

⁷²[**Prescribed class of persons for the purpose of clause (XI) of the proviso to clause (x) of sub-section (2) of section 56.**

11UAC. The provisions of clause (x) of sub-section (2) of section 56 shall not apply to,—

- (1) any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification⁷³ in the Official Gazette, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

Explanation.—For the purposes of this sub-rule,—

- (a) “resident” means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user;
- (b) “unauthorised colony” shall have the same meaning as assigned to it in clause (b) of section 2 of the National Capital Territory of Delhi

72. Substituted by the IT (Fourteenth Amdt.) Rules, 2020, w.r.e.f. 1-4-2020 and shall be applicable for assessment year 2020-21 and subsequent assessment years. Prior to its substitution, rule 11UAC, as inserted by the IT (Thirteenth Amdt.) Rules, 2019, w.e.f. 1-4-2020 and later on amended by the IT (Sixth Amdt.) Rules, 2020, w.e.f. 1-4-2020, read as under :

‘11UAC. *Prescribed class of persons for the purpose of clause (XI) of the proviso to clause (x) of sub-section (2) of section 56.*—The provisions of clause (x) of sub-section (2) of section 56 shall not apply to any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi, where the Central Government by notification in the Official Gazette, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

Explanation.—For the purposes of this rule,—

- (a) “resident” means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user;
- (b) “unauthorised colony” shall have the same meaning as assigned to it in clause (b) of section 2 of the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Act, 2019 (45 of 2019).’

73. For text of Regulations for regularization of unauthorized colonies in NCT of Delhi, see Taxmann’s Master Guide to Income-tax Rules.

(Recognition of Property Rights of Residents in Unauthorised Colonies) Act, 2019 (45 of 2019)⁷⁴.

- (2) any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary received by a shareholder, where,—
- (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and
 - (ii) share of company and its subsidiary and the subsidiary of such subsidiary has been received pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Explanation.—For the purposes of this sub-rule,—

- (a) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;
 - (b) “Tribunal” shall have the meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013 (18 of 2013).
- (3) any movable property, being equity shares, of the reconstructed bank, received by the investor or the investor bank, as the case may be, where the said share has been allotted by the reconstructed bank under the scheme at a price specified in sub-paragraph (3) of paragraph 3 of the Scheme.

Explanation.—For the purposes of this sub-rule,—

- (a) “investor” shall have the same meaning as assigned to it in sub-clause (b) of clause (1) of paragraph 2 of the Scheme;
 - (b) “investor bank” shall have the same meaning as assigned to it in sub-clause (c) of clause (1) of paragraph 2 of the Scheme;
 - (c) “reconstructed bank” shall have the same meaning as assigned to it in sub-clause (d) of clause (1) of paragraph 2 of the Scheme;
 - (d) “Scheme” means Yes Bank Limited Reconstruction Scheme, 2020⁷⁵.]
- ⁷⁶[(4) any movable property, being equity shares, of a public sector company or a company, received by a person from a public sector company or the Central Government or any State Government under strategic disinvestment.

74. For definition of “unauthorised colony” and text of Notification, see **Appendix**.

75. For text of Scheme, see Taxmann’s Master Guide to Income-tax Rules.

76. Substituted by the IT (Eighth Amdt.) Rules, 2023, w.r.e.f. 1-4-2023 and shall be applicable for the assessment year 2023-24 and subsequent assessment years. Prior to its substitution,

(Contd. on p. 1.277)

Explanation.—For the purposes of ⁷⁷[this sub-rule], ‘strategic disinvestment’ shall have the same meaning as assigned to it in clause (iii) of *Explanation* to clause (d) of sub-section (1) of section 72A.]

