

# **Taxability of Gifts & Share Premium u/s 56 of Income Tax Act 1961**



**CA. PRAMOD JAIN**

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

**Shared at**

**Vikas Marg CPE Study Circle of NIRC of ICAI**

**1<sup>st</sup> 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 till 1<sup>st</sup> 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. 1<sup>st</sup> 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

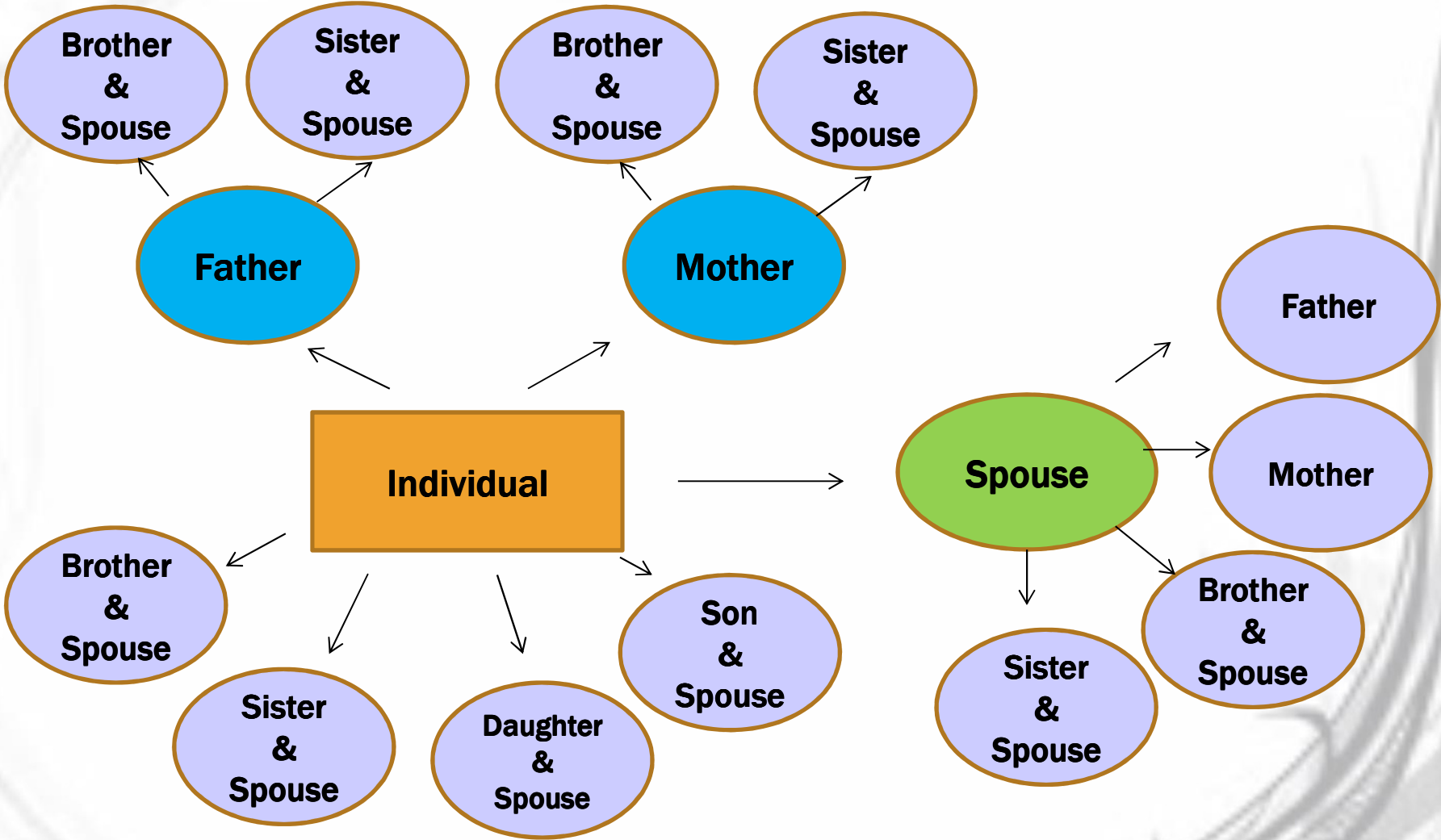
## × Relative

### + 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**



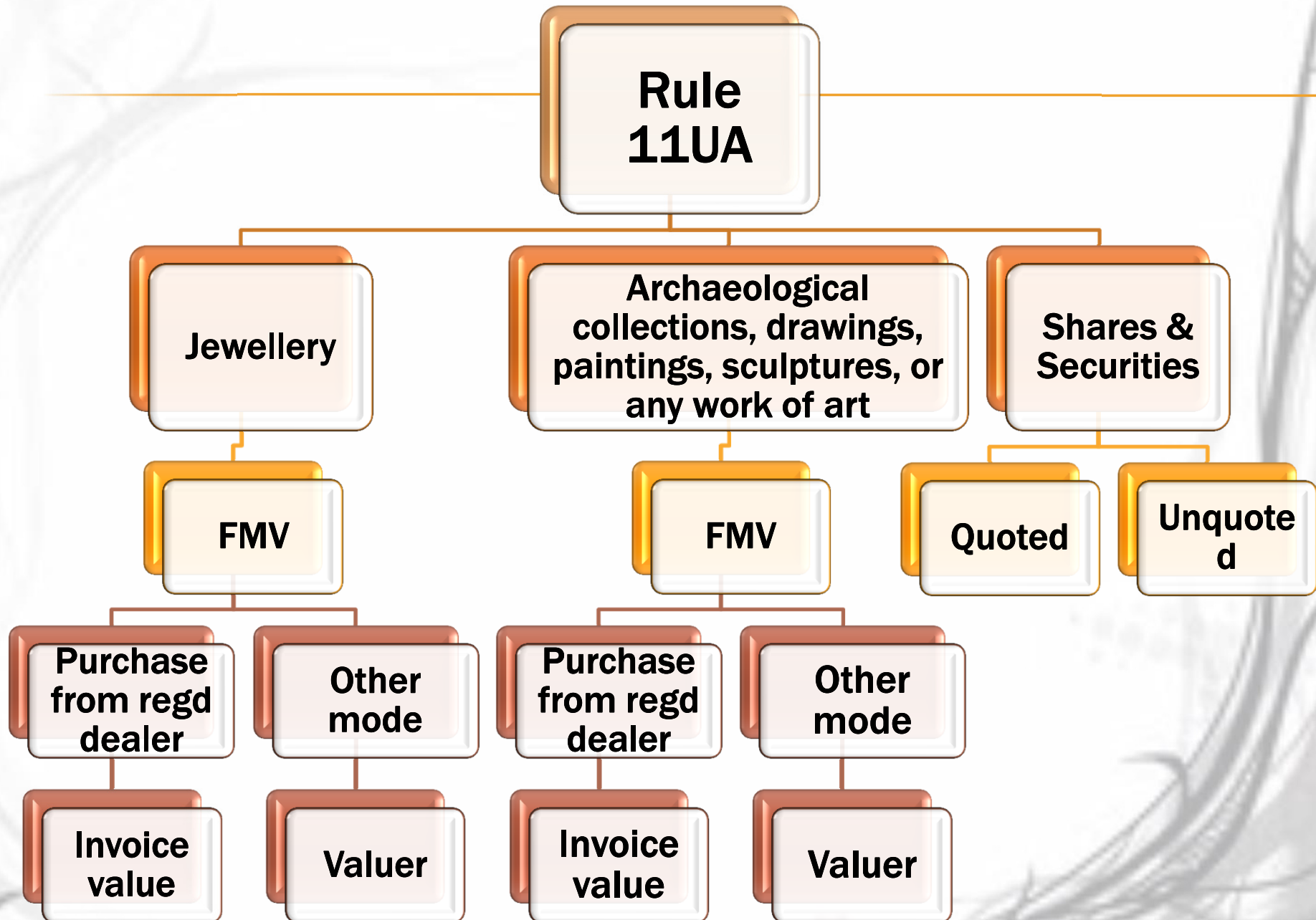
# SHARE PREMIUM

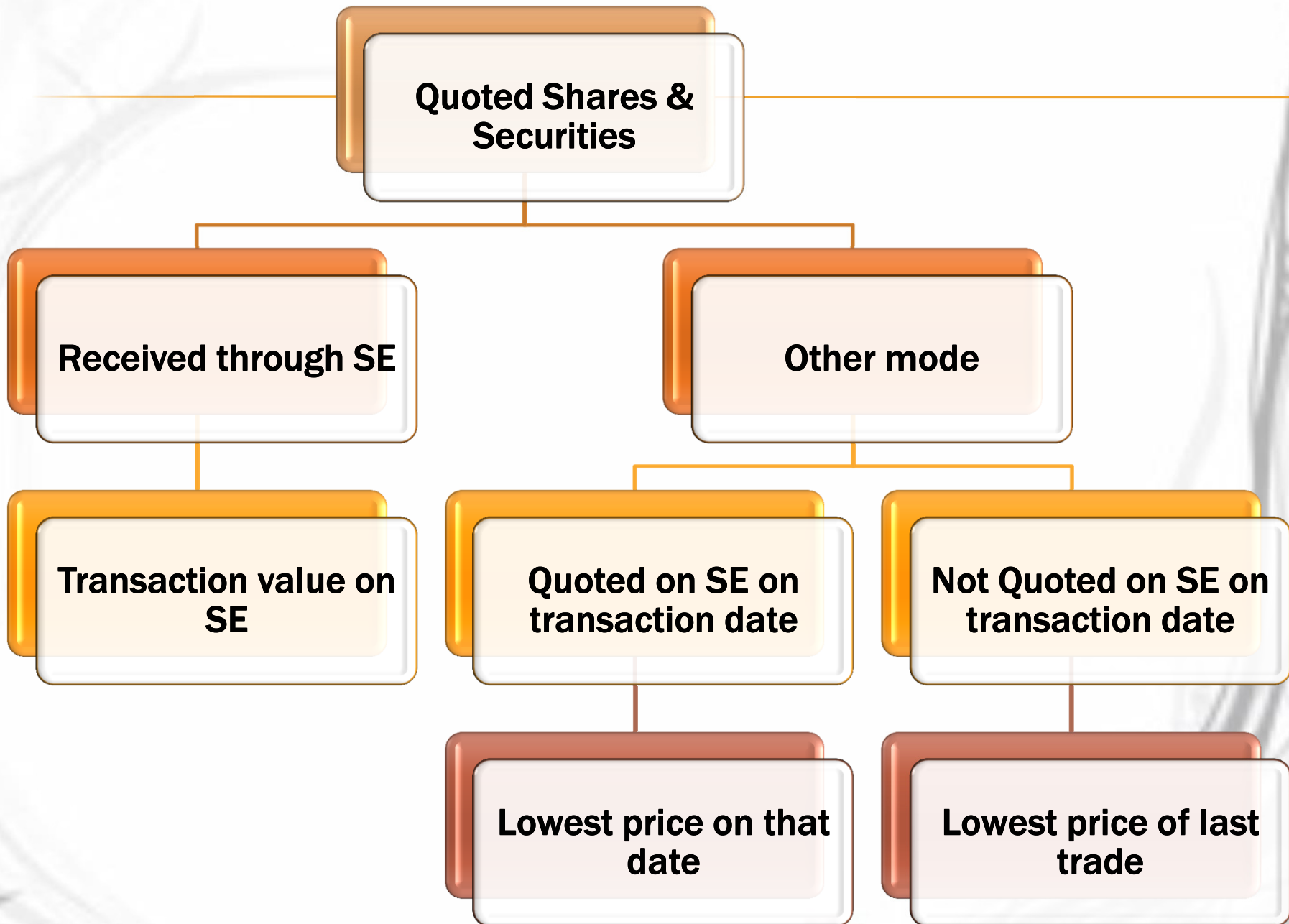
- × **S. 56(2) (viib) – w.e.f. AY 2013-14**
  - + **Company receives consideration from a resident for issue of shares exceeding FMV – aggregate consideration < 50K**
  - + **Exemption for receipt by**
    - × **Company in which public are substantially interested**
    - × **Venture capital undertaking 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

- ✘ **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

- ✘ **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

- ✘ **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**

---

- ✘ **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**

# **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 and 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 & Hospitals claiming exemption u/s 10(23C)(iiiad), (iii ae) receive Corpus donations for buildings?**
- ✘ **An unregistered Trust receives Rs. 2 Lakhs as corpus donation for building of temple?**
- ✘ **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?**
- ✘ **Mr. A receives Car Mercedes Benz value Rs. 50 Lakhs as gift from Mr B?**

**This Presentation would be available  
on**

**[www.lunawat.com](http://www.lunawat.com)**

**Also may download free mobile app**

**“LUNAWAT”**

**for all updates since year 2007**

Thank You!

**CA. Pramod Jain**

**[pramodjain@lunawat.com](mailto:pramodjain@lunawat.com)**

**+91 9811073867**



© 2017 CA. Pramod Jain