

Deemed Gifts & Shares Valuation



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Shared at

**North Ex CPE Study Circle of NIRC of ICAI
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SECTION 56

- ✖ **S. 56(1) – Any income not taxed in any other head**
- ✖ **S. 56(2) – Specific incomes**
 - + **11 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**

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DEEMED GIFTS



DEEMED GIFTS

- ✗ **S. 56(2)(x) on or after 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 less than stamp duty value being higher of :**
 - + **Rs. 50000/-**
 - + **5% of consideration**
- ✗ **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

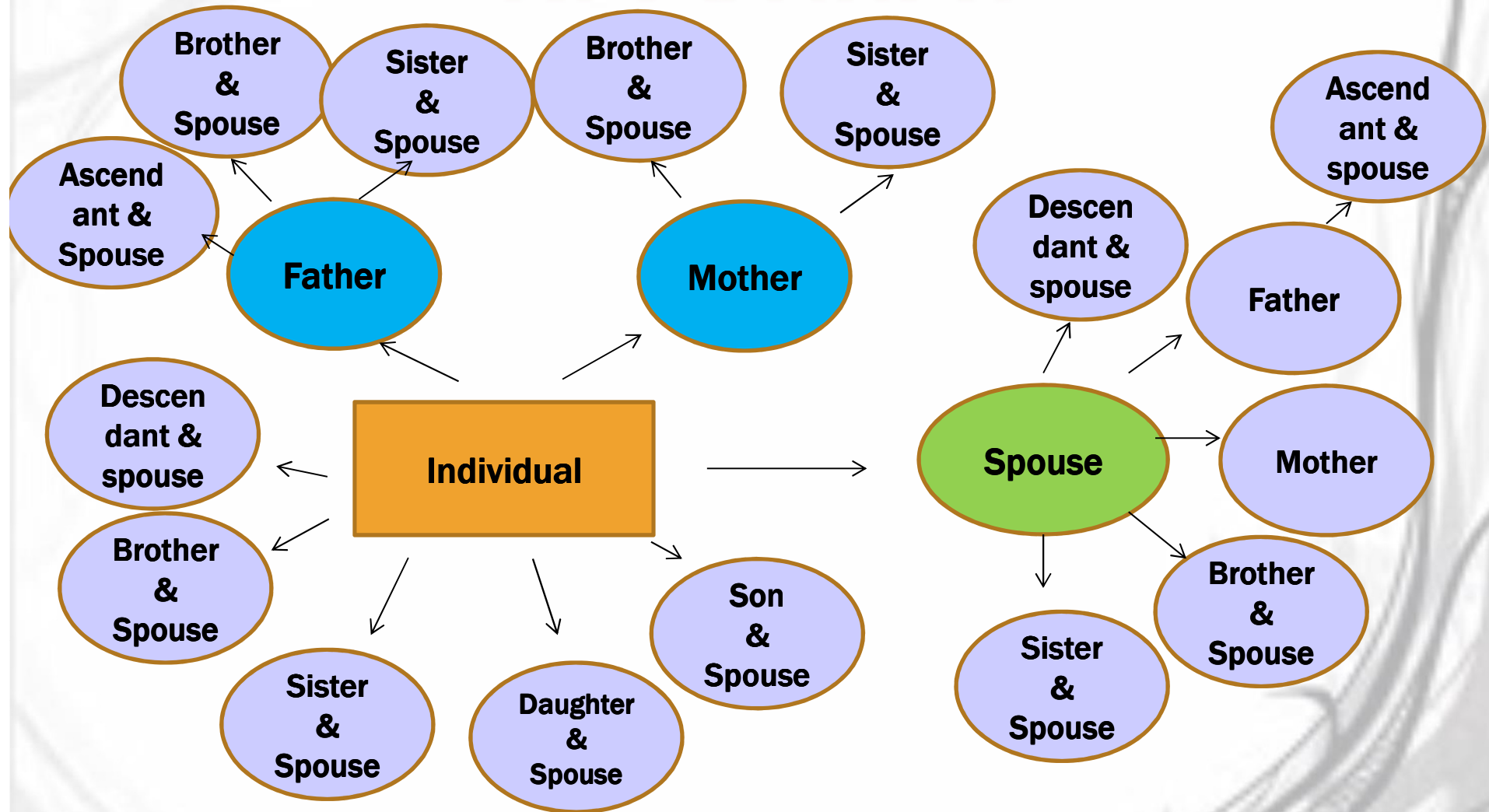
× Relative

+ 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 (iv) – Trf of capital asset to Indian WOS**
 - + **S. 47 (v) – Trf of Capital asset to Indian holding Co by WOS**
 - + **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. is Indian Co**

