

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

LOK SABHA
UNSTARRED QUESTION NO. 1422

TO BE ANSWERED ON MONDAY THE 1st JULY 2019/ASHADHA 10, 1941 (SAKA)

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“CBDT Circular”

1422. SHRI MANICKAM TAGORE B.:

“Will the Minister of FINANCE be pleased to state:

- (a) whether the Central Board of Direct Taxes (CBDT) has issued a Circular No. 10/2018 dated 31.12.2018 regarding clarification of applicability of section 56(2)(viiia) of the Income Tax Act, 1961;
- (b) if so, the details thereof and the total number of assesses benefited along with their names out of the said circular, state-wise;
- (c) whether any remedial action has been taken by the Revenue Department after the withdrawal of the said CBDT Circular; and
- (d) if so, the details thereof and if not, the reasons therefor ?”

ANSWER

MINISTER of FINANCE
(SMT. NIRMALA SITHARAMAN)

(a) to (d) Central Board of Direct Taxes had issued Circular 10/2018 dated 31.12.2018 to clarify that provisions of section 56(2)(viiia) of the Income-tax Act, 1961 being anti-abuse provisions shall not be applicable in cases of receipt of shares by the specified company or firm as result of fresh issuance of shares including by way of bonus shares, rights shares and preference shares or transactions of similar nature by the specified company. However, on reconsideration it was found that the matter relating to interpretation of the term ‘receives’ used in section 56(2)(viiia) of the act is pending before judicial forums and stakeholders have sought clarifications on other similar provisions in section 56 of the Act. Accordingly, with the idea of issuing a fresh comprehensive circular on the subject, the circular no. 10/2018 was

withdrawn by circular no. 02/2019 dated 04.01.2019. While withdrawing the circular no. 10/2018, it was also clarified that the said circular shall be considered to have never been issued.

Subsequently, it was clarified vide circular no. 3/2019 dated 21.01.2019 that the view, taken in circular no. 10/2018 (subsequently withdrawn by circular no. 02/2019) that section 56(2)(viiia) of the Act would not apply to fresh issuance of shares, would not be a correct approach, as it could be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. Accordingly, it was further clarified that any view expressed by the Board in Circular No. 10/2018 shall be considered to have never been expressed and, the said circular shall not be taken into account by any Income-tax authority in any proceedings under the Act.

CBDT is in knowledge of only one case assessed in Delhi wherein Circular 10/2018 dated 31.12.2018 was taken into account during the course of the assessment proceedings. Appropriate remedial measure as per Act to apply the circular no. 3/2019 dated 21.01.2019 is being identified.
