

R C JAIN AND ASSOCIATES LLP

NEWSLETTER

March

2021

“If you believe it’ll work out, you’ll see opportunities. If you don’t believe it’ll work out, you’ll see obstacles.”

– Wayne Dyer



INDEX

1. Income Tax _____	3
2. Case Law _____	6
3. GST _____	9
4. RBI _____	13
5. Corporate Law _____	15
6. Hunaar Haat _____	20

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Income Tax

1. CBDT CLARIFICATION IN RESPECT OF RESIDENCY UNDER THE ACT

The status of an individual, as to whether he is resident in India or a non--resident or not ordinarily resident, is dependent, inter-alia, on the period for which the person is in India during a previous year or years preceding the previous year. Considering the COVID-19 pandemic and the resultant overstay of an individual who had come to India on a visit before 22nd March 2020, circular no 11 of 2020 dated 8th May 2020 was issued by the Central Board of Direct Taxes (the Board) under section 119 of the Act to avoid genuine hardship in such cases.

On receiving various representations for relaxation in determination of residential status for PY 2020-2021 for individuals who has come to India during PY 2019-20 and could not leave due to the Covid Pandemic due to suspension of International Flights, some facts about the same has been considered and elaborated in the below circular dated 3 March 2021 (Link provided below).

Even after considering all the facts stated in the circular, for situations in which a particular taxpayer is facing double taxation due to the forced stay in India even after considering the relief provided by the respective DTAA's the individual may furnish a Form NR electronically by 31/03/2021 to state the relevant facts.

<https://www.incometaxindia.gov.in/communications/circular/residency-circular-02-of-2021.pdf>

2. CLARIFICATION UNDER VIVAAD SE VISHWAS SCHEME FOR AO TO PASS CONSEQUENTIAL ORDERS

Sub-section (1) of section 5 of Vivad se Vishwas provides that the designated authority (DA) shall pass a determination order within fifteen days from the date of receipt of the declaration. The DA is also required to pass another order under sub-section (2) of section 5 of Vivad se Vishwas for full and final settlement of the tax arrear.

Various representations have been made stating that there is no provision to AO to give effect to the related orders passed by the DA.

DIRECT TAX

In view of the foregoing, and in exercise of the powers conferred on the Board under section 10 of Vivad se Vishwas, it is hereby clarified that where the DA has passed orders under sub-sections (1) and (2) of section 5 of Vivad se Vishwas, the Assessing Officer shall pass consequential order under the Act.

3. DEFERRMENT OF CLAUSE 30C AND 44 IN FORM 3CD OF TAX AUDIT IN VIEW OF GLOBAL PANDEMIC

Reporting under clause 30C (relating to GAAR provisions) and Clause 44 (Expenses allocation based on GST) has been kept in abeyance till 31 March 2022 due to the global pandemic issues.

4. APPROVAL OF INSTITUTION FOR SEC 35 (1)(ii)/(iii) OF INCOME TAX ACT FOR SCIENTIFIC RESEARCH EXPENDITURE

By exercising the powers conferred upon them, the Central Government has approved **M/s Bennett University, Greater Noida, Uttar Pradesh** (PAN: AAAJB1388A) under the category of 'University, College or other institution' for Scientific Research and Research in Social Science and Statistical Research.

This Notification shall be deemed to have been applied for the assessment year 2020-2021 and shall apply with respect to the assessment years 2021-22, 2022-23, 2023-24, 2024-25.

5. CLARIFICATION ON CONTINUATION OF CONCESSIONAL RATE OF TAX ON CERTAIN INTEREST INCOME OF FPIs

Section 115AD of Income Tax Act inter alia contains provision for taxation of income of FPIs. Proviso to section 115AD(1)(i) provides that the tax shall be chargeable at concessional rate of 5% on interest income referred to section 194LD.

It is clarified that there is no change in above proviso and concessional rate of 5% will continue to apply.

