



TAX TREATMENT OF GIFT RECEIVED BY AN INDIVIDUAL OR HINDU UNDIVIDED FAMILY (HUF)

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1. Back Ground: A very common and frequent question running in the mind of taxpayers is the taxability of gifts. In this chapter an attempt has been made to discuss about various provisions relating to taxability of gift received by an individual or a Hindu Undivided Family (HUF) i.e. sum of money or property received by an individual or a HUF without consideration or a case in which the property is acquired for inadequate consideration.

1.1. From the taxation point of view, gift can be classified as follows:

- i.** Any sum of money received without consideration; it can be termed as '**monetary gift**'.
- ii.** Specified movable properties received without consideration, it can be termed as '**gift of movable property**'.
- iii.** **Specified movable properties** received at a reduced price (i.e. for inadequate consideration), it can be termed as 'movable property received for less than its fair market value'.
- iv.** Immovable properties received without consideration; it can be termed as '**gift of immovable property**'.
- v.** Immovable properties acquired at a reduced price (i.e. for inadequate consideration), it can be termed as '**immovable property received for less than its stamp duty value**'.

2. Tax treatment of monetary gifts received by an individual or Hindu Undivided Family (HUF)

2.1. If the following conditions are satisfied then any sum of money received without consideration (i.e., monetary gift may be received in cash, cheque, draft, etc.) by an individual/ HUF will be charged to tax:

- Sum of money received without consideration.
- The aggregate value of such sum of money received during the year exceeds Rs. 50,000.

2.2. Though the provisions relating to gift applies in case of every person, but it has been reported that gifts by a resident person to a non-resident are claimed to be non-taxable in India as the income does not accrue or arise in India up to 4th July 2019. **To ensure that such gifts made by residents to a non-resident person are subjected to tax in India, the Finance (No. 2) Act, 2019 has inserted a new clause (viii) under Section 9 of the Income-tax Act to provide that any income arising outside India, being money paid without consideration on or after 05-07-2019, by a person resident in India to a non-resident or a foreign company shall be deemed to accrue or arise in India.**

2.3. Cases in which sum of money received without consideration, i.e., monetary gift received by an individual or HUF is not charged to tax

In following cases, monetary gift received by an individual or HUF will not be charged to tax:-

- a) Money received from relatives.

Note: Relative for this purpose means:

In case of an Individual - a. Spouse of the individual; b. Brother or sister of the individual; c. Brother or sister of the spouse of the individual; d. Brother or sister of either of the parents of the individual; e. Any lineal ascendant or descendent of the individual; f. Any lineal ascendant or descendent of the spouse of the individual; spouse of the persons referred to in (b) to (f).

In case of HUF - any member thereof.

- b) Money received on the occasion of the marriage of the individual.
- c) Money received under will/ by way of inheritance.
- d) Money received in contemplation of death of the payer or donor.
- e) Money received from a local authority [as defined in *Explanation* to section 10(20) of the Income-tax Act].
- f) Money received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C).
- g) Money received from a trust or institution registered under section 12AA.
- h) Share received as a consequences of demerger or amalgamation of a company under clause (vid) or clause (vii) of section 47, respectively.
- i) Share received as a consequences of business reorganization of a co-operative bank under section 47(vicb).

2.4. Marriage of the individual is the only occasion when monetary gift received by him will not be charged to tax

Gift received on the occasion of marriage of the individual is not charged to tax. Apart from marriage there is no other occasion when monetary gift received by an individual is not charged to tax. Hence, monetary gift received on occasions like birthday, anniversary, etc. will be charged to tax.

2.5. Taxability of monetary gifts received from friends

2.6. Gifts received from relatives are not charged to tax (Meaning of 'relative' has been discussed earlier). Friend is not a 'relative' as defined in the above list and hence, gift received from friends will be charged to tax (if other criteria of taxing gift are satisfied).

2.7. Monetary gifts received from abroad

If the aggregate value of monetary gift received during the year by an individual or HUF exceeds Rs. 50,000 and the gifts are not covered under the exceptions discussed in earlier part, then gifts whether received from India or abroad will be charged to tax.