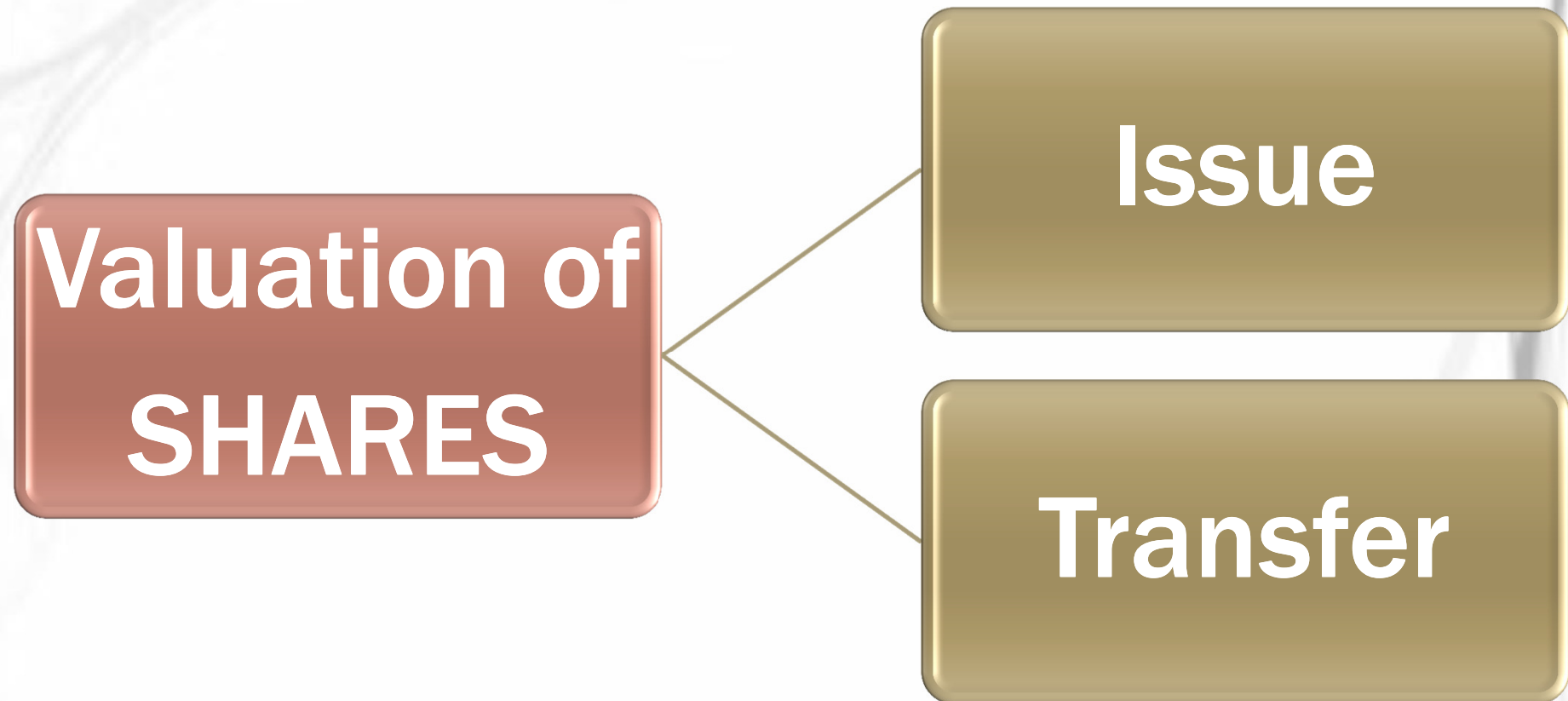
EXCEPTIONS

- ✖ **S. 47 (vic) – Demerger of foreign company asset being shares subject to certain conditions**
- ✖ **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