6. APPLICATION TO AO IN NEW FORM 15E UNDER RULE 29BA & SEC 195 (TDS ON PAYMENT TO NON RESIDENTS)

Sub-section 2 of Section 195 of the Act provides that where the person responsible for paying any sum chargeable under the Act to a non-resident considers that the whole of such sum would not be income chargeable in the case of recipient, he may make an application. An amendment was made in Finance act 2019 stating that the

DIRECT TAX

application need to be made to AO. Accordingly the CBDT by issuing a notification 18/2021 dated 16/03/2021 and by insertion of a new rule 29BA effective from 1st April 2021 determines appropriate proportion (other than salary), payable to non-resident, chargeable in case of the recipients by filing a form 15E electronically.

The AO shall examine whether the sum being paid or credited is chargeable to tax under the provisions of the Act read with the relevant Double Taxation Avoidance Agreement, if any, and if the sum is chargeable to tax, he shall proceed to determine the appropriate proportion of such sum chargeable to tax by taking into consideration the relevant facts and circumstances of each case.

The certificate shall be valid only for the payment to non-resident named in that certificate and for such period of the previous year as may be specified in the certificate.

Application for fresh certificate may be made, if the assessee so desires, after the expiry of the period of validity of the earlier certificate or within three months before the expiry thereof.

7. CLARIFICATIONS RELATED TO SEARCH UNDER VIVAAD SE VISHWAS SCHEME

FAQ no 70 of circular 21/2020 clarified eligibility of Search case under VSV scheme clarifying that if an assessment order has been framed in the case of a taxpayer under sec 143 (3)/144 based on search executed in some other taxpayers case it is to be considered as a search case under the VSV scheme.

In order to remove uncertainty in these regard, it is further clarified that a search case means an assessment or reassessment made under sec 143 (3)/144/147/153A/153C/158BC of the Income Tax Act in case of a person referred

to in sec 153A or sec 153C or sec 158BC or sec 158BD on the basis of search initiated under sec 132or requisition made under sec 132A.

-Compiled by Neha Agnihotri

DIRECT TAX

Case Laws:

1) Issue Involved:

How does deposit of cash exceeding limit prescribed under section 40A(3) in Suppliers Bank Account attract disallowance?

➤ **In the Hon'ble High Court of Allahabad, in case of Ajai Kumar Singh Khaldelial vs PCIT [2020]**

GIST OF THE CASE:

M/s Purushottam Das Ajai Kumar is engaged in the business of retail trading of readymade and other clothes in the name of the proprietary concern. He deposited cash of Rs. 3,40,000 on various dates in the bank account of the supplier. A notice under Section 148 was issued stating that cash payment made to supplier violated the provisions of Section 40A(3) and the same is liable to be disallowed. Assessee contended that amount deposited in the bank account of supplier would be covered under Rule 6DD(c)(v) as the same had been done by use of "electronic clearing system" through the Bank. Assessing Officer (AO), not being satisfied with assessee's reply, disallowed said payment under Section 40A(3).

HELD:

Provision of section 40A(3) relevant extracts from which are as follows:

Where the assessee incurs any expenditure in respect of which a payment or aggregate of payment made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, or use of electronic clearing system through a bank account, exceeds ten thousand rupees, no deduction shall be allowed in respect of such expenditure ."

No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account [account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, exceeds ten thousand rupees].

DIRECT TAX

On writ, Allahabad High Court held that the term “use of electronic clearing system through a bank account” would necessarily include the transaction of funds by electronic mode through the clearing system. Any transfer of funds through the use of electronic clearing system through a bank account would mean a transfer of funds through electronic mode of transfer i.e. RTGS, IMPS, NEFT etc., where the funds are transferred through the bank account of one individual into the bank account of the beneficiary through electronic means. When the funds are transferred through electronic clearing system then at least two banks or two branches of the same bank have to be involved then only the money is transferred through electronic clearing system between them. Transaction by depositing cash directly in the bank account of the beneficiary was not routed through any clearinghouse nor is the money sent through electronic mode and therefore such a transaction could not be covered by rule 6DD(c)(v). Therefore, the benefit of the provision could not be given to assessee. Assessee also could not lead any evidence to show that he had deposited the amount on the instructions of the supplier or due to any business exigency. In absence of such evidence, AO rightly denied the benefit of exemption to assessee.