2.8. Once the aggregate value of gifts received during the year exceeds Rs. 50,000 then all gifts are charged to tax

Sum of money received without consideration by an individual or HUF is chargeable to tax if the aggregate value of such sum received during the year exceeds Rs. 50,000.

The important point to be noted in this regard is the "aggregate value of such sum received during the year". The taxability of the gift is determined on the basis of the aggregate value of gift received during the year and not on the basis of individual gift. Hence, if the aggregate value of gifts received during the year exceeds Rs. 50,000, then total value of all such gifts received during the year will be charged to tax (i.e. the total amount of gift and not the amount in excess of Rs. 50,000).

2.9. Illustration -1

Mr. Kumar received following gifts during the financial year 2019-20:

- Rs. 1,84,000 from his friend residing in Canada.
- Rs. 25,200 from his elder brother residing in Delhi.
- Rs. 84,000 from his friend residing in Delhi (received on the occasion of birthday of Mr. Kumar).

What will be the tax treatment of above items in the hands of Mr. Kumar?

Tax Treatment: Sum of money received without consideration (i.e. gift) by an Individual or a HUF from any person other than relative (meaning of relative is already discussed earlier) and otherwise

than on prescribed occasions (as discussed earlier) is charged to tax, if the aggregate amount of such gift received during the year exceeds Rs. 50,000. Considering these provisions, the tax treatment of gifts in the hands of Mr. Kumar will be as follows:

- Rs. 1,84,000 received from his friend will be fully taxed because friend is not covered in the definition of 'relative'.
- Rs. 25,200 received from elder brother will not be charged to tax because elder brother is covered in the definition of 'relative'.
- Birthday is not covered in the list of prescribed occasion on which gift is not charged to tax, hence Rs. 84,000 received on the occasion of birthday will be fully taxed.

Illustration -2

During the financial year 2020-21, Mr. Raja received following gifts from his friends:

- Rs. 25,000 on 1-5-2020
- Rs. 18,000 on 20-12-2020

What will be the tax treatment of above gifts?

Tax Treatment: Sum of money received without consideration (i.e. gift) by an Individual or a HUF from any person other than relative (meaning of relative has been discussed earlier) and otherwise than on prescribed occasions (as discussed earlier) is charged to tax, if the aggregate amount of such gift received during the year exceeds Rs. 50,000.

Friends are not covered in the definition of relative. Further, birthday is not covered in the list of prescribed occasion on which gift is not charged to tax and hence, gift received from friends will be charged to tax. However, nothing will be charged to tax, if the aggregate amount of gift received during the year does not exceed Rs. 50,000.

The aggregate amount of gift received by Mr. Raja during the year amounts to Rs. 43,000 (Rs. 25,000 + Rs. 18,000) which is below Rs. 50,000, hence, nothing will be charged to tax in the hands of Mr. Raja. Suppose, if in the given case, the amount of second gift is Rs. 28,000 instead of Rs. 18,000, then the aggregate amount of gift will come to Rs. 53,000 (Rs. 25,000 + Rs. 28,000). In this case, entire amount of Rs. 53,000 will be charged to tax in the hands of Mr. Raja.

3. Tax treatment of immovable property received as gift by an individual or HUF

If the following conditions are satisfied than immovable property received without consideration by an individual or HUF will be charged to tax:

- i. Immovable property, being land or building or both, is received by an individual/HUF.
- ii. The immovable property is a capital asset with in the meaning of section 2(14) for such an individual or HUF.
- iii. The stamp duty value of such immovable property received without consideration exceeds Rs. 50,000.

3.1. When immovable property received by an individual or HUF without consideration (i.e. by way of gift) is not charged to tax

In following cases, gift of immovable property will not be charged to tax.

- 1) Property received from relatives. Relative for this purpose means:
 - i. In case of an Individual
 - a. Spouse of the individual;
 - b. Brother or sister of the individual;

- c. Brother or sister of the spouse of the individual;
 - d. Brother or sister of either of the parents of the individual;
 - e. Any lineal ascendant or descendent of the individual;
 - f. Any lineal ascendant or descendent of the spouse of the individual;
 - g. Spouse of the persons referred to in (b) to (f).
- ii. In case of HUF, any member thereof. .
- 2) Property received on the occasion of the marriage of the individual.
 - 3) Property received under will/ by way of inheritance.
 - 4) Property received in contemplation of death of the donor.
 - 5) Property received from a local authority [as defined in *Explanation* to section 10(20) of the Income-tax Act].
 - 6) Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C).
 - 7) Property received from a trust or institution registered under section 12AA.

