Gifts to and from HUF- Taxation Aspects

In this article, the author endeavours to prescient the amendment by Finance Act, 2012 in the definition of 'relative' in Explanation (e) to clause (vii) of Section 56. The article also critically analyses the recent judicial decisions on the subject matter of gifts to and from HUF, in light of pre and post amendment scenario with special emphasis on relevant affecting provisions of Hindu Law. The article also explains the need to harmonise provisions of Section 10(2) of Income-tax Act, 1961 (the Act) with Section 56(2)(vii) in case of gifts received from HUF by its members.

Background

In earlier tax regime, up to 30-09-1998 any amount received without consideration was taxable as gift under the Gift-tax Act, 1958, which was abolished w.e.f. 01-10-1998. With effect from 01-10-1998 to 31-08-2004 any amount received without consideration was not liable to tax in the hands of receiver even under the Act. This relaxation gave rise to a debate before Assessing Officer/appellate authorities that whether particular amount is genuine gift or unexplained credit by the assessee in the guise of gift.

Thereafter, in Section 56(2), a clause (v) was inserted by Finance (No.2) Act, 2004 to provide that a sum of money exceeding ₹25, 000/- received by an individual or HUF from any person after 01-09-2004 without consideration will be taxable as income from other sources.

The amount received from *'relative'*, as defined in Explanation to Section 56(2)(v) is, however, not chargeable to tax.

The above provision was further amended by introduction of a new clause (vi) in Section 56(2) *w.e.f.* 01-04-2006 to provide that if aggregate amount received during the year is more than ₹50,000/- the same will be chargeable to tax and the other conditions remains same as were provided under clause (v).

Thereafter, Section 56(2)(vi) has been substituted by 56(2)(vii) *w.e.f.* 01-10-09 which was further amended by Finance Act, 2010, Finance Act, 2012 and Finance Act, 2013.

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Income from other sources (Section 56)

At present Section 56 reads as under *(relevant extracts only)*:

(1) Income of every kind which is not to be excluded from the total income under this Act

shall be chargeable to Income-tax under the head "Income from other sources", if it is not chargeable to Income-tax under any of the heads specified in Section 14, items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub-Section (1), the following incomes, shall be chargeable to Income-tax under the head "Income from other sources", namely:

(i)

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(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that .....

Provided further that.....

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that.....

Provided further that this clause shall not apply to any sum of money or any property received —

(a) from any relative; or

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In earlier tax regime, up to 30-09-1998 any amount received without consideration was taxable as gift under the Gift-tax Act, 1958, which was abolished w.e.f. 01-10-1998.

Explanation.—for the purposes of this clause,—

(a)

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**(e) "relative" means,—

(i) in case of an individual—

(A).....;

(B).....;

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(G).....; and

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

*[** Substituted by the Finance Act 2012 w.r.e.f. 01.10.2009]*

Provisions of sub-Section (2) of Section 10

In order to give justice to the title of the article, it is incumbent on the author to discuss provisions of sub-Section (2) of Section 10, which reads as follows:

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—

(1) .....

(2) subject to the provisions of sub-Section (2) of Section 64, any sum received by an individual as a member of a Hindu undivided family, where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family;

[It is only if the assessee has received the sum in question by virtue of his position as member of the undivided family to which he claims to belong, that the application of Section 14(1) of the 1922 Act [*corresponding to Section 10(2) of the 1961 Act*] is attracted – [*Maharaj Kumar of Vizianagaram, [1934] 2 ITR 186 (All.)*]

Implications under Income-tax Act, 1961

On the combined reading of Section 56(2) and Section 10(2) and literally interpreting the provisions

of the Act and specific prospective/retrospective amendments thereto, from time to time as discussed above, following scenario emerges:

1) Any sum given by HUF to its members, subject to the conditions prescribed under Section 10(2) is exempt from tax in the hands of recipients.
2) Gifts received by HUF from its members were taxable in the hands of HUF up to 30-09-09. (Refer the decision in case of *Harshadbhai D. Vaidhya (HUF)* discussed below)
3) With effect from 01-10-2009, gift *received by HUF from its members* would be excluded from taxable income due to specific amendment to that effect in definition of relative under explanation (e) to clause (vii) of Section 56(2).
4) As on date any sum received by members from their HUF is *taxable*, if
   i) It is above threshold limit as provided in Section 56(2)(vii); *and*
   ii) It is not in conformity with conditions prescribed under Section 10(2).