TRANSFER OF SHARES

✗ **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**

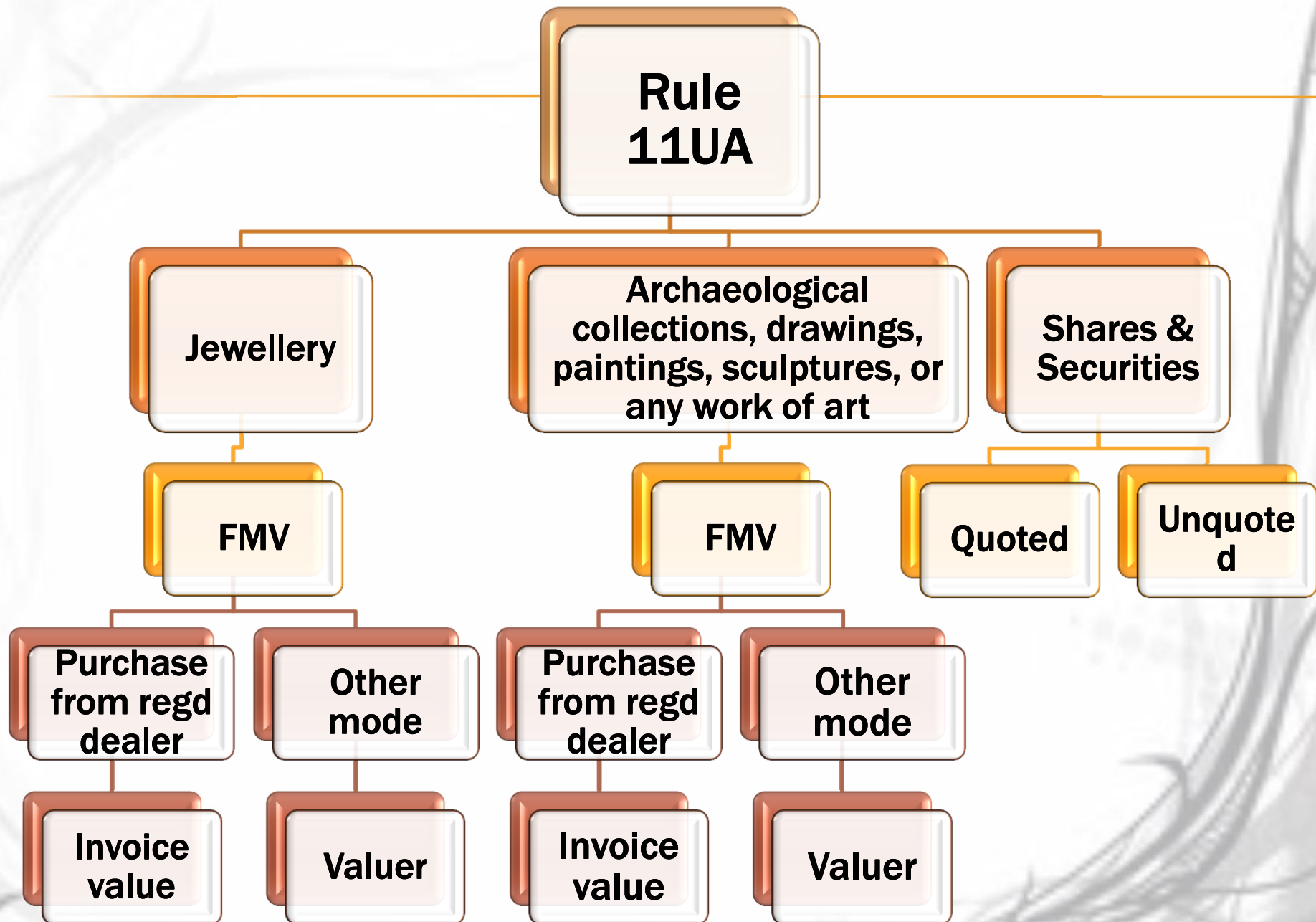
ISSUE OF SHARES

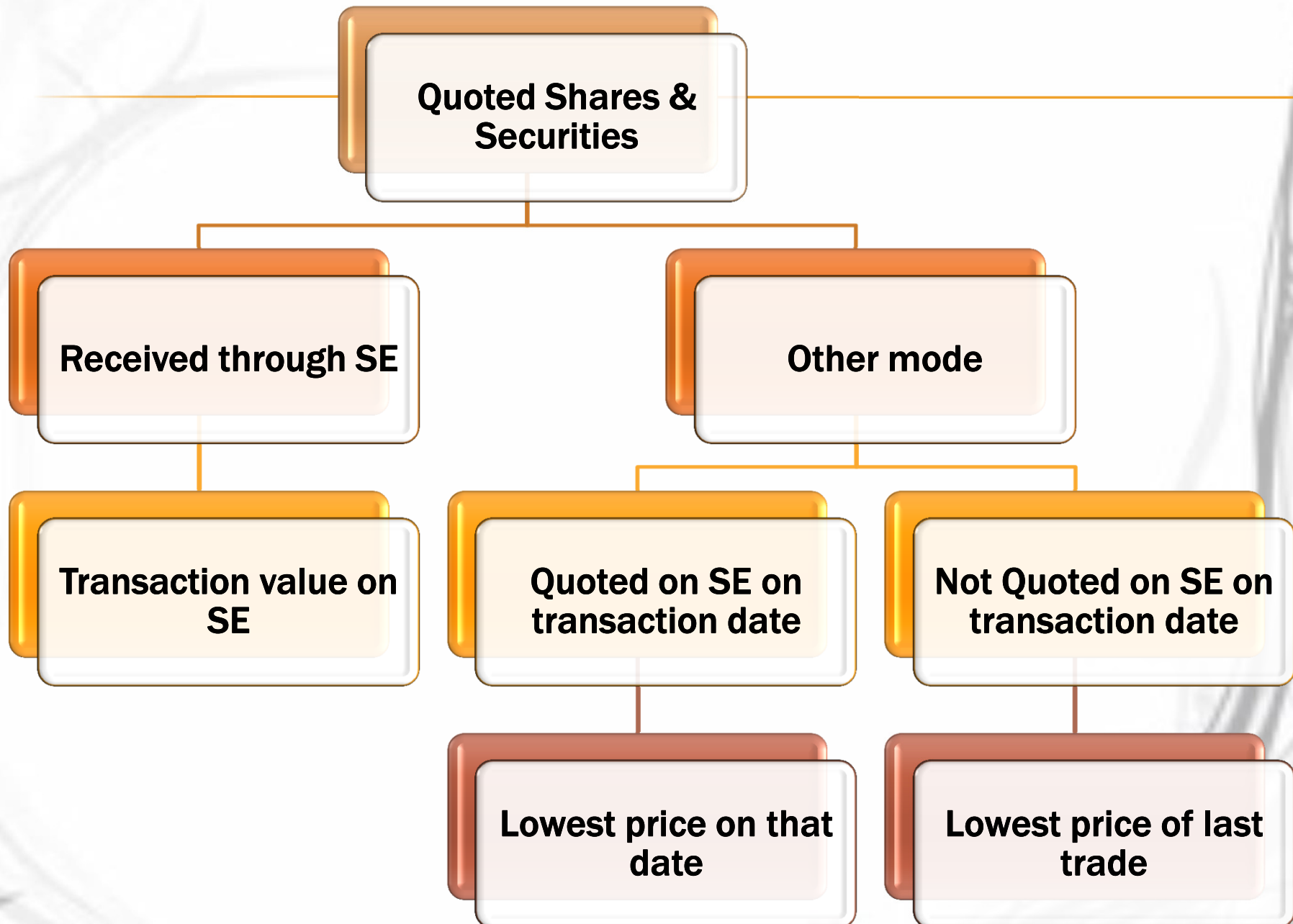
- ✖ **S. 56(2) (viib) – w.e.f. AY 2013-14**
 - + **Company receives consideration from a **resident** for issue of shares exceeding FMV**
 - **aggregate consideration < 50K**
 - + **Exemption for receipt by**
 - ✖ **Company in which public are substantially interested**
 - ✖ **Venture capital undertaking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

FMV FOR ISSUE OF SHARES

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

- + Method prescribed i.e. 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

- ✖ Rule 11UA (1)(c)(b) w.e.f. AY 2018-19
- ✖ $FMV = (A+B+C+D - L) \times (PV)/(PE)$
- ✖ 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 regd 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

