

Bringing the non-resident investors within the ambit of section 56(2)(viib) to eliminate the possibility of Tax Avoidance [Section 56(2)(viib)]

Section 56(2)(viib) of the Act, inter alia, provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head „Income from other sources“. Rule 11UA of the Income-tax Rules provides the formula for computation of the fair market value of unquoted equity shares for the purposes of the Section 56(2) (viib) of the Act.

Clause (viib) of sub section (2) of section 56 of the Act was inserted vide Finance Act, 2012 to prevent generation and circulation of unaccounted money through share premium received from resident investors in a closely held company in excess of its fair market value. However, the said section is not applicable for consideration (share application money/ share premium) received from non-resident investors.

Accordingly, it is proposed to include the consideration received from a non-resident also under the ambit of clause (viib) by removing the phrase „being a resident“ from the said clause.

This will make the provision applicable for receipt of consideration for issue of shares from any person irrespective of his residency status.

These amendments will be effective from the 1st day of April, 2024 and shall accordingly, apply in relation to the assessment year 2024-25 and subsequent assessment years.