The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)
KALYAN DOMBIVLI BRANCH OF WIRC OF ICAI

July 2022 : Volume 40

HAPPY CHARTERED ACCOUNTANTS DAY

Home to me is what Amendment is to Law
Section is to Taxation AS is to Accounting
SA is to Auditing Formula is to Costing
Signature is to CA

3, Sharad Complex, Oak Baug, Nr. Archie's Showroom, Station Road, Kalyan (W.) - 421301

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LEAD
LEAP TOWARDS EXCELLENCE, ACHIEVEMENT AND DEVELOPMENT

: Newsletter Committee :

CA Parag Prabhudesai	CA Vikas Kamra	CA Keyur Gangar	CA Girish Tarwani
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3, SHARAD COMPLEX, OAK BAUG, NR. ARCHIE'S SHOWROOM, STATION ROAD, KALYAN (W.) - 421301

Chairperson Ke Dil ki Baat….

My Dear Friends,

June month marks the start of monsoon month and also the start of new academic year. This year would be special for the students, as this year will the full year with physical presence after the pandemic. Many kids and parents will find it challenging to cope up with this situation.

June month would be remembered for many reasons. Politically, Maharashtra government saw a major setback. Economically, also, RBI increased the Repo rate by 50bps and the stock market is also in the correction mode and is still volatile. Assam is facing worst ever flood problem.

ICAI is working hard to get the feedback on the new proposed scheme of Education and training. They have taken a very bold step in revamping the course to make the students industry ready and to have them practical and relevant experiences.

Branch participated in the Happy Street event in Kalyan, wherein we made Financial Literacy initiative to educate general public on matter of finance. Thereafter, on 21st June, being celebrated as International Yoga Day, we had events at Kalyan, Bhiwandi, Ulhasnagar and Dombivli.

Branch also participated in the outreach program conducted by BOS to reach out to students and members. Lastly, on 27th June, being the international MSME day, branch conducted a seminar of MSME with a wonderful topic on Virtual CFO and the opportunities for Cas.

We will be celebrating the CA Day with many activities like Blood donation camp, Tree plantation, Education Kits distribution. This will be followed by the Brand event of the branch – TARANG XXII. The wicasa team is working hard and has arranged a wonderful event.

I have been meeting the students of OT batches and it is a beautiful experience to connect with all of them and understand their views. Also, I share my experience and journey with them and that's how the bonding starts. I really thank God for this opportunity.

Lastly, at Branch we are already in the process of planning for the Sub Regional Conference in the month of August.

Stay Tuned…

Wishing you a happy reading and a healthy and safe days ahead.

Yours in Service…

CA. Kaushik Gada
Chairperson 2022-23
Kalyan Dombivli Branch of WIRC of ICAI

INDEX

Direct Tax Case Laws
Compiled by CA. Shekhar Patwardhan

HIGH COURT DECISIONS

HIGH COURT OF CALCUTTA

PCIT Vs Jute Corporation of India Ltd

ITAT No 355 of 2017 6 NYPCTR 654, Date of Publication 8th June ,2022, Section 37(1) & 260A

The issue before the high court was whether substantial question of law is involved in a judgement given by the Calcutta Tribunal. The matter was related to allowability of expenditure when the liability was contingent in nature. The tribunal allowed the deduction after verification of payment in a subsequent year, high court said the case is very much factual and dismissed the appeal at admission stage.

Decision in favourof :- Assessee

Appeal filed by the assessee before the CIT(A) was allowed based on the actual payment made by the assessee in the subsequent year. Tribunal verified the factual position and affirmed the order passed by the CIT and dismissed the appeal filed by the Revenue. Therefore, the High Court observed that Question raised in this appeal is fully factual. In fact, the High Court pointed out that much less than any substantial question of law arises for consideration. Therefore, the said Appeal was dismissed by the High Court at the admission stage itself.

TRIBUNAL DECISIONS

MUMBAI TRIBUNAL

ACIT Vs Wizcraft International Entertainment Pvt Ltd

ITA No 1356 / Mumbai / 2021 AY2013-14, Section 178 (6) & 253(2) IBC Code, DOP 06/06/2022

The issue before the Tribunal was whether appeal can be filed by the department when the matter is pending before the Insolvency Professional in terms of the Insolvency and Bankruptcy Code, 2016 and moratorium period has been declared as per s. 14 of the Code? The Tribunal held that Appeal cant be filed in that case by the department.

Decision in favourof :- Assessee

The Tribunal observed that the matter is pending before the Insolvency Professional in terms of the Insolvency and Bankruptcy Code, 2016 and moratorium period has been declared as per s. 14 of the Code. As per the provisions of s. 14 of the Code institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any Court of law, Tribunal, arbitration panel or other

authority is prohibited during the moratorium period. In the instant case, the period of moratorium is effective from the date of such order till the completion of the corporate insolvency resolution process The Tribunal said therefore, the present appeal filed by the Revenue is dismissed in terms of the provisions of s. 14 of the Code with liberty to the AO that as soon as the moratorium period is over, he may prefer appeal afresh `Alchemist Asset Reconstruction Co. Ltd. vs. Hotel Gaudavan (P) Ltd. (2017) 88 taxmann.com 202 and Principal CIT vs. Monnet Ispat & Energy Ltd. (2018)304 CTR (SC) 233 : (2018) 169 DTR (SC) 262 followed

MUMBAI TRIBUNAL

KETAN BROTHERS DIAMONDS EXPORTS Vs CIT

ITA No 1627 / Mum / 2021, Section36(1) (va) & 43BAY 2017-18, Date of Publication 14TH June , 2022

The issue before the Tribunal was whether the additions made in 143(1) by way of adjustments based on audit reports regarding nonpayment of the PF Esic dues till the date of the audit report were valid when the payment was made before the date of filing of return? The Tribunal said the additions are not valid.

Decision in Favourof :Assessee

The Tribunal observed , When the due dateunder Explanation to s. 36(1)(va) is judicially held to be not decisive for determining the disallowance in the computation of total income, there is no good reason to proceed on the basis that the payment shaving been made after this due date is 'indicative' of the disallowance of expenditure in question. While preparing the tax audit report, the auditor is expected to report the information as per the provisions of the Act, and the tax auditor has done that, but that information ceases to be relevant because, interim of the law laid down by Courts, which bind shall as much as the enacted legislation does, the said disallowance does not come into play when the payment is made well before the due date of filing the IT return under sec 139 (1). Therefore the Tribunal said viewed in thus the impugned adjustment in the course of processing of return under s. 143(1) is vitiated in law, and we delete the same Vis-a-vis disallowance under s.36 (1)(va) made vide intimation issued under s.143(1) Thus, the disallowance made by the terms of s. 36(1)(va) is deleted — Kalpesh Synthetics (P) Ltd. vs. Dy. CIT (2022) 217 TTJ (Mumbai) 513 : (2022) 213 DTR (Mumbai) (Trib) 217 followed.

DELHI TRIBUNAL

Rajat Export Import Pvt Ltd VsITO

ITA No 5482 /Del / 2014, Date of Publication 21st June ,2022, Section68 AY 2010-11

The issue before the Tribunal was whether the additions will sustain when it was merely based on the statement given by CA . As the addition was without any corroborative evidence Tribunal deleted the addition.

Decision in favourof :- Assessee

In this case the CA gave a statement saying that the expenditure was allegedly incurred by the assessee towards commission for availing accommodation entries.

No independent inquiry was made by the AO/CIT(A) to ascertain the real nature of the transaction. Merely relying up on the statement of CA, the additions were made. It is relevant to observe, the statement recorded from CA on23rd Nov., 2011 was subsequently retracted by him on 25th Dec., 2011. The Tribunal said, that being the factual position, simply relying upon the statement of CA, additions should not have been made. Departmental authorities have failed to bring on record any other corroborative material to demonstrate that the share application money received by assessee are in the nature of accommodation entries. Thus, the addition made of Rs.49,00,000 as unexplained cash credit under s.68 is unsustainable Sungrow Impex (P) Ltd. vs. ITO (ITANo.4183/ Del/2019,dt.19th March, 2021) followed

PUNE TRIBUNAL

Atul Jaiprakash Goel Vs DCIT

ITA No 474 / Pune / 2018, Date of Publication 22stJune, 2022, Section22 and 28(i) AY 2010-11

The issue before the Tribunal was in case of a Builder when the unsold flats were given on Rent , Whether the said Income to be chargeable to tax under which head ? Income from Business or Income from House Property ? The Tribunal held that its Income from House Property.