3.1.1. Marriage of individual is the only occasion when gift received by him will not be charged to tax

Gift (i.e. immovable property received without consideration) received only on the occasion of marriage of the individual is not charged to tax. Apart from marriage there is no other occasion when gift received by an individual is not chargeable to tax. Hence, immovable property received on occasions like birthday, anniversary, etc., without any consideration will be charged to tax.

3.2. Taxability of immovable property received without consideration i.e., gift from friends

Gifts (i.e. immovable property received without consideration) received from relatives are not charged to tax (meaning of relative has been discussed earlier). Friend is not a relative as defined in the above list and hence, gift received from friends will be charged to tax (if other criteria of taxing gift are satisfied).

3.3. Tax treatment of gift of immovable property located abroad

If the conditions discussed in earlier part (regarding the taxability of gift of immovable property) are satisfied, then gift of immovable property will be charged to tax whether the property is located in India or abroad.

Illustration -3

An Individual received a gift of flat from his friend. The stamp duty value of the flat is Rs. 84,000. In this case whether the total value of gifted property will be charged to tax or only the value in excess of Rs. 50,000 will be charged to tax?

Tax Treatment: If the conditions discussed in earlier part (regarding the taxability of gift of immovable property) are satisfied, then the entire stamp duty value of immovable property received without consideration, i.e., received as gift will be charged to tax. Once the taxability is attracted, i.e., stamp duty value of property received as gift exceeds Rs. 50,000, then the entire stamp duty value of the property is chargeable to tax. Hence, in this case entire stamp duty value of property, i.e., Rs. 84,000 will be charged to tax.

Illustration-4

On 1-5-2020, Mr. Kumar gifted his house to his friend Mr. Raja. The market value of the building was Rs. 8,40,000 and the value of the building adopted by the Stamp Valuation Authority for charging stamp duty was Rs. 9,00,000. Advise Mr. Raja regarding the tax treatment in this case.

Tax Treatment: If the following conditions are satisfied then immovable property received by an individual or HUF will be charged to tax:

- i. Immovable property, being land or building or both, is received by an individual/HUF.
- ii. The immovable property is a 'capital asset' within the meaning of section 2(14) for such an individual or HUF.
- iii. The stamp duty value of such immovable property received without consideration exceeds Rs. 50,000.

The above provisions are not applicable in case of immovable property received from relatives and immovable property received on certain specified occasions.

In the given case, the property is a capital asset for Mr. Raja, the property is received from his friend (friend is not covered in the definition of relative), property is not received on any specified occasions and the stamp duty value of the property exceeds Rs. 50,000. In other words, all the conditions required to tax the gift are satisfied and hence the stamp duty value of the property i.e. Rs. 9,00,000 will be charged to tax in the hands of Mr. Raja. It will be charged to tax under the head "Income from other sources".

3.4. Taxability in a case where an immovable property is received for less than its stamp duty value

Apart from taxing immovable property received without consideration, i.e., received as gift, the Income-tax Act has also designed provisions for taxing immovable property received for less than its stamp duty value. If following conditions are satisfied, then immovable property received by an individual or HUF for less than its stamp duty value will be charged to tax:

- i. Any immovable property is acquired by an individual or a HUF.
- ii. The immovable property is a 'capital asset' within the meaning of section 2(14) of the Act for such individual or HUF.
- iii. Such property is acquired for a consideration but the consideration is less than the stamp duty value and the difference exceed higher of Rs. 50,000 and 10% of the consideration.

Note: The Finance Act, 2020 has increase the safe harbor limit of 5% to 10% w.e.f. Assessment Year 2021-22

In above case the excess of stamp duty value over the purchase price of the property will be treated as income of the purchaser. When immovable property received by an individual or HUF for less than its stamp duty value is not charged to tax. In following cases, nothing will be charged to tax in respect of immovable property received for less than its stamp duty value

Property received from relatives.

