

RULES 11U & 11UA*

Determination of fair market value of property other than immovable property

11U.1 Statutory background of section 56(2)(x)

11U.1-1 Applicability - Section 56(2)(x) is applicable when any sum of money or property (whether movable or immovable) is received by any person from any person(s) on or after 1-4-2017. The provisions of s. 56(2)(x) are sub-divided into the following 5 broad categories:—

Category	Particulars	Transactions to be taken into account	Tax treatment
Category 1 [s. 56(2)(x)(a)]	(i) Receipt of any sum of money without consideration; and (ii) Aggregate value of such receipt during the previous year exceeds Rs. 50,000	All transactions to be taken into account	Whole of the aggregate value of such sum shall become taxable
Category 2 [s. 56(2)(x)(b)(A)]	(i) Receipt of any immovable property without consideration; and (ii) Stamp duty value (SDV) of such property exceeds Rs. 50,000	Single transaction to be taken into account	SDV of such immovable property shall become taxable
Category 3A [s. 56(2)(x)(b)(B)]	(i) Receipt of any immovable property for a consideration [other than a residential unit referred to in Category 3B below]; (ii) Difference between SDV of such property and consideration (paid or payable) is more than Rs. 50,000; and (iii) SDV exceeds 110% of the consideration	Single transaction to be taken into account	SDV of such immovable property (-) Consideration paid or payable
Category 3B [4th proviso to s. 56(2)(x)(b)(B)]	(i) Receipt of a residential unit [i.e., an independent housing unit with separate facilities for living, cooking and sanitary requirement, distinctly separated from other residential units within the building, which is directly accessible from an outer	Single transaction to be taken into account	SDV of such immovable property (-) Consideration paid or payable

*SECTION 56(2)(x) & 56(2)(viib).

Category	Particulars	Transactions to be taken into account	Tax treatment
	door or through an interior door in a shared hallway and not by walking through the living space of another household] for a consideration; (ii) Transfer of such residential unit took place between 12-11-2020 and 30-6-2021; (iii) Such transfer is by way of first time allotment of residential unit to any person; (iv) Consideration received or accruing as a result of such transfer to the seller does not exceed Rs. 2 crores; (v) Difference between SDV of such property and consideration (paid or payable) is more than Rs. 50,000; and (vi) SDV exceeds 120% of the consideration		
Category 4 [section 56(2)(x)(c)(A)]	(i) Receipt of specified movable property without consideration; and (ii) Aggregate fair market value (FMV) of such property exceeds Rs. 50,000	All transactions to be taken into account	Whole of the aggregate FMV of such property shall become taxable
Category 5 [section 56(2)(x)(c)(B)]	(i) Receipt of specified movable property for a consideration; and (ii) Such consideration is less than the aggregate FMV of the property by an amount exceeding Rs. 50,000	All transactions to be taken into account	Aggregate FMV of such movable property (-) Consideration paid or payable

11U.1.1-1 PROPERTY’, DEFINED - As per *Explanation (b)* to section 56(2)(x) r/w *Explanation (d)* to section 56(2)(vii), “property” means the following capital asset of the assessee:—

- (i) Immovable property, being land or building or both;
- (ii) Shares and securities;
- (iii) Jewellery;
- (iv) Archaeological collections;
- (v) Drawings;
- (vi) Paintings;
- (vii) Sculptures;
- (viii) Any work of art;
- (ix) Bullion.

With effect from 1-4-2023, the above expression also includes virtual digital asset [as defined in s. 2(47A)] in view of *Explanation (b)* to section 56(2)(x).

Thus, for the purposes of section 56(2)(x),—

- (i) property which is in the nature of stock-in-trade, raw material and consumable stores of any business is not covered under the expression “property”.
- (ii) “immovable property” means land or building or both.
- (iii) “movable property” means shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, bullion, and includes virtual digital asset.

Provisions are not triggered when there is an issue of bonus shares since money remains with company and nothing comes to shareholders as there is no transfer of property—*PCIT v. Dr. Ranjan Pai* [2021] 124 taxmann.com 241/278 Taxman 138 (Kar.). Similar is the conclusion where additional shares were allotted *pro rata* to shareholders based on their existing shareholding as no property is being received on such allotment—*Sudhir Menon HUF v. Asstt. CIT* [2014] 45 taxmann.com 176/148 ITD 260 (Mum. - Trib.).