- ✖ **Rule 11UA(1)(c)(c)**
- ✖ **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

✖ Rule 11UA(2) – at option of the assessee

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 DFCF –
Accountant not allowed w.e.f. 24th May 2018

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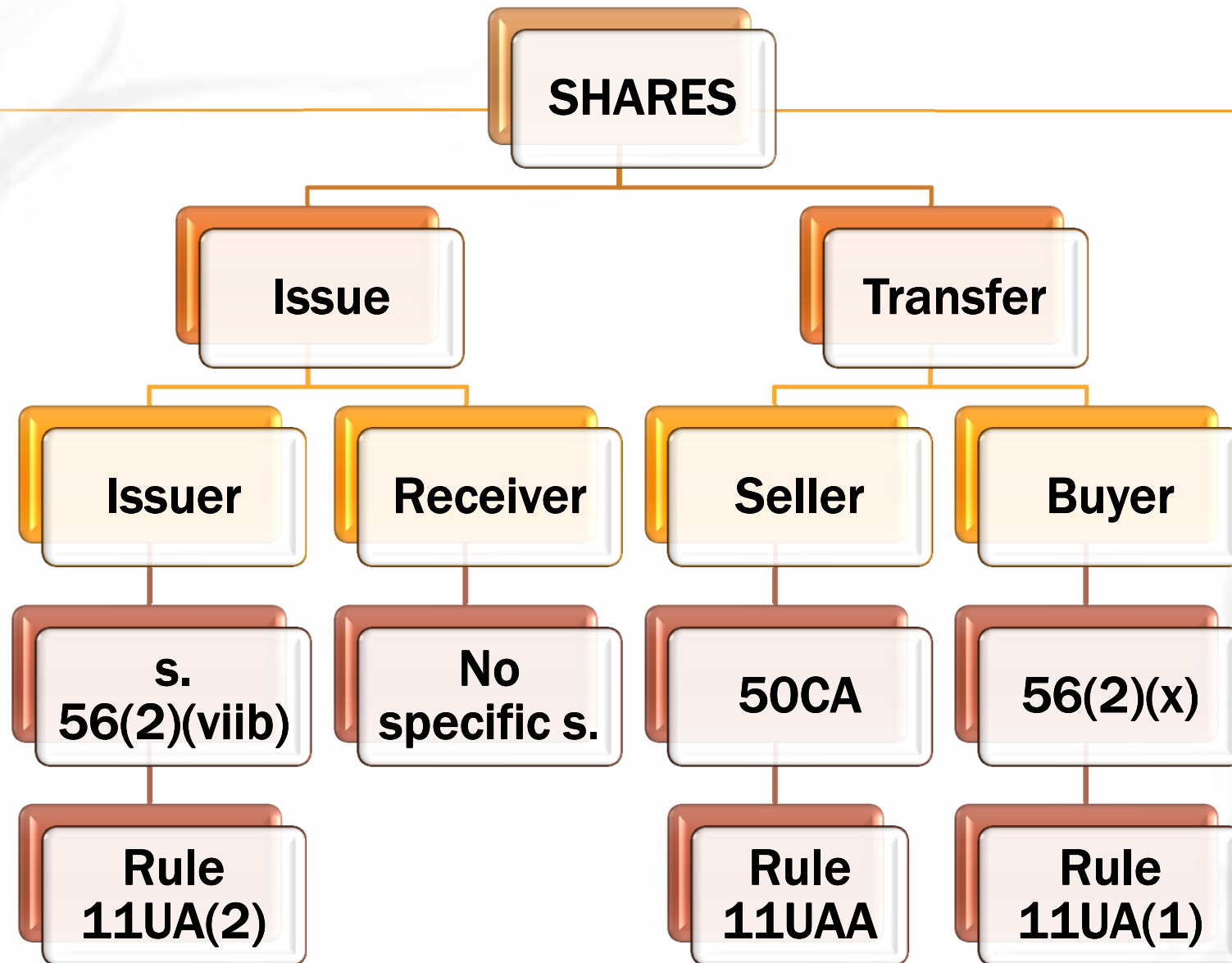
- ✖ ABC Pvt Ltd. incorporated in FY 2016-17
- ✖ Has adequate profits
- ✖ Has immovable property
- ✖ Face Value Rs. 10/-
- ✖ FMV u/r 11UA(1) – Rs. 100/-
- ✖ FMV being Book Value u/r 11UA(2) – Rs. 50/-
- ✖ At what value should ABC Pvt. Ltd issue shares so that there is no tax implication on company / shareholder?

