

**CBDT deviates from its own view taken in Circular No. 10 dated 31.12.2018 on non-applicability of S. 56(2)(viiia) to fresh issue of shares by a closely held company
(Circular No. 3 dated 23.01.2019)**

1. CBDT had issued Circular No. 10 dated 31.12.2018 clarifying that S. 56(2)(viiia) is not applicable on receipt of shares pursuant to fresh issue of shares by a closely held company.
2. On 4th January 2019, CBDT issued another circular withdrawing the aforesaid Circular No. 10. CBDT cited that the interpretation of the term “receives” used in S. 56(2)(viiia) is *subjudice* in various judicial forums and representations have been received from various stakeholders for clarification in the matter. While the issue is being considered afresh by the CBDT, Circular No. 10 of 2018 stands withdrawn and is to be considered as though it was never issued. Click [here](#) for our post on Circular No. 2 of 2019.
3. On 23rd January 2019, CBDT issued another circular to the effect that it would be incorrect to hold that S. 56(2)(viiia) and the related provisions do not apply to a fresh issue of shares considering that these provisions were introduced as anti-abuse provisions. Circular No. 10 would defy the legal intent of introduction of these provisions. Hence, Circular No. 10 should be considered as never to have been issued.

Annexure: CBDT Circular No. 3 dated 23.01.2019

CIRCULAR NO. 3/2019 [F.NO. 173/616/2018-ITA.I]

**SECTION 56 OF THE INCOME-TAX ACT, 1961 - INCOME FROM OTHER SOURCES -
APPLICABILITY OF SECTION 56(2)(viiia) OF THE INCOME-TAX ACT, 1961 OR SIMILAR
PROVISIONS UNDER SECTION 56(2) OF THE SAID ACT FOR ISSUE OF SHARES BY A
COMPANY**

CIRCULAR NO. 3/2019 [F.NO. 173/616/2018-ITA.I], DATED 23-1-2019

As mentioned in Circular No. 02/2019, a comprehensive review of the subject matter relating to interpretation of the term "receives" as used in, *inter alia*, section 56(2)(viiia) of the Income-tax Act, 1961 (the Act) and similar provisions contained in section 56(2) of the Act has been made by the Board in view of pendency of this issue in various judicial forums and clarifications sought by stakeholders. Based on the above, the following position is hereby clarified.

2. Keeping in view the plain reading as well as the legislative intent of section 56(2)(viiia) and similar provisions contained in section 56(2) of the Act, being anti-abuse in nature, it has been decided that the view, as was taken in Circular No. 10/2018 [subsequently withdrawn by Circular No. 02/2019] that section 56(2)(viiia) of the Act would not apply to fresh issuance of shares, would not be a correct approach, as it could be subject to abuse and would be contrary to the express provisions and the legislative intent of section 56(2)(viiia) or similar provisions contained in section 56(2) of the Act.

3. Therefore, any view expressed by the Board in Circular No. 10/2018 shall be considered to have never been expressed and accordingly, the said circular shall not be taken into account by any Income-tax authority in any proceedings under the Act.

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