Following the above Mumbai Tribunal judgment, it has been held that provisions do not apply in respect of allocation of rights shares allotted to assessee below FMV proportionate to his shareholding in company and also cannot be invoked in respect of additional shares received by assessee on account of renunciation of rights issue by assessee’s wife and father in favour of assessee, since wife/father fall within definition of ‘relatives’, which are excluded from purview of operation of provision. Further, renunciation of rights shares by third party shareholders in favour of assessee, allowing assessee to gain controlling interest results in disproportionate allocation of rights shares in favour of assessee and therefore, in respect of these shares, provision shall apply, and income would be taxable in hands of assessee—*Jigar Jashwantlal Shah v. ACIT* [2022] 142 taxmann.com 200 (Ahmd. - Trib.).

11U.1.1.1-1 ‘Jewellery’, defined - As per *Explanation (a)* to section 56(2)(x) r/w *Explanation (c)* to s. 56(2)(vii) and *Explanation* to section 2(14)(ii), “jewellery” includes—

- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

11U.1.1.2 ‘STAMP DUTY VALUE’, DEFINED - As per *Explanation (a)* to section 56(2)(x) r/w *Explanation (f)* to section 56(2)(vii), “stamp duty value” means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

11U.1.1.2-1 ‘Assessable’, defined - As per *Explanation (a)* to section 56(2)(x) r/w *Explanation (a)* to section 56(2)(vii) and *Explanation 2* below section 50C(2), “assessable” means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

11U.1.1.2-2 SDV when date of agreement and date of registration are different - If the date of agreement fixing the amount of consideration and the date of registration for transfer of immovable property, being land or building or both, are not the same, then full value of consideration shall be determined on the following basis:—

- (i) Where any amount of consideration (or part thereof) has been received, by way of an account payee cheque or account payee bank draft or by use of ECS through a bank account or credit card or debit card or net banking or IMPS or UPI or RTGS or NEFT or BHIM Aadhaar Pay, on or before the date of agreement for transfer—SDV on the date of such agreement may be taken.
- (ii) Where any amount of consideration (or part thereof) has not been received, by way of an account payee cheque or account payee bank draft or by use of ECS through a bank account or credit card or debit card or net banking or IMPS or UPI or RTGS or NEFT or BHIM Aadhaar Pay, on or before the date of agreement for transfer—SDV on the date of transfer shall be taken.

11U.1.1.2-3 Reference to Valuation Officer - The AO may refer the valuation of immovable property, being land or building or both, to the Valuation Officer [as defined in section 2(r) of the Wealth-tax Act, 1957] in the following cases:—

- (1) Where the assessee claims before any AO that the SDV under section 50C(1) exceeds the FMV of the property as on the date of transfer; or
- (2) Where the SDV has not been disputed in any appeal or revision, or no reference has been made before any other authority, Court or the High Court.

When reference has been made to the Valuation Officer, then the full value of consideration to be determined on the following basis:—

- (i) Where the value ascertained by Valuation Officer exceeds SDV by stamp valuation authority—SDV shall be taken;
- (ii) Where the value ascertained by Valuation Officer is less than SDV by stamp valuation authority—Value ascertained by Valuation Officer shall be taken.

11U.1.1-3 FAIR MARKET VALUE', DEFINED - As per *Explanation (a)* to section 56(2)(x) read with *Explanation (b)* to section 56(2)(vii), “fair market value” of a property, other than an immovable property, means the value determined in accordance with the method prescribed under Rule 11UA(1) (*see para 11U.2*).

11U.1-2 Non-applicability - For non-applicability of the provisions of section 56(2)(x), see Rule 11UAC (*see para 11UAC.2*).

11U.2 Determination of fair market value (FMV) of specified movable properties for the purposes of section 56(2)(x) [Rule 11UA(1)]

11U.2-1 Valuation of jewellery, archaeological collections and other artistic works [Rule 11UA(1)(a) & 11UA(1)(b)]- Valuation of jewellery, archaeological collections, drawings, paintings, sculptures or any work of art (altogether called as ‘capital asset(s)’) shall be determined in the following manner:—

S. No.	Circumstances	Fair market value (FMV)
(1)	Normal provision	Estimated price which such capital asset(s) would fetch if sold in the open market on the valuation date
(2)	If purchased from a registered dealer on the valuation date	Invoice value of such capital asset(s)
(3)	If received by any other mode and value of such capital asset(s) exceed(s) Rs. 50,000	Assessee may obtain report of registered valuer in respect of price it would fetch if sold in the open market on the valuation date

11U.2.1-1 ‘REGISTERED DEALER’, DEFINED - For the purposes of S. No. (2), as per Rule 11U(f), “registered dealer” means a dealer who is registered under Central Sales Tax Act, 1956 or General Sales Tax Law for the time being in force in any State including value added tax laws.

