

Relative under Income Tax Act, 1961

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Normally, in this wisdom, there are three ways of becoming a relative. **Becoming a relative by birth.** As soon as a child is born, he automatically becomes a relative to his parents and their relatives. **A person can also become a relative by his Act.** In case of a marriage, the bride becomes relative of bride groom and his relatives and in the same way bride groom becomes relative of bride and her relatives. **In case of adoption, the adopted child becomes relative of his mother or father and their relatives.** Income Tax Act has defined relatives but the definition of relative in income tax act differs from section to section. All such sections dealing term relative are briefly discussed in the following chart –

Sr no	Section	Particulars
1	Sec. 13(2)	Application of income / assets of charitable trust for the benefit of relatives of the trustee, founder, manager etc.
2	Sec.40A(2)(b)	Disallowance of payments made towards expenses to relatives of the assessee.
3	Sec. 56(2)(vii)	Charging of amount received as gift received by an individual or HUF
4	Sec. 64	Clubbing of income in the case of spouse, daughter-in-law, minors out of assets transferred without consideration.
5	Sec. 79	Disallowance of set-off of loss carried forward in the case of transfer of shares of a closely held company
6	Sec. 80 DD	Deduction in respect of medical treatment of a dependent who is a person with disability
7	Sec. 80 DDB	Deduction in respect of medical treatment of specified ailments of a dependent who is a person with disability
8	Sec. 92A	Associated Enterprises under Transfer Pricing Regulations

The term 'relative' found in most of the above sections is defined in section 2(41) of Income Tax Act,1961 as under -

“relative”, in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

This definition of relative is for individuals whether male or female. S. 2(41) of Income Tax Act,1961 refers to “lineal ascendant / descendent”. Lineal means in a straight unbroken line of descent from parent to child. Further, lineal ascendant/ descendant relationship should be looked into from the perspective of “that individual” and not any other person. It extends to both

the variants of relationship i.e. vertically and horizontally. Vertically it covers father, mother, son, daughter etc. Horizontally, it covers brother and sister. But it doesn't extend beyond that. However, vertically, it extends to second and third level as well, as it covers both i.e. lineal ascendant and descendant as well.

As per Explanation to proviso of section 56(2)(vii) of Income Tax Act,1961, the definition of Relative is given as under: -

(i) in case of an individual—

(A) spouse of the individual;

(B) brother or sister of the individual;

(C) brother or sister of the spouse of the individual;

(D) brother or sister of either of the parents of the individual;

(E) any lineal ascendant or descendant of the individual;

(F) any lineal ascendant or descendant of the spouse of the individual;

(G) spouse of the person referred to in items (B) to (F); and

(ii) in case of a Hindu undivided family, any member thereof;

In a simplified manner, the list of relative is given below in light of above explanation:

List of relatives deriving out of section 56(2)(vii) of the Income Tax Act,1961

• Father	• Mother	• Brother
• Sister	• Son	• Daughter
• Grand Son	• Grand Daughter	• Husband
• Wife	• Sister's Husband	• Brother's Wife
• Wife's	• Brother	• Wife's Sister
• Husband's Brother	• Husband's Sister	• Mother's Brother
• Mother's Sister	• Mother's Sister's Husband	• Wife's brother's wife
• Father's Brother	• Father's Brother's Wife	• Father's Sister's Husband
• Father's Sister	• Grand Father	• Grand Mother
• Great Grand Father	• Great Grand Mother	• Daughter's Husband
• Son's Wife	• Wife's Father	• Wife's Mother
• Husband's Father	• Husband's Mother	• 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	• Brother's Wife	• Mother's Brother's Wife