Decision in favourof :- Assessee

Assessee is a builder who had certain unsold flats/units in his possession. Such flats were let out. As per s.23(5), where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period upto two years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, is to be taken as nil. In line of those provisions the said Income of the builder is chargeable to tax under the head `Income from house property' and not as business income.CIT vs. Sane & Doshi Enterprises (2015) 278 CTR (Bom) 316: (2015) 120 DTR (Bom) 49 : (2015) 58 taxmann.com 111 (Bom) followed.

TDS Provision - 194S

Compiled by CA. Jitesh Makhija

TDS Provisions under Section 194S for Virtual Digital Assets

1.Introduction to Section 194S:-

A new Section 194S has been inserted in the Act for the deduction of tax from the payment of consideration for the transfer of virtual digital assets. This provision is applicable **from 01-07-2022**.

2. Who shall be the deductor?

Any person (resident or non-resident) responsible for paying any sum by way of consideration for the transfer of a virtual digital asset is required to deduct tax at source.

Various scenarios to determine the deductor:-

2.1 Over-the-Counter (OTC) deal:-

This refers to a process of brokering an **off-market exchange** of tokens in exchange for either fiat currency or other crypto assets.

- Where the buyer and seller of VDAs know each other in an OTC deal.
- The buyer shall deduct tax at source under the provision.

2.2 Dealing through the exchange platform:-

- Pseudo-anonymity is one of the reasons that made crypto currencies a popular mode of payment.
- To buy or sell crypto currencies, buyer and seller just need wallet.
- When VDAs transfer through the exchange platform without revealing the identity of the buyer and seller, **Exchange platform** shall be liable to deduct tax, as it is responsible for paying the consideration to the seller [Section204].

However, where the exchange is just **facilitating the trade** by connecting the seller and buyer.

- Where money is transferred directly from the buyer to the seller.
- In that case, the exchange may not be considered as a 'peron responsible for paying'.
- Here **the buyer** should be responsible for deducting the tax.

2.3 Consideration in kind:-

- The consideration for the transfer of the VDA scan be paid or payable in cash, in kind, in exchange of another VDA or partly in cash or partly in kind.
- Before releasing the consideration, tax has to be deducted by the person responsible for paying such consideration on transfer of VDAs.
- Further it is to be noted that where transfer of VDAs shall happen both in the case of payer and payee, both the parties may be liable to deduct tax at source under section 194S.

Consideration for the transfer of VDAs is paid	Obligation of the payer
Wholly in kind OR Partly in cash or partly in kind, and cash component is not sufficient to deduct tax	Where the recipient has credit balance, debit his account with amount of TDS. If no such credit balance, then ensure that tax required to be deducted has been paid before releasing the benefits.
Partly in cash or partly in kind, and cash component is sufficient to deduct tax	Deduct tax from the cash component.
Wholly in cash	Deduct tax at the rate of 1% of the consideration.

Example, Mr. A transfers bitcoin of Rs.2,00,000 to Mr. B in exchange of equivalent value of shares of ABC Ltd. Now as Mr. B is paying consideration in kind (i.e.*shares* of ABC Ltd.) to Mr. A for transfer of VDA, he shall be liable to deduct tax at source under section 194S.

- The amount of TDS shall be computed **after grossing up.**
- Therefore, Mr. B will deposit TDS of **Rs.2020**[200000/99% x 1%] under section 194S.
- Further, where a person receives a VDAs as consideration for his services, he shall be responsible for deducting tax at source.

3.Deductee:-

Tax is required to be deducted under this provision if the consideration is paid or payable to **anyresident person**. If the recipient of the consideration is any non-resident, the tax may be deductible under section 195.

4.Rate of TDS:-

Tax is required to be deducted at the rate of 1% of the consideration.(Rate shall not be increased by Surcharge and Health& Education Cess.)

If the Deductee does not furnish his PAN to the deductor, TDS @20% shall be deducted. [Sec 206AA]

- If the deductee has not furnished the return of income for a specified period, and payer is a specified person (Point 6), the tax shall be deducted @1% and not as specified in section 206AB.
- If the payer is not a specified person, the tax shall be deducted as per Section 206AB if the payee is a non-filer.
- Where both the provision of Section 206AA and Section 206AB are applicable, the tax shall be deducted at the rates provided in Section 206AA or Section 206AB, whichever is higher.

5. Time of Deduction:-

Tax shall be deducted **earlier of the following:-**

- At the time of payment by any mode or
- At the time of credit of such sum,

to the **account of the resident.**

Example, Mr. A has deposited Rs. 10 Lakhs in his account opened with an exchange platform. He has done multiple transactions in Bitcoin for over a week. The computation of income and TDS implications are explained in the below table:

Date of purchase	Cost of acquisition	Date of transfer	Sale consideration	TDS @1%	Cumulative balance	Taxable income
Opening Balance	-	-	-	-	10,00,000	-
01-04-22	9,50,000	02-04-2022	9,70,000	9,700	10,10,300	20,000
03-04-22	8,75,000	03-04-22	8,25,000	8,250	9,52,050	-
Total				17,950		20,000

Mr. A will be liable to pay tax at 30% plus cess on his business income of Rs. 20,000 which will be Rs. 6,240 /-. He can file an income tax return to claim the refund of Rs. 11,710 (Rs. 17950- Rs. 6240) towards the excess tax paid by him by way of TDS under Section 194S.

- The loss of Rs.50,000will be dead loss that ca neither be set off against any other income nor can be carried forward to subsequent years.

6. Exemption from deduction of tax at source:-

No tax shall be deducted under the provision in the following circumstances.

Consideration is below Rs. 10,000

- No tax shall be deducted under this provision if the consideration is payable by any person (other than specified person) and its aggregate value does not exceed Rs. 10,000 during the financial year.

Consideration is below Rs. 50,000

- No tax shall be deducted under this provision if the **consideration is payable by the specified persons** and its aggregate value does not exceed Rs. 50,000 during the financial year:

- An individual or HUF, whose total sales, gross receipt or turnover does not exceed Rs. 1 crore in case of business or Rs.50 lakh in case of profession, during the financial year immediately preceding the financial year in which such VDA is transferred.

- An individual or a HUF who does not have any income under the head profits and gains of business or profession.

7. Overriding effect of provision/others:-

- TDS under Sec 194S will be preferred over 194-O and 206C(1H)
- TAN is not mandatory for payment of TDS
- No TDS on gift or lending of VDAs.

Category of payer	Threshold limit of turnover or gross receipt	Threshold limit of consideration
Company	-	Rs. 10,000
Firm or LLP	-	Rs. 10,000
Individual	Rs. 1 crore (for business) Rs. 50 lakhs (for profession) Also includes an individual not engaged in any business or profession	Rs. 50,000
Any other individual	-	Rs. 10,000
HUF (engaged in business or profession)	Rs. 1 crore (for business) Rs. 50 lakhs (for profession) Also includes an HUF not engaged in any business or profession	Rs. 50,000
Any other HUF	-	Rs. 10,000
Any other person	-	Rs. 10,000

TDS Provision - 194R

Compiled by CA. Lavina Mangwani

TDS on business benefits / perquisites (Section 194R) - Summary and Key Takeaways

1. Introduction and purpose

During the course of business, it is necessary to provide benefits / perquisites in the form of incentives, discounts, kind, etc. to distributors, consultants, customers, etc. This not only help in providing satisfaction to the beneficiaries but also motivate them to achieve huge targets and expand the business. In the recent years, various sectors of business have started spending huge amounts on providing benefits in various forms to their distributors, consultants, customers, etc. The said benefits / perquisites are taxable in the hands of recipients under Section 28(iv) of the Income-tax Act, 1961 ('the Act').