Relative for this purpose means:

In case of an Individual Spouse of the individual; Brother or sister of the individual; Brother or sister of the spouse of the individual; Brother or sister of either of the parents of the individual; Any lineal ascendant or descendent of the individual; Any lineal ascendant or descendent of the spouse of the individual; Spouse of the persons referred to in (b) to (f).

In case of HUF, any member thereof: Property received on the occasion of the marriage of the individual. Property received under will/ by way of inheritance. Property received in contemplation of death of the donor. Property received from a local authority [as defined \in Explanation to section 10(20) of the Income-tax Act]. Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C). Property received from a trust or institution registered under section 12AA.

Illustration -5

Question: On 1-4-2020, Mr. Raja (a salaried employee) purchased a building from Mr. Kumar for Rs. 25,20,000. The value of the building adopted by the Stamp Valuation Authority for charging stamp duty was Rs. 28,00,000. Advice Mr. Raja regarding the tax treatment in this case.

Tax Treatment: If an individual purchases a capital asset, being an immovable property, and the stamp duty value of such property exceeds actual consideration by higher of Rs. 50,000 and 10% of the actual consideration, then the excess of stamp duty value over the purchase price will be charged to tax in the hands of the purchaser.

In the instant case, building is a capital asset for Mr. Kumar. The stamp duty value of the building exceeds the actual consideration by Rs. 2,80,000 which is higher than Rs. 50,000 and 10% of the actual consideration of Rs. 25,20,000, i.e., Rs. 2,52,000. Hence, the above discussed provision shall apply and the differential amount of Rs. 2,80,000 (Rs. 28,00,000 less Rs. 25,20,000) will be treated as income of Mr. Kumar.

Illustration -6

On 1-4-2020, Mr. Kumar (a salaried employee) purchased a building from Mr. Vipul for Rs. 25,40,000. The value of the building adopted by the Stamp Valuation Authority for charging stamp duty was Rs. 25,50,000. Advice Mr. Kumar regarding the tax treatment in this case.

Tax Treatment: If an individual purchases a capital asset, being an immovable property, and the stamp duty value of such property exceeds actual consideration by higher of Rs. 50,000 and 10% of the actual consideration, then the excess of stamp duty value over the purchase price will be charged to tax in the hands of the purchaser.

In the instant case, building is a capital asset for Mr. Kumar. Though the stamp duty value of the building exceeds the actual consideration by Rs. 10,000 but it does not exceed Rs. 50,000 and 10% of the actual consideration of Rs. 25,40,000, i.e., Rs. 2,54,000. Hence, the above discussed provision shall not apply and the differential amount of Rs. 10,000 (Rs. 25,50,000 less Rs. 25,40,000) will not be treated as income of Mr. Kumar.

4. Tax treatment of movable property received as gift by an individual or HUF

4.1. If the following conditions are satisfied then value of prescribed movable property (meaning discussed in later part) received by an individual or HUF will be charged to tax:

- i Prescribed movable property is received without consideration (i.e., received as gift).
- ii The aggregate fair market value of such property received by the taxpayer during the year exceeds Rs. 50,000.

In above case, the fair market value of the prescribed movable property will be treated as income of the receiver.

Prescribed movable property means shares/securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art and bullion, being capital asset of the taxpayer.

Considering the above definition, nothing will be charged to tax in respect of gift of any item being a movable property other than covered in the above definition, e.g., Nothing will be charged to tax in respect of a television set received as gift, because a television set is not covered in the definition of prescribed movable property.

4.2. When prescribed movable property received without consideration, i.e., received as gift by an individual or HUF is not charged to tax

In following cases, nothing will be charged to tax in respect of prescribed movable property received without consideration:

Movable Property received from relatives.

Relative for this purpose means:

In case of an Individual Spouse of the individual; Brother or sister of the individual; Brother or sister of the spouse of the individual; Brother or sister of either of the parents of the individual; Any lineal ascendant or descendent of the individual; Any lineal ascendant or descendent of the spouse of the individual; Spouse of the persons referred to in (b) to (f).

