

Some gifts can be treated as income

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On the eve of last Sunday, my dad said he wished to gift a diamond necklace to my uncle and aunt on their 25th wedding anniversary. He asked me if there was a need to pay any tax as the erstwhile Gift Tax Act (GTA) required the donor to pay tax.

Under the GTA, the donor paid tax of almost 30 per cent. In 1998, after giving due consideration to the fact that the GTA neither yielded any substantial revenue nor fulfilled the objective of combating tax evasion, the Finance Ministry decided to stop the tax. While deleting the GTA, the Finance Minister proposed to introduce the corresponding charging section in the Income-Tax Act. However, the proposal was withdrawn at the time of enactment of the Finance Bill, 1998, leading to a tax-free period for gift transactions until March 31, 2004.

In absence of a corresponding charging section, the tax-free period opened the doors for bogus capital-building and money laundering. Later on to plug this loophole and combat tax evasion, the Finance Minister announced in Budget 2004 that purported gifts above Rs 25,000 from any unrelated person will be taxed as income in the hands of the receiver (being individuals or Hindu Undivided Family).

However, what happens when one receives Rs 24,000 each from three persons? Under the then provisions, there was a possibility to escape tax. To curb the above practise, an amendment taxing the aggregate of moneys received in excess of the prescribed limit (enhanced to Rs 50,000) was introduced from April 2006.

Since October 2009, the provisions surrounding gifts have gone far beyond taxing only money and have expanded its scope by including immovable property and specified movable property received without consideration or adequate consideration. A separate exemption limit of Rs 50,000 is provided for each of these categories.

Stamp duty

The adequacy of consideration is to be measured with the stamp duty value for immovable property and fair market value in case of movable property. The intention is to be a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gift. Further, it has been aptly made clear in the explanatory memorandum that above provision would apply to the capital asset and not to stock-in-trade, raw material or consumable stores of any business.

However, an adverse impact arose on genuine sale transactions of immovable property, where the sale consideration was less than the stamp duty value, the purchaser was required to pay tax as receiver of gift. As the intention of law was not this, the Finance Minister in Budget 2010

made retrospective amendment to levy tax on receipt of immovable property only if it is received without consideration.

Gifts received from blood relations (includes relatives of the spouse as well), lineal ascendants, descendants and gifts received on certain occasions such as marriage, under a will or inheritance are not to be treated as income in the hands of the recipient. Thankfully, the same exemption is proposed to be continued under the Direct Tax Code which is effective from financial year 2012- 13. Of course, though not mentioned in the tax laws, it is always advisable to obtain written confirmations regarding the gift of money from the donor along with details such as donor's PAN and so on so that genuineness of the gift can be established to the tax officer.

In a nutshell, now my dad is happy that at least he can gift his brother without inviting the tax officers' attention.

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