The Government noticed that the recipients are not appropriately disclosing the said benefits / perquisites in their return of income and also, not paying tax on the same which leads to loss of government's revenue. Whereas on the other side, the benefit providers are claiming deduction of the said benefits as business expenditure which also leads to loss of Government's revenue.In order to track such transactions and to ensure that the said benefits / perquisites are appropriately taxed, the Government, vide Finance Act 2022, has inserted a new Section -194R for the purpose of tax deduction at source from any benefit or perquisite provided to a resident arising from the business or profession.

Documents mentioning about purpose and intent of Section 194R

Budget Speech

As per the budget speech, TDS on benefit / perquisite has been provided in order to track the transactions wherein as a business promotion strategy, benefits are passed on in the hands of agents.

Memorandum of Finance Bill 2022

As per the memorandum of the Finance Bill 2022, in many cases, the benefit / perquisite received by the recipients are taxable under Section 28(iv) of the Act. However, the recipients does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income. In order to track such transactions and to widen the tax base, a new Section 194R has been inserted to provide TDS on benefits

perquisites arising from carrying out of a business or exercising of a profession.

Section 194R in the Act

In this background, the Income Tax statute has brought Section 194R in the Act vide Finance Act 2022 which is summarised as under:

- As per Section 194R of the Act, any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or profession carried on by such resident, shall be liable to deduct tax at source @ 10% of the value or aggregate of value of such benefit or perquisite.
- This Section is applicable w.e.f. 1 July 2022.
- Such tax is to be deducted before providing such benefit or perquisite, as the case may be, to such resident. Where the benefit is wholly in kind or where the cash part of the benefit is not sufficient to deduct the tax, the payer, before releasing the benefit, is required to ensure that tax required to be deducted has been deducted.
- Section 194R would not apply to a person being an individual or a HUF, whose total sales, gross receipts or turnover does not exceed INR 1 crore rupees in case of business or INR 50 lakhs in case of profession, during FY immediately preceding FY in which such benefit or perquisite, as the case may be, is provided by such person.
- Section 194R would not apply where the aggregate value of the benefit provided to a resident during FY does not exceed INR 20,000.

Summary table for easy reference:

Nature of Payment	Monetary Limit	Payer	Payee	Rate
Benefit or perquisite in cash or kind (e.g. gifts, perks, incen-tives, etc.)	Rs. 20,000	Any person (other than individual / HUFwhose turnover does not exceed Rs. 1 crore or Rs. 50 lakh rupees in case of profession, during FY immediately preceding the FY in which such benefit or perquisiteis provided).	Resident Person	10%

CBDT Guidelines

- Pursuant to the introduction of Section 194R under the Act, the taxpayers were waiting for clarifications on the applicability of Section 194R on various transactions. The Central Board of Direct Taxes ('CBDT') has issued guidelines vide Circular No. 12 of 2022 for removal of difficulties under Section 194R. The said guidelines are summarised as under:

- The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient, and the section under which it is taxable.

- The benefit / perquisites can either be in cash, in-kind, or partly in both of these forms.The capital assets given as benefits or perquisites are covered within the scope of Section 194R of the Act.

- Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself are outside the purview of Section 194R.

- Section 194R would apply to sellers giving incentives (other than discount, rebate) in the form of cash or kind like car, TV, computers, gold coin, mobile, sponsored trips upon achieving certain targets, free ticket for an event, free medical samples to medical practitioners.

- CBDT clarified that Section 194R would apply to the distribution of free samples to the hospital for doctors receiving free samples of medicines while employed in a hospital. The hospital as an employer may treat such samples as a taxable perquisite for employees and deduct tax under Section 192. For those, the threshold of □20,000 has to be seen concerning the hospital.

- While for doctors working as consultants with a hospital and receiving free samples, TDS would ideally apply to the hospital first, which in turn would require to deduct of tax under Section 194R about consultant doctors. CBDT clarified that as an alternative to remove the difficulty, the original benefit or perquisite provider may directly deduct tax under Section 194R about the consultant doctor as a recipient.

- Section 194R will not apply if the benefit or perquisite is provided to a government entity, like a government hospital, not carrying on business or profession.

- The CBDT has provided valuation mechanism of benefit / perquisite which are as under:

  - Benefit / perquisite has been purchased by provider - Purchase price.
  - Benefit / perquisite has been manufactured by provider - Price charged to customers.

  In other cases - Fair Market Value.

- GST is to be excludedfor the purpose of TDS Deduction.
- TDS is to be deducted:
    - If the product given to social media influencer for use and after using, the product is retained by the influencer.
    - In case of reimbursement of out-of-pocket expenses if the invoice is in the name of service recipient.
- Expenditure pertaining to dealer/business conference is not to be considered as benefit/perquisite in a case where dealer/business conference is held with the prime object to educate dealers/customers and is not in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.
- Further, expenditure attributable to leisure trip, expenditure incurred on family members accompanying person on dealer / business conference, expenditure for days on account of prior stay or overstay beyond the date of conference would be treated as benefit / perquisite.
- The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under Section 194R of the Act, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. Tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient, confirming that the tax required to be deducted on the benefit/perquisite has been deposited.
- Alternatively, the benefit provider may deduct tax under section 194R of the ITA and pay to the government. The tax should be deducted after taking into account the fact that tax paid by him as TDS is also a benefit under section 194R of the ITA. In the Form 26Q, tax deducted on benefit provided would need to be shown.
- The benefit or perquisite which has been provided on or before 30 June 2022 would be considered to compute the threshold of Rs. 20,000 but would not be subjected to tax deduction under section 194R of the Act.

3. Key Takeaways

A. **Lack of Correlation**-As per the memorandum of Finance Bill 2022, the purpose of introducing Section 194R is that recipients of benefit / perquisite are not disclosing the benefits in their Income Tax returns as well as not paying the tax on the same whereas in the CBDT circular, it is clarified that the deductor is not required to check whether benefit / perquisite is taxable or not in the hands of recipients. Therefore, there is lack of correlation between the memorandum of the Finance Bill 2022 and the CBDT circular.

B. Point of TDS - There is no clarity on the point of deducting TDS under Section 194R. Like, in other TDS provisions, tax is required to be deducted at the time of credit or payment whichever is earlier whereas Section 194R provides that tax is to be deducted before providing the benefit to the recipient. Thus, tax can be deducted at any time before providing benefit. One can take a view that even if benefit has been credited in the books of account, tax is not required to be deducted till the time benefit is not actually given / paid to the recipient.Clarification is required on this aspect.

C. Definitions - Definition of benefit / perquisite is not provided under the Act. Also, the definition of the word 'rebate' is also not provided under the Act. Hence, the tax payers can take recourse of the definitions given in the dictionaries and in the judicial precedents to analyse whether any benefit / perquisite has been provided so as to check the TDS applicability under Section 194R.

D. Fair Market Value - Fair Market Value is not defined under the CBDT guidelines. As per section 2(22B) of the Act, it is defined generally to mean the price a capital asset would fetch in the open market or where not ascertainable, the price as per rules. No such rules have been prescribed till date.

E. Overlap of TDS provisions -If the tax payer is already deducting tax on any of the benefit / perquisite under other Sections of TDS like Section 194J, Section 194C, etc. and the said benefit / perquisite is now covered under Section 194R, whether TDS should be done under Section 194R or the already prevalent TDS sections. Clarification is required on this aspect.

F. Reimbursement - In case of reimbursement of out-of-pocket expenses, the CBDT has mentioned that tax is to be deducted if invoice is in the name of service recipient. This treatment of applicability of Section 194R on reimbursement of cost-to-cost basis is contradictory to the intent of introducing Section 194R as there is no any benefit or perquisite accruing to the recipient, only the amount spent by the recipient is getting reimbursed by the deductor. This situation require reconsideration by the tax authorities.

G. Waiver of Trade debts - In cases where there is waiver of trade debts, whether such waiver would be treated as benefit / perquisite given to the debtor and whether TDS under Section 194R would be applicable. If TDS is applicable, whether grossing up is required to be done. Clarification is required on this aspect.

H. Nil Withholding Certificate- There are various circumstances provided under Section 197 of the Act wherein deductee can provide a certificate to the deductor for non-withholding of TDS. However, the said benefit cannot be availed by the recipient for Section 194R as the scenario of Section 194R is not covered under Section 197 of the Act. A clarification is required on this aspect.

