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Gifts: A Comprehensive Analysis of an Everlasting Tax Planning Tool

NAVNEET SINGAL

Tax litigation advisor and international tax expert, Founder and Managing Partner, EvoBreyta TaxFinTech LLP.

Gifts have always been subject to taxation in one form or another around the world, and India is not exempt from it. Milton Berle has quoted that, *"Santa is having a tough time this year. Last year, he deducted eight billion for gifts, and the IRS wants an itemized list"*,[1] shows the spread of gift transactions worldwide and the focus of revenue authorities on the same.

Legislators have long debated the taxation of gifts because, in situations where concealed assets were found, the assessee would argue that the assets were gifts received and therefore free from taxation. In order to address this issue, legislation was put into place to ban specific behaviours, allowing for the taxation of such gift receipts while also exempting extremely small gift amounts, family gifts, and gifts given on specific dates. Understanding how the government intends to tax the gift, what exemptions are available, and how we can take advantage of the concessions granted by statute to reduce the tax liability becomes critical.

In this article, the author has attempted to analyse the different scenarios of transfer of assets between related and unrelated persons without consideration or inadequate consideration, amid the applicability of different sections of the Income-tax Act, 1961 ('the Act') and other statutes, under the following headings:

I. Brief history of taxation of gifts in India
II. Applicability of the tax on the Gift
III. Exemption from tax on transaction with Nil or inadequate consideration (Gift)
IV. Interplay of clubbing provisions and capital gain provisions
V. Valuation of gifts
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(*h*) Property transferred as gift becomes stock-in-trade for Donee

(*i*) Whether Gifts can be considered as cash credit u/s 68 of the Act

(*j*) Whether Section 269ST is Applicable on Cash Gifts

VII. Conclusion

I. Brief history of taxation of gifts in India

The history of Indian culture dates back thousands of years, and there are many different customs associated with it. India is a nation with a diverse culture where every occasion is cause for celebration and an opportunity to express love and affection to close family and friends. On several occasions, including Diwali, Raksha Bandhan, Christmas, and New Year's, gifts are given and received. Additionally, some individuals view gifting as a status symbol.

It is important to understand the meaning of the term "gift". The Income-tax Act, 1961 ('the Act'), or GST Act, 2017 has not specifically defined the term "gift". Section 2(xii) of the repealed Gift Tax Act, 1958 (the GTA) defines *"Gift as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth."* Thus, a gift is a gratuity and an act of generosity and does not require consideration. If there is consideration for the transaction, it is not a gift. Love, affection, spiritual benefit, and many other factors may enter into the intention of the donor to make a gift, but these considerations cannot be called or held to be legal considerations as understood.

Tax on gifts was introduced in India in 1958 by the Gift Tax Act, which was subsequently amended and repealed in the year 1987 and 1998, respectively. Till October 1, 1998, all gifts (including gifts to relatives), barring a few exceptions, were chargeable to Gift Tax in the hands of the Donor under the Gift Tax Act. The period from October 1998 until March 2004 was without any tax on gifts. However, the gift tax was reintroduced in a new form to fill up the vacuum created by the abolition of the Gift tax Act, 1958 and the provisions were included in the Income-tax Act vide Finance (No. 2) Act, 2004, w.e.f. 1.4.2005. **The remarkable difference is that under the old law, gifts were taxed in the hands of the donor, while under the current law, the same is taxable in the hands of the donee or recipient of the gift as income from other sources u/s 56 of the Income Tax Act, 1961.**

In short, the provisions relating to tax on such receipts can be described as follows:

Legislation	Period	Taxability
GTA, 1958	Up to 30/09/1998	in the hands of the donor if amount of gift exceeded Rs.30,000 in a year
-	01/10/1998 to 31/08/2004	No tax on such sum
U/s 56(2)(v) of Income-tax Act	01/09/2004 to 31/03/2006	only sum of money if the same exceeds Rs.25,000 from each person (Individual or HUF)
U/s 56(2)(vi)	01/04/2006 to 30/09/2009	only sum of money if the same exceeds in aggregate Rs.50,000 in a year in the hands of the recipient from all donors (Individual or HUF)
U/s 56(2)(vii)	01/10/2009 to 31/03/2017	Taxable Receipt of sum of Money, Immovable property as well as certain specified movable property if the amount exceeds Rs.50,000

		in aggregate in case of each of such category of assets (Individual or HUF)
U/s 56(2)(viia)	01/6/2010 to 31/03/2017	Partnership Firms and companies in which public are not substantially interested when shares of specified companies are received without consideration or at inadequate consideration
U/s 56(2)(x)	01/04/2017 onwards	Provisions applicable as of now – Tax is applicable to all irrespective of their status and residency subject to certain thresholds and conditions. (Discussed in detail)

