

ALL YOU KNOW ABOUT GIFTING

As per Section 122 of the Transfer of Property Act, 1882- "Gift is the transfer of certain existing MOVABLE OR IMMOVABLE property made VOLUNTARILY and WITHOUT CONSIDERATION by one person called Donor to another called Donee and accepted by or on behalf of Donee

- The most important part of a valid gift is ACCEPTANCE by the DONEE.
- If either the Donor or Donee dies before acceptance, the gift is VOID.
- It is advisable to get the acceptance of the Donee on the deed of gift itself.
- A gift once duly made and accepted cannot be revoked

Is there any difference between gifting movable or immovable gift

Yes, in practice for gifts of Movables and Cash etc. MEMORANDUM OF GIFT is executed by getting the acceptance of the donee to avoid the exorbitant stamp duty.

However, a gift of Immovable property of whatever value must be made by "Registered Deed" ONLY, signed by the donor and attested by at least two witnesses.

The history of GIFTS in taxation

- For a long time, Gifts were taxable under Gift Tax Act, 1957 wherein tax was payable by the Donor and exempt in the hands of Donee.
- However, in 1998 Gift Tax Act was abolished.
- After 01st October, 2009 gifts received from Non-Relatives were made taxable in the hands of recipient

How are gifts are taxed in the current scenario

Gifts of value exceeding Rs.50,000, whether in cash or property, is taxable in the hands of the recipient under the head "Income from other sources" in the view of section 56(2)(vii).

Property

Property as mentioned in the above definition means the following capital asset-

- Immovable Property being Land or building or both
- Shares and Securities
- Jewellery
- Archaeological collections

- Drawings, Paintings, Sculptures or any work of art
- Bullion.

The circumstances where Gift will not be taxable u/s 56(2)(vii)

Section 56(2)(vii) does not cover the following gifts

- From any relative; or
- On the occasion of the marriage of the individual;
- Under a will or by way of inheritance; or
- In contemplation of death of the payer or donor; or
- From any local authority as defined in section 10(20);
- From any fund, university, hospital etc. referred to in section 10(23C);
- From any Trust or Institution registered u/s 12AA or 12AB; or
- By way of business organization of Co-operative banks, Amalgamation and demerger of companies w.e.f. 01.04.2017.

From which relatives gift is not taxable u/s 56(2)(vii)

As defined in section "Relative of an individual" means

- His Spouse or Spouse of people mentioned below;
- Brother or sister; Brother or sister of the spouse;
- Brother or sister of either of his parents;
- Any linear ascendant or descendant;
- Any linear ascendant or descendant of his spouse;

Whose responsibility it is to prove genuineness of gift

The burden to prove genuineness of gift is on the shoulders of the Recipient in the view if provisions of section 68 dealing with cash credit.

In Finance Budget 2023-24 what amendment was brought in by the Government

- Section 9 (1)(viii) provides that the any sum of money exceeding Rs. 50,000, received by a non-resident without consideration from a person resident in India, shall be income deemed to accrue or arise in India.
- Certain instances were observed where gifts were being made by persons residents in India to non-residents and were claimed to be non-taxable in India by such non-residents
- It is proposed to amend section 9 (1)(viii) of the Act so as to extend this deeming provision to sum of money exceeding Rs. 50,000, gift received by a

not ordinarily resident, without consideration from a person resident in India will be taxable in India in the hands of not-ordinarily resident.

- This amendment will take effect from 1st April 2024 and will accordingly apply to assessment year 2024-25 and subsequent assessment years.