4. Conclusion:

The introduction of Section 194R has increased the compliance burden on various business sectors providing benefits / incentives to their distributors, consultants, customers, etc. Though the CBDT has issued guidelines, the implementation of Section 194R may face challenges as still there are many areas where clarifications are required. Hoping that the CBDT addresses the areas where the CBDT guidelines are in contradictions with the intention of introducing Section 194R. Accordingly, deferment of TDS applicability date of 1 July 2022 for few months would be helpful for the deductors.

Deduction - Sec. 80JJAA

Compiled by CA. Nemin Shah

Deduction under Section 80JJAA – Employment of New Employees – A Treatise

Section 80JJAA was introduced way back in 1998 to incentivize hiring of workmen by manufacturing units. It was revamped in 2016 and made applicable to taxpayers across the board. This Article covers the eligibility to avail this deduction, the conditions required to be satisfied and some important issues which arise in the interpretation of this section.

Background

In 1998, Section 80JJAA was introduced with the objective of generating more employment opportunities by providing a deduction – over and above wages paid to new workmen. Back then, these provisions were applicable to manufacturing units. Fast forward to 2016 – Section 80JJAA was revamped. The amended provision is applicable to all taxpayers across the board – not just industrial undertakings as was the case earlier. This also put an end to an ongoing controversy as to whether these provisions (prior to 2016) were appliable to software companies. Courts/ Tribunals had taken a view that employees in software companies could be regarded as workmen and hence deduction under 80JJAA was available. This provision has been amended several times (some of the significant amendments are discussed later).

Eligible Taxpayer

The eligibility criteria for deduction under Section 80JJAA is as under:

- Any person (definition of person will include all types of taxpayers such as individual, HUF, partnership firm, LLP, company, AOP/ BOI, trust, etc);
- Whose gross total income includes profit and gains from business
- Is subject to tax audit under Section 44AB

Thus, any taxpayer who has carried on business during the year and has been subjected to tax audit is eligible for claiming deduction under Section 80JJAA.

Conditions for Claiming Deduction under Section 80JJAA

On a holistic reading of Section 80JJAA, any taxpayer needs to fulfil the following conditions in order to claim deduction:

Taxpayer should have incurred additional employee cost – Additional employee cost has been defined in Explanation (i) to Section 80JJAA(2) to mean total emoluments paid to additional employees who have been employed during the year. Proviso to Explanation (i) deems additional employee cost as Nil in case:

- Remuneration is paid to employees otherwise than by account payee cheque or through electronic clearing system through a bank;
- There is no increase in number of employees from the total number of employees as on the last day of the earlier year.

Thus, two important points emerge from the above:

1. Remuneration has to be paid to the new employees (employed during the year) by account payee cheque or through NEFT/ RTGS. Remuneration cannot be paid in cash or by a regular cheque.
2. There should be a net increase in the number of employees employed as compared with the last date of the earlier financial year. For example if total employees as on 31 March 2021 is 100. In 2021-22, 50 new employees are hired but the total employees as on 31 March 2022 are 97 (because 53 employees have left), the additional employee cost will be deemed to be Nil as per the above Proviso.

Additional employee has been defined in Explanation (ii) to Section 80JJAA(2) as an employee:

- who has been hired during the year;
- whose employment has the effect of increasing the number of employees hired as on the last day of the earlier year (similar to the provision discussed above);
- whose salary is less than Rs 25,000 per month;
- who has worked for at least 240 days during the year (150 days in case of manufacturers of apparel, footwear or leather products);
- who participates in recognised provident fund;
- whose entire contribution is not paid by the Central Government under Employees Pension Scheme notified under Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

As per an amendment in 2018, any employee who has not been employed for 240 days during the year but is employed for 240 days or more in the next year, the said employee should be counted as employed in the next year and the provisions of the law would apply accordingly. This amendment was introduced on account of significant litigation with regard to availability of deduction in the event employees do not work for 240 days in the first year – as it was nearly impossible to ensure that all new employeesare hired on or before 4 August of the year.

Emoluments have been defined to include all remuneration paid to employees except employer contribution to PF, NPS or any other fund for the benefit of the employee and any sums payable on termination of services, retirement etc.

Furnishing of Form 10DA–In order to claim deduction under Section 80JJAA, the taxpayer is required to electronically furnish Form 10DA on or before the due date of furnishing Tax Audit Report under Section 44AB.

Business should not be formed by splitting up or reconstruction of an existing business - The business for which additional employees are hired should not have been formed by splitting up or reconstruction of an existing business. For example – A Ltd had a unit which employed 50 employees. The promoters of A Ltd formed a new company B Ltd and discontinued the business in A Ltd. B Ltd takes over all the assets of A Ltd. All the employees resign from A Ltd and join B Ltd. In this situation, the business of B Ltd can be said to be formed by splitting up or reconstruction of an existing business (the business carried on by A Ltd) and hence B Ltd will not be eligible for deduction under Section 80JJAA with respect to the employees who have joined from A Ltd.

However, if A Ltd continues its business at the same scale and some employees of A Ltd resign and join B Ltd, B Ltd's business cannot be said to be formed by splitting up or reconstruction of an existing business since A Ltd is continuing its business and B Ltd's business is entirely new (which will need to be demonstrated by fresh investment and new assets). There has been considerable litigation with regard to splitting up or reconstruction of existing business with regard to deduction under Section 10A/ 10B/ 10AA. However, this may not be a significant issue in context of Section 80JJAA.

Business should not be acquired by way of transfer or as a result of business reorganisation–The business for which additional employees are hired should not have been acquired by way of transfer or business reorganisation.

Interestingly, the term 'business reorganisation' was not defined either in Section 80JJAA or anywhere else in the Income-tax Act, 1961 till 2022 – when it was defined under Section 170A to mean merger (amalgamation) or de-merger. Thus, if an entity acquires a unit as a slump sale or by way of merger/ demerger, the entity cannot claim the benefits of Section 80JJAA with respect to the additional employees which become employees of the entity as a result of the slump sale/ merger/ demerger.

However, if post transfer/ business reorganisation, new employees (satisfying the conditions of additional employees and additional employee cost) are hired, deduction under Section 80JJAA will be available. However, the fact of hiring new employees post transfer/ business reorganisation will need to be demonstrated with appropriate documentation. For example - A Ltd had 500 employees. It acquired a unit having 100 employees during the year. Post acquiring the unit, 50 new employees were hired by A Ltd. Even though the additional employees for A Ltd will be 150, deduction under Section 80JJAA will not be available for the 100 employees because they were a part of the unit acquired by way of a transfer. Though, deduction under Section 80JJAA will be available with regard to the 50 new employees hired by A Ltd post acquiring the new unit.

Quantum of Deduction under Section 80JJAA

The eligible taxpayer, upon satisfying the conditions mentioned above, will be entitled to a deduction at 30% of additional employee cost for a period of three assessment years from the year in which employees are hired. For example if 50 employees (subject to fulfilment of conditions mentioned above) are hired in FY 2021-22, deduction under Section 80JJAA will be available with respect to additional employee cost for FY 2021-22, 2022-23 and 2023-24.

Potential Issues

Here are some interesting issues which arise from interpretation of Section 80JJAA.

Applicability of Tax Audit

Recently, Section 44AB has been amended to enhance the limit of turnover for applicability of Tax Audit to Rs 10 crore (subject to other conditions). In the event, a taxpayer satisfies the relevant conditions and the turnover is below Rs 10 crore, deduction under Section 80JJAA will not be available. Deduction will also not be available to taxpayers who claim the benefit of Section 44AD (presumptive taxation at 6%/8%).

Section 80JJAA – Whether available to persons carrying on Profession

A question may arise as to whether professionals such as Doctors, Chartered Accountants etc can claim deduction under Section 80JJAA. Section 80JJAA only refers to income from business and does not mention profession. The term business is defined in Section 2(13). This definition does not include any reference to profession. In fact, the term profession has been separately defined in Section 2(36). Further, in the definition of previous year in Section 3 and the charging section for business income – Section 28, the term profession has been separately specified. Thus, in the absence of any reference to the term 'profession' in Section 80JJAA, professionals may not be eligible for deduction under Section 80JJAA.