CBDT CIRCULAR

- ✖ **Circular No. 10/2018 dt. 31.12.2018**
- ✖ **Issued and withdrawn**
- ✖ **S. 56(2)(viiia) of the Act shall apply in cases where a specified company or firm receives the shares of the specified company through transfer for no or inadequate consideration. Hence, the provisions of s. 56(2)(viiia) of the Act shall not be applicable in cases of receipt of shares by the specified company or firm as a result of fresh issuance of shares by the specified company**

CBDT ANOTHER CIRCULAR

- ✖ **View stated in Circular No. 10/2018 shall be considered to have never been expressed and accordingly, the said circular shall not be taken into account by any income-tax authority in any proceedings under the Act.**



ACCOUNTANT

- ✖ Who is an accountant for issuing valuation report ?
- ✖ **Rule 11U(a) omitted w.e.f. 24th May 2018**
- ✖ For issue of shares only for DFCF method [Rule 11U(a)(i)]:
 - + A fellow of ICAI who is not Tax Auditor or Statutory Auditor
- ✖ For transfer of unlisted shares (other than equity) & securities [Rule 11U(a)(ii)]:
 - + 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 11U(b)(i)]:
 - + 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

BALANCE SHEET

- ✖ **Which B/s date is to be taken for valuation?**
- ✖ **For transfer of shares Rule 11U(b)(ii):**
 - + **Audited B/S of such Indian company (including the notes) as drawn up on valuation date audited by statutory auditor**
 - + **For other than Indian Company audited by auditor, if any appointed under foreign law (w.e.f. AY 2019-20)**

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- ✖ 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 Mr. Y (not a relative) on the occasion of her daughter marriage. Is there any tax on Mr. X or Mr. Y?

✖ On Mr. Y

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✗ A buy commercial property at Mumbai for Rs. 9 L (stamp value 9.50 lacs) and another residential property at Gurgaon for Rs. 9.50 L (stamp value 10.00 Lacs)??

+ No

✗ A acquires Shares of listed Co for Rs. 5 L (FMV 5.5 L) & jewellery for Rs. 3 L (FMV 3.50 L)??

✗ Yes

✗ B buys agricultural land at Rajasthan for 15 Lacs (stamp value 25 L)??

✗ No

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✖ 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

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- ✖ 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

- ✖ Mr. A receives Car Mercedes Benz value Rs. 50 Lakhs as gift from Mr B?

✖ No

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✖ 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

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- ✖ Are Preference Shares covered u/s 56(2)(viib)?
 - ✖ Yes
- ✖ Father gifts 1,00,000 shares of ABC Pvt. Ltd whose FMV is Rs. 500/- per share to his son. Is there any tax on father / son?
 - ✖ No
- ✖ Is there any change if for 1,00,000 shares of ABC Pvt. Ltd whose FMV is Rs. 500/- per share father sells @ Rs. 50/- per share to his son?
 - ✖ Yes, on Father s. 50CA

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✖ **Alimony lump-sum / monthly received from ex-husband?**

✖ **Monthly –Yes; Lump-sum – No**

✖ *ACIT vs. Meenakshi Khanna (2013) 143 ITD 0744 (Del) - consideration for relinquishing all her past & future claims*

✖ **XYZ P. Ltd. shares FMV as per s. 56(2)(x) is (-) 50/- .**

+ **Mr. P sells 1000 shares to Mr. Q at Re. 1/-**

+ **Mr. R sells 500 shares to BC P. Ltd at Rs. 100/-?**

+ **M/s PQR Pvt. Ltd sells 10000 shares to Mr. Q at Re. 1/- and 5000 shares to BC P. Ltd at Rs. 100/-**

✖ **No**

✖ *Medplus Health Services P. Ltd. vs. ITO (2016) 46 CCH 0285 HydTrib*

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