

**R.C.JAIN AND ASSOCIATES LLP**

**NEWSLETTER**

**July**  
**2021**

*“Live the Life of Your Dreams: Be brave enough to live the life of your dreams according to your vision and purpose instead of the expectations and opinions of others.”*

*- Roy T. Bennett*



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**Income Tax**

**1. RULE 8AC FOR COMPUTATION OF SHORT TERM CAPITAL GAINS AND WRITTEN DOWN VALUE UNDER SECTION 50 WHERE DEPRECIATION ON GOODWILL HAS BEEN OBTAINED**

The new rule lays out the computation methods of STCG and WDV applicable for those companies which have obtained depreciation on goodwill in the assessment year beginning on April 1, 2020 since depreciation can no longer be deducted on goodwill, as provided by the Finance Act 2021. This provision is retrospectively in effect from April 2020.

Exclusion of goodwill from the purview of intangible assets will lead to a reduction in their overall valuation, and increase their tax liabilities.

**Rule 8AC: What are the implications for businesses?**

This rule enforces the amended Section 50 of the Income Tax Act, which provides a method for computation of STCG and WDV in cases where goodwill of a business or profession formed part of a block of asset for the assessment year beginning on April 1, 2020, and depreciation has been obtained by the assessee under the Act.

If the value of net goodwill removed from the block is in excess of the opening WDV value as on April 1, 2020, such excess will now taxable as STCG. But in cases where goodwill was the only asset in the block, there will be no impact as per Section 55(2(a)) of the Income Tax Act.

Companies will now be required to calculate the tax on these short-term capital gains and pay it before filing the income tax return (ITR) for financial year 2021 (FY21).

**How to determine the Written Down Value (WDV) relevant for assessment year 2021 ?**

The WDV relevant to the assessment year (AY) 2021-22 shall be determined in the following manner:

1. Determine the opening WDV of a block of assets as on April 1, 2020.
2. Add the actual cost of the asset (other than goodwill) acquired during the previous year.
3. Deduct the amount payable with respect to any asset that is sold, destroyed, discarded, or demolished during the previous year. The scrap value, if any, must also be deducted.
4. Deduct the WDV of the assets, transferred under 'slump sale' falling under that block. (Slump sale means the transfer of one or more undertaking, for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales)
5. Deduct the actual cost of goodwill after reducing depreciation allowed, falling within the block.

Rule 8AC provides that if the actual cost of goodwill after reducing depreciation (amount calculated at point 5) exceeds the aggregate of opening WDV (point 1) and the actual cost of asset acquired during the year (point 2), such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

**2. RULE 8AB:ATTRIBUTION OF INCOME TAXABLE UNDER SECTION 45 (4) TO THE CAPITAL ASSETS REMAINING WITH THE SPECIFIED ENTITY UNDER SECTION 48**

Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of

## **DIRECT TAX**

the balance in his capital account, chargeable to tax under sub-section (4) of section 45, relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount attributable to the capital asset remaining with the specified entity for purpose of clause (iii) of section 48 shall be the amount which bears to the amount charged under sub-section (4) of section 45 the same proportion as the increase in, or recognition of, value of that asset because of revaluation or valuation bears to the aggregate of increase in, or recognition of, value of all assets because of the revaluation or valuation.

(3) Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 does not relate to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

(4) Notwithstanding anything contained in sub-rules (2) or (3), where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, charged to tax under sub-section (4) of section 45 relate only to the capital asset received by the specified person from the specified entity, the amount charged to tax under sub-section (4) of section 45 shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.

(5) The specified entity shall furnish the details of amount attributed to capital asset remaining with the specified entity in Form No. 5C.

For Detailed Notification please refer:

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[https://incometaxindia.gov.in/communications/notification/notification\\_76\\_2021.pdf](https://incometaxindia.gov.in/communications/notification/notification_76_2021.pdf)

*-Compiled by Ritik Karotra*

## **DIRECT TAX**

### **Case Laws:**

#### **1) Issue Involved:**

Whether the amount received by the assessee under a lease agreement is income from other sources or business income?

- **In the Tribunal of Bangalore, in case of East West Hotels Ltd. vs DCIT (2009)**

#### **GIST OF THE CASE**

The assessee is the owner of a hotel property at Bangalore and it consists of a land, building and other facilities. The same is leased out to M/s. Taj Group of Hotels, who are actually running the hotel. In return, the assessee would get lease rent computed on the basis of the profit of the business. During the assessment year 2005-06, the assessee had received a license fee of Rs. 3,59,88,998. It has also received an interest income of Rs. 13,35,240 and it claimed expenditure of Rs. 68,09,588 under different heads. The dispute between the parties is whether the said income is to be assessed under the head 'Business Income' or 'Income from Other Sources'. The said dispute settled in the earlier round of litigation. It was held that it is to be assessed as income from other sources.