⁷⁸[(5) any movable property, being shares or units or interest in the resultant fund received by the fund management entity of the resultant fund, in lieu of shares or units or interest held by the investment manager entity in the original fund, pursuant to the relocation, subject to the following conditions, namely:—

- (i) not less than ninety per cent of shares or units or interest in the fund management entity of the resultant fund are held by the same entity(ies) or person(s) in the same proportion as held by them in the investment manager entity of the original fund; and
- (ii) not less than ninety per cent of the aggregate of shares or units or interest in the investment manager entity of the original fund was held by such entity(ies) or person(s).

Explanation.—For the purposes of this sub-rule,—

- (a) the expressions “relocation”, “original fund” and “resultant fund” shall have the meanings respectively assigned to them in the *Explanation* to clause (viia) and clause (viia) of section 47;
- (b) “fund management entity” shall have the same meaning as provided in the sub-clause (p) of regulation 2^{78a} of the International Financial Services Centres Authority (Fund Management) Regulations, 2022; and
- (c) “investment manager entity” means the fund manager of the original fund regulated by the respective regulation of the jurisdiction in which the original fund is located.]

⁷⁹[**Computation of income chargeable to tax under clause (xiii) of sub-section (2) of section 56.**

11UACA. For the purpose of clause (xiii) of sub-section (2) of section 56, where any person receives at any time during any previous year any sum under a life insurance policy, then, the income chargeable to tax under the said clause

(Contd. from p. 1.276)

clause (4), as inserted by the IT (Twenty-eighth Amdt.) Rules, 2021, w.e.f. 1-4-2022, read as under :

‘(4) any movable property, being equity shares, of the public sector company, received by a person from the Central Government or any State Government under strategic disinvestment.

Explanation.—For the purpose of this clause, “strategic disinvestment” shall have the same meaning as assigned to it in clause (iii) of *Explanation* to clause (d) of sub-section (1) of section 72A.’

77. Substituted for “this clause” by the IT (Thirteenth Amdt.) Rules, 2023, w.e.f. 18-7-2023.

78. Inserted, *ibid*.

78a. For text of regulation 2(p) of International Financial Services Centres Authority (Fund Management) Regulations, 2022, see **Appendix**.

79. Inserted by the IT (Sixteenth Amdt.) Rules, 2023, w.e.f. 16-8-2023.

during the previous year in which such sum is received shall be computed in the following manner, namely:—

- (i) where the sum is received for the first time under the life insurance policy during the previous year (hereinafter referred to as first previous year), the income chargeable to tax in the first previous year shall be computed in accordance with the formula,—

A-B

where,—

A = the sum or aggregate of sum received under the life insurance policy during the first previous year; and

B = the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the first previous year that has not been claimed as deduction under any other provision of the Act;

- (ii) where the sum is received under the life insurance policy during the previous year subsequent to the first previous year (hereinafter referred to as subsequent previous year), the income chargeable to tax in the subsequent previous year shall be computed in accordance to the formula,—

C-D

where,—

C = the sum or aggregate of sum received under the life insurance policy during the subsequent previous year; and

D = the aggregate of the premium paid during the term of the life insurance policy till the date of receipt of the sum in the subsequent previous year not being premium which—

- (a) has been claimed as deduction under any other provision of the Act;
or
(b) is included in amount 'B' or amount 'D' of this rule in any of the previous year or years.

Explanation.—For the removal of doubts, it is clarified that the sum received under a life insurance policy would mean any amount, by whatever name called, received under such policy which is not to be excluded from the total income of the previous year in accordance with the provisions of clause (10D) of section 10, other than the sum—

- (a) received under a unit linked insurance policy; or
(b) being the income referred to in clause (iv) of sub-section (2) of section 56.]

⁸⁰[**Prescribed class of persons for the purpose of section 50CA.**

11UAD. The provisions of section 50CA of the Act shall not apply to transfer of any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary by an assessee, where,—

80. Inserted by the IT (Fifteenth Amdt.) Rules, 2020, w.r.e.f. 1-4-2020 and shall be applicable for assessment year 2020-21 and subsequent assessment years.