2) Issue Involved:

Does advance given to sister companies for temporary financial accommodation treated as deemed dividend us 2 (22) (e)?

➤ **In the ITAT Delhi, in case of Exotica Housing & Infra Pvt. Ltd. vs ITO [2020] {AY 2013-2014}**

GIST OF THE CASE:

The brief facts of the case are that the assessee company is engaged in the business of commission agent and property development. he A.O. completed assessment under section 143(3) of the I.T. Act, 1961, after making the impugned addition of Rs.2,88,92,817/- under section 2(22)(e) of the I.T. Act on account of deemed dividend. It is observed by the A.O. that during the year under consideration, assessee company has received loans and advances for a value of Rs.23,70,33,000/- from M/s Exotica Housing and Infra Projects Pvt. Ltd., which was squared off during the year. The assessee held 98% shares of M/s Exotica Housing and Infra Project Pvt. Ltd. Therefore, A.O. has taken a view that case of the assessee has come

DIRECT TAX

within the purview of section 2(22)(e) of the Act and amount received was to be considered as deemed dividend in the hands of the assessee.

HELD:

Provision of section 2(22)(e) relevant extracts from which are as follows:

According to Section 2(22)(e), when a company in which the public are not substantially interested, extends a loan or an advance to: a. any of its shareholders who has more than 10% voting power in the company or b. to any concern in which such shareholder is substantially interested or c. for the individual benefit of such shareholder or d. on behalf of such shareholder to the extent the company has accumulated profits, such payment would be deemed as a dividend under Section 2(22)(e). *a company in which public is not substantially interested is otherwise called a closely held company.*

The assessee submitted before A.O. that it has taken money from its subsidiary company M/s. Exotica Housing and Infra Projects Pvt. Ltd., which were repaid within a short span of time. The transactions between the assessee company and its subsidiary companies are in the nature of current account transactions.

It was held that 2(22)(e) is a deeming provision & should be construed strictly. The section uses the expression "by way of advances or loans" which shows that **all payments received from the sister company cannot be treated as deemed dividend but only payments which bear the characteristics of loans and advances. Under the law, all loans and advances are debts, but all debts are not loans and advances. The term 'loans and advances' is not defined & has to be understood in the commercial sense. Advances given for purely temporary financial accommodation for business purposes does not attract the deeming fiction.**

-Compiled by Tarun Lakhani

GST

Notifications

1) Notification No. 05/2021-Central Tax, Dated 8th March, 2021

As per this notification the amendment made in respect of certain class of registered persons having aggregate Turnover in the financial year exceeds Rs. 50 crore shall prepare /issue e-invoices. For the purpose of applicability of e-invoice of F Y 2021-22, Turnover in any of the F Y 2017-18 to F Y 2020-21 needs to be checked.

This notification shall be applicable from 01st April, 2021

2) Notification No. 06/2021-Central Tax, Dated 30th March, 2021

As per notification No.14/2020, amendment made through this notification that QR Code (Quick Response Code) which was essential to be provided by dealers having more than Five hundred Crore Turnover for invoice raised to unregistered person (B2C transaction) shall be considered to have provided QR Code if such code is provided in Digital display between the period from 1st December, 2020 to 30th June, 2021, subject to the condition that the said person complies with the provisions of the said notification from 1st July, 2021.

Circular

1) Circular No. 145/01/2021-GST, Dated 11th February, 2021

The said circular is issued in respect of Standard Operating Procedure (SOP) for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017.

INDIRECT TAX

As per the notification no 94/2020 dated 22/12/20, states that case where the suspension of GST Registration may occur that is the difference between the outward details furnished in form GSTR-1 & Tax liability shown in GSTR-3B.

Now the Central Government has stated the procedure for such suspension in the said circular, following are the steps to be followed by department for suspending the Registration.