#### **HELD**

- A. On appeal, the Assessing Authority held that as the income is to be treated as income from other sources, the assessee is not entitled to deduction as allowable in the case of business income and therefore, he disallowed a sum of Rs. 49,27,648 out of the expenditure claimed. He was under the view that allowance of expenditure was subject to the provisions of section 57 (iii) of the Income-tax Act. He did not accept the contention of the assessee that in the last 7 years, the expenditure claimed under other heads as in this year has been allowed and in fact that was also agitated up to the Tribunal and the department has accepted the said finding. However, the assessing Authority did not agree with the said submission, disallowed the expenditure under other heads amounting to Rs. 49,27,648 and passed the order. Aggrieved by the same, the assessee preferred an appeal to the Commissioner of Appeals who dismissed the appeal

## **DIRECT TAX**

insofar as aforesaid claim though he granted reliefs on other heads. Aggrieved by the same, the assessee preferred an appeal to the Tribunal, wherein the Tribunal upheld the orders passed by the lower authorities and dismissed the appeal. Aggrieved by the same the assessee moves to this court.

- B. The learned counsel for the assessee contends that though the principles of res judicata is not applicable to the assessment orders passed each year, however where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and party have allowed that position to be sustained by not challenging the order, it would not be appropriate to allow the position to be changed in subsequent years and therefore, the authorities were not justified in ignoring the finding recorded in the earlier orders and disallowing the deductions claimed which are identical as in the case of previous 7 years. Even otherwise, he contends that the authorities have not gone into the question whether these expenditures have any direct nexus with the business that is carried on by the assessee and if the assessee is able to show the nexus, he is entitled to deductions. Therefore he submits that the authorities have committed a serious error in not keeping the settled legal position in mind and also the requirements of the law and therefore, the order impugned is liable to be held aside.

### **2) Issue Involved:**

Whether the payments made by the assessee to its employees under the nomenclature 'Good work reward' constitute bonus within the meaning of section 36(1)(ii) of the Income-tax Act, 1961 or were allowable as normal business expenditure under section 37?

- **In the Hon'ble High Court of Delhi, in the case of Shriram Pistons and Rings Ltd. v. CIT (2008)**

### **GIST OF THE CASE**

The "good work reward" that was given by the assessee to some employees on the recommendation of senior officers of the assessee did not fall in any of the categories of bonus specified under the industrial law.



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There was nothing to suggest that the good work reward given by the assessee to its employees had any relation to the profits that the assessee may or may not make. The reward had relation to the good work done by the employee during the course of his employment and at the end of the financial year on the recommendation of a senior officer of the assessee, the reward was given to the employee.

Consequently, the "good work reward" could not fall within the ambit of section 36(1)(ii) of the Income-tax Act, 1961. The "good work" reward was allowable as business expenditure under section 37(1) of the Act.

### **HELD**

The Tribunal has noted that the word 'bonus' has not been defined anywhere including in the Payment of Bonus Act 1965. However, for the purpose of industrial law, four types of bonus have been recognized and they are as follows:

- (a) Production bonus
- (b) Contractual bonus
- (c) Customary bonus usually associated with festivals.
- (d) Profit sharing bonus.

The 'good work reward' that is given by the assessed to some employees on the recommendation of senior officers of the assessed does not fall in any one of these above categories. Insofar as the present case is concerned, there is nothing to suggest that the good work reward given by the assessee to its employees has any relation to the profits that the assessee may or may not make. It appears from the order of the Tribunal that it has relation to the good work that is done by the employee during the course of his employment and that at the end of the financial year on the recommendation of a senior officer of the assessee, the reward is given to the employee. Consequently, the 'good work reward' cannot fall within the ambit of Section 36(1)(ii) of the Act as contended by the Revenue.

In Commissioner of Income Tax v. Autopins (India), a Division Bench of this Court had occasion to consider payment of various kinds of bonus such as production bonus,

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attendance bonus and incentive bonus and whether they were within the contemplation of the Payment of Bonus Act , 1965. It was held that such types of bonus as well as ex gratia payment would not fall within the provisions of Section 36(1)(ii) of the Act and that they were payments allowable as revenue expenditure having been incurred for the purpose of business expediency. These payments were not of the type contemplated by the Payment of Bonus Act. It was held that it was an ex gratia payment or some sort of reward given to an employee for the good work done by him and would therefore, fall within the category of expenditure incurred for the purpose of business expediency and for improving the working of the assessed. Therefore, it would not fall within the meaning of Section 36(1)(ii) of the Act but would fall within the ambit of Section 37 of the Act.