11U.2-2 *Valuation of quoted shares and securities [Rule 11UA(1)(c)(a)]*- FMV of quoted shares and securities shall be determined in the following manner:—

S. No.	Quoted shares and securities are received by way of—	Trading on valuation date or not	Fair market value (FMV)
(1)	Transaction carried out through any recognised stock exchange		Transaction value as recorded in such stock exchange
(2)	Transaction carried out other than through any recognised stock exchange	Quoted shares and securities are traded on that date on any recognised stock exchange	Lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date
		Quoted shares and securities are not traded on that date on any recognised stock exchange	Lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange

11U.2.2-1 ‘QUOTED SHARES OR SECURITIES’, DEFINED - As per Rule 11U(d), “quoted shares or securities” in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business.

11U.2.2-2 ‘RECOGNISED STOCK EXCHANGE’, DEFINED - As per Rule 11U(e) r/w s. 2(f) of the Securities Contracts (Regulation) Act, 1956, “recognized stock exchange” means a stock exchange which is for the time being recognised by the Central Government under section 4 of the 1956 Act.

11U.2-3 *Valuation of unquoted equity shares [Rule 11UA(1)(c)(b)]*- FMV of unquoted equity shares, on the valuation date, shall be determined in the following manner:—

S. No.	Particulars		Formula
(1)	Book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance sheet		$A = [(1) - \{(1A) + (1B)\}]$
(1A)	(-)	Income-tax paid (-) Income-tax refund claimed	
(1B)	(-)	Amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset (i.e., fictitious assets)	
(2)	Price which jewellery and artistic work would fetch if sold in open market on basis of valuation report obtained from a registered valuer		B
(3)	FMV of shares and securities as determined in accordance with the provisions of this Rule 11UA [as discussed above]		C
(4)	Value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of immovable property		D
(5)	Book value of liabilities shown in the balance sheet		$L = [(5) - \{(5A) + (5B) + (5C) + (5D) + (5E) + (5F)\}]$
(5A)	(-)	Paid-up capital in respect of equity shares	
(5B)	(-)	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	
(5C)	(-)	Reserves & surplus (by whatever name called) even if the resulting figure is negative (-) Reserves set apart towards depreciation	
(5D)	(-)	Provision for taxation [other than income-tax paid (-) income-tax refund claimed] (-) Tax payable with reference to book profits	

S. No.	Particulars		Formula
(5E)	(-)	Amount representing provisions made for meeting liabilities (-) Ascertained liabilities	
(5F)	(-)	Amount representing contingent liabilities (-) Arrears of dividends payable in respect of cumulative preference shares	
(6)	(×)	Paid-up value of such equity shares	PV
(7)	(÷)	Total amount of paid-up equity share capital as shown in the balance sheet	PE
FMV of unquoted equity shares			$[(A+B+C+D-L) \times PV] \div PE$

Where AO failed to take note of balance sheet as on valuation date, additions made by AO had rightly been deleted as book value of liability shown in balance sheet has to be reduced for purpose of valuation and determination of FMV of unquoted equity shares—*ITO v. Mystical Infaratech (P) Ltd.* [2022] 143 taxmann.com 81/197 ITD 794 (Mum. – Trib.).

11U.2.3-1 ‘BALANCE SHEET’, DEFINED- As per Rule 11U(b)(ii), “balance sheet”, in relation to any company, means—

- (i) In relation to an Indian company—the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and
- (ii) In relation to a company (not being an Indian company)—the balance sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated.

“Valuation date”, as per Rule 11U(j), means the date on which the property or consideration, as the case may be, is received by the assessee.

11U.2-4 *Valuation of unquoted shares and securities (other than unquoted equity shares) [Rule 11UA(1)(c)(c)]*- FMV of unquoted shares and securities (other than unquoted equity shares) in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

A combined reading of rule 11UA(1)(c)(b) with rule 11UA(1)(c)(c) can be taken to mean that for purpose of valuation of preference shares also immovable properties should be considered at guideline value since value based on guidance note represents economic and commercial value of preference shares on date of valuation. Thus, considering guideline value of land and building for purpose of valuation of preference shares under NAV method was right—*Information Technology Park Ltd. v. ITO* [2022] 143 taxmann.com 408 (Bang. – Trib.).