1. Comparison of the return furnished (GSTR-1 & GSTR-3B)
2. If differences found, due to the contravention of provision the department may lead to cancellation of registration, and the registration of such person shall be suspended till the final order of cancellation.
3. The system generated intimation of suspension letter shall be sent by the department, which will be available via GST portal (on dashboard = View/Notice and Order) or by sending communication to email address of the registered person stating the reason for suspension.
4. The registered person would be require to furnish an explanation or reply within 30 days from the receipt of such suspension letter to jurisdictional officer.
5. If no reply is submitted by the registered person, the concerned officer under "Suo moto cancellation proceeding" after expiry of 30 days period shall issue the cancellation order.
6. The officer on the basis of reply submitted by the registered person shall take appropriate action i.e. revoke the suspension / cancellation order or issue the cancellation order as the case may be.
7. If required the officer may proceed to detailed verification of documents relating to such contravention / recovery of short payment of tax.

INDIRECT TAX

2) Circular No. 146/02/2021-GST, Dated 11th February, 2021

This circular has been issued by the Central Government, that clarification in respect of applicability of Dynamic Quick Response (QR) Code, penalty has been waived for the non-compliance of the provision as per the notification no. 14/2020 as the said notification has been amended that the due extended to 1st July, 2021.

Following the some clarification has been issued by the Government in respect to the issues relating to implementation of QR code provision.

Sr. No.	Issues	Clarification
1.	To which invoice is Notification No 14/2020- Central Tax dated 21 st March, 2020 applicable? Would this requirement be applicable on invoices issued for supplies made for Exports?	<p>This notification is applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds 500 Cr rupees in any of the financial years from 2017-18 onwards. However, the said notification is not applicable to an invoice issued in following cases:</p> <p style="padding-left: 40px;">i. Where the supplier of taxable service is:</p> <p style="padding-left: 80px;">a) an insurer or a banking company or a financial institution, including a non-banking financial company;</p> <p style="padding-left: 80px;">b) a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;</p>

		<p>c) supplying passenger transportation service;</p> <p>d) supplying services by way of admission to exhibition of cinematograph in films in multiplex screens</p> <p>ii. OIDAR supplies made by any registered person, who has obtained registration under section 14 of the IGST Act 2017, to an unregistered person.</p> <p>As regards the supplies made for exports, though such supplies are made by a registered person to an unregistered person, however, as e-invoices are required to be issued in respect of supplies for exports, in terms of Notification no. 13/2020-Central Tax, dated 21st March, 2020 treating them as Business to Business (B2B) supplies, Notification no. 14/2020- Central Tax, dated 21st March, 2020 will not be applicable to them.</p>
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-Compiled by Radhika Yadav

RBI

1. **RBI/2021-22/06**
Ref.No.FIDD.GSSD.BC.No.01/09.10.01/2021-22

Credit Facilities to Minority Communities

All commercial banks are advised to ensure smooth flow of bank credit to minority communities.

Government of India has also forwarded a list of 121 minority concentration districts having at least 25% minority population, excluding those States / UTs where minorities are in majority (J & K, Punjab, Meghalaya, Mizoram, Nagaland and Lakshadweep). Accordingly, all scheduled commercial banks are advised to specially monitor the credit flow to minorities in these 121 districts, thereby, ensuring that the minority communities receive a fair and equitable portion of the credit within the overall target of the priority sector.

In terms of Reserve Bank's extant guidelines on lending to priority sector, a target of 40 percent of Adjusted Net Bank Credit (ANBC) or Credit Equivalent amount of Off-Balance Sheet Exposures (OBE), whichever is higher, as on March 31 of the previous year, has been mandated for lending to the priority sector by domestic scheduled commercial banks and foreign banks with 20 and above branches, for Small Finance Banks it is 75% of their Adjusted Net Bank Credit (ANBC). Within this, a sub-target of 12 per cent of ANBC or Credit Equivalent amount of OBE, whichever is higher, as on March 31 of the previous year, has been mandated for lending to weaker sections which includes, among others, persons from minority communities. Revised targets for weaker sections shall be implemented in a phased manner as indicated in Para 5.2 of RBI Master Directions on Priority Sector lending (Targets and Classification) dated September 04, 2020

2. **RBI/2021-22/77**
Ref.Master Direction DCM (CC) No.G-4/03.35.01/2021-22

Master Direction on levy of Penal interest for Delayed Reporting/Wrong Reporting/Non Reporting of Currency Chest Transactions and Inclusion of Ineligible amounts in Currency Chest Balances

The above circular states about the penal interest to be levied in case of delayed/wrong/non reporting of currency chest transactions and also about the rate to be levied for such penalty. It simultaneously speaks about the time of reporting and relaxation given to banks in case of any situations like strike.