II. Applicability of the tax on the Gift

Section 56(2)(x) of the Act stipulates that any person, which includes everyone, whether individual, HUF, firm, company, LLP, trust, etc., who receives any asset (money, immovable property or any property (other than immovable property)) without consideration or inadequate consideration is liable to pay tax on the value of such asset under the head of 'Income from Other Sources'.

However, gifts have been made taxable only in those cases where the aggregate value of such gifts is more than Rs. 50,000 during the FY. The taxability of the gift is determined on the basis of,

(I) Aggregate value of gift received during the year and not on the basis of individual gift, i.e., it can be single time or multiple times.

(II) The total value of the gifts will be considered for the threshold limit of Rs. 50,000/-, whether they have been received from a single person or multiple persons.

(III) If the aggregate value of gifts received during the year exceeds Rs. 50,000, then the 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).

III. Exemption from tax on transaction with Nil or inadequate consideration (Gift)

(*a*) Taxability of gifts received from a relative

The income-tax provisions provide an exhaustive list of such cases where a gift is not taxable if it is received from a relative. The definition of a relative in the Act has been defined as follows:

(*i*) **in the case of an individual**

English Acronym	Hindi Acronym
Husband or wife	Pati or Patni
Father or mother, son or daughter, grandson or granddaughter, grandfather or grandmother, great grandfather, great grandmother	Papa, mummy, beta, beti, pota, poti, dada, dadi, pardada, pardadi
Brother, sister, Sister's Husband, Brother's Wife, Wife's Brother, Wife's Sister, Husband's Brother, Husband's Sister, Husband's Brother's Wife, Wife's brother's wife	Bahi, Behan, Jija, Bhabhi, nanad, Sala, Sali, Dewar, devrani, jethani, nandoi, salaheli
Mother's Sister, Mother's Sister Husband, Mother's Brother, Mother's Brother's Wife, Father's Brother, Father's Brother's Wife, Father's Sister's Husband, Father's Sister, Daughter's Husband, Son's Wife, Wife's Father, Wife's Mother, Husband's Father, Husband's Mother	Mama, mami, mausa, mausi, chacha, tau, chachi, tai, fufa, bhua, jawai, bahu, sasur, saas

Wife's Grand Father, Husband's Grand Mother, Husband's Grand Father, Wife's Grand Mother, Wife's Great Grand Father, Husband's Great Grand Mother, Husband's Great Grand Father, Wife's Great Grand Mother	Dada Sasur, Dadi Saas, Bada Dada Sasur, Badi Dadi Saas.

(The list is quite exhaustive and author has tried his best to cover all cases as per the definition of the relative in the Act still any miss can't be ruled out)

Interpretation of relationship in specific circumstances:

The above list of relationships is an **exclusive list,** and any other relationship outside of this list is not a relative for the purpose of exemption under this section. Any gift from a friend, in case he/she is not a relative as mentioned above, is not exempt from taxability, irrespective how close he or she is.

This list is one-sided, in other words, a **two-way relationship cannot be assumed**; e.g., a gift by Uncle to Nephew is exempted, however, gift by nephew to uncle is not exempt. It has been held in ***Asstt. CIT* v. *Lucky Pamnani***[2], that, even in a case where a minor's income is taxed in hands of his parent, the relationship has to be seen with reference to the recipient, being a minor, and not his parent.

The theory of transitivity doesn't apply to the definition of 'relative'. The theory of transitivity means that a relation between three element is such that if it holds between the first and second and it also holds between the second and third, it must necessarily hold between the first and third. Thus, as per the definition of relative, it is possible that dada and dadi are exempt, but nana and nani are not.

(*ii*) **in the case of HUF**

The gift received by HUF from its member is exempt; however, the following points are required to be considered while interpreting this aspect, i.e.,

(*a*) A gift received by a member from HUF is not exempted.