- (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and
- (ii) share of such company and its subsidiary and the subsidiary of such subsidiary has been transferred pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Explanation.—For the purposes of this sub-rule,—

- (a) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;
- (b) “Tribunal” shall have the same meaning assigned to it in clause (90) of section 2 of the Companies Act, 2013.]

⁸¹[**Computation of fair market value of capital assets for the purposes of section 50B of the Income-tax Act.**

11UAE. (1) For the purpose of clause (ii) of sub-section (2) of section 50B, the fair market value of the capital assets shall be the FMV1 determined under sub-rule (2) or FMV2 determined under sub-rule (3), whichever is higher.

(2) The FMV1 shall be the fair market value of the capital assets transferred by way of slump sale determined in accordance with the formula—

$A+B+C+D - L$, where,

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale as reduced by the following amount which relate to such undertaking or the division,—

- (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and
- (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in sub-rule (1) of rule 11UA;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L = book value of liabilities as appearing in the books of account of the undertaking or the division transferred by way of slump sale, but not including the following amounts which relates to such undertaking or division, namely: —

81. Inserted by the IT (Sixteenth Amdt.) Rules, 2021, w.e.f. 24-5-2021.

- (i) the paid-up capital in respect of equity shares;
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

(3) FMV2 shall be the fair market value of the consideration received or accruing as a result of transfer by way of slump sale determined in accordance with the formula—

$E+F+G+H$, where,

E = value of the monetary consideration received or accruing as a result of the transfer;

F = fair market value of non-monetary consideration received or accruing as a result of the transfer represented by property referred to in sub-rule (1) of rule 11UA determined in the manner provided in sub-rule (1) of rule 11UA for the property covered in that sub-rule;

G = the price which the non-monetary consideration received or accruing as a result of the transfer represented by property, other than immovable property, which is not referred to in sub-rule (1) of rule 11UA would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer, in respect of property;

H = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property in case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property.

(4) The fair market value of the capital assets under sub-rule (2) and sub-rule (3) shall be determined on the date of slump sale and for this purpose valuation date referred to in rule 11UA shall also mean the date of slump sale.

Explanation.—For the purposes of this rule, the expression “registered valuer” and “securities” shall have the same meanings as respectively assigned to them in rule 11U.]

⁸²[I.—*Determination of value of assets and apportionment of income in certain cases.*

Fair market value of assets in certain cases⁸³.

11UB. (1) The fair market value of asset, tangible or intangible, as on the specified date, held directly or indirectly by a company or an entity registered or incorporated outside India (hereafter referred to as “foreign company or entity”), for the purposes of clause (i) of sub-section (1) of section 9, shall be computed in accordance with the provisions of this rule.

(2) Where the asset is a share of an Indian company listed on a recognised stock exchange on the specified date, the fair market value of the share shall be the observable price of such share on the stock exchange:

Provided that where the share is held as part of the shareholding which confers, directly or indirectly, any right of management or control in relation to the aforesaid company, the fair market value of the share shall be determined in accordance with the following formula, namely :—

$$\text{Fair market value} = (A+B)/C$$

Where:

A = the market capitalisation of the company on the basis of observable price of its shares quoted on the recognised stock exchange;

B = the book value of liabilities of the company as on the specified date;

C = the total number of outstanding shares:

Provided further that where, on the specified date, the share is listed on more than one recognised stock exchange, the observable price of the share shall be computed with reference to the recognised stock exchange which records the highest volume of trading in the share during the period considered for determining the price.

(3) Where the asset is a share of an Indian company not listed on a recognised stock exchange on the specified date, the fair market value of the share shall be its fair market value on such date as determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm’s length basis as increased by the liability, if any, considered in such determination.