11U.3 Statutory background of section 56(2)(viib)

11U.3-1 *Applicability*- The provisions will get attracted if the following conditions are satisfied cumulatively:—

- (a) Company should be a closely-held company, i.e., a company in which the public are not substantially interested.
- (b) Such company should receive consideration in the previous year for issue of shares (whether equity shares or preference shares).

- (c) Such company should have received such consideration from a resident person only. However, by the Finance Act, 2023, with effect from 1-4-2024, the provision has been amended to provide that such company should have received such consideration from any person (*i.e.*, resident as well as non-resident¹).
- (d) Such shares are issued in excess of the face value of such shares [*i.e.*, shares are issued at premium].
- (e) ²Such consideration is received from the relevant person up to and including 31-3-2025, *i.e.*, up to the assessment year 2024-25.

However, the compliance of above conditions does not mean that the taxability will attract since taxability will get attracted only if the aggregate consideration received for such shares exceeds the fair market value (FMV) of such shares. Thus, if the share issue price is more than the FMV of the shares and the shares are issued at a premium, then the provisions will get attracted and the consideration received in excess of the FMV of shares will get taxed.

Share allotment in lieu of purchase consideration payable for an asset acquired is not outside the ambit of provisions of section 56(2)(*viib*). As per provisions, it is the consideration received for issue of shares that exceeds face value of such shares which is to be considered and not payment received only in cash or by cheque, etc.—*Flutura Business Solutions (P) Ltd. v. ITO* [2020] 117 taxmann.com 567/183 ITD 446 (Bang. - Trib.).

In *Cimex Land and Housing (P) Ltd. v. ITO* [2019] 104 taxmann.com 240 (Del. - Trib.), it has been held that where part of the share application money was received in earlier assessment years but since in those assessment years shares were not allotted, therefore, the share premium could not have been examined by the AO in those year. Since the entire transaction has crystallized during the year under consideration, it needs to be examined during the year under consideration only. Thus, provision is applicable in year of issue of shares and not year of receipt of premium—*Medicon Leather (P) Ltd. v. Asstt. CIT* [2022] 135 taxmann.com 165/194 ITD 44 (Bang. - Trib.).

Where assessee converted CCDs into equity shares in relevant assessment year and claimed that entire consideration was received at time of issuance of CCDs, since subsequent conversion entailed receipt of certain consideration by assessee in form of discharge of interest obligation, etc., section 56(2)(*viib*) would be applicable as said section envisages wider outlook to receipt of any consideration which could not be limited to receipt of money—*Milk Mantra Dairy (P) Ltd. v. DCIT* [2022] 140 taxmann.com 163/196 ITD 333 (Kol. - Trib.).

11U.3.1-1 FAIR MARKET VALUE OF SHARES - In *CIT v. Vaani Estates (P) Ltd.* [2019] 107 taxmann.com 15/264 Taxman 310 (Mad.), it has been reiterated that before applying the provisions of s. 56(2)(*viib*), assessing authority is required to undertake exercise of determining FMV of shares as provided in the provisions.

As per *Explanation (a)* to section 56(2)(*viib*), the FMV of the shares shall be higher of the following values:—

- (i) Value determined in accordance with Rule 11UA(2) (*see para 11U.4*); or
- (ii) Value as may be substantiated by the company to the satisfaction of the AO, based on the value, on the date of issue of shares, 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.

The provision seeks to enable the determination of FMV by two methods, *i.e.*, (i) prescribed method as purportedly embedded in rule 11UA; and (ii) FMV based on the

1. The judgment rendered by the Indore Tribunal in *Ruchi J Oil (P) Ltd. v. PCIT* [2021] 129 taxmann.com 43 holding that the provisions of section 56(2)(*viib*) shall not apply where the consideration is received from non-residents has been overridden.

2. This condition has been inserted by inserting a new third proviso to section 56(2)(*viib*) by the Finance (No. 2) Act, 2024, w.e.f. 1-4-2025.

intrinsic value of the assets both tangible and intangible on the date of issue of shares. The FMV of all the assets (tangibles, intangibles, human resources, right of management or control or other rights whatsoever in or in relation to Indian company), whether recorded in the books or not, appearing in the books at their intrinsic value or not, is a sufficient warrant to value the premium on issue of unquoted equity shares by closely-held company. Thus, the second method itself implies that book entry for recognition of intrinsic value is not necessary at all. Also, the higher of the value determined as per the first and second limb of *Explanation* shall be adopted for the purposes of section 56(2)(viib)—*Unnati Inorganics (P) Ltd. v. ITO* [2019] 109 taxmann.com 165 (Ahd. - Trib.).

