

Taxability of Gifts & Share Premium under Income Tax Act 1961



CA. PRAMOD JAIN

FCA, FCS, FCMA, LL.B, MIMA, DISA

**Shared at
South Delhi CA Study Circle of NIRC of ICAI
28th December 2017**

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**

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

- ✗ **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 imm. property being stock-in-trade covered?
- ✗ 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 - *Chiranjeet 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

OTHER THAN IMMOVABLE PROPERTY

✕ Property as per Explanation to 56(2)(vii)

Capital Asset being:

- + Shares and securities**
- + Jewellery**
- + Archaeological collections**
- + Drawings**
- + Paintings**
- + Sculptures**
- + Any work of art**
- + Bullion**

EXCEPTIONS

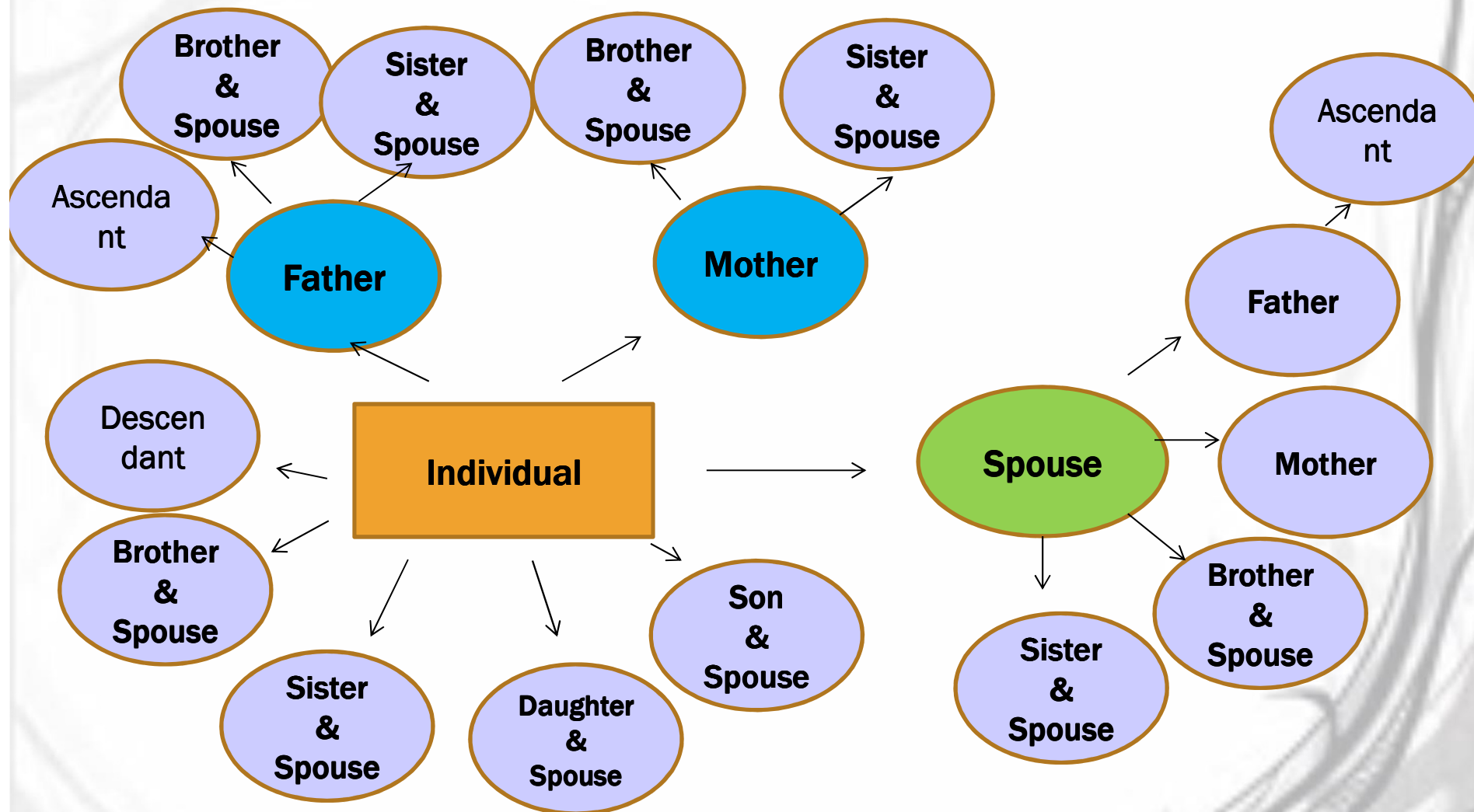
× Relative

+ 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

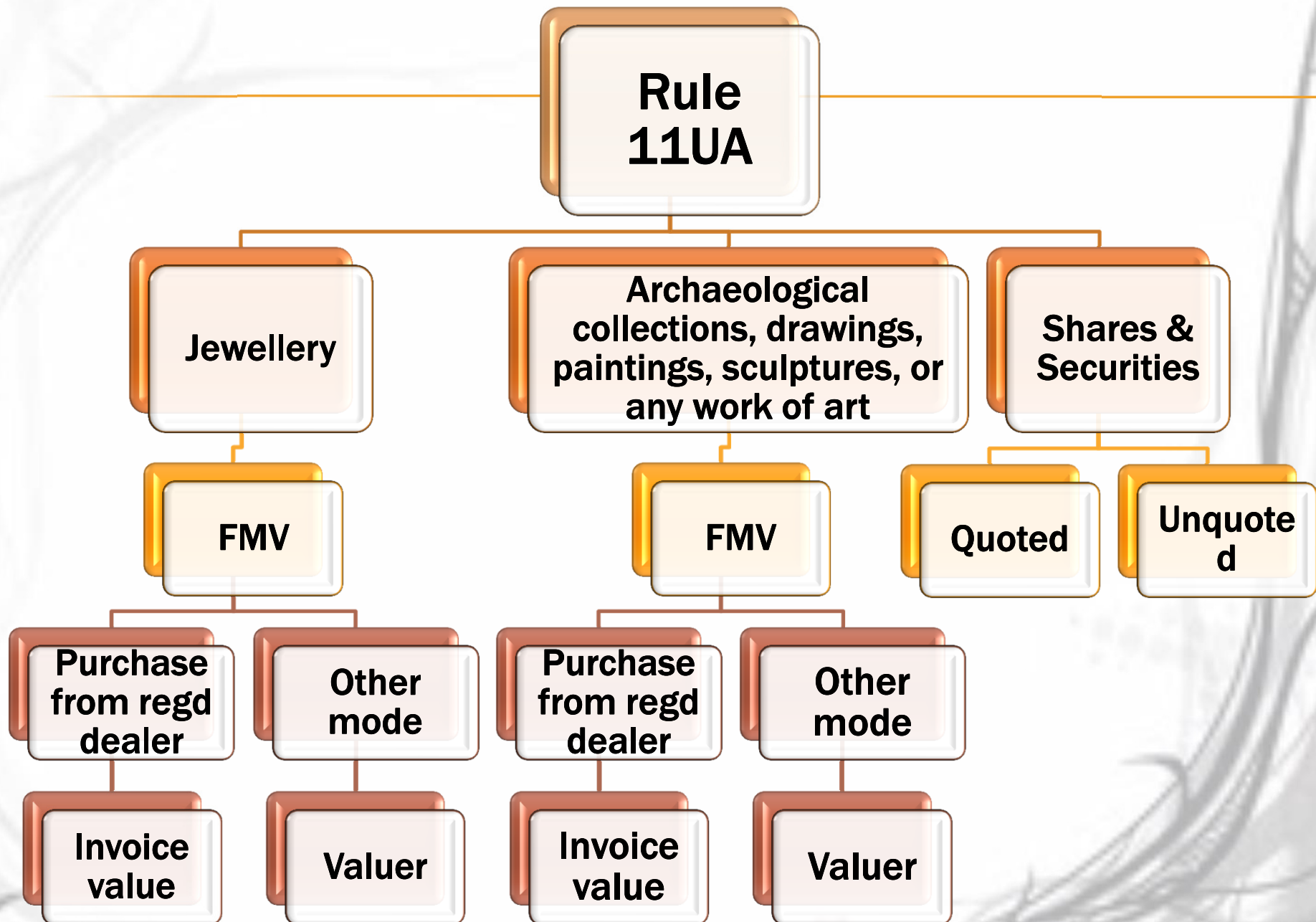
SHARE PREMIUM