In other words, if conditions stipulated in 10(2) are complied then the income itself will not be included in 'total income' and thus it will not reach to the stage of charging/exemptions under Section 56(2). Thus, in context of above statement, for making the income, being received by individual from his HUF, taxable in hands of individual, there should be a non-compliance of conditions of 10(2) and amount should exceed ₹ 50,000/- in aggregate.

[Alert:

a) If a member of HUF converts his/her individual property (movable/immovable) into HUF property, the income from such property will be clubbed with the income of the Individual (donor) under Section 64(2). Further under Section 4(1A) of Wealth Tax Act, 1957 assets so converted shall be deemed to be the assets of the Individual transferor.

b) Before granting exemptions as applicable, capacity to pay in case of donor and cross entries in his/her books shall always be subject matter of scrutiny during the course of assessment proceedings.]

Any sum given by HUF to its members, subject to the conditions prescribed under Section 10(2) is exempt from tax in the hands of the recipients.

Law applicable to gifts under the Hindu Law

- *Definition of Gift*
  Gift consists in the relinquishment (without consideration) of one's own right (in property) and the creation of another man's right is completed on that other's acceptance of the gift, but not otherwise.
- *Acceptance of Gift by HUF from its members, coparceners or outsiders:*
  There is no restriction for a HUF to accept gifts from any source. However, the intention of the donor should be clear and the gift should be genuine. Gift declaration detailing complete information relating to the donor should be drawn and recorded. Gift by cheque should go in a bank account in the name of the donee HUF for realisation and subsequent realisation.
- *Can a HUF give away its property (movable/immovable) by way of gift?*
  Although children acquire by birth rights equal to those of a father (*Karta*) in an ancestral property, both movable and immovable, the father has the power of making, *within reasonable limits*, gifts of ancestral *movable property* without the consent of *coparceners*. Combined reading of the Hindu Law and various judicial precedents show that the position in the Hindu Law is that, whereas, the *Karta* has the power to gift ancestral movables within reasonable limits, he has no such power with regard to ancestral immovable property or coparcenary property. He can however, make a gift within reasonable limits of ancestral immovable property for *"pious purpose"*. However, the alienation must be by an act *inter vivos*, and not by will. [*Kuppayee vs. Raja Gounder (265 ITR 551 at 559) SC*]
- *Whether the gift by HUF in violation of above principals is void or voidable?*
  The alienation by a *Karta* of joint Hindu Family is not necessarily void but is only voidable if objections are taken to it by the other members of joint Hindu Family. The *Lahore High Court in Imperial Bank of India vs. Maya Devi,* AIR 1935 Lahore 367 observed, *"Where, however, the gift is not for religious purposes, or consists of the whole or large portion of the joint family property (i.e.,* above reasonable limit or

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disproportionate distribution), *the transaction is voidable, but only at the instance of the other coparceners….."*

With the above background of relevant provisions of the Hindu Law, if we analyse the wordings of sub-Section (2) of Section 10 it appears that, the conditional exemption by way of a rider, *"……. where such sum has been paid out of the income of the family, or, in the case of any impartible estate, where such sum has been paid out of the income of the estate belonging to the family"* is carefully drafted by legislature to save the spirit of concerned affecting provisions of the Hindu Law.

Two recent judgments on the subject matter

1) *Vineetkumar R. Bhalodia vs. ITO [2011] 11 taxmann.com 384 (Rajkot) (A.Y. 2005-06)*

Section 56 of the Income-tax Act, 1961 - Income from other sources - Chargeable as - Assessment year 2005-06 - Whether a gift received from 'relative', irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax under provisions of Section 56(2)(vi) - Held, yes - Whether HUF is a group of relatives and therefore, gift received from HUF would be exempt from tax under section 56(2)(vi) - Held, yes

To substantiate its stand, the Hon'ble Tribunal observed that,

"…….Further, from a plain reading of Section 56(2)(vi) along with the Explanation to that Section and on understanding the intention of the legislature from the Section, it could be seen that a gift received from 'relative', irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax under the provisions of Section 56(2)(vi) as a group of relatives also falls within the Explanation to Section 56(2)(vi). It is not expressly defined in the Explanation that the word 'relative' represents a single person. And it is not always necessary that singular remains singular. Sometimes a singular can mean more than one, as in the case on hand. In the instant case the assessee received gift from his HUF. The word 'Hindu Undivided Family' though sounds singular unit in its form and assessed as such for Income- tax purposes, finally at the end a 'Hindu Undivided Family' is made up of 'a group of relatives'. Thus, a singular words/ words could be read as plural also, according to the circumstance/situation."