(4) Where the asset is an interest in a partnership firm or an association of persons, its fair market value shall be determined in the following manner, namely:—

- (i) the value on the specified date of such firm or association of persons, shall be determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology as increased by the liability, if any, considered in such determination;
- (ii) the portion of the value computed in clause (i) as is equal to the amount of its capital shall be allocated among its partners or members in the

82. Inserted by the IT (Nineteenth Amdt.) Rules, 2016, w.e.f. 28-6-2016.

83. For clarifications on indirect transfer provisions, see Circular No. 41/2016, dated 21-12-2016, which has been kept in abeyance vide Circular No. 4/2017, dated 20-1-2017. For details, see Taxmann’s Master Guide to Income-tax Rules.

proportion in which capital has been contributed by them and the residue of the value shall be allocated among the partners or members in accordance with the agreement of partnership firm or association of persons for distribution of assets in the event of dissolution of the firm or association, or, in the absence of any such agreement, in the proportion in which the partners or members are entitled to share profits and the sum total of the amount so allocated to a partner or member shall be treated as the fair market value of the interest of that partner or member in the firm or the association of persons, as the case may be.

(5) The fair market value of the asset other than those referred to in sub-rules (2), (3) and (4) shall be the price it would fetch if sold in the open market on the specified date as determined by a merchant banker or an accountant as increased by the liability, if any, considered in such determination.

(6) The fair market value of all the assets of a foreign company or an entity shall be determined in the following manner, namely:—

- (i) where the transfer of share of, or interest in, the foreign company or entity is between the persons who are not connected persons, the fair market value of all the assets owned by the foreign company or the entity as on the specified date, for the purpose of such transfer, shall be determined in accordance with the following formula, namely:—

Fair market value of all assets = A+B

Where:

A = Market capitalisation of the foreign company or entity computed on the basis of the full value of consideration for transfer of the share or interest;

B = book value of the liabilities of the company or the entity as on the specified date as certified by a merchant banker or an accountant;

- (ii) in any other case, if, —

- (a) the share of the foreign company or entity is listed on a stock exchange on the specified date, the fair market value of all the assets owned by the foreign company or the entity shall be determined in accordance with the following formula, namely:—

Fair market value of all the assets = A+B

Where:

A = Market capitalisation of the foreign company or entity computed on the basis of the observable price of the share on the stock exchange where the share of the foreign company or the entity is listed;

B = book value of the liabilities of the company or the entity as on the specified date:

Provided that where, as on the specified date, the share is listed on more than one stock exchange, the observable price in the aforesaid formula shall be in respect of the stock exchange which

records the highest volume of trading in the share during the period considered for determining the price;

- (b) the share in the foreign company or entity is not listed on a stock exchange on the specified date, the value of all the assets owned by the foreign company or the entity shall be determined in accordance with the following formula, namely :—

Fair market value of all the assets = A+B

Where:

A = fair market value of the foreign company or the entity as on the specified date as determined by a merchant banker or an accountant as per the internationally accepted valuation methodology;

B = value of liabilities of the company or the entity if any, considered for the determination of fair market value in A.

(7) Where fair market value has been determined on the basis of any interim balance sheet referred to in the first proviso to clause (ix) of the *Explanation*, then the fair market value shall be appropriately modified after finalisation of the relevant financial statement in accordance with the applicable laws and all the provisions of this rule and rules 11UC and 114DB shall apply accordingly.

(8) For determining the fair market value of any asset located in India, being a share of an Indian company or interest in a partnership firm or association of persons, all the assets and business operations of the said company or partnership firm or association of persons shall be taken into account irrespective of whether the assets or business operations are located in India or outside.

(9) The rate of exchange for the calculation in foreign currency, of the value of assets located in India and expressed in rupees shall be the telegraphic transfer buying rate of such currency as on the specified date.

