

***The gift facade***  
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**Tax Matters/ S.P. Babuta**  
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New Provisions in the Income Tax Act viz., Section 2(24)(XIII) & section 56(2)(v) were introduced in Finance Bill 2004, to prevent money laundering via exchange of gifts. As per these provisions, Where any sum of money exceeding 25000/- is received without consideration by an Individual or HUF from any person on or after 01-09-2004, the Whole of such sum will be taxable under the head 'Income from other sources' in the hands of Receiver of gifts. This will not apply to any sum of money which is received:

From any relative, or

On the occasion of the marriage of the Individual or

Under a will or by way of Inheritance, or

In Contemplation of death of the Payer

**Some Issues emerging from these Provisions**

**Q1:** Are gifts in kind, covered under these provisions ?

**Ans:** Gifts in kind do not come within purview of this section. For instance if gifts are received in the form of jewellery, immovable property etc. then the provisions of this section will not apply. Only Gifts received in cash will be covered.

**Q2:** What happens if an Individual receives five gifts of Rs. 20000 each from different persons, Will it be included in his income as Income from other sources?

**Ans:** As per the provisions, the gifted amount is to be included in the income from other sources only if, any sum of money exceeding Rs. 25000/- is received without consideration by an individual or HUF from any Person. There is no mention of the word 'in aggregate' during the previous year.

In the above case, the individual has not received any sum exceeding Rs. 25000 from any individuals, the aggregate sum of Rs. 100000 cannot be considered for inclusion in income from other sources.

However it is proposed in the taxation law amendment bill 2005 that w.e.f. Ass.yr. 2007-08 the aggregate amount of any sum without consideration from any person or persons in previous year shall be treated to be income if such sum exceed Rs 50000/-

**Q3:** Whether sum of money received by an Individual for Inadequate consideration is covered under the new Provisions?

**Ans:** The words mentioned in section 56(2)(v) are any sum of money received **without consideration** rather than the words **inadequate consideration**. Thus in order to attract the provisions of this section money is to be received without consideration. If money has been received for inadequate consideration, the same cannot be treated as Income under this section.

**Q4:** Whether gifts made by an NRI are covered under these provisions?

**Ans:** Yes, these provisions are applicable in case of gifts made by an NRI.

**Q5:** What happens if House property is gifted by an Individual to his/her spouse?

**Ans:** Since Gift in kind made to a relative is exempt, thus Amount of gift made to the spouse in the form of house property will not form part of Income . However any income received out of the house property will be clubbed in the hands of transferor, as per the clubbing provisions of section 64(1)(iv) if such transfer is otherwise than for adequate consideration or in connection with an agreement to live apart.

**Q6:** Can gifts If not properly explained be treated as Income from undisclosed sources and added to Income?

**Ans: Yes.** The recipient of gift is required to prove the identity, creditworthiness and financial capability of the donor of the gift . In case where any sum is found credited in the books of an assessee and assessee offer no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the A.O. satisfactory, the sum so credited may be charged to income tax as the income of the assessee .