The Hon'ble Tribunal further allowed the exemption on alternate ground based on Section 10(2) by observing that, for getting exemption under Section 10(2) two conditions are to be satisfied. Firstly, a person must be a member of HUF and secondly, he should receive sum out of income of such HUF, may it be income of earlier year. Accordingly, in the instant case, it was held that, assessee was a member of HUF and received gift from HUF which was out of income of family and *there was no material on record to show that gift amount was part of any assets of HUF*, same would be exempt under Section 10(2).

Having said that, had revenue been able to prove beyond doubt *that amount gifted by HUF to its member was part of any assets of HUF, whether tribunal would have allowed the case purely on the basis of liberal interpretation of Section 56(2)(vi)?*

With all due respect to the authority of the Hon'ble Tribunal, in the author's considered opinion, taxability or otherwise of any sum given by HUF to its members should be decided strictly on the touchstone of provisions contained in Section 10(2) and not by liberally interpreting the provisions of Section 56(2)(vii). If the interpretation of term 'relative', as adopted by the Hon'ble ITAT in *Bhalodia's case* (*supra*) is adopted, it would render the provisions of Section 10(2) & the conditions prescribed there under, *otiose*.

In fact, amendment by the Finance Act, 2012, amending the definition of term 'relative', to the effect that relative in case of HUF means, any member thereof, itself clarifies that if the legislature further wanted that money exceeding ₹50,000/- received by the member of the HUF from the HUF should also not be chargeable to tax, it would have specifically mentioned so in the definition in *'relatives'*. However, that has certainly not been done to avoid the conflicts between Section 10(2) and Section 56(2)(vii) and

to harmonise with the spirit of relevant affecting provisions of Hindu Law, as discussed earlier.

To elaborate further, it is the settled canon of interpretation of statute that the entire act should be read as a whole and any interpretation of provision, which would render the other provision inoperable/ meaningless, should be avoided.

In *High Court of Gujarat vs. Gujarat Kisan Masdoor Panchayat* [2003] 4 SCC 712 it has been held by the Apex Court that it is a well-settled principle of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided.

The Act has, therefore, to be viewed as a whole and its intention determined by construing all the constituent parts of the Act together and not by taking detached Sections or to take one word here and another there. [*Newspapers Ltd. vs. State Industrial Tribunal AIR 1957 SC 532*]

In order to ascertain the meaning of a clause or a statute, it is a settled rule or, in other words, *a compelling rule that the entire statute must be read as a whole* and thereby, the intention of Legislature and the meaning of different provisions can be ascertained and *all efforts must be made to make a harmonious interpretation* of the different parts of the statute and thereby to reconcile the different parts of the statute even though they apparently appear to be conflicting or contradictory. [*State of UP vs. Prem Singh Vahi AIR 1986 All. 332*]

The Supreme Court in *CIT vs. Hindustan Bulk Carriers* [2003] 259 ITR 449 observed:

> "Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they *'harmonise'*. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.
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> *The provisions of one Section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus, a construction that reduces one of the provisions to a 'useless number' or 'dead letter' is not a harmonised construction. To harmonise is not to destroy."*

2) *Harshadbhai D. Vaidhya (HUF) vs. ITO [2013] 33 taxmann.com 483 (Ahd.-Trib.) (A.Y. 2005-06)*

Facts in brief were that, the assessee in the capacity of HUF, received a sum of ₹7 lakh as gift from his uncle. The Hon'ble tribunal, while allowing the case of assessee observed as under:

"For the year under consideration, *i.e.,* assessment year 2005-06 the definition of 'relative' was in respect of the relationship by an individual donee with close relatives as defined therein. However, it is very pertinent to note that the operative Section *i.e.,* Section 56(2)(v) was in respect of (i) individual, and (ii) Hindu Undivided Family (HUF). Meaning, thereby, the legislature has clear intention to include both, *i.e.,* individual as well as HUF within its scope. *Thus, the Section is applicable in respect of money exceeding ₹25,000/- received without consideration either by an 'individual' or by a 'HUF.'*

The *proviso* annexed to sub-Section (v) states that the charging clause shall not apply to any sum of money received from any relative. Meaning, thereby, the *proviso* is applicable to both of them *i.e.,* 'individual' as well as 'HUF'. *The donor 'relative' can be either relative of 'Individual' or 'HUF', as the case may be.* In other words, if an amount exceeding ₹25,000/- is received as a gift either by 'individual' or by 'HUF', then such an amount is chargeable to income under the head "Income from other sources" but an exception is provided in the first *proviso* that the said clause of charging the amount to tax should not apply to an amount received from any relative.

