl. to 56(2)(vii) Capital Asset namely:**
 - + **Imm. Property being land or building or both**
 - + **Shares and securities**
 - + **Jewellery**
 - + **Archaeological collections**
 - + **Drawings**
 - + **Paintings**
 - + **Sculptures**
 - + **Any work of art**
 - + **Bullion**

EXCEPTIONS

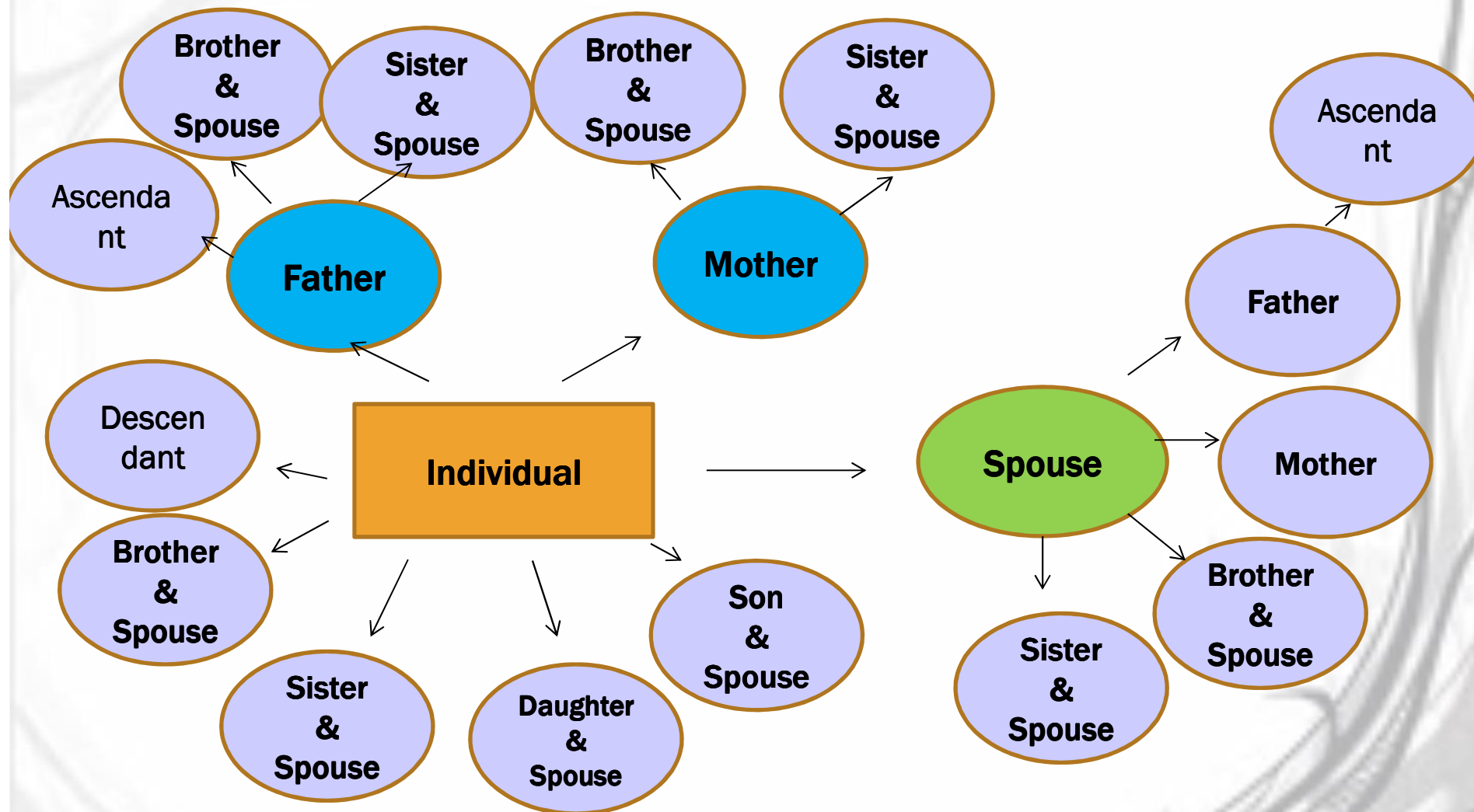
× Relative

+ In case of an individual:

- a) Spouse;
- b) Brother or sister;
- c) Brother or sister of the spouse;
- d) Brother or sister of either of the parents;
- e) Any lineal ascendant or descendant;
- f) Any lineal ascendant or descendant of the spouse;
- g) Spouse of person referred to in (b) to (f)

+ In case of a HUF, any member thereof

RELATIVES



EXCEPTIONS

- ✘ On the occasion of the marriage of the individual**
- ✘ Under a will or by way of inheritance**
- ✘ In contemplation of death of the payer or donor, as the case may be**
- ✘ From any Local Authority as defined in the Explanation to section 10(20)**
- ✘ 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)**

EXCEPTIONS

- ✖ **From or by any Trust or Institution registered u/s 12A /12AA**
- ✖ **By any Fund or Trust or Institution or any university or other educational institution or any hospital or other medical institution referred in**
 - + **S. 10(23C) (iv) – Importance in India / states**
 - + **S. 10(23C) (v) – Approved religious or charitable trust**
 - + **S. 10(23C) (vi) – Approved university or educational institute**
 - + **S. 10(23C) (via) – Approved hospitals**

EXCEPTIONS

- ✖ **By way of transaction not regarded as transfer:**
 - + **S. 47 (i) – Total / partial partition of HUF**
 - + **S. 47 (vi) – Amalgamation if amalgamated co. Indian**
 - + **S. 47 (via) – Amalgamation of two foreign companies asset being shares subject to certain conditions**
 - + **S. 47 (viaa) – Amalgamation of banks sanctioned by CG**
 - + **S. 47 (vib) – Demerger if resulting co. in Indian Co**
 - + **S. 47 (vic) – Demerger of foreign company asset being shares subject to certain conditions**

EXCEPTIONS

- ✖ **By way of transaction not regarded as transfer:**
 - + **S. 47 (vica) - business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank**
 - + **S. 47 (vicb) - business reorganisation, of a capital asset being shares by predecessor co-operative bank to successor co-operative bank**
 - + **S. 47 (vid) - transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company**
 - + **S. 47 (vii) - trf by a shareholder, in scheme of amalgamation, of capital asset being share or in amalgamating co. subject to certain conditions**

EXCEPTIONS

- ✖ **From an individual by a trust created or established solely for the benefit of relative of the individual**

SHARES ISSUE & TRANSFER

SHARE ISSUED EXCEEDING FMV

- ✖ **S. 56(2) (viib) – w.e.f. AY 2013-14**
 - + **Company receives consideration from a resident for issue of shares exceeding FMV – aggregate consideration < 50K**
 - + **Exemption for receipt by**
 - ✖ **Company in which public are substantially interested**
 - ✖ **Venture capital undertaking from VC company or VC fund as defined in 10(23FB)**
 - ✖ **Notified companies – startup companies – Not. No. 45/2016 dated 14.6.2016**