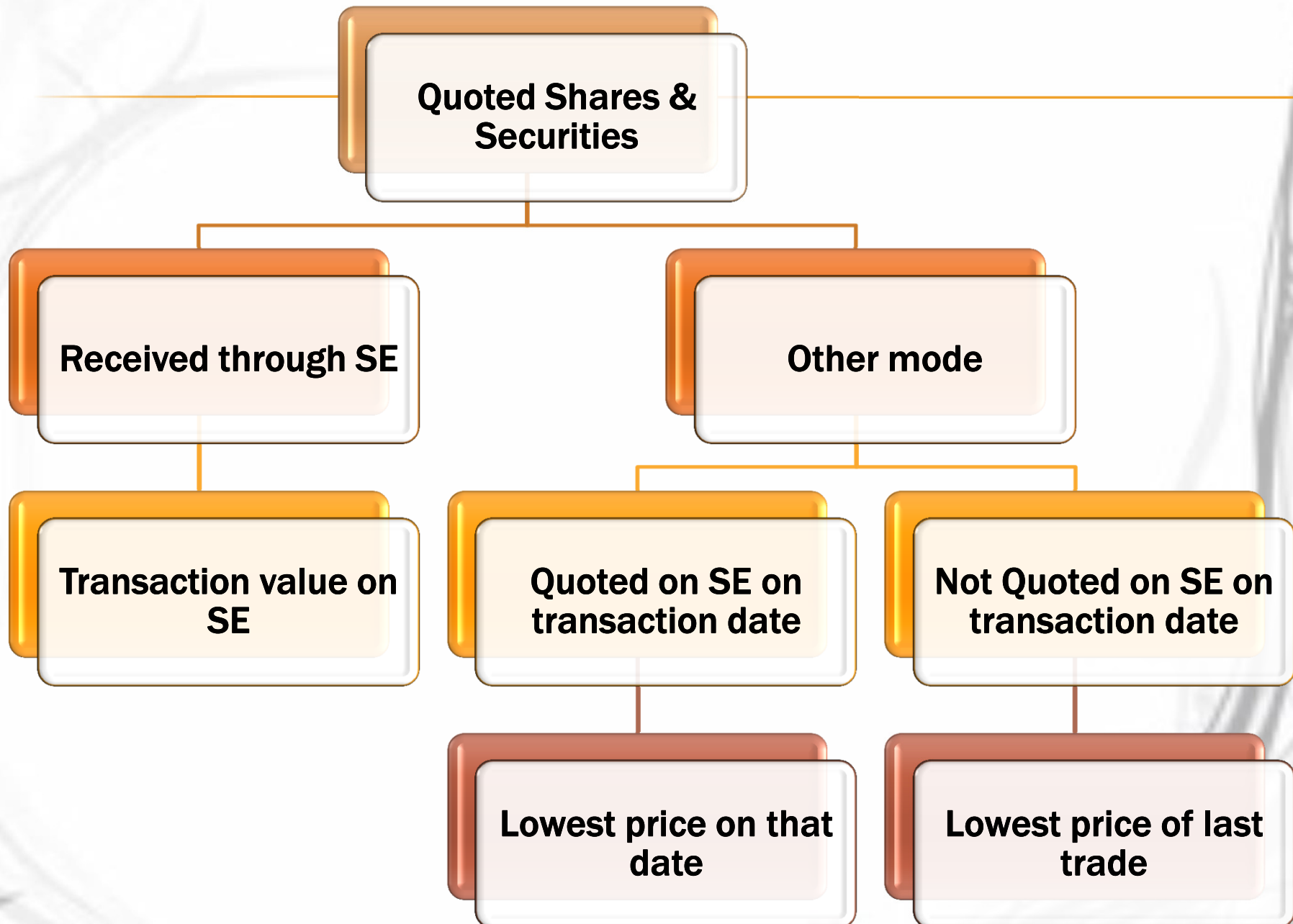
- ✗ **S. 56(2) (viib) – w.e.f. AY 2013-14**
 - + **Company receives consideration from a resident for issue of shares exceeding FMV – aggregate consideration < 50K**
 - + **Exemption for receipt by**
 - ✗ **Company in which public are substantially interested**
 - ✗ **Venture capital undertaking from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

SHARE PREMIUM

✕ **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

- ✖ Who can issue valuation report ?
- ✖ For issue of shares [Rule 11UA(2)]:
 - + A fellow of the ICAI who is not Tax Auditor or Statutory Auditor
- ✖ For transfer:
 - + Same as in the Explanation below section 288 (2)

BALANCE SHEET

- ✖ **Which B/s date to be taken for valuation?**
- ✖ **For issue of shares [Rule 11UA(2)]:**
 - + **Audited B/S (including the notes) as drawn up on valuation date**
 - + **Where the B/S on the valuation date is not drawn up, 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:**
 - + **Audited B/S of such company (including the notes) as drawn up on valuation date audited by statutory auditor**

????

- ✖ **Schools having less than Rs. 1 Cr receipt from education activities claiming exemption u/s 10(23C)(iiiad) receive donations for buildings being capital receipts?**
- ✖ **Few people come together to build a community centre and contribute Rs. 5 Lakhs?**
- ✖ **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?**

????

- ✖ Hospitals claiming exemption u/s 10(23C) (iiia) receive Corpus donations for building hospital?
- ✖ Mr. A receives Car Mercedes Benz value Rs. 50 Lakhs as gift from Mr B?
- ✖ An unregistered religious Trust receives Rs. 4 Lakhs as corpus donation for building of temple?
- ✖ A company dealing in immovable property purchases imm property below stamp duty rate?
- ✖ Are Preference Shares covered u/s 56(2)(viib)

THANKS



CA. Pramod Jain

pramodjain@lunawat.com

+91 9811073867



© 2017 CA. Pramod Jain,