

# What's New

## Tax Insights



13 March 2023

### Receipt of shares in a List Co as a gift without consideration from holding/ group company is not taxable under either section 56(1) or section 28(iv) of the Act – Mumbai bench of the Tribunal

#### In brief

The Mumbai bench of the Income-tax Appellate Tribunal (Tribunal)<sup>1</sup> holds that receipt of shares in a listed company (List Co) by the taxpayer is a capital receipt that is not chargeable to tax under either sections 56(1) or 28(iv) of the Income-tax Act, 1961 (the Act).

#### In detail

##### Facts

- The taxpayer, an Indian company, was a subsidiary of company A w.e.f. 14 November 2011. The taxpayer did not carry out any business activity during the relevant assessment years, and the profit and loss account showed a debit balance.
- At the time of acquisition, i.e. on 14 November 2011, company A wrote a letter to the taxpayer that, as a part of group restructuring and to consolidate media assets, company A will transfer some shares in a List Co to the taxpayer as a gift without consideration. A similar letter was written by another company B, in the same group, to the taxpayer; herein, company B agreed to transfer some shares in same List Co to the taxpayer as a gift without consideration. Both transactions were approved by the respective boards of the companies on the same day. Actual transfer of the shares was completed in tranches before the end of the financial year.
- The taxpayer did not offer any income to tax under any provisions of the Act on account of the receipt of shares for nil consideration.
- The Tax officer (TO) added the market value of the List Co shares to the total income of the taxpayer under sections 56(1) or 28(iv) of the Act. The Commissioner of Income-tax (Appeals) deleted the additions made by the TO.

##### Taxpayer's contentions

- The receipt of shares as a gift was under an internal scheme of consolidation of media assets without violating any provisions of any law.

<sup>1</sup> ITA Nos. 2715/Mum/2018 and 3084/Mum/2018

- The aforesaid gift cannot be said to be a colourable device.
- There is no bar on corporate on giving and receiving gifts.
- The receipt of shares as a gift is a capital receipt and not taxable under section 56(1) of the Act.
- The receipt is not taxable under section 28(iv) of the Act since said receipt is not made in the ordinary course of business of the taxpayer.

### **Tax department's contentions**

- Value of the List Co shares received for nil consideration would be chargeable to tax as income from other sources under section 56(1) of the Act.
- Receipt of shares as gift for nil consideration must be treated as a revenue receipt as it is a benefit arising from the business under section 28(iv) of the Act. If transfer of a capital asset as a gift for the purpose of business is allowed as a revenue expenditure, the gift received can be treated as a revenue receipt from the business that is taxable under section 28(iv) of the Act.

### **Issues before the Tribunal**

- Whether the receipt of shares of a List Co for nil consideration is liable to tax under section 56(1) of the Act?
- Whether such receipt is liable to tax under section 28(iv) of the Act?

### **Tribunal's ruling**

- A source of income that is not covered specifically under any other head of income is brought to tax under income from other sources. However, receipt of shares is a capital receipt and can be brought to tax under the head of capital gains only. Accordingly, the provisions of section 56(1) of the Act cannot be resorted to.
- Moreover, since the shares gifted are those of a List Co, provisions of section 56(2)(viiia) of the Act are not attracted.
- Section 28(iv) of the Act specifies that the value of any benefit or perquisite arising from business will be chargeable to tax under the head 'Profits & Gains of Business or Profession'. To bring the gift of shares to tax under section 28(iv) of the Act, the benefit or perquisite should arise from business. In the instant case, receipt of shares of the List Co as a gift does not arise out of any business dealings and is also a capital receipt. Accordingly, it is not taxable under section 28(iv) of the Act.
- Therefore, the receipt of gift of shares of List Co by the taxpayer is not chargeable to tax under either sections 56 or 28(iv) of the Act.

### **The takeaways**

This is a welcome ruling by the Tribunal that holds the gift of shares as a capital receipt and not taxable under either sections 56(1) or 28(iv) of the Act. The ruling seeks to provide clarity on the fact that income from gift of shares, not arising from business activity or in the course of a business, is not to be taxed as a perquisite arising from business or profession.

## About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 156 countries with over 295,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com).

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

© 2023 PwC. All rights reserved.

## Follow us on

[Facebook](#), [LinkedIn](#), [Twitter](#) and [YouTube](#).

## **pwc.in**

In this document, "PwC" refers to PricewaterhouseCoopers Private Limited (a limited liability company in India having Corporate Identity Number or CIN : U74140WB1983PTC036093), which is a member firm of PricewaterhouseCoopers International Limited (PwCIL), each member firm of which is a separate legal entity.

©2023 PricewaterhouseCoopers Private Limited. All rights reserved.