No of days employed – to be satisfied in each year independently

Deduction under Section 80JJAA is available for three assessment years. In this regard, it is noteworthy that the condition with respect to working for a minimum 240 days (150 daysin case of manufacturers of apparel, footwear or leather products) will need to be satisfied in each assessment year independently as per aruling of the Bangalore Tribunal in the case of Bosch Ltd. For example - if 50 employees (subject to fulfilment of conditions mentioned above) are hired in FY 2021-22, deduction under Section 80JJAA will be available with respect to additional employee cost for FY 2021-22, 2022-23 and 2023-24. Apart from satisfying the 240-day condition in FY 2021-22, the same will also need to be satisfied in FY 2022-23 and 2023-24. In the event an employee was not employed for 240 days in FY 2022-23 or 2023-24, no deduction with respect to his remuneration will be availa- ble.

Claim of Profit based deductions – Impact on Section 80JJAA deduction

There could be a situation where the taxpayer may have claimed deduction under Section 10A or 10AA or 80-IA or 80-IB or any other similar provision wherein deduction has been claimed with regard to the profit of a particular unit. In such an event, as per a ruling of the Bangalore Tribunal in the case of SAP Labs India (P) Ltd deduction under Section 80JJAA will not be available in accordance with Section 80A(4) with respect to the unit for which profit based deduction has been claimed.

Deduction under Section 80JJAA in case of set-off of losses

There could be a situation where the taxpayer is eligible for a deduction under Section 80JJAA but there is business loss/ unabsorbed depreciation carried forward from earlier years. In such an event, in line with the Supreme Court ruling in the case of Synco Industries Ltd v. AO the taxpayer will only get a deduction under Section 80JJAA to the extent of gross total income remaining post set-off. For example – A Ltd is eligible for deduction under Section 80JJAA to the extent of Rs 100, its income from business is Rs 300 and loss carried forward from earlier year is Rs 250. In such an event, A Ltd will be permitted to claim deduction to the extent of Rs 50 (Business income Rs 300 less set off of losses Rs 250). In this example, if losses carried forward from earlier year are Rs 350, A Ltd will not be able to claim any deduction under Section 80JJAA since the gross total income will become Nil.

Claim not made in the return of income – impact

One of the conditions for availing deduction under Section 80JJAA is furnishing Form 10DA and making the claim in the tax return. However, Courts/ Tribunals have allowed the claim of deduction under Section 80JJAA when the claim was made during assessment/ appellate proceedings or Form 10DA was filed during assessment proceedings.

Conclusion

Section 80JJAA is a relatively unknown deduction under Chapter VI-A and many taxpayers are not fully conversant with the eligibility criteria, conditions to be fulfilled, etc. Hence, it is important to consider the eligibility and fulfilment of conditions at the time of filing tax returns. This deduction should also be kept in mind in case of expansion of business. Chartered Accountants should advise clients with respect to this deduction at the beginning of the year so that appropriate steps can be taken during the year to avail this deduction.

Also, the issues highlighted above need to be kept in mind by practicing Chartered Accountants while issuing Form 10DA. In case of differences related to interpretation, Chartered Accountants should insist on obtaining written opinions from tax experts. This will strengthen the documentation to be maintained with respect to issuance of Form 10DA.

Insolvency & Bankruptcy Code 2016

Compiled by CA. Sunit Shah

OVERVIEW OF INSOLVENCY AND BANKRUPTCY CODE 2016

A milestone in Indian Economy to boost

EASE OF DOING BUSINESS PROCESS

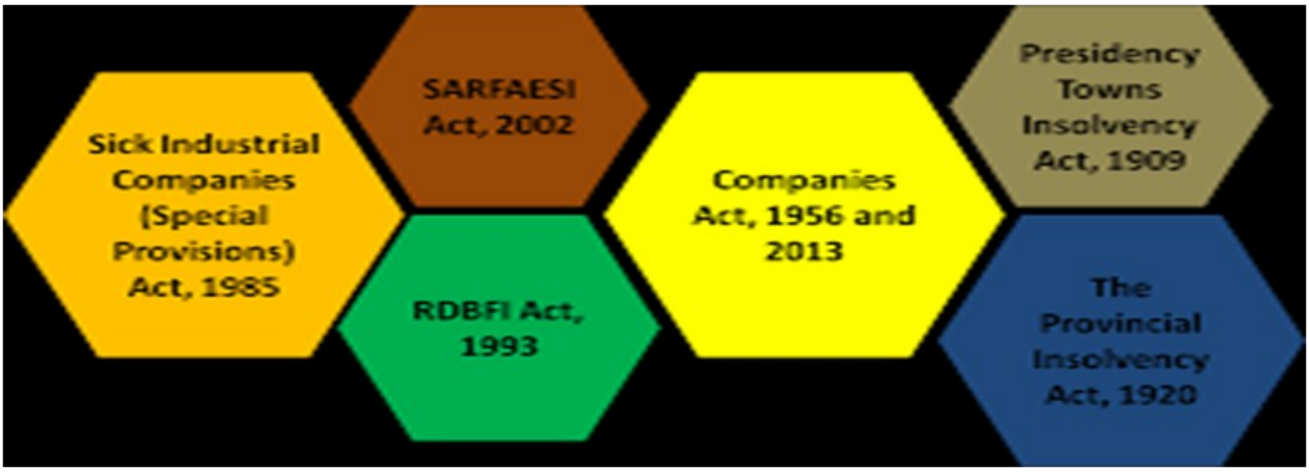
Insolvency could be defined as a state where an individual, corporation, or other organization cannot meet its financial obligations for paying debts as they become due.

The Insolvency and Bankruptcy Code deals with the reorganization and insolvency resolution of corporate debtors (CDs), partnership firms, and even individuals. A Corporate Debtor is a corporate person that has defaulted on paying its debts. The IBC also provides an exit mechanism for a corporate person that has not defaulted, through a voluntary liquidation process. The provisions of the IBC relating to corporate persons came into force on **December 1, 2016**.

A strong insolvency regime serves two purposes. It saves businesses that are viable and facilitates the exit of those that are not.

JOURNEY OF IBC

ACTS REPEALED BY THE CODE



HY IBC WAS REQUIRED IN INDIA?

Before the enactment of the Insolvency and Bankruptcy Code, there was no single law in the country to deal with insolvency and bankruptcy. There were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India. The framework for insolvency and bankruptcy was inadequate, ineffective and resulted in undue delays in resolution. The IBC Code was required to:

1. Provide a comprehensive law and single platform to deal with or resolve financial stress of business entities or otherwise.
2. Assure early detection of financial stress or default, any creditor can report the default now.
3. Provide for time bound resolution for viable businesses. Helps reorganisation and /or restructuring of business.
4. Creates a collective platform of the stakeholders to enable them to take decisions about the future of the distressed entity.
5. Sends the unviable businesses to liquidation at the earliest to arrest any substantial loss in value.

BANKRUPTCY LAW REFORMS COMMITTEE (BLRC) FOR IBC

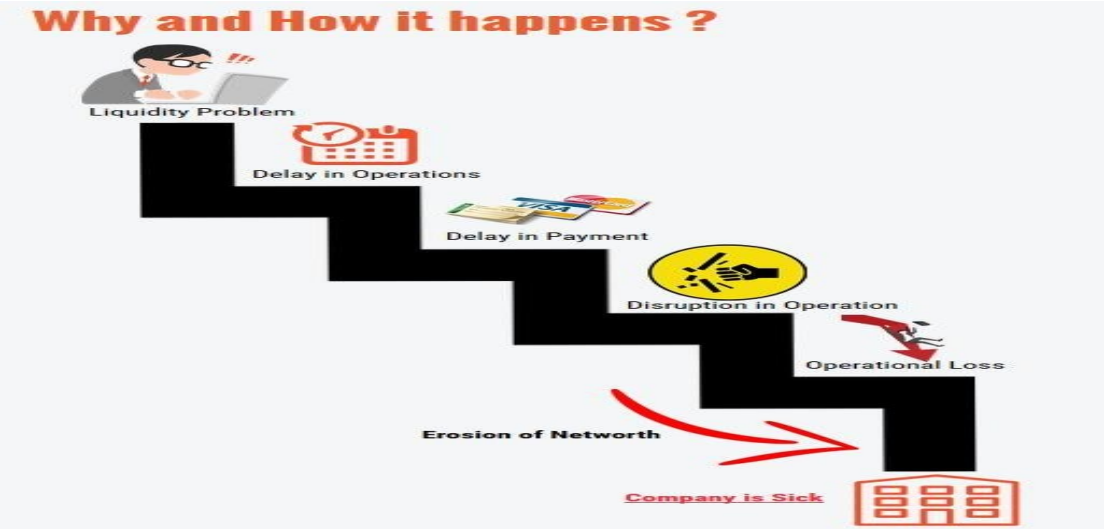
The BLRC committee was formed with an objective to resolve insolvency with:

