

**FRINGE BENEFITS -**  
**BY WAY OF GIFT, VOUCHER OR TOKEN TO EMPLOYEES**

**[ Detailed interpretation of new Rule 3(7)(iv) of the I.T. Rules, 1962 ]**

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Recently old Rule 3 of the I.T. Rules, 1962, regarding valuation of perquisites, has been substituted by a new Rule, vide Notification No. S.O. 940(E), dated 25.9.2001. Sub-rule (7) of new Rule 3 deals with other fringe benefits or amenities in terms of the provisions of S. 17(2)(vi) of the I.T. Act, 1961. Clause (iv) of sub-rule (7) of Rule 3 deals with the valuation of perquisite by way of **any gift or voucher or token** in lieu of which such gift may be received by an employee or member of his household on ceremonial occasions or otherwise. It is also provided in Rule 3(7)(iv) that where the value of such gift, voucher or token, as the case may be, is below Rs. 5,000/- in the aggregate, during the previous year, the value of perquisite shall be taken as Nil.

Various employers and I.T. advisors have encountered a number of difficulties in the correct interpretation of the aforesaid Rule 3(7)(iv). Some time back, a well-known French Multinational Company, based in Mumbai, has sought my opinion in respect of the interpretation of new Rule 3(7)(iv), vide its letter dated 5.11.2001. This Company had raised as many as **nine** queries in respect thereof. For giving my opinion, in respect of the aforesaid query, I had to examine the aforesaid Rule 3(7)(iv) in a detailed manner and in all its aspects. I have provided my detailed opinion to the aforesaid Company in respect of all the queries raised by it, vide my letter dated 7.11.2001.

The queries raised by the aforesaid Company and my opinion in respect thereof are reproduced, as follows:

**A. The Queries**

1. Please give us your detailed interpretation of this clause.
2. Can gift vouchers issued by any voucher issuing company be en-cashed for cash and under what situation can the exemption of Rs.5000/- given under this clause be still valid?

Our interpretation is that the gift vouchers should enable the receiver to buy gifts of his choice from the establishment accepting the gift voucher against the value of the gift article sold by the establishment.

3. Can a Company give Cash to its employees, while for form 12 BA, take an undertaking from the person that the amount has been spent by him for purchasing Gifts?
4. Can a Company under the above clause, reimburse the amount, against submission of bills by the employee, and whether the same would qualify for tax exemption?

5. Does the word 'Token' imply that monetary items like cheque, Cash in an envelope are admissible?
6. If the following gifts are given by the employer to his employees, will it qualify for exemption under clause (7)(iv) of Rule 3, as amended by the CBDT's Notification dated 25th September 2001.
  - a. Cash
  - b. Bank Cheque
  - c. Bank draft
  - d. Money Transfer
  - e. Gift cheque issued by the bank, which can be en-cashed.
7. Can the employer give gift vouchers to the employees or members of his household on ceremonial occasions or any other occasion or without occasion as per his choice and judgement in a financial year?
8. If a gift voucher is given for Rs.6000/-, whether Rs.1000/- will be taxed as taxable perquisite or Rs.6000/- will be taxed as taxable perquisite?
9. Does the above clause, apply equally to employees of the Private Sector, Employees of Government undertakings, Employees of the Central Government, or are their special provisions/concessions for each category of employees?

## B. My Opinion

Before we proceed to deal with the issue proper as raised in the aforesaid letter, it would be appropriate to discuss the context and the purpose for which Rule 3 (R.3) of Income-Tax Rules, 1962 has been framed. Chapter IV-A, of the Income Tax Act, 1961 (the Act) deals with computation of income under the head 'Salaries'. This chapter contains three sections namely, 15, 16 and 17. Section 17(1) provides an inclusive definition of the expression 'Salaries'. As per S. 17(1)(iv), 'Salary' includes perquisites. Section 17(2) provides inclusive definition of the expression 'Perquisite'.

Part II-A of the Income-Tax Rules, 1962, deals with determination of income under the head 'Salaries'. Rule 3, which falls under Part II-A of the I.T. Rules, 1962, deals with the valuation of perquisites. Rule 3 has been totally overhauled vide aforesaid Notification No. S.O.940(E), dated 25.9.2001 of the CBDT. The new R. 3 has been divided into 9 sub-rules and the sub-rules have been further divided into clauses, etc. We are presently dealing with R. 3(7)(iv), which deals with valuation of perquisites provided by the employer in the form of any **Gift, Voucher or Token** in lieu of which such gift may be received by the employee or a member of his household.