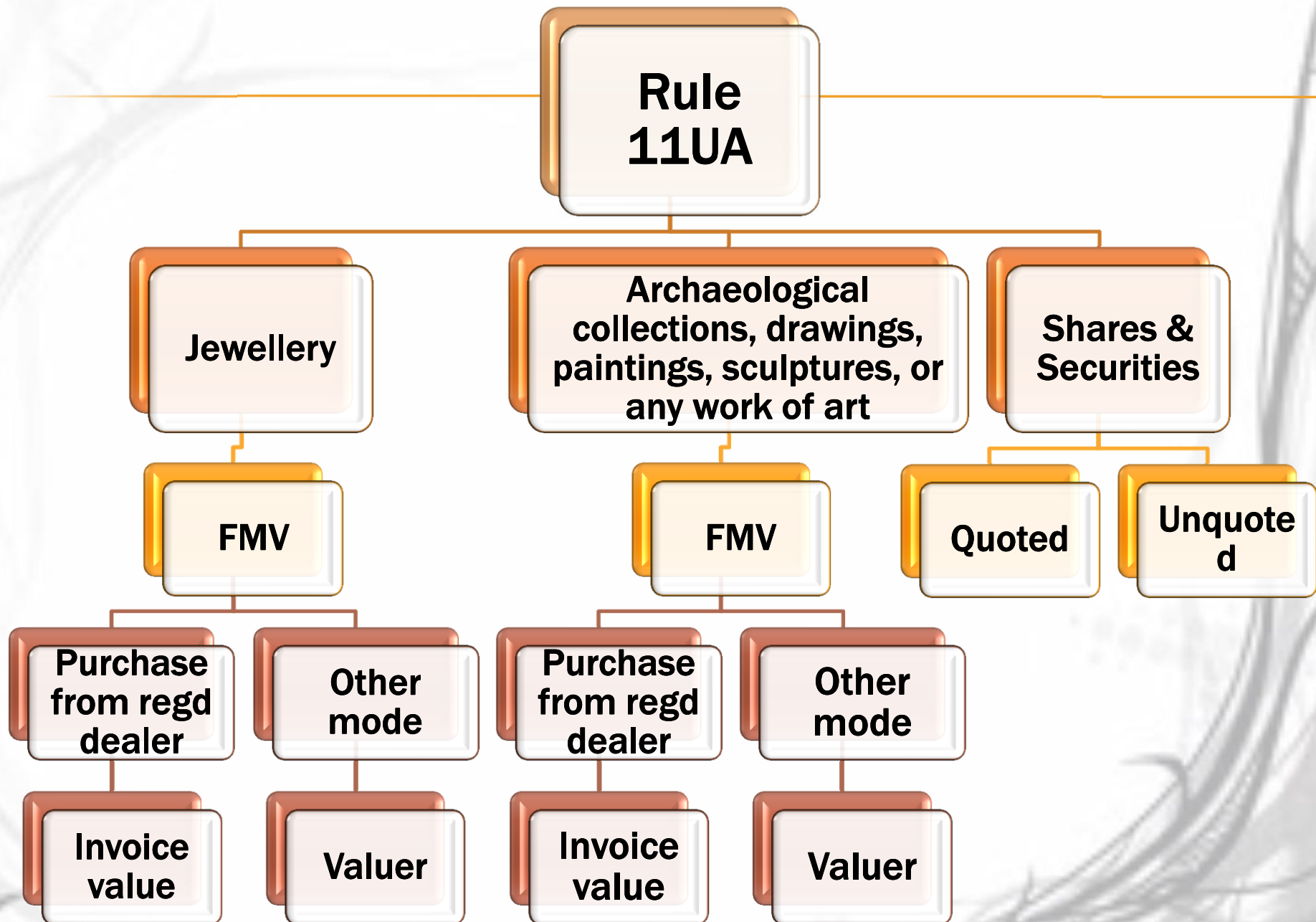
SHARES TRANSFERRED

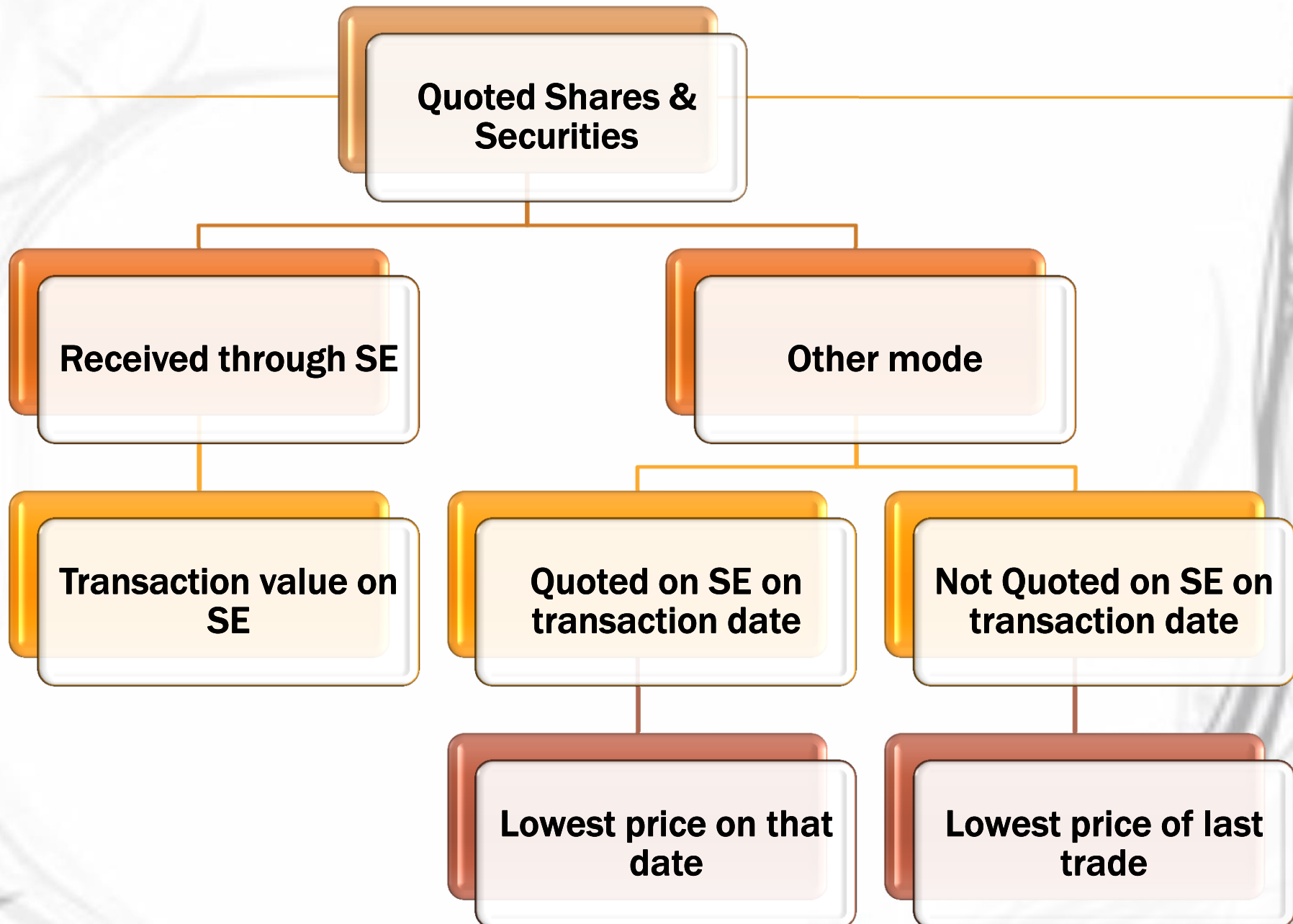
- ✖ **S. 56(2) (x) - Buyer**
- ✖ **S. 50CA w.e.f. AY 2018-19 - Seller**
 - + **Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being share of a company other than a quoted share, is less than FMV of such share determined in such manner as may be prescribed, the value so determined shall be deemed to be the full value of consideration received or accruing as a result of such transfer**

SHARES FMV

✗ **FMV to be on the date of issue of shares higher of :**

- + **Rule 11UA / 11U; or**
- + **Satisfaction of AO based on value of its assets including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature**





UNQUOTED SHARES - TRANSFER

- ✗ **FMV = (A+B+C+D - L) × (PV)/(PE)**
- ✗ **A= Book value of all assets (other than jewellery, artistic work, shares, securities and immovable property) in B/S as reduced by**
 - + any amount of IT paid less IT refund claimed, if any**
 - + any amount shown as asset including unamortised amount of deferred expenditure which does not represent the value of any asset**
- ✗ **B = Price which jewellery & artistic work would fetch if sold in open market on basis of registered valuer report**

UNQUOTED SHARES - TRANSFER

- ✖ **C = FMV of shares and securities as determined in this rule**
- ✖ **D = Stamp duty value adopted or assessed or assessable by any authority of the Government in respect of the immovable property**
- ✖ **L= Book value of liabilities in B/S not including:**
 - + **Equity paid-up capital**
 - + **Amount set apart for payment of dividends on preference and equity shares where such dividends have not been declared before the date of transfer at AGM**

UNQUOTED SHARES - TRANSFER

- ✗ **L= Book value of liabilities in B/S not including:**
 - + **R&S, including negative balance, other than set apart towards depreciation**
 - + **Provision for tax, other than IT paid less IT Refund to the extent of excess over the tax payable u/s 115JB**
 - + **Unascertained liabilities**
 - + **Contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares**
- ✗ **PV= Paid up value of such equity shares**
- ✗ **PE = Paid up equity share capital**

UNQUOTED SECURITIES - TRANSFER

- ✖ **Price it would fetch if sold in the open market on the valuation date**
- ✖ **Assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation**