In case of HUF, any member thereof: Property received on the occasion of the marriage of the individual. Property received under will/ by way of inheritance. Property received in contemplation of death of the donor. Property received from a local authority [as defined \in Explanation to section 10(20) of the Income-tax Act]. Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C). Property received from a trust or institution registered under section 12AA.

Illustration -7

During the financial year 2020-21, Mr. Raja received following gifts from his friends/relatives:

- Shares received from his father, the fair market value(i.e. value as per stock exchange) of the shares on the date of gift was Rs. 2,84,000.
- Jewellery received from his friend, the fair market value of the jewellery is Rs. 84,000.
- Jewellery received from his friends and relatives on the occasion of his marriage, the fair market value of jewellery is Rs. 2,52,000.
- Advice Mr. Raja regarding the tax treatment of above gifts.

Tax Treatment: If the following conditions are satisfied then value of prescribed movable property (meaning has been discussed earlier) received by an individual or HUF will be charged to tax:

- Prescribed movable property is received without consideration (i.e., received as gift).
- The aggregate fair market value of such property received by the taxpayer during the year exceeds Rs. 50,000.

In above case, the fair market value of the prescribed movable property will be treated as income of the receiver. The discussed provisions are not applicable in case of prescribed movable property received from relatives and received on certain specified occasions.

Considering above provisions, the tax treatment of various items received by Mr. Raja will be as follows:

- a) Nothing will be charged to tax in respect of shares received from his father, since father comes under the definition of the term 'relative'.
- b) Friend is not covered in the definition of relative and hence, in respect of jewellery received from his friend, the fair market value, i.e., Rs. 84,000 will be charged to tax in the hands of Mr. Raja.
- c) Marriage is covered in the list of specified occasions, and hence, nothing will be charged to tax in respect of jewellery received from his friends and relatives on the occasion of his marriage.

Illustration -8

An individual received gift of jewellery from his friends. The total value of jewellery received during the

year as gift from all the friends amounted to Rs. 84,000. What will be the tax treatment of gift in this case?

Tax Treatment: If the aggregate fair market value of prescribed movable property received by an individual or HUF without consideration during the year exceeds Rs. 50,000, then the total value of such properties received during the year without consideration will be charged to tax. In this case the total value of jewellery received during the year exceeds Rs. 50,000 and hence, Rs. 84,000 will be charged to tax.

4.3. Taxability when prescribed movable property is received by an individual or HUF for less than its fair market value

If the following conditions are satisfied then prescribed movable property (meaning has been discussed earlier) received by an individual or HUF will be charged to tax:

- i. Prescribed movable property is acquired by an individual or HUF.
- ii. The aggregate fair market value of such properties acquired by the taxpayer during the year exceeds the consideration paid for these properties by Rs. 50,000. In other words, the aggregate fair market value of all such properties is higher than the consideration paid and the difference is more than Rs. 50,000.

Considering the definition of prescribed movable property (as discussed earlier), nothing will be charged to tax in respect of gift of any item, being a movable property other than covered in the above definition. e.g., Nothing will be charged to tax in respect of a television set received as gift because a television set is not covered in the definition of prescribed movable property.

4.4. When prescribed movable property received for less than its fair market value by an individual or HUF is not charged to tax

In following cases, nothing will be charged to tax in respect of prescribed movable property received for less than its fair market value:

Movable Property received from relatives.

Relative for this purpose means:

In case of an Individual Spouse of the individual; Brother or sister of the individual; Brother or sister of the spouse of the individual; Brother or sister of either of the parents of the individual; Any lineal ascendant or descendent of the individual; Any lineal ascendant or descendent of the spouse of the individual; Spouse of the persons referred to in (b) to (f).

In case of HUF, any member thereof: Property received on the occasion of the marriage of the individual. Property received under will/ by way of inheritance. Property received in contemplation of death of the donor. Property received from a local authority [as defined in Explanation to section 10(20) of the Income-tax Act]. Property received from any fund, foundation, university, other educational institution, hospital or other medical institution, any trust or institution referred to in section 10(23C). Property received from a trust or institution registered under section 12AA.