Rule 3 starts as follows:

**“3. Valuation of perquisites** – For the purpose of computing the income chargeable under the head ‘Salaries’, the value of perquisites provided by the employer directly or indirectly to the assessee

(hereinafter referred to as employee) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely :-”

Sub-rule (7) of R. 3 begins as follows:

**“(7)** In terms of provisions contained in sub-clause (vi) of sub-section (2) of section 17, the following other fringe benefits or amenities are hereby prescribed and the value thereof shall be determined in the manner provided hereunder:”

Clause (iv) of R. 3(7) is reproduced as follows:

**“(iv)** The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise shall be determined as the sum equal to the amount of such gift. However, where the value of such gift, voucher or token, as the case may be, is below Rs. 5,000 in the aggregate during the previous year, the value of perquisite shall be taken as Nil.”

In this context, we have to examine S. 17(2)(vi) which may be reproduced as under:

**“17.** For the purposes of sections 15 and 16 of this section –

(2) ‘Perquisite’ includes –

(vi) the value of any other fringe benefit or amenity as may be prescribed”.

As per Concise Oxford Dictionary, Ninth Edition, “fringe benefit” means an employee’s benefit supplementing a money wage or salary.

After referring to the relevant provisions under the I.T. Act, 1961 as well as the I.T. Rule, 1962, in respect of the valuation of perquisites and in particular R. 3(7)(iv), it would be necessary to look at the meanings of the terms ‘perquisite’, ‘gift’, ‘token’ and ‘voucher’, as they are understood in the common parlance, keeping the view in context in which they are used under the I.T. Act as well as Rules. The same are discussed, as follows:

### **I. Perquisite**

The term ‘perquisite’ has been defined U/S 17(2) of the Act. A plain reading of S. 17(2) indicates that perquisites mean a benefit or amenity provided by the employer to the employee. S.17(2)(vi) also refers to “any other fringe benefit or amenity”. The term ‘benefit’ does not include any cash payment or reimbursement of expenses incurred. It clearly refers to a benefit or amenity provided in kind. Besides, it is a settled position in law that perquisite does not include any monetary payment.

As per T.P. Mukherjee’s Law Lexicon Vol.2 p.317 – perquisite has a known normal meaning, namely, a personal advantage which would not apply to a mere reimbursement of necessary disbursements – **Owen Vs. Pook (Inspector of Taxes), 74 ITR p.147 (HL)**.

As per Concise Oxford Dictionary, Ninth Edition, 'perquisite' means an incidental **benefit** attached to employment, etc.

## II. Gift

The word 'gift' is not defined under the Act. Therefore, we have to seek guidance from the definition of the word in other statutes. It would be more reasonable to seek guidance from the definition of the word in a taxing statute like a Gift Tax Act. Section 2(xiii) of the Gift Tax Act defines 'gift' as under –

'Gift' means the transfer by one person to another of any existing or movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer of any property deemed to be a gift U/S 4."

It is thus clear that a 'gift' may also include gift of money, cash or cheque etc. However, keeping in view the context in which the term 'gift' is used in R. 3(7)(iv), the term 'gift' will not include any payment by cash or cheque etc. as also reimbursement of expenses incurred. The R.3(7)(iv) starts with "The value of any gift or voucher, or token...". The use of the term 'value' before the term 'any gift' signifies that the term 'gift' as used in R. 3(7)(iv), will not include payment by cash or cheque, because there is no need to find the 'value' of any gift by cash or cheque. It, therefore, implies that the term 'gift' as used in R. 3(7)(iv) should be in kind only.

## III. Token

As per T.P. Mukherjee's Law Lexicon Vol.2 p.717, the term 'token' means –

- (i) a sign of the existence of a fact,
- (ii) private money – Wharton's Law Lexicon.

Thus, for our purpose, it would only mean 'private money'. Therefore, the term 'token' will not include payment by cash or cheque.

As per Concise Oxford Dictionary, Ninth Edition, 'token' means a voucher exchangeable for goods (often of a specified kind) given as a gift. This meaning of the term 'token' also proves that it does not include any payment by cash or cheque, etc.

## IV. Voucher

As per Concise Oxford Dictionary, Ninth Edition, 'voucher' means a document which can be exchanged for goods or services as a token of payment made or promised by the holder or another. From the aforesaid meaning of 'voucher', it is evident that it does not include payment by cash or cheque, etc.

## V. Interpretation – regarding a beneficial provision

Rule 3(7)(iv) deals with the valuation of perquisites in the form of **Gift, Voucher or Token**, in lieu of which such gift may be received by the employee or by member of his household etc. In the end of the aforesaid clause (iv), a benefit or concession has been provided, namely where the value of such gift, voucher or token is below Rs. 5,000/-, in the aggregate during the previous year, the value of perquisite shall be taken as **Nil**.

Now the question arises, what would be the treatment accorded to a Gift, Voucher or