Satisfaction of the AO would be judicial satisfaction of the AO. Judicial satisfaction means the AO has to take into consideration the well-established method of valuation of shares including the assets as explained in *Explanation* to section 56(2)(viib). It cannot be arbitrary. He has to take note of the judicial and established principles in arriving at his satisfaction. In this case, the AO has not found any specific fault in rejecting or not satisfying with the valuation made by the assessee. When the AO has not found any defect or error in the valuation of shares by the assessee-company, it may not be necessary to apply the method of valuation prescribed under Rule 11UA—*Lalithaa Jewellery Mart (P) Ltd. v. Asstt. CIT* [2019] 108 taxmann.com 490/178 ITD 503 (Chennai - Trib.).

Substantiation of the fair market value on the basis of the valuation done by the assessee simply cannot be rejected where the assessee has demonstrated with evidence that the fair market value of the asset is much more than the value shown in the balance sheet—*India Convention and Culture Centre (P) Ltd. v. ITO* [2019] 111 taxmann.com 252 (Del. - Trib.).

Where assessee issued/allotted equity shares at a premium, however, did not file any valuation report to substantiate FMV of shares issued, AO could not have accepted intrinsic value without calling for a value in terms of Rule 11UA(2) to find out whether clause (i) or (ii) of *Explanation (a)* to section 56(2)(viib) would be applicable—*Medicon Leather (P) Ltd. v. Asstt. CIT* [2022] 135 taxmann.com 165/194 ITD 44 (Bang. - Trib.).

11U.3-2 Illustrations-

- (1) Where assessee-company issued shares at premium and had filed valuation report of shares from independent Chartered Accountant as well as from statutory auditor of company which was based on assets of company and said report was also supported by valuation report of Chartered Engineer, provisions could not be invoked to tax share premium collected by assessee merely for reason that such valuation report was not filed at time of original assessment proceedings—*Sri Sakthi Textiles Ltd. v. DCIT* [2021] 126 taxmann.com 159/188 ITD 946 (Chennai - Trib.).
- (2) Where assessee issued shares at premium and received share capital of certain amount, since assessee had valued its shares at FMV computed as per valuation certificate issued by its chartered accountant in accordance with relevant rule and no fault was found in method applied by assessee, impugned addition made under section 56(2)(viib) on account of such share capital received by assessee was unjustified—*Mantram Commodities (P) Ltd. v. ITO* [2021] 127 taxmann.com 462/188 ITD 687 (Del. - Trib.).
- (3) Provisions of section 56(2)(viib) or Rule 11UA nowhere provides for rounding off to nearest rupee or multiple of ten or hundred, hence, where FMV of shares was determined at Rs. 3560.77 per share as per Rule 11UA, but shares were issued at Rs. 3600 per share, addition made on account of difference between FMV and actual consideration received by assessee in terms of section 56(2)(viib) was justified—*Royal Accord Realtors (P) Ltd. v. DCIT* [2022] 139 taxmann.com 197/195 ITD 287 (Mum. - Trib.).
- (4) Where assessee-company converted unquoted optionally fully convertible debentures (OFCDs) into non-cumulative preference shares at same price

of OFCDs, since consideration was received by assessee during earlier AY 2012-13 when OFCDs were issued and only conversion happened during year, provision of section 56(2)(viib) was not applicable during relevant year and, thus, impugned additions made by AO in respect of such consideration by invoking said section was to be deleted—*DCIT v. Rankin Infrastructure (P.) Ltd.* [2022] 142 taxmann.com 37 (Mum. - Trib.).

11U.3-3 Non-applicability - The provisions of section 56(2)(viib), effective up to assessment year 2024-25, shall not apply in the following cases:—

- (1) Where the consideration for issue of shares is received by a venture capital undertaking (VCU) from:—
 - (i) a venture capital company (VCC); or
 - (ii) a venture capital fund (VCF); or
 - (iii) a specified fund.
- (2) Where the consideration for issue of shares that exceeds the face value of such shares is received by a start-up company/entity from any person (whether resident or non-resident). This exemption to the start-up company has been granted (w.r.e.f. 1-4-2023) *vide* Notification No. SO 2275(E), dated 24-5-2023 [see, **Annex 11U.1**] superseding Notification No. SO 1131(E), dated 5-3-2019.
- (3) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more [notified *vide* Notification No. SO 2274(E), dated 24-5-2023].
- (4) Banks or entities involved in insurance business where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident [notified *vide* Notification No. SO 2274(E), dated 24-5-2023].
- (5) Any of the following entities, which is a resident of any listed country or specified territory¹, and such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident [notified *vide* Notification No. SO 2274(E), dated 24-5-2023]:—
 - (a) entities registered with SEBI as Category-I Foreign Portfolio Investors (FPIs);
 - (b) endowment funds associated with a university, hospitals or charities;
 - (c) pension funds created or established under the law of the foreign country or specified territory;
 - (d) Broad Based Pooled Investment Vehicle or fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.
- (6) Where the consideration is received by a company in which the public are substantially interested—*Apollo Sugar Clinics Ltd. v. DCIT* [2019] 105 taxmann.com 254/176 ITD 724 (Hyd. - Trib.).