(*b*) The Act does not clarify whether the transfer of any asset on the total partition or partial partition of HUF can be considered a gift or not. As per the understanding of the author, the partition of HUF, whether full or partial, is not an act of love or affection; hence, such a transfer should not be considered a gift by the HUF to its members.

(*b*) Gift received on the occasion of the marriage of the individual

Gifts received on the occasion of the marriage of the individual are not subject to tax. Apart from marriage there is no other occasion when gifts received by an individual are exempt. Hence, gifts received on occasions like birthdays, anniversaries, etc. will be subject to tax.

Some points to deliberate:

(*i*) Gifts here include the sum of money as well as any property.

(*ii*) Gifts received by any person other than the individual whose marriage has taken place are not exempted under this clause. In ***Rajinder Mohan Lal* v. *Dy. CIT***[3], it was observed by the Punjab & Haryana High Court that *"If the legislature had intended that gifts received on the occasion of marriage of the assessee's children should be exempted, nothing prevented the Legislature from adding the words 'or his children' after the words 'marriage of the individual."*

(*iii*) Gift received not on the date of the marriage

The expression 'on the occasion of the marriage' does not confine the receipt of the gift on the day of the wedding or during ancillary functions in relation to wedding. The gift may be received on, or before, or after the occasion of marriage. In ***CIT* v. *Dr. (Mrs.) Neelambai Ramaswamy***[4], (rendered in context of GTA), gift received 11 months after marriage was considered as gift received on the occasion of marriage as the gift was intended to be made at the time of marriage but could not be made. Some other decisions on the same line are as follows:

A. Rudrakodi v. *CIT* [2000] 244 ITR 309 (Mad.)

CGT v. *G. Venkataswamy* [1999] 236 ITR 539 (Mad.)

CGT v. *K.B.B. Subudhi* [1993] 201 ITR 741 (Ori.)

Sumatilal H. Kapadia (HUF) v. *Gift tax Officer* [1992] 43 ITD 580 (Ahd. - ITAT)

CGT v. *Budur Thippiah* [1976] 103 ITR 1.

(*c*) Gift received under a will, by way of inheritance, in contemplation of death

The requirements of a 'gift in contemplation of death' are laid down in section 191 of the Indian Succession Act, 1925. This section reads as follows:

"191. Property transferable by gift made in contemplation of death.— (1) A man may dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will.

(2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers, to another the possession of any movable property to keep as a gift in case the donor shall die of that illness.

(3) Such a gift may be resumed by the giver, and shall not take effect if he recovers from the illness during which it was made; nor if he survives the person to whom it was made."

Two important requirements laid down in this sub-section are, (i) the donor must be ill and expects to die shortly of the illness, and (ii) possession of the property should be delivered to the donee, apparently during the lifetime of the donor.

(*d*) Gift received from any local authority from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution subject to certain conditions

(Refer Explanation to clause (20) of section 10; clause (23C) of section 10; section 12A or section 12AA or section 12AB; sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 for the definition of the institutions mentioned in this clause);

(*e*) Transactions not regarded as transfer u/s 47

(*f*) Gift received from an individual by a trust created or established solely for the benefit of relative of the individual;

(*g*) Gift received from such class of persons and subject to such conditions, as prescribed u/r 11UAC of the Income-tax Rules, 1962.

IV. Interplay of clubbing provisions and capital gain provisions

(*a*) Clubbing of Income provisions u/s 64 of the Act

In the following circumstances, even though the gifts are exempted from being received by an individual, due to clubbing provisions, the income from such gifts will be included in the income of the donor, i.e.,

(1) Gift to the spouse (excluding the transfer in connection with an agreement to live apart), son's wife, minor child or to any other person or association of person, directly or indirectly, for the immediately or future benefit of himself, spouse or son's wife. (Section 64(1)(iv), (vi), (vii), (viii), 64(1A))

(2) In case, the house property has been transferred otherwise than for adequate consideration to the spouse or to a minor child (not being a married daughter), the donor will be considered as the owner of such house property and rental income (not the income from other sources) from such property will be considered as the income of the individual. (Section 27(i))

(3) In the case of gift of any property to HUF by its member, even though such property is exempt from tax as gift, income from such property will be considered the income of the member.