*-Compiled by Abhya Mishra*

## **GST**

### **Notifications**

**1. Notification No. 28/2021-Central Tax, Dated 30th June, 2021**

As per the Notification No.28/2021 - Central Tax, dated 30th June, 2021 the Government has waived off the Penalty for Non-compliance with Quick Response (QR) Code on B2C transactions from 1st December 2020 till 30th September, 2021. Earlier this waiver was up to 30th June 2021.

Hence, taxpayers having aggregate turnover exceeding 500 Cr. in any of the preceding financial year starting from 2017-18 can initiate adding dynamic QR Code on B2C invoices from 1st October 2021 and in case if the taxpayers fail to comply with dynamic QR Code requirements from 1st October 2021, penalty will be levied from 1st October, 2021.

**2. Notification No. 31/2021-Central Tax, Dated 30th July, 2021**

Taxpayers having aggregate turnover below Rs 2 crores in FY 20-21 are exempted from filing of Annual Return i.e Form GSTR 9 for said FY. The effective date of notification is 1 August 2021.

### **Circular**

**1. Circular No. 157/13/2021-GST, Dated 20th July, 2021**

This circular is issued by the Central Government in respect of Clarification regarding extension of limitation under GST Law in terms of Hon'ble Supreme Court's Order dated 27.04.2021.

As per the circular, the extension of timelines granted by Hon'ble Supreme Court is applicable in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts and where proceeding for revision or rectification of any order is required to be

## **INDIRECT TAX**

undertaken. However, tax authorities can continue to hear and dispose off proceedings such as disposal of application for refund, application for revocation of cancellation of registration, adjudication proceedings of demand notices, etc. as per the provision of GST Act.

*-Compiled by Adarsh Shah*

**RBI****1. RBI/2021-22/74  
DOR.FIN.REC.No.34/03.10.136/2021-22****Rating of Deposits of HFCs - Approved Credit Rating Agencies and Minimum Investment Grade Credit Rating**

A reference is invited to Para 25.2 of Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021, wherein the names of five approved credit rating agencies and their minimum investment grade credit rating for the purpose of accepting public deposits have been listed.

a) On a review, it has been decided to align the aforesaid provisions for HFCs with provisions on the subject prescribed for NBFCs which are contained in Para 9 of Master Direction - Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016. Accordingly, the names of credit rating agencies and their minimum investment grade ratings for the purpose of accepting public deposits by HFCs are listed in the Annex.

b) The Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021 is being modified accordingly.

**2. RBI/2021-2022/67  
FIDD.MSME & NFS.BC.No.13/06.02.31/2021-22****New Definition of Micro, Small and Medium Enterprises - Addition of Retail and Wholesale Trade**

In this connection, Ministry of Micro, Small and Medium Enterprises vide Office Memorandum (OM) No. 5/2(2)/2021-E/P & G/Policy dated July 2, 2021, has decided to include Retail and Wholesale trade as MSMEs for the limited purpose of Priority Sector Lending and they would be allowed to be registered on Udyam Registration Portal for the following NIC Codes and activities mentioned against them:

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**45 Wholesale and retail trade and repair of motor vehicles and motorcycles**

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**46 Wholesale trade except of motor vehicles and motorcycles****47 Retail trade except of motor vehicles and motorcycles**

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The Enterprises having Udyog Aadhaar Memorandum (UAM) under above three NIC Codes are now allowed to migrate to Udyam Registration Portal or file Udyam Registration afresh.

3. **RBI/2021-22/70**  
**DoR.ORG.REC.31/21.06.017/2021-22**

**Mandatory Leave for Employees Posted in Sensitive Positions or Areas of Operation**

a) As a prudent operational risk management measure, the banks shall put in place a 'mandatory leave' policy wherein the employees posted in sensitive positions or areas of operation shall be compulsorily sent on leave for a few days (not less than 10 working days) in a single spell every year, without giving any prior intimation to these employees, thereby maintaining an element of surprise.

b) Banks shall ensure that the employees, while on 'mandatory leave', do not have access to any physical or virtual resources related to their work responsibilities, with the exception of internal/ corporate email which is usually available to all employees for general purposes.

c) Banks shall, as per a Board-approved policy, prepare a list of sensitive positions to be covered under 'mandatory leave' requirements and the list shall be reviewed periodically. Implementation of this policy shall be reviewed under the supervisory process.

d) The revised instructions shall be applicable to all the banks and they shall comply with these instructions within six months from the date of issue of this circular.