1. List of countries or specified territories are: (1) Australia; (2) Austria; (3) Belgium; (4) Canada; (5) Czech Republic; (6) Denmark; (7) Finland; (8) France; (9) Germany; (10) Iceland; (11) Israel; (12) Italy; (13) Japan; (14) Korea; (15) New Zealand; (16) Norway; (17) Russia; (18) Spain; (19) Sweden; (20) United Kingdom (UK); and (21) United States (USA).

- (7) Issue of shares at face value by amalgamated company to shareholders of amalgamating company in pursuance of scheme of amalgamation—*DCIT v. Ozone India Ltd.* [2021] 126 taxmann.com 192/189 ITD 476 (Ahmd. - Trib.).
- (8) Where assessee-company had bought back its own shares from its holding company—*Vora Financial Services (P) Ltd. v. Asstt. CIT* [2018] 96 taxmann.com 88/171 ITD 646 (Mum. - Trib.), **followed in** *VITP (P) Ltd. v. DCIT* [2022] 143 taxmann.com 304/197 ITD 395 (Hyd. - Trib.).

11U.3.3-1 'VENTURE CAPITAL UNDERTAKING', DEFINED - As per *Explanation (b)* to section 56(2)(viib) read with *Explanation (c)* to section 10(23FB), "venture capital undertaking" means—

- (i) a venture capital undertaking as defined in clause (n) of regulation 2 of the Venture Capital Funds Regulations; or
- (ii) a venture capital undertaking as defined in clause (aa)¹ of sub-regulation (1) of regulation 2 of the Alternative Investment Funds Regulations.

Thus, according to Regulation 2(n) of the SEBI (Venture Capital Funds) Regulations, 1996, "venture capital undertaking" means a domestic company—

- (i) whose shares are not listed on a recognized stock exchange in India;
- (ii) which is engaged in the business for providing services, production or manufacture of article or things or does not include such activities or sectors which are specified in the negative list by the Board with the approval of the Central Government by notification in the Official Gazette in this behalf.

According to Regulation 2(1)(za)² of the SEBI (Alternative Investment Funds) Regulations, 2012, with effect from 5-5-2021, "venture capital undertaking" means a domestic company which is not listed on a recognised stock exchange at the time of making investments.

11U.3.3-2 'VENTURE CAPITAL COMPANY', DEFINED - As per *Explanation (b)* to section 56(2)(viib) read with *Explanation (a)* to section 10(23FB), "venture capital company" means a company which—

- (A) has been granted a certificate of registration, before 21-5-2012, as a Venture Capital Fund and is regulated under the SEBI (Venture Capital Funds) Regulations, 1996 made under the SEBI Act, 1992 (15 of 1992); or
- (B) has been granted a certificate of registration as Venture Capital Fund as a sub-category of Category I Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Funds) Regulations, 2012 made under the SEBI Act, 1992 (15 of 1992), and which fulfils the following conditions, namely:—
 - (i) it is not listed on a recognised stock exchange;
 - (ii) it has invested not less than two-thirds of its investible funds in unlisted equity shares or equity linked instruments of venture capital undertaking; and
 - (iii) it has not invested in any venture capital undertaking in which its director or a substantial shareholder (being a beneficial owner of equity shares exceeding 10% of its equity share capital) holds, either individually or collectively, equity shares in excess of 15% of the paid-up equity share capital of such venture capital undertaking.

11U.3.3-3 'VENTURE CAPITAL FUND', DEFINED - As per *Explanation (b)* to section 56(2)(viib) read with *Explanation (b)* to section 10(23FB), "venture capital fund" means a fund—

1. Regulation 2(1)(aa) till 2-8-2021.

2. (za) for and from 3-8-2021 by the SEBI (Alternative Investment Funds) (Third Amdt.) Regulations, 2021.