1. Involving less time
2. Lessor loss in recovery and
3. Higher level of debt financing across instruments

Key Economic Reforms Recommended:

1. Until debt obligations are met, equity owners have complete control over the business affairs of the company, and creditors have no authority over the business.
2. Paradigm shift from 'Debtor in Control' to 'Creditor in Control' in case of persistent failure to meet liabilities
3. In case of default, control istransferred to the creditors; then equity owners have no right in business affairs of the company.
4. Debtor under financial stress must be protected during resolution period.
5. Asset Striping by promoters must be controlled– before or after default aroused.
6. The illegitimate transfer of wealth out of companies by controlling shareholders is considered malfeasance.

HOW AND WHEN IT HAPPENS?



OBJECTIVES OF THE IBC CODE

1. The objective of equitable treatment is based on the notion that, in collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution on their claim in accordance with their relative ranking and interests.
2. To consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals.
3. To provide time bound insolvency resolution mechanism.
4. To ensure maximization of value of assets.
5. To promote entrepreneurship.
6. Clear & Speedy Process for early identification & Resolution finance distress for Corporate & LLP.

BENEFITS OF IBC CODE 2016

1. Time bound settlement of insolvency
2. Insolvency and Bankruptcy Board of India will as act as a Regulatory Body.
3. Locked up assets will be set free.
4. Faster turnaround of businesses
5. Significantly improve Ease of Doing Business
6. Prevents fraudulent activities by debtors. Also have provisions to deal with concealment, fraud and /or manipulation leading to fine and/or imprisonment
7. Relief for bona fide debtors
8. The test of insolvency has been shifted from “erosion of net worth” to “payment default”.
9. A clearly defined distribution of recovery proceeds
10. Single insolvency and bankruptcy framework. It replaces/modifies/amends certain existing laws.

International tax Rulings
Compiled by CA. Prerna Peshori

Important International Tax Rulings

1. Remittances to Cambridge University & IB for imparting instructions on syllabus not taxable as FT[TS-430-ITAT-2022(HYD)]

The assessee-Company, an educational institute made remittances to two foreign institutions without TDS, which was disallowed by the Revenue, whereas on appeal, the CIT(A) deleted the disallowance holding that amounts paid to both the universities do not amount to FTS/Royalty as per the applicable DTAAs. Hyderabad ITAT acceptedthe assessee's contention that the foreign institutions are imparting instructions in India as per the syllabus set by them and are conducting examinations before issuing the degrees which cannot be held taxable as FTS as per treaty provisions. ITAT noted theassessee's contention that such remittances cannot be treated as FTS since the India-UK DTAA and India-Switzerland DTAA excludes the amounts received for "teaching in or by educational institutions" from the ambit of expression FTS and that the services fails to satisfy the make available clause. It observed that remittance to the foreign universities are the fees collected from students, which are directly transmitted by theassessee as received without retaining any part of it and no additional expenditure in that respect is incurred by the assessee. On perusal of Article 13(5)(c) of the India-UK DTAA and Article 12(5)(a) of India-Switzerland DTAA, ITAT observed that FTS does not include any amount paid for teaching in or by educational institutions. ITAT dismissed Revenue's appeal and upheld deletion of disallowance of remittances made to Cambridge University (UK) and International Baccalaureate (Switzerland) made without deducting tax at source under Section 195.

2. ITAT: Payment for benchmarking services not FIS, not taxable as business income in absence of PE[TS-432-ITAT-2022(Mum)]

Assessee-Company, engaged in the business of oil exploration, refining crude oil, manufacturing and trading of petrochemicals etc. sought authorisation for payment of Rs.4.50 Cr. to M/s Phillip Townsend Associates Inc. (PTAI) with nil rate of TDS.Assessee furnished the tax residency certificate for PTAI certifying its residency in the US and submitted that PTAI did not have a PE in India, and the income was in the nature of business income and not FIS, hence not taxable in India. Revenue concluded that the payments satisfied the conditions of Article 12(4)(b) of the India-US DTAA, and thus held the payments to be FIS, liable for deduction of tax at source at 10%, which was rejected by the CIT(A);Mumbai ITAT dismissed Revenue's appeal against Reliance Industries, holds payment made towards benchmarking services are not in the nature of FIS under India-US DTAA since make available clause is not satisfied.It held that it is business profit but not liable to tax in India due to absence of PE and business connection in India. ITAT, on perusal of the agreement and the nature of services rendered by the PTAI, finds the payment to be purely towards benchmarking of the services of the SPI and also that such benchmarking study enables the clients to undertake further course of action to improve its qualitative capacity. It observed that PTAI did not provide any know how or technical knowledge but prompted its clients to take corrective action in above areas. Also that PTAI was not a domain expert in the area in which the Assessee operated. On the basis of applicable provisions of India-US DTAA and the MOU to the DTAA, ITAT holds that the make available clause was not satisfied in the facts of the case and observes, "merely providing commercial information through a benchmarking study does not in any manner makes available any technical knowledge, experience, skill, know how or processes, nor consist of the development and transfer of a technical plan or technical design"

3. ITAT: Overseas remittances for business promotion not FTS but business income, not liable for TDS absent PE[TS-400-ITAT-2022(DEL)]

Assessee-Individual, proprietor of M/s. Quantum Solutions India engaged in contract research organisation and specializes in the area of pharmacovigilance (drug safety) services made payments to his non-resident GBA/ BDA as commission for the purpose of expanding the scope of its current activities in the overseas markets. Revenue, for AYs 2010-11 to 2012-13, held that such remittances were made to the consultant outside India, thus, treated the services rendered as FTS under Section 9(1)(vii) and held the assessee liable for TDS default. CIT(A) granted part relief to Assessee in respect of the payments made to GBAs/ BDAs in USA and UK holding it to be FTS but falling under exception clause of 'make available' under the respective DTAAs but affirmed the additions with respect to GBA/BDA located in other countries, against which the assessee preferred the present appeal. Delhi ITAT allowed assessee's appeal, holds that the sum paid to non-resident Global Business Affiliates (GBA)/ Business Development Associates (BDA) is not FTS but business profits not liable to tax in India, in the absence of PE.It held that no tax was required to be deducted at source on such payments. In the light of the Master Services Agreement entered between Assessee and GBAs, ITAT observed that the GBAs/ BDAs act as a business promotion agents rendering services for promotion of sales (of services) and soliciting new clients and are appointed only with a view to propagate and solicit business overseas and not to render any managerial, advisory, technical or consultancy services. It noted that GBAs/BDAs functions within the outlines of the business model and instructions given by the assessee and does not suggest or undertake any changes in the functioning pattern of the assessee and are entitled to receive a minimum stipulated sum as remuneration for services rendered along with additional percentage as further add on in event of any contract getting materialised. It remarked that the Revenue has referred to the word "consultant" too narrowly which is used in the Master Service Agreement to arrive at the conclusion that the payments made to the GBAs are in the nature of FTS and states that even though the payees are referred to as consultant in the said agreement, it is the nature of services rendered that is to be considered in order to determine if the services falls within the ambit of FTS.It pointed out that Revenue has not done the complete and subjective analysis of the whole agreement and failed to appreciate the exact nature of services rendered by GBAs/ BDA. Thus, held that payments made to the GBAs/ BDAs are not FTS on the grounds that no specialised technical services are rendered to the Assessee and the absence of personal interaction between Assessee and these service providers, who acted within the scope defined in the Master Service Agreement. It held that the service provided by GBAs/BDAs as regards to sale promotion are squarely covered by Article 7 of the applicable DTAAs as business profits. It noted that the GBAs/ BDAs located overseas are non-residents and do not have PE in India, thus, opined, "the payments to GBAs/ BDAs being the business profit of the GBAs/ BDAs are not taxable in India in the absence of PE"; It held that the Assessee is not liable for TDS under Section 195 on such payments by relying on SC ruling in GE India, wherein it was held that obligation under section 195(1) to withhold tax arrives only if the payment is chargeable to tax in the hands of non-resident recipient and held, "the payments made to the GBAs/ BDAs are not subject to any withholding tax, such payments being not chargeable to tax in India"