4. **RBI/2021-22/72**  
**DOR.CRE.REC.No.33/13.03.00/2021-22**

**Loans and Advances – Regulatory Restrictions**

On a review, it has been decided that

i) For personal loans granted to any director of other banks, the threshold of Rupees twenty-five lakh, stands revised to Rupees five crore.

ii) Paragraph 2.2.1.4 has been revised as under –

Unless sanctioned by the Board of Directors/Management Committee, banks should not grant loans and advances aggregating Rupees five crore and above to -

(a) any relative other than spouse and minor / dependent children of their own Chairmen/Managing Directors or other Directors;

(b) any relative other than spouse and minor / dependent children of the Chairman/Managing Director or other directors of other banks\*;

(c) any firm in which any of the relatives other than spouse and minor / dependent children as mentioned in (a) & (b) above is interested as a partner or guarantor; and

(d) any company in which any of the relatives other than spouse and minor / dependent children as mentioned in (a) & (b) above is interested as a major shareholder or as a director or as a guarantor or is in control.

Provided that a relative of a director shall also be deemed to be interested in a company, being the subsidiary or holding company, if he/she is a major shareholder or is in control of the respective holding or subsidiary company.

\*including directors of Scheduled Co-operative Banks, directors of subsidiaries/trustees of mutual funds/venture capital funds.

iii) Paragraph 2.2.1.5 has been revised as under -

The proposals for credit facilities of an amount less than Rupees twenty-five lakh or Rupees five crores (as the case may be) to these borrowers may be sanctioned by the appropriate authority in the financing bank under powers vested in such authority, but the matter should be reported to the Board.

Explanation : For the purpose of this circular:

i) The term “personal loan” shall have the meaning assigned to it in the circular DBR.No.BP.BC.99/08.13.100/2017-18 dated January 04, 2018 on XBRL Returns – Harmonization of Banking Statistics.

ii) The term “major shareholder” shall mean a person holding 10% or more of the paid-up share capital or five crore rupees in paid-up shares, whichever is less.

iii) The term “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in another manner.

5. **RBI/2021-22/65**  
**DOR.CRE(DIR).REC.28/04.02.001/2021-22**

**Interest Equalization Scheme on Pre and Post Shipment Rupee Export Credit - Extension**

Government of India has approved the extension of Interest Equalization Scheme for Pre and Post Shipment Rupee Export Credit, with the same scope and coverage, for a further period of three months, i.e., up to September 30, 2021. The extension takes effect from July 01, 2021 and ends on September 30, 2021 covering a period of three months.

Consequently, the extant operational instructions issued by the Reserve Bank under the captioned Scheme shall continue to remain in force up to September 30, 2021.

6. **RBI/2021-22/66**  
**DoR.SPE.REC.29/13.03.00/2021-2022**

**Review of Instructions on Interest on overdue domestic deposits**

It has been decided that if a Term Deposit (TD) matures and proceeds are unpaid, the amount left unclaimed with the bank shall attract rate of interest as applicable to savings account or the contracted rate of interest on the matured TD, whichever is lower.

7. **RBI/2021-22/80**  
**DOR.No.RET.REC.32/12.01.001/2021-22**

**Master Direction - Reserve Bank of India**  
**[Cash Reserve Ratio (CRR) and Statutory Liquidity Ratio (SLR)] Directions - 2021**



## **RBI**

- The provisions of these Directions shall apply to all Scheduled Commercial Banks (SCBs) (including Regional Rural Banks), Small Finance Banks (SFBs), Payments Banks, Local Area Banks (LABs), Primary (Urban) Co-operative Banks (UCBs), State Co-operative Banks (StCBs) and District Central Co-operative Banks (DCCBs) unless stated to the contrary.
- The maintenance of CRR shall be reported to Reserve Bank of India under the following statutory returns:
  - Form A Return for Scheduled Commercial Banks (including Regional Rural Banks (RRBs)), Small Finance Banks, Payments Banks and Local Area Banks
  - Form B Return for Scheduled Co-operative Banks
  - Form I Return for non-scheduled Co-operative Banks under Section 18 of the Banking Regulation Act, 1949, read with Section 56 thereof
- The maintenance of SLR shall be reported to Reserve Bank of India under the following statutory returns:
  - Form VIII Return (for SLR) for Scheduled Commercial Banks (including Regional Rural Banks), Small Finance Banks, Payments Banks and Local Area Banks;
  - Form I Return (for SLR) for all Co-operative Banks under Section 24 of the Banking Regulation Act, 1949, read with Section 56 thereof