<ul style="list-style-type: none"> • Husband's Brother's Wife 		
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Although the above list is very exhaustive, yet there are certain relatives who have been left out. For instances Bhanja, Bhatija etc. The interesting part of this list of relative is this that Mama can make gift to Bhanja or Chacha can make gift to Bhatija but it is not vice versa. If Chacha is relative of Bhatija or Mama is relative of Bhanja how they are not relatives of their mama and Chacha. Furthermore, in the above list I have not included Nana since It's a controversial issue. Some of the experts are of the view that NANA is not included in the definition of relative in section 56(2)(vii). Some of the experts opine that NANA is also included in the said definition. They opine that as per "The Oxford Large Print Dictionary", grandfather is the father of a person's father or mother and grandmother is the mother of a person's father or mother. As per Law Lexicon (General Editor: Justice Y.V. Chandrachud), the term "Lineal descendant" includes all the descendants and is not restricted to male descendants. Thus, in my view the relationship of "Nana"/ "Nani" is covered in the exempted category and gifts received from them are exempt from tax.

Therefore, The Hon'ble finance minister should make appropriate amendments in the definition of relative to make it more practical.

The transfer from husband to wife or wife to husband is allowed as per section 56(2) of the Income Tax Act. But if you go through the section 64, you will find that section 64 states that if any amount is transferred from wife to husband or vice versa without consideration directly or indirectly, the income arises out of such transfer will be added in the hands of the transferor. Therefore, the assessee should look into both sections before making any such transaction.

People are often found saying that gift to blood relative is not taxable in the hands of the donee. But there is no such provision in the Act. Any gift being made to relative as per section 56(2), in which term relative has been defined, is not taxable irrespective of the fact that whether donee has blood relation with donee or not. Husband wife has no blood relation, Mother in law or father in law has no blood relation but they are covered in definition of relative as per section 56(2). Hence, it is clear that gift not between the blood relation but between the relatives as defined in section 56(2) of the Income Tax Act,1961 is not taxable.

In various sections, such as section 64 of Income Tax Act,1961, specific relatives have been mentioned. There is no mention of section 2(41) of the Income Tax Act,1961 or section 56(2)(vii) of the Income Tax Act, 1961 in respect of the term 'relative' used in section 64. However, basic section which defines the term relative is section 2(41) of the Income Tax Act. Section 56(2)(vii) defines relatives for the purpose of Section 56 (2) only.

For the purpose of Section 11,12 and 12A, Explanation to section 13, defines Relative as under

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- i. Spouse of the individual

- ii. brother or sister of the individual;
- iii. brother or sister of the spouse of the individual;
- iv. any lineal ascendant or descendant of the individual;
- v. any lineal ascendant or descendant of the spouse of the individual;
- vi. spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);
- vii. any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

The relative in section 13 differs with the relative in section 56(2) v. The difference is given as under: -

Explanation I of Section 13		Section 56(2)(v)	
1	Spouse of the Individual	1	Spouse of the Individual
2	Brother or Sister of the Individual	2	Brother or Sister of the Individual
3	Brother or Sister of the spouse of the Individual	3	Brother or Sister of the spouse of the Individual
4	Any Linear Descendent or Ascendant of the individual	4	Brother or Sister or either of the parents of the Individual
5	any lineal ascendant or descendant of the spouse of the individual	5	any lineal ascendant or descendant of the individual
6	spouse of a person referred to in sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v);	6	any lineal ascendant or descendant of the spouse of the individual
7	any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.	7	spouse of a person referred to in clauses (ii) to (vi)

In nutshell, the assessee should be very careful if section 56(2) applies in his case as the term Relative is very confusing. The assessee should keep in mind the list of relatives and accordingly should proceed for any transaction under section 56(2). In case of application of term relative defined in section 2(41) and section 13, he should be well aware in advance that as to whether particular transaction is proper or not in connection with the said section. In both situation, mistakes may occur while understanding the term relative and it can lead to heavy burden of tax and litigation. The assessee may sometime be confused to understand 'relative' for particular section. if no particular relative is mentioned or no particular definition of relative is mentioned, section 2(41) will come into effect ipso facto.