For detailed circular details please refer rbi.org.in

3. **RBI/2020-21/108**

DGBA.GBD.No.S-140/42.01.029/2020-21

Closure of Residual Transactions

The Government of India has decided that the date of closure of residual transactions for the month of March 2021 be fixed as April 10, 2021. In view of the ensuing closing of government accounts for the financial year 2020-21, receiving branches including those not situated locally, should adopt special arrangements such as courier service etc., for passing on challans/scrolls etc., to the Nodal/Focal Point branches so that all payments and collections made on behalf of government towards the end of March are accounted for in the same financial year. These instructions regarding special messenger arrangements may please be informed to all branches concerned.

4. **RBI/2020-21/116**

A.P. (DIR Series) Circular No. 14

Investment by Foreign Portfolio Investors (FPI) Investment Limits

For FY 2021-22 the limits for FPI investment in Corporate bonds shall remain unchanged at 15% of outstanding stock of securities for FY 2021-22.

The revised limits for FPI investment in Central Government securities (G-secs) and State Development Loans (SDLs) for FY 2021-22 will be advised separately.

For more details please refer the website rbi.org.in

-Compiled by Sailee Rawle

ROC**1. COMMENCEMENT NOTIFICATION OF CLAUSE (I) OF SECTION 23 DATED 05.03.2021 WITH RESPECT TO PUBLIC OFFER AND PRIVATE PLACEMENT:**

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2017 (1 of 2018), the Central Government hereby appoints the day of 05th March, 2021 as the date on which the provisions of clause (i) of section 23 which is Public Offer and Private Placement shall come into force.

2. AMENDMENT TO SCHEDULE V OF THE COMPANIES ACT, 2013 PERTAINING TO MANAGERIAL REMUNERATION IN CASE OF LOSS:

In Schedule V of the Companies Act, 2013, in PART II, under the heading "REMUNERATION"

(a) In Section I, after the words managerial person or persons, the words other director or directors shall be inserted.

(b) In Section II, after the words managerial person, wherever occurred, the words other director shall be inserted. Also the below mentioned table shall be substituted:

SR. No.	WHERE THE EFFECTIVE CAPITAL (IN RS.)	LIMIT OF YEARLY REMUNERATION PAYABLE SHALL NOT EXCEED (IN RS.) IN CASE OF MANAGERIAL PERSON	LIMIT OF YEARLY REMUNERATION PAYABLE SHALL NOT EXCEED (IN RS.) IN CASE OF OTHER DIRECTOR
1.	Negative or less than 5 crores.	60 Lakhs	12 Lakhs
2.	5 crores and above but less than 100 crores.	84 Lakhs	17 Lakhs
3.	100 crores and above but less than 250 crores.	120 Lakhs	24 Lakhs
4.	250 crores and above.	120 lakhs plus 0.01% of the effective capital in	24 Lakhs plus 0.01% of the effective capital in excess of Rs. 250

		excess of Rs.250 crores:	crores:¶
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(c) In Section III, after the word “managerial person”, wherever occurred, except in clause (i) of the provision, the word “or other director” shall be inserted. Also after the words “managerial persons”, wherever occurred, the words “or other directors” shall be inserted. Below Mentioned explanation shall be inserted at the end:

“Explanation- For the purposes of Section I, Section II and Section III, the term or other director shall mean a non-executive director or an independent director.”

3. COMMENCEMENT NOTIFICATION DATED 18TH MARCH, 2021 WITH RESPECT TO RED HERRING PROSPECTUS AND SECURITIES TO BE DEALT WITH IN STOCK EXCHANGE:

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the 18TH March, 2021 as the date on which the provisions of section 32 and section 40 of the said Act shall come into force.