For more details, refer the website [rbi.org.in](http://rbi.org.in)

*-Compiled by Kajal Yadav*

**ROC**

**1. RELAXATION IN LEVY OF ADDITIONAL FEES FOR CERTAIN FORMS**

In continuation of General circular No. 11/2021 and 12/2021, MCA dated July 01, 2021 notified certain forms to grant additional time for its filing which are/were due for filing between 01st April, 2021 to 31st July, 2021 without any additional fees. Thus, only normal fees shall be levied upto 31st August, 2021 for filing of the notified forms.

The list of the forms for which no additional fees shall be levied can be viewed through the below mentioned link:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=xIk8LHJJKnBG4BVxIUSaSFQ%253D%253D&type=open>

**2. CLARIFICATION FOR SPENDING OF CSR FUND FOR COVID-19 VACCINATION**

MCA General circular no. 13/2021 dated July 30, 2021 clarified that spending of CSR funds for COVID-19 vaccination for person other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.

Accordingly, the Companies may undertake this CSR activity subject to fulfillment of Companies (CSR) Policy Rules, 2014.

*-Compiled by Devang Thakkar*

*An investment in knowledge always pays the best interest.*

*Presenting you all an article given by our CA Meera Joisher Ma'am.....*

### *Adversities or Opportunities – What did Covid bring for the Students?*

*Several Pandemic hit the earth at some point or the other, but what Covid did to this globe is unprecedented. Something inconceivable... Something unbelievable... We were all flying on cloud nine, arrogant of our Human achievements and unstoppable. But just one pandemic, and the whole world just came to a standstill...*

*Lives of common man was intervened by nature earlier also, but affected only some portion of the Human race, at a time. I believe, this is the one intervention which changed the lives of every single human on this earth. We ALL suffered, we ALL struggled, we ALL cursed the surroundings for what it brought to us.*

*But what we did not embrace is the positive change it brought to our lives. It made us confront ourselves. It made us realise the fact that we are part of the whole system and cannot ride it hard at the cost of our neighborhood. It made us realise that development & prosperity is good, but not at the cost of our kins. People say it was the most adverse time of their entire life... I say it's the most blessed time of my entire life.*

*It brought me back to my family, it brought me back to humanity, and it opened up an all new world of opportunities. If the topic is to be touched, a huge book can be written on this. But to cover in my article today, I shall touch upon the Adversities and Opportunities this pandemic has brought to the lives of a Student.*

*Yes, the biggest adversity is that the pandemic tied the student to the four walls of the room stuck to the mobiles, computers and the internet. Worst is that there is also a section of the society who does not have access to this technology and seems to be missing out on crucial academics. But, if it is minutely observed, this is a temporary loss in light of the Pandora's Box that has opened for many. The most affected are those in the high schools, the primary schools and the pre-primary schools. But frankly what they are losing is pure academics, which can be compensated a year down the line. What will happen if a 5 year old doesn't learn standing and sleeping lines at age 5 but does it at age 6... A 10 year old doesn't learn the universe at the age of 10 but learns his family, who is the universe for him... Or a 15 year old doesn't score merits in his boards but adds family values to his merit... The best of this technological disruption is presently out of sight for our sore eyes...*

*Over a year ago, a Student with a light purse experienced a heavy curse. He couldn't explore into resourceful geographies to grab the bite of the best education. He always felt left out or had to compromise on his dreams to procure education from wisest of the lot or best of the universities, because he couldn't afford it.*

*But today, he stands shoulder to shoulder to any other student, be it be a prince or a pauper. He can reach out to the best professors via the strength of internet, something for which Internet was born. Top National / International universities are offering their courses at very reasonable fees, right at the student's doorstep. Yes, there is physical exposure, which all are missing, but nothing in terms of knowledge. To enter the new world of opportunities, what is needed is not Setting but sincerity... Not Dimes but Dedication...*

*Tough times create strong men, strong men create easy times, Easy times create weak men, weak men create tough times. So my friends rise up to the new dawn and make optimum use of the new normal.*

*And Parents... Raise Warriors, not Parasites...*

**Allow us to tell you more!**



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