UNQUOTED SHARES - ISSUE

× Two options

1. $FMV = (A - L) \times (PV)/(PE)$

× A= Book value of all assets in B/S as reduced by

★ any amount of IT paid less IT refund claimed, if any

★ any amount shown as asset including unamortised amount of deferred expenditure which does not represent the value of any asset

× L= Book value of liabilities in B/S not including ... same as for Transfer

2. Merchant Banker or **Accountant** as per DCF –
Accountant not allowed w.e.f. 24th May 2018

ACCOUNTANT

- ✖ Who is an accountant for issuing valuation report ?
- ✖ For issue of shares [Rule 11UA(2)]:
 - + A fellow of the ICAI who is not Tax Auditor or Statutory Auditor – **CA cannot do w.e.f. 24th May 2018**
- ✖ For transfer of unlisted shares (other than equity) & securities:
 - + Same as in the Explanation below section 288 (2)

BALANCE SHEET

- ✗ Which B/s date is to be taken for valuation?
- ✗ For issue of shares [Rule 11UA(2)]:
 - + Audited B/S (including the notes) as drawn up on valuation date; or
 - + Where the B/S on the valuation date is not drawn:
 - ✗ B/S (including the notes) drawn up as on a date immediately preceding the valuation date which has been approved & adopted in AGM
- ✗ For transfer of shares:
 - + Audited B/S of such company (including the notes) as drawn up on valuation date audited by statutory auditor

????

✖ Mr. A gifts immovable property whose stamp duty value is Rs. 10 Lakhs to Mr. B (not a relative). Is there any tax on Mr. A or Mr. B?

✖ On B

✖ Mr. X gifts immovable property whose stamp duty value is Rs. 15 Lakhs to Ms. Y (not a relative) on the occasion of her marriage. Is there any tax on Mr. X or Ms. Y?

✖ No

✖ Are Preference Shares covered u/s 56(2)(viib)?

✖ Yes

????

✖ Schools having less than Rs. 1 Cr receipt from education activities claiming exemption u/s 10(23C)(iiia) receive donations for buildings being capital receipts. Are the receipts taxable u/s 56(2)(x)?

✖ Yes

✖ Hospitals claiming exemption u/s 10(23C)(iiia) receive Corpus donations for building hospital? Are the receipts taxable u/s 56(2)(x)?

✖ Yes

????

- ✖ Partner at time of dissolution withdraws immovable property whose book value is 25 Lakhs but stamp duty value is 50 Lakhs. Taxation in hands of firm as well as partner?
 - ✖ Yes, in both hands Rs. 25 L each
- ✖ Few people come together to build a community centre for general public benefit and collect Rs. 5 Lakhs to build it?
 - ✖ Yes
- ✖ Mr. A receives Car Mercedes Benz value Rs. 50 Lakhs as gift from Mr B?
 - ✖ No

????

✘ An unregistered religious Trust receives Rs. 5 Lakhs as corpus donation for building of temple? Is it taxable u/s 56(2)(x)?

✘ Yes

✘ A company dealing in shares receives shares below FMV?

✘ No

✘ Mr. A gives interest free unsecured loan of Rs. 10 Lacs to Mr. Y? Is it taxable u/s 56(2)(x)?

✘ No

Section 44AD

Presumptive Tax Scheme



PRESUMPTIVE TAXATION

44AD

- **PGBP other than professionals and agents**

44ADA

- **Professionals**

44AE

- **Goods Carriages**

PRESUMPTIVE TAXATION

- Section 44AD
- If income **CLAIMED** - Presumptive then:
 - No books of accounts u/s 44AA
 - No audit u/s 44AB
 - Deemed income of 8% and above
 - 6% if receipts by banking / digital channel
 - All deductions u/s 30 to 38 deemed to have been given full effect.