Thus, the *proviso* prescribes that the charging of the gifted amount shall not apply to any sum of money received as a gift from a 'relative' either by an "individual" or by "HUF". *Naturally, the proviso annexed to clause (v) of Section 56(2) does not restrict to an 'individual' but it governs 'individual' as well as a 'HUF'.* With this understanding/ interpretation of the main provisions, one has to examine the definition of 'relative'

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given in Explanation annexed to this Section. *The position shall be absolutely clear that even in case of HUF, if a sum of money is received from any relative and that relative is as defined in 'Explanation' then also the case would fall within the exception as prescribed in this Section."*

Though the issue relates to A.Y. 2005-06, while concluding its verdict, the Hon'ble Tribunal took the cognisance of amendment made by Finance Act 2012 w.r.e.f. 01-10-2009 in the following words,

"……..at some later stage, the legislature became conscious of the problem, therefore, while drafting the analogous provisions of Section 56(2)(vii), it was added in the definition of *'relative'* (ii) in case of a Hindu Undivided Family, any member thereof…… Although this subsequent change in the Act do not apply for the year under consideration, being incorporated by Finance Act, 2012 but *it appears that by insertion of these words the Hon'ble Legislatures have visualised the difficulty, hence streamlined the provisions by removing the doubt."*

Thus, by necessary implication, the Hon'ble Tribunal affirmed that the amendment by Finance Act, 2012 [*w.e.f.* 01-10-09] should be construed as retrospective *w.e.f.* 01-09-2004 [*i.e.,* from birth of clause (v) of sub-Section (2) of Section 56), being clarificatory in nature and intended for removal of doubts.

The moot question

The amendment by Finance Act, 2012 specifically exempts the gifts received by HUF from its members [explanation (e) to Section 56(2)(vii)] and not from relatives of members. Whereas, the decision of the Hon'ble ITAT in Harshadbhai D. Vaidhya-HUF (*supra*), by adopting a purposive interpretation, went a step further and held that gift received by HUF from relative of *Karta* (or member of HUF) is also exempt within the meaning of Section 56(2)(v)/(vi)/(vii) !

In the author's humble opinion, the decision in case of *Harshadbhai D. Vaidhya (HUF)* (*supra*) may hold good for assessment year concerned, however, in the post amendment scenario, the term 'relative' in case of HUF cannot be stretched so as to include within its ambit, relatives of members of HUF, in view of clear and unambiguous wordings

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of amended clause (e) of the explanation to Section 56(2)(vii). *Thus, the exemption in case of HUF recipients is restricted to gifts under a will [clause (c)] or in contemplation of death [clause (d)] or gift from members of HUF.*

To put in other words, a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. In the case of *State of Jharkhand vs. Govind Singh [2005] 10 SCC 437 (SC)* the court by referring to the rule of *casus omissus* observed that,

"….when the words of the statute are clear, plain or unambiguous, *i.e.,* they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. The intention of the legislature is primarily to be gathered from the language used, *which means that attention should be paid to what has been said as also to what has not been said."*

Conclusion

To summarise, while deciding the issue of taxability or otherwise in case of gifts to and from HUF, clear provisions of the Act (read as a whole) should be resorted to, before taking recourse of any judicial decisions on the subject matter, though in favour of assessee. Further, one should not miss that, though in view of the above amended position, if a member of HUF converts his/her individual property (movable/immovable) into HUF property, the HUF will not have to pay tax under Section 56(2)(vi)/(vii), but at the same time income from such property will be clubbed with the income of the Individual (donor) under Section 64(2).

References

1) Income-tax Act, 1961

2) Interpretation of Taxing Statutes by Dr. K. N. Chaturvedi (Taxmann)

3) CTR Encyclopedia on Indian Tax Laws by CCH

4) 151 FAQs' on HUF published by All India Federation of Tax Practitioners, Mumbai. ■