Illustration -9

During the financial year 2020-21, Mr. Raja purchased the following capital assets:

- Gold jewellery purchased for Rs. 1,84,000, the fair market value of gold jewellery is Rs. 2,84,000.
- Bullion purchased for Rs. 5,50,000, the fair market value of the bullion is Rs. 6,00,000.
- Motor car purchased for Rs. 1,52,000, the fair market value of car is Rs. 2,52,000. Advice him regarding the tax treatment of above items acquired by him.

Tax Treatment: Any prescribed movable property (meaning has been discussed earlier) acquired for less than its fair market value by an individual/HUF is charged to tax if the following conditions are satisfied:

- a) Prescribed movable property is acquired by an individual or HUF.
- b) The aggregate fair market value of such properties acquired by the taxpayer during the year exceeds the consideration paid for these properties by Rs. 50,000. In other words, the aggregate fair market value of all such properties is higher than the consideration paid and the difference is more than Rs. 50,000.

The above discussed provisions are not applicable in case of prescribed movable property received from relatives and received on certain specified occasions.

Considering above provisions, the tax treatment of various items acquired by Mr. Raja will be as follows:

- Gold jewellery and bullion are covered in the definition of specified movable property. The fair market value of gold jewellery is Rs. 2,84,000 and of bullion is Rs.6,00,000. The purchase price of gold jewellery is Rs.1,84,000 and that of bullion is Rs. 5,50,000. It can be observed that both the properties are acquired for less than its fair market value.

The excess of fair market value over the purchase price will amount to Rs. 1,50,000 (Rs. 1,00,000 for gold jewellery and Rs. 50,000 for bullion) which is more than Rs. 50,000. Hence, the entire excess of fair market value over purchase price i.e. Rs. 1,50,000 will be charged to tax in the hands of Mr. Raja. It will be charged to tax under the head "Income from other sources".

- Motor car does not come under the definition of prescribed movable property; hence, nothing will be taxed in respect of purchase of motor car.

Illustration -10

On 1-4-2020, Mr. Kumar purchased shares from Mr. Raja for Rs. 84,000. The fair market value of the shares i.e. value as per price quoted in stock exchange is Rs. 1,00,000. Further, on 1-7-2020, he acquired gold jewellery from Mr. Rajkumar for Rs. 25,200. The fair market value of jewellery is Rs. 50,400. Mr. Kumar is confused regarding the tax consequences arising in respect of above items purchased by him. Advise him in this regard.

Tax Treatment: Any prescribed movable property (meaning has been discussed earlier) acquired for less than its fair market value by an individual/a HUF is charged to tax if the following conditions are satisfied:

- a) Prescribed movable property is acquired by an individual or HUF.
- b) The aggregate fair market value of such properties acquired by the taxpayer during the year exceeds the consideration paid for these properties by Rs. 50,000. In other words, the aggregate fair market value of all such properties is higher than the consideration paid and the difference is more than Rs. 50,000.

The above provisions are not applicable in case of prescribed movable property received from relatives and received on certain specified occasions.

Considering the above discussed provisions, the tax treatment of various items acquired by Mr. Kumar will be as follows:

- The fair market value of the share is Rs. 1,00,000 and shares are acquired for Rs. 84,000, thus, the excess of fair market value over purchase price will come to Rs.16,000.
- The fair market value of jewellery is Rs. 50,400 and it is acquired for Rs. 25,200, thus, the excess of fair market value over purchase price will come to Rs. 25,200.

The total of the excess of fair market value over purchase price amounts to Rs. 41,200 (Rs. 16,000 for shares + Rs. 25,200 for jewellery) which is below Rs. 50,000 and hence, nothing will be charged to tax in the hands of Mr. Kumar.

Suppose, if in the given case, the fair market value of shares is Rs. 1,84,000 instead of Rs. 1,00,000, then the aggregate of excess of fair market value of shares and gold jewellery will amount to Rs. 1,25,200, (Rs. 1,00,000 excess fair market value of shares + Rs. 25,200 excess fair market value of gold jewellery). The excess of fair market value over purchase price exceeds Rs. 50,000 and hence, entire excess of Rs.1,25,200 will be charged to tax as income from other sources.