Explanation.—For the purposes of this rule and rule 11UC,—

- (i) “accountant” means an accountant referred to in the *Explanation* to sub-section (2) of section 288 and for the purposes of sub-rule (6) includes any valuer recognised for undertaking similar valuation by the Government of the country where the foreign company or the entity is registered or incorporated or any of its agencies, who fulfils the following conditions, namely :—
- (a) if he is a member or partner in any entity engaged in rendering accountancy or valuation services then,—
 - (i) the entity or its affiliates has presence in more than two countries; and
 - (ii) the annual receipt of the entity in the year preceding the year in which valuation is undertaken exceeds ten crore rupees;
 - (b) if he is pursuing the profession of accountancy individually or is a valuer then,—

- (i) his annual receipt in the year preceding the year in which valuation is undertaken, from the exercise of profession, exceeds one crore rupees; and
 - (ii) he has professional experience of not less than ten years.
- (ii) “connected person” shall have the meaning as assigned to it in clause (4) of section 102;
- (iii) “right of management or control” shall include the right to appoint majority of the directors or to control the management or policy decision exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
- (iv) “telegraphic transfer buying rate” shall have the meaning as assigned to it in the *Explanation* to rule 26;
- (v) “observable price” in respect of a share quoted on a stock exchange shall be the higher of the following :—
 - (a) the average of the weekly high and low of the closing prices of the shares quoted on the said stock exchange during the six months period preceding the specified date; or
 - (b) the average of the weekly high and low of the closing price of the shares quoted on the said stock exchange during the two weeks preceding the specified date;
- (vi) “book value of the liabilities” means the value of liabilities as shown in the balance-sheet of the company or the entity as the case may be, excluding the paid-up capital in respect of equity shares or members’ interest and the general reserves and surplus and security premium related to the paid-up capital.
- (vii) “specified date” shall have the meaning as assigned to it in clause (d) of *Explanation 6* to clause (i) of sub-section (1) of section 9;
- (viii) the terms “merchant banker” and “recognised stock exchange” shall have the meaning as assigned to them in rule 11U;
- (ix) “balance sheet”,—
 - (a) in relation to an Indian company, means the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and
 - (b) in any other case, means the balance-sheet of the company or the entity (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date and submitted to the relevant authority outside India under the laws in force of the country in which the foreign company or the entity is registered or incorporated:

1.285 DETERMINATION OF INCOME - INCOME IN CERTAIN CASES RR. 11UC-11UD

Provided that where the balance-sheet as on the specified date is not drawn up, pending finalisation of accounts, as mentioned in clauses (a) and (b), the balance sheet shall mean an interim balance-sheet drawn up as on the specified date and approved by the board of directors of the company or an equivalent body in case of any other entity:

Provided further that where the specified date is the date referred to in sub-clause (ii) of clause (d) of *Explanation 6* to clause (i) of sub-section (1) of section 9, the balance sheet means the balance sheet as drawn up on the specified date and certified by an accountant.

Determination of income attributable to assets in India.

11UC. (1) The income from transfer outside India of a share of, or interest in, a company or an entity referred to in clause (i) of sub-section (1) of section 9, attributable to assets located in India, shall be determined in accordance with the following formula, namely:—

$$A \times \frac{B}{C}$$

Where:

A = Income from the transfer of the share of, or interest in, the company or the entity computed in accordance with the provisions of the Act, as if, such share or interest is located in India;

B = Fair Market Value of assets located in India as on the specified date, from which the share or interest referred to in A derives its value substantially, computed in accordance with rule 11UB;

C = Fair Market Value of all the assets of the company or the entity as on the specified date, computed in accordance with rule 11UB:

Provided that if the transferor of the share of, or interest in, the company or the entity fails to provide the information required for the application of the aforesaid formula then the income from the transfer of such share or interest attributable to the assets located in India shall be determined in such manner as the Assessing Officer may deem suitable.

(2) The transferor of the share of, or interest in, a company or an entity that derives its value substantially from assets located in India, shall obtain and furnish along with the return of income a report in Form No. 3CT duly signed and verified by an accountant providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets located in India has been correctly computed.]

⁸⁴[**Thresholds for the purposes of significant economic presence.**

11UD. (1) For the purposes of clause (a) of *Explanation 2A* to clause (i) of sub-section (1) of section 9, the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year, shall be two crore rupees.

84. Inserted by the IT (Thirteenth Amdt.) Rules, 2021, w.e.f. 1-4-2022.