(a) Section 32 (Red Herring Prospectus): A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

(b) Section 40 (Securities to be Dealt with in Stock Exchanges): Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

4. AMENDMENT TO SCHEDULE III TO THE COMPANIES ACT, 2013 PERTAINING TO CHANGES IN BALANCE-SHEET REQUIREMENTS:

Ministry of Company Affairs w.e.f. 1ST April, 2021 to ensure more and more transparency. Schedule III of the Companies Act, 2013 contains the general instructions for Preparation of Balance Sheet and Statement of Profit and Loss of a company.

CORPORATE LAW

Following are the changes made in the financials/notes to accounts on account of amendments in Schedule III brought by MCA:

- (a) Now companies have to round off the figures appearing in the financial statements, thereto it was optional. Further, the criteria for rounding off shall be based on "total income" in place of "turnover".
- (b) Company shall disclose shareholding of Promoters.
- (c) Current maturities of Long term borrowings shall be disclosed separately.
- (d) Trade payables ageing schedule to be given.
- (e) Trade receivables ageing schedule to be given.
- (f) Security deposits shall not be disclosed under 'Long term loans and advances' but disclosed under 'Other non- current assets'.
- (g) The company shall disclose the reason of utilization of funds for the purposes other than for which they were borrowed and shall also disclose the purposes for which the funds were utilised.
- (h) Company needs to disclose if the books of accounts are tallied with the quarterly/monthly returns filed with the banker in cases where company has borrowed funds from banks on the basis of securities of current assets , or else a separate reco statement needs to be provided.
- (i) The company shall provide the details of all the immovable property (other than properties where the company is the lessee and the lease agreements are duly executed in favour of the lessee) whose title deeds are not held and where such immovable property is jointly held with others, details are required to be given to the extent of the company's share.
- (j) In cases where revaluation has been done in case of Property Plant and Equipment, the company shall disclose if the valuation was done by registered valuer.

CORPORATE LAW

(k) Disclosure to be made where Loans and Advances in the nature of loans are granted to promoters, directors, KMPs and related parties (loans given to promoters as a % of total loans)

(l) For Capital-work-in-progress, ageing schedule shall be given.

(m) For Intangible assets under development, aging schedule to be given.

(n) Disclosure of any proceedings initiated or pending against the company for holding any benami property under the Benami Transactions Act, 1988 to be made.

(o) Where a company is a declared wilful defaulter by any bank or financial institution or other lender, details to be given.

(p) Disclosure of any transactions with companies struck off.

(q) Where any charges or satisfaction yet to be registered with the Registrar of Companies beyond the statutory period, details and reasons thereof shall be disclosed.

(r) Following ratios to be disclosed:

Current Ratio, Debt-Equity Ratio, Debt Service Coverage Ratio, Return on Equity Ratio, Inventory turnover ratio, Trade Receivables Turnover Ratio, Trade Payables Turnover Ratio, Net Capital Turnover Ratio, Net profit ratio, Return on Capital employed, Return on investment, Disclosure of Utilisation of borrowed funds and share premium to be given.

Explanation is required if there is change of more than 25% as compare to preceding financial year.

(s) Further disclosures shall be made where the company has received funds from any persons or entities including foreign entities to further lend or invest or provide any guarantee, security to third parties.

(t) Where a scheme of arrangements has been approved, disclosure shall be made of the effect of the same on the books of accounts and any deviation from the accounting standards for the same.

5. AMENDMENTS IN COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2021:

In the Companies (Incorporation) Rules, 2014, in Form INC-35 AGILE-PRO, part of SPICe+, in serial number 12, at the end of Table (A), the following shall be inserted:

“Do you wish to perform Aadhar authentication for GSTIN registration.