4. ITAT: Remands issue of taxability of sum received from Hutch as royalty; Considers Assessee's MFN Clause plea[TS-380-ITAT-2022(Bang)]

Bangalore ITAT remanded the issue of taxability of sum received from Hutch against services provided by Assessee for de novo consideration. Revenue, for AY 2008-09, observed that the Assessee-Company, tax resident of Belgium, provided services specified to Hutch as specified in Carrier Service Agreement (CSA) from outside India, in lieu of which consideration was received from Hutch without deduction of tax and accordingly, Revenue initiated reassessment proceedings on the Assessee. Revenue passed the draft assessment order treating the sums received by the assessee as 'royalty' under the Act as well as the DTAA. Before the ITAT, Assessee submitted that the payments received by the Assessee on account of services rendered to Hutch cannot be brought to tax in view of the principle of most favoured nation (MFN) clause contained in Protocol to India-Belgium DTAA read in the light of Protocol attached to India-Hungary DTAA and India-Greece DTAA, unless there is a 'right to use secret process' by Hutch in India. Further Assessee submitted that interpretation of the term, 'process' under Explanation 6 cannot be read into DTAA as the term used in DTAA under Article 12(3) is, 'secret process'

'secret process' as per DTAA is a valuable right, the consideration for which is to be regarded as 'royalty. Assessee placed reliance upon recent Delhi ITAT ruling in BT Global Communication. ITAT observed that Assessee did not raise the aforesaid arguments before the Revenue earlier, thus remands the issue back to Revenue for de novo consideration.It directed Revenue to consider the issue based on the above recorded arguments and keeping in mind the principle laid down by SC ruling in Engineering Analysis that domestic law cannot be read into treaties unless the treaties are amended bilaterally, with due opportunity granted to the Assessee.

5. ITAT: Sale of equipment concluded outside India, not taxable; Relies on SC ruling in Ishikawajima Harima[TS-387-ITAT-2022(DDN)]

Dehradun ITAT dismissed Revenue's appeal, holds sale of equipment and accessories to be not taxable in India since all the activities in relation to manufacturing of the equipment took place outside India and deletes the addition of Rs.1.14 Cr.Assessee, a Singapore Branch of a US based Company, for the AY 2014-15, received income on account of overhauling services and claimed the same to be exempt from tax under Article 12 of India-USA DTAA. However, Revenue held the receipts cannot be considered as overhauling charges since the purchase order was placed for sale and supply of an equipment called turbine/gas producer assembly Taurus 60 and since the sale was concluded in India as the installation and commissioning and start-up of power generator set supplied was carried out in India, held the receipts to be chargeable under Section 9(1), and estimated 25% of gross receipts as profit on the sale of equipment at Rs.1.14 Cr. ITAT considered CIT(A)'s observation on perusal of the purchase order that it does not mention anything about any services in regard to installation and commissioning to be provided by the Assessee and no separate price for such services is quoted therein.It relied on Supreme Court decision in case of Ishikawajima Harima, wherein it was held that, where income arises out of operations performed in more than one jurisdiction, then it has a nexus with each of the jurisdictions and no one state can exercise its right to tax the income which did not arise in that state.It observed that only the part of the work which is attributable to business operations carried out by the Assessee in India is taxable in India, thus, opined that, "at the most the supervisory services for installation and commissioning etc., provided in India at the premises of the buyer, can be considered to be taxed in India.". Thus, it held that the receipts on account of supply/ sale of equipment Taurus 60 and other accessories cannot be taxed in India as all the activities in relation to manufacturing of the equipment took place outside India and only the services rendered with respect to installation and commissioning of the turbine accrued in India and shall be taxable in India.

6. ITAT: Revenue to decide if 'beneficial ownership' inbuilt in Art.13 of India-Mauritius DTAA; Vacates presumptuous assessment[TS-381-ITAT-2022(Mum)]

Mumbai ITAT set aside assessment order against Blackstone FP Capital Partners Mauritius involving capital gains of Rs.904.98 Cr. from transfer of shares of CMS Info Systems, where Revenue declined the treaty benefit under article 13(4) of India-Mauritius DTAA by lifting the corporate veil and gave a finding that the beneficial owners of shares were in Cayman Islands. ITAT raised a fundamental question whether the concept of 'beneficial ownership' can be read into the scheme of Article 13 of India-Mauritius DTAA and if so what is its contextual connotation, thus, directed the Revenue to re-decide the issue. ITAT referred to elaborate debate on the concept of beneficial ownership in the light of United Nations Committee of Experts on International Cooperation on Tax Matters pursuant to which Prof. Philip Baker QC in his consultation paper: (i) noted the irrelevance of the domestic law meaning of 'beneficial ownership' and justifiability of its international fiscal meaning, (ii) observed that the inclusion of a beneficial ownership limitation in the capital gains article of specific bilateral conventions is not part of the current tax treaty practice of any State, (iii) concluded that "there was ultimately only limited support for inserting beneficial ownership in article 13". Thus, ITAT observed that reading beneficial ownership test in Article 13 as an impermissible interpretation since not embedded in the treaty provision itself unlike Articles 10 and 11. ITAT invoked the principle of pacta sunt servanda referred to in Article 26 of the Vienna Convention on the Law of Treaties and observes, "Any violation of this approach, no matter how well-intended, can only be at a huge cost of tax unpredictability - something tax administrations can ill afford. …the approach adopted by the authorities below in ducking the issue as to whether the provisions of beneficial ownership can be read into the provisions of

article 13 and proceeding by taking the position of beneficial ownership as granted in the scheme of Article 13 is unsustainable in law." ITAT also referred to Canadian Supreme Court's ruling in Alta Energy where it was observed, "Indeed, beneficial ownership is utterly foreign to Art. 13". On Revenue's reliance on jurisdiction HC ruling in Aditya Birla Nuvo, ITAT observed that the ruling is not an authority for the proposition that the requirements of 'beneficial ownership' can be read into Article 13. ITAT deniedto be persuaded by AAR ruling in AB Mauritius since the ruling proceeded on the assumption that 'beneficial ownership' of the shares in question is condition precedent for availing the treaty protection under Article 13 and is anyway not a binding precedent. ITAT noted that there is huge debate globally on the meanings of 'beneficial ownership' in the context of the treaties and refers to OECD Conduit Companies Report 1986 and several foreign rulings, whatever their utility and relevance be, on this issue.It remarked that it is not at the whim or fancy of the Revenue to decide as to what constitutes 'beneficial ownership' and the Revenue must also examine this fundamental concept and give categorical findings as to how requirements of beneficial ownership are satisfied in the present case. Thus, it restored the matter with a direction to pass a speaking order after giving a fair and reasonable opportunity of hearing to the Assessee in this regard.

Google-Gmail-YouTube -TwitterTime Saving Hacks Compiled by CA. Paras Kenia

There are nearly 5Billion Internet Users in the world and more than 840 Million users in India alone. All of us are using Google, YouTube, Gmail since past many years and Twitter now a days either for our professional work or in our day to day life as well. We all know how to use these but there's still a lot most of us can learn about how to search faster, how to save time and how to use them more effectively. Given below are some useful Tips, Tricks and Hacks to use these applications effectively –

Looking for information on google has become *second nature* for many of us. In fact, "Googling" has become generic word for looking or searching things online. I have listed 5 Googling Tips which will be helpful while searching anything on google.

1. "Quotation Mark"

   Searching within quotes only finds results that include **all of those words**, in that specific order. Searching without quotes populates results that include the words you typed, but not necessarily in the order you searched.