CHANGES W.E.F. AY 2017-18

- **Limit u/s 44AD increased from 1 Cr to 2 Cr**
- **For firms - partners salary & interest not allowable for business as well as professional**
- **S. 44AD(4) - If benefit u/s 44AD claimed and in any later 5 years not claimed then cannot claim for next 5 years. In such case to maintain books if income > maximum amount not chargeable to tax and audit u/s 44AB**
- **No similar clause for professionals u/s 44ADA**
- **Advance Tax for 44AD only– 15th March**

APPLICABILITY OF 44AD / 44AB ON MR. A

**AY 2017-18 – T – Rs. 120 Lacs . P
– 10 L, TI – 9 L**

• Y/N

**AY 2018-19 – T – Rs. 120 Lacs . P
– 8 L, TI – 6 L**

• N/Y

**AY 2019-20 – T – Rs. 70 Lacs . P –
10 L, TI – 9 L**

• N/Y

**AY 2020-21 – T – Rs. 60 Lacs . P –
10 L, TI – 2 L**

• N/N

40A VS 44AD

- Both s. 40A & s. 44AD use non-obstante clause
- Where there is a conflict between a general and special provisions, the latter shall prevail - *Union of India & Anr. vs. India Fisheries (P) Ltd. (1965) 57 ITR 331(SC).*
- This rule is subject to the condition that there is nothing in the general provisions, express or implied, indicating any intention to the contrary - *CIT vs. Shahzada Nand & Sons (1966) 60 ITR 392 (SC)*

40A VS 44AD

- **Applying the said rules of interpretation, it is clear that since s. 44AD is a special provision whereas s. 40A is a general provision & there is nothing in s. 40A indicating any intention to the contrary, s. 40A will have no application where a case is covered by s. 44AD**
- **Also s. 44AD is a later section and Legislature must have deliberately used in that section the non-obstanta clause despite the fact that s. 40A, which is already on the statute, is using the same expression.**

SECTION 44AD ESSENTIALS

- **Should be eligible assessee**
 - **Ind., HUF, Firm (except LLP); and**
 - **No s. 10A, 10AA, 10B, 10BA & Chp VIA Part C**
- **Should be doing eligible business**
 - **Any except 44AE; and**
 - **Turnover < Rs. 2 Crs**
- **Section not applicable to a person carrying:**
 - **Profession**
 - **Commission or brokerage**
 - **Agency business**
- **Deemed profit 6 % / 8% or more**
- **Commensurate with bank account !!!**

SECTION 44ADA ESSENTIALS

- **Should be engaged in profession**
 - **section 44AA read with rule 6F**
- **Gross receipt < 50 Lakhs**
- **Deemed profit 50% or more**
- **Commensurate with bank account !!!**

PROFESSION

- **Section 44AA read with Rule 6F**
 - **Accountancy**
 - **Architectural**
 - **Authorised Representative**
 - **Company Secretary**
 - **Engineering**
 - **Film Artist, actors, cameramen, editor.....**
 - **Interior Decoration**
 - **Legal**
 - **Medical**
 - **Technical Consultancy**
 - **Information Technology**

PROFESSION

- **Held as business**
 - **Advertising agent**
 - **Clearing, forwarding & shipping agents**
 - **Insurance agents**
 - **Travel agent**
 - **Stock and share broking**
 - **Courier agency**
 - **Nursing Home**
- **Are they hence covered u/s 44AD??**

**This Presentation would be available
on**

www.lunawat.com


Also may download free mobile app


“LUNAWAT”


**For all updates & Ready to use
Charts since year 2007**

A one stop place where all your Queries can be answered by various Experts throughout the Country


www.expertspanel.in



Questions 

Questions Unanswered Categories Experts Ask a Question Tagged Question  PRAMOD JAIN

A Place to Share Knowledge
for and by Professionals in Law, Tax, Accounts, Finance



Recent Questions Articles Presentations Videos Notifications

All Categories

Audit & Assurance and Accounting Standards (63)

Bank / Insurance / Stock / Debtors Audit (42)

Corporate Matters/LLP (206)

Goods and Services Tax (GST) (1,018)

Income Tax

Recent Questions

Question added **10 hours** ago **Goods and Services Tax (GST)** By vikas khanijo, CA, rohtak

1 answer

Q. Gst audit - audit requirement...

Answered By **CA DK Bholusaria**


16 views

Question added **12 hours** ago **Corporate Matters/LLP** By CA K Rajendra Prasad, CA, India

0 answers


Q. An NRI wanted to invest the following amounts,

3 views

 Have a written opinion?

Ask a question:

Next

 **nmore-25@googlegroups.com**
Digest for nmore-25@googlegroups.com - 3 updates in ...
Today's topic summary
Concept by
CA Pramod Jain

Together ...we shall make it....

THANK YOU!



CA. Pramod Jain
pramodjain@lunawat.com
+91 9811073867



© 2018 CA. Pramod Jain