Yes No”

6. COMPANIES (MANAGEMENT AND ADMINISTRATION) AMENDMENT RULES, 2021:

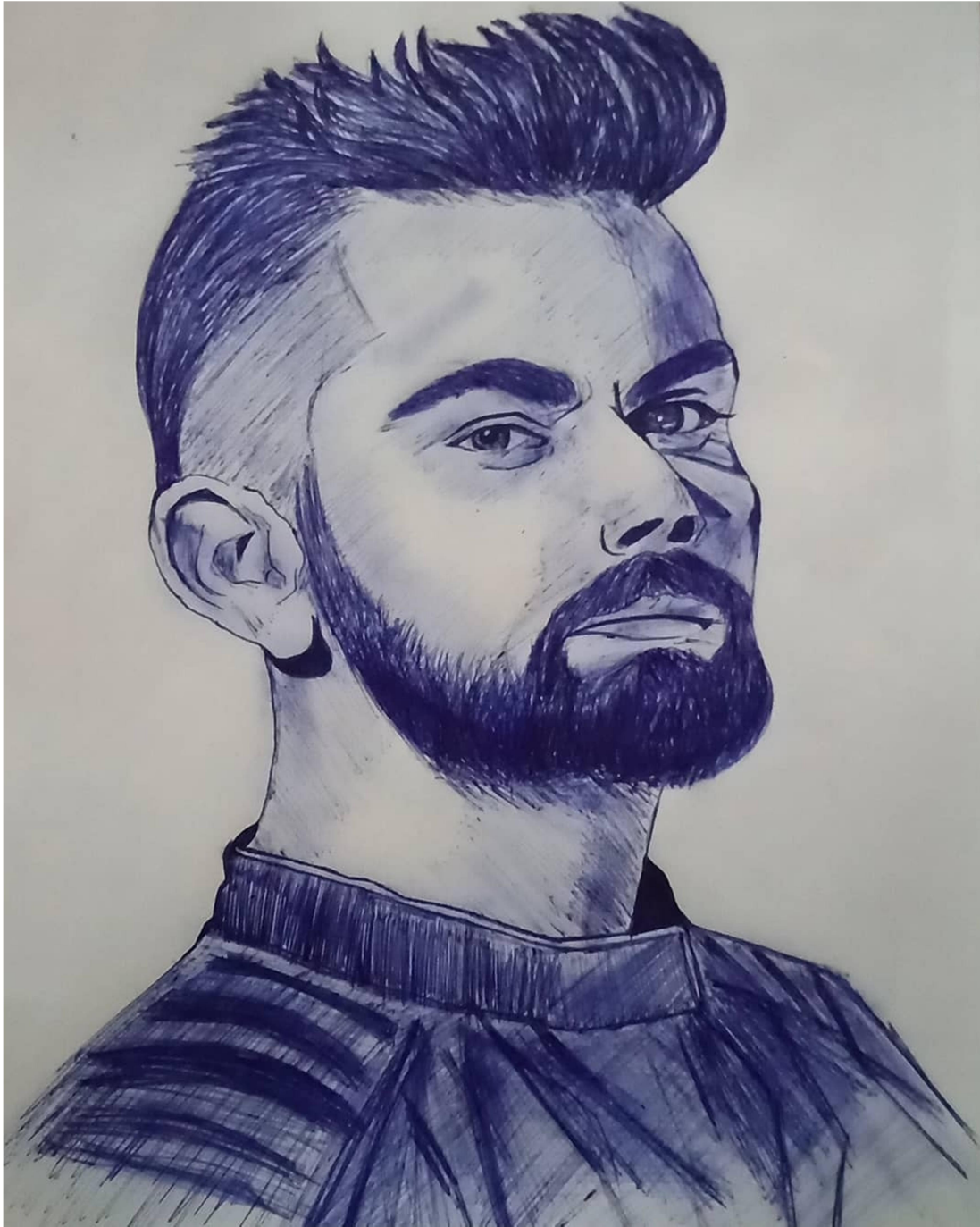
In this Amendment, Every company shall file its annual return in Form No. MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in “Form No.MGT-7A” which will be deployed it soon.

-Compiled by Rasika Nalawade

HUNAAR HAAT

HUNAAR HAAT

- By Priya Suthar



Allow us to tell you more!



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