   Example: Section 56(2)(x) and "Section 56(2)(x)". The former search will include other subsection or clauses of Section 56. Search with Quotation Mark will give search result for Section 56(2)(x) only.

2. – Hyphen

   Using a hyphen immediately before a word tells Google that you do not want pages that contain this word to appear in your results. Continuing with our earlier example, if you search Section 56(2)(x) the very first result will appear with link of taxguru.in website. If you search Section 56(2)(x) -taxguru.in, this will eliminate any link leading to taxguru.in in the search result.

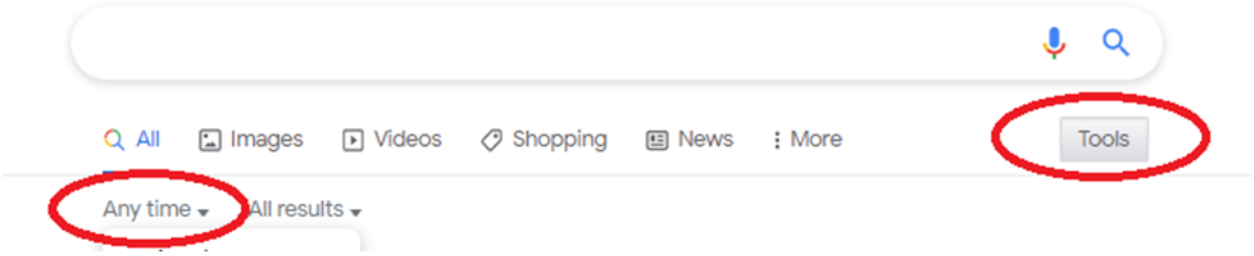
3. Site:

   Simply add "site:domain name with extension" after your search term, and you will get all the instances of that term on that particular site. Results from the rest of the web will be filtered out. Example Section 56(2)(x) :incometaxindia.gov.in. This search will give you links of instances of Section 56(2)(x) available only on Income Tax Website in the search result excluding links to all other websites.

4. File Type

You can use the Filetype:"Type" in Google Search to limit results to a specific file type. For example, section 56 (2)(x) Filetype:PPT will search for PPT files with the given search.

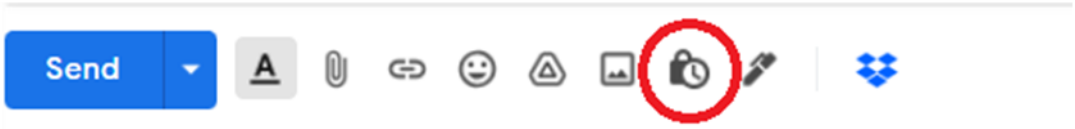
5. Tool Button



You can also use this Tool Button to narrow down your search and make it more relevant.

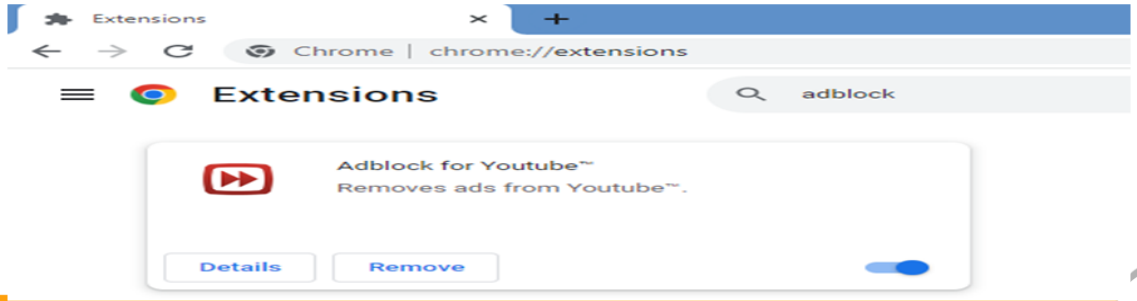
As far as **Gmail**is concerned, there is one feature called "Confidential Mode" which is little known feature or if not little known, surely hardly used feature that can help you send sensitive information over Gmail. What it essentially does is it prevents emails from getting **forwarded, copied or printed. The receiver can not even download messages or attachments**.With this feature you can set a message expiration date ranging from 1day to 5 years, **revoke message acceseven before expiration**. If passcode option is selected, recipient will be asked to provide a verification code to open email message. Verification Code will be sent by Google via Text Message on a Contact Number of the intended recipient entered by the Sender. This ensures that the email message will be accessed and read by the intended recipient only.

To set the expiration date of a message in confidential mode lick on the Confidential Mode icon (represented with a clock and lock icon) -> select expiration date and SMS passcode (in case you want to) and then send the mail.

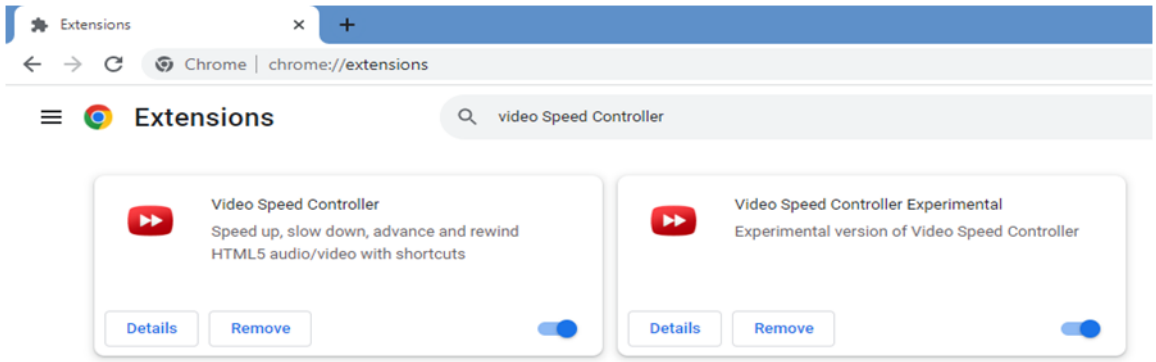


YouTube is second largest search engine next to Google. It is one of the best ways to communicate to a wide audience. It has now been emerged as a best platform to learn new-new things and concepts. I have listed below two very useful and effective Chrome Extensions which will surely help you save considerable time while using YouTube and it will make your.

1.Adblock for YouTube – If you are tired of annoying advertisements popping up when you are watching a video, just install an adblocker from chrome web store which is available for free. This extension removes all advertisements which pops either before any video starts or during the video being played.



2. Video Speed Controller – YouTube lets you play any video with playback speed of 0.25x and in multiple of 0.25x till 2x only but does not allow any other playback speed alternative like 0.7x or playback speed exceeding 2x. Video Speed Controller which is one more chrome extension lets you adjust the playback speed as per your convenience in multiple of 0.1x.



Twitter is most popular micro-blogging social network and is now being widely used by many Chartered Accountants to share knowledge, thoughts or views on any subject or topics, or even ask queries or raise issues with concerned authorities. The twitter has made it possible to communicate, though in restricted ways, to any person across globe as quickly as it can introduce you to your next-door neighbour. There are some twitter Bots and twitter Hacks which are really very useful to boost productivity –

1. @threadreaderapp – Many experts now a days write Threads (i.e. series of tweets on particular topic). This twitter bot is very helpful if you are going through a thread. Just reply "@threadreaderapp unroll" to any tweet, and the bot will compile the thread into an easily readable blog-style format.

2. @getvideobot / @this_vid - As the name suggests, this twitter bot helps you download videos on twitter. If you want to download a particular video on twitter, reply with "@getvideobot" or "@this_vid" to the tweet that contains the video you want to save. The bot will then reply to you with the link to download the video.

3. @RemindMe_OfThis – Just mention "@RemindMe_OfThis" by replying or quoting the tweet with time say 2days or 9pm and the bot will remind you of the tweet. This bot is very useful when you come across any tweet containing link to any event or webinar to be held on future date and you do not want to miss the same.

4. Apart from these bots, there is one more advanced search feature which is very useful in order to find a particular tweet by particular person. For Example, type from:paraskenia "ReadSomeWhere" and you will find all the tweets from @paraskenia containing the above keyword. You can filter the search even by popularity too. For Example, type from:paraskenia "ReadSomeWhere" min_faves:100 or min_replies:10 or min_retweets:25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