(*b*) Transaction not regarding as transfer u/s 47(iii) of the Act

(1) Capital gain is not appliable on the any transfer of capital asset referred u/s 47(iii) of the Act.

(2) Capital gain is not applicable on any distribution of capital assets on the total or partial partition of a HUF.

Some points to deliberate on:

(*i*) In the case of a gift of any asset to a minor child, the income from such a gift will be considered the income of the parent whose total income is greater.

(*ii*) In the event that the gift from the member of HUF to HUF has been the subject matter of the partition of the HUF, the income from such property as received by the spouse after such partition will be considered the income of the individual.

(*iii*) At the time of partition of the HUF, any property that is subject matter of partition and has not been received as a gift from any member will not be subject to the provisions of the clubbing.

(*iv*) Income includes losses as well.

After analysing the above clauses related to clubbing of income, it can be interpreted that:

(A) Even though any gift by an individual to spouse, son's wife, minor child or any gift by member of HUF to HUF is exempted from any tax, however, any income generated through such gift will be added in the income of the transferor and will not be the part of the income of the transferee.

(B) Further, if any individual, whether being the owner of a self-acquired house property desires to sell the property, and also to minimize capital gains tax, it is advisable for the individual to settle the same in favour of his children (other than minors), who would otherwise be entitled to this property on a later date, retaining the designed portion, including the minors' share with the individual. By adopting this method, capital gains get distributed among all these persons, i.e., settlors and settlees.

The provisions for clubbing of income are complicated, so adequate precautions should be taken and proper tax planning is required to be done to come out of the legal implications that the transferor of property may have to face. The observation of the Supreme Court in its decision in the case of "***Sevantilal Maneklal Sheth* v. *CIT***[5]" is relevant:

"The object of the enactment of the section is to prevent avoidance of tax or reducing the incidence of tax on the part of the assessee by transfer of his assets to his wife or minor child. It is a sound rule of

interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the makers of the statute."

V. Valuation of gifts depending upon the nature of the asset transferred

For the purpose of valuation of the assets transferred as a gift, they can be classified as money, immovable properties, or properties other than immovable properties.

(*a*) Sum of money

Any sum of money received without consideration can be termed as a 'monetary gift'. The sum of money received without consideration (i.e., a gift not arising from the business or the exercise of a profession that is chargeable u/s 28(iv) of the Act) from any person is charged to tax under the head of Income from Other Sources if the aggregate amount of such a gift received during the year exceeds Rs. 50,000, subject to the conditions discussed in other paragraphs of this article.

(*b*) Immovable Property

Any land, or building, or both, or any appurtenant thereto, can be considered immovable property. If the stamp value exceeds the consideration of the immovable property, if any, and such excess is more than Rs. 50,000 or 10% (before 01.04.2021, it was 5%) of the consideration, whichever is more, the stamp value of the property is considered the value of the gift.

Some points to deliberate on:

Where the date of agreement, i.e., gift deed, and registration date of immovable property are not same

(*a*) Date which should be considered as the date of gift

When a person makes a gift of immovable property by a deed executed in a previous year but registered in a subsequent year, the question arises whether the said gift is to be taxed in the previous year in which the gift deed was executed or in the previous year in which gift deed was registered. In other words, the question is whether the gift becomes effective from the date of registration of the document or from the date of execution of such deed. The Courts, while interpreting provisions of different laws in the context of the question posed above, has held as under:

In ***T.V. Kalyanasundaram Pillai* v. *Karuppa Mooppanar***[6], the Privy Council sought to reconcile the provisions of section 123 of the Transfer of Property Act with section 47 of the Indian Registration Act by saying that, while registration is a necessary solemnity for the enforcement of gift of immovable property, it does not suspend the gift until registration actually takes place.

In ***Venkat Subba Srinivas Hegde* v. *Subba Rama Hegde***[7], the point at issue was stated by the High Court which gave rise to the appeal before the Privy Council. The Privy Council followed its earlier decision in T.V. Kalyanasundaram Pillai's case (supra). Rajasthan High Court in ***Sirehmal Nawalkha* v. *CIT***[8], has come to the same conclusion. In the case of ***CGT* v. *Smt. Aloha Lata Sett***[9], the HC has considered the transfer of property only on the basis of the possession of the property by the husband to his wife without any document.

In other words, the ratio of the decisions is that the transaction of gift is complete if the other formalities are completed and the document of gift is executed.

(*b*) Value of stamp Duty

Where the date of agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, **the stamp duty**

value on the date of agreement will be considered, subject to that the amount of consideration has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed by the government, on or before the date of the agreement for transfer of such immovable property.

(*c*) Valuation of the property based on the valuation report

Where the stamp duty value of immovable property is disputed by the assessee on the grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer. However, it is quite litigative and different courts have taken different approach while considering the value on the basis of the valuation report.

In, ***ITO* v. *Santosh Kumar Dalmia***[10], the Calcutta HC has held that the question of valuation is a matter of opinion and valuation differs from valuer to valuer, depending on the facts and circumstances of each case. The valuer's report is after all a statistical hypothesis that leaves wide room for error on either side. It is no useful material for rational belief as to suppression of real consideration that passes in a transaction.

It has been held in, ***Smt. Tarawati Debi Agarwal* v. *ITO***[11], that the opinion of an Engineer cannot be a material to entertain any belief that the petitioner has escaped income, therefore the authority concerned ought not to have reopened the assessment.

In ***Kajaria Investment & Properties (P.) Ltd.* v. *ITO***[12], following the decision in ***Smt. Tarawati Debi Agarwal***[13], it has been held that the valuation is always a question of opinion and unless there is clear finding, on basis of material, that an assessee has invested in construction more than what has been shown by it in course of assessment proceedings, Assessing Officer cannot proceed merely on basis of valuation report of departmental valuer.

"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.

(*c*) Movable Property (properties other than immovable properties)

Shares and securities, jewellery, archaeological collections, drawing, paintings, sculptures, any work of art, bullion and virtual digital asset (VDA) has been included in the definition of the properties other than the immovable property under the Act.

In case, the Fair Market Value (FMV) of the property exceeds the consideration, if any, and such excess is more than Rs. 50,000, FMV of the property is considered as the value of the gift.

Some points to deliberate on:

(*i*) FMV of a property, other than an immovable property, will be determined in accordance with the rule 11U and 11UA of the Income-tax Rules.

(*ii*) Nothing will be charged to tax in respect of the 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 an iPad received as gift, because an iPad is not covered in the definition of prescribed movable property.

VI. Specific cases related to gift transactions

a. Gift by non-resident to resident and vice-versa

The provision of gifts apply to every person whether it is a resident or a non-resident.

(*i*) Any gift received by a received by a resident person consider to be taxable in India, whether it is received from a resident or a non-resident

(*ii*) **Gifts received by a non-resident from a resident is also taxable in India.**

Earlier, gifts by a resident to a non-resident are claimed to be non-taxable in India as the income does not accrue or arise in India. 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.

b. **Gift received from abroad or properties situated outside India**

Whether the monetary gift has been received from India or outside India and whether the underlying property is situated in India or outside India does not make any difference on the taxability to the gift under the Act, subject to other provisions or exemptions discussed in other parts of this article.

The Act does not define how the stamp duty value of property outside India will be determined. As per the understanding of the author, it should be considered as per the local laws of the valuation of that country overseas.

c. **Gift of Immovable Property which is not a Capital Asset, i.e., rural agricultural land**

As per the meaning of the term "property" given in Clause (d) of Explanation to section 56(2)(vii), immovable property means any land, or building, or both. In the aforesaid Explanation while defining the term "property" the word 'capital asset' has also been used. On this basis, it is being argued that, if any property is not in the nature of capital asset as defined in section 2(14), the same is not covered under the definition of property and therefore, provisions of section 56(2)(x) are not applicable. Example of such cases are agriculture land, stock-in-trade, assets of personal effects etc.

The issue had come up before ITAT Jaipur Bench in the case of '***ITO* v. *Trilok Chand Sain***'[14] in the context of agricultural land. It has been held by the Hon'ble Bench that definition of term capital asset in section 2(14) of the Act is not relevant for the purpose of section 56(2)(vii) of the Act.

d. **Taxability of amount received as Alimony**

Section 56 of the Act is applicable on receipts which are without consideration. But in case of divorce, a sum of money paid to the wife or children for the relinquishment of all and future claim is not without consideration and therefore, not chargeable to tax.

In ***Asstt. CIT* v. *Meenakshi Khanna***[15], the ITAT held that – *"the receipt by the assessee represents accumulated monthly instalments of alimony, which has been received by the assessee as a consideration for relinquishing all her past and future claims. Therefore, there was sufficient consideration in getting this amount. Therefore, section 56(2)(vi) is not applicable."*

The Hon'ble Bombay High Court in the case of ***Princes Maheshwari Devi of Pratapgarh***[16] had held the monthly payments of alimony as taxable and lump sum amount of alimony as tax free being capital receipt.

e. **Benefits/Gifts by employer to employees including ESOP**

Gifts given by an employer to an employee shall be taxable if the value of the gifts exceeds Rs.5,000. The limit of Rs.50,000 shall not apply to gifts received from an employer. But the value of gifts in excess of Rs.5,000 shall only be taxed. However, it is to be mentioned that the transfer of any sum of money or property from an employer to an employee under the contractual

agreement of employment can't be considered as a gift and is taxable under the head of salaries as per the provision thereof.

f. **Applicability of TDS on gifts**

TDS is not appliable on the gifts whether the consideration is NIL or for inadequate consideration, however, TDS u/s 194 R is applicable in the case of the benefit or perquisite arising from business or exercise of profession which is not a gift under the Act.

g. **Interest free loans**

Merely because the amount of the loan has been raised without involving payment of interest, it cannot be seen to have vested the impugned amount with characteristics of an income, within the meaning of section 56(2) of the Act. In the case of a loan, the promise to pay back the equivalent sum in the future shows the presence of consideration as defined in sec 2(d) of the Contract Act, 1872. This view has been supported by the Hon'ble Delhi High Court in ***CIT v. Mridu Hari Dalmia***[17]. From the above, it can be interpreted that a loan has a two-way traffic and gift has only one traffic. This view is also supported in ***CIT v. Saran Pal Singh (HUF)***[18] as well.

h. **Property transferred as gift becomes stock-in-trade for Donee.**

Section 43(c)(2) of the Act defines the cost of the asset, where an asset becomes the property of the assessee on the total or partial partition of a Hindu undivided family or under a gift or will or an irrevocable trust, is sold by the assessee as stock-in-trade of the business carried on by him.

The cost of acquisition of the said asset to the assessee in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to the transferor or the donor, as the case may be, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any.

i. **Whether Gifts can be considered as cash credit u/s 68 of the Act**

It may be noted that there is no blank exemption in respect of Gift within prescribed limit of Rs.50,000 as also gifts from relatives and gifts received in circumstances of exceptions. In appropriate cases the department will be within its powers to treat even such unexplained or unproved gifts as cash credits or income u/s 68 of the Income Tax Act.

j. **Whether Section 269ST is Applicable on Cash Gifts**

There is clash in the provisions of Section 269ST and Section 56 of the Act, e.g., if a person receives a sum of Rs. 3,00,000 from his friend as gift in cash and Rs. 2,50,000 from a relative in cash. Gift of Rs. 3,00,000 will be included as income from other sources u/s 56. Further, a penalty u/s 271DA of Rs.3,00,000 shall be imposed as person has received cash in violation of provision of Section 269ST. In case of the gift of Rs.2,50,000 received from relative in cash, then no income will be put to tax u/s 56 and penalty will be levied u/s 271DA of the Act.

VII. Conclusion

The author has tried to consider the maximum number of scenarios related to the gift. Gifts are in the culture of society and have been in place for thousands of years, and it is possible that there would be thousands of other situations that have been missed to explain. Tax planning by gift is a tool that has been given by the legislature to the taxpayers, and use of the same can't be avoided.

The famous economist John Maynard Keynes has quoted that,

> *"The avoidance of taxes is the only intellectual pursuit that still carries any reward."*

Giving gifts to others is a very common way for taxpayers to manage their taxes within the boundaries of the law. The Act permits the transfer of any asset within the parameters of law in many situations when

income from any asset through such modes may be transferred from one person to another. The legislature has made every effort to close these loopholes by introducing a number of provisions, but there will always be situations where tax planning is feasible. Conflict between taxpayers and lawmakers will persist, and the taxability of gifts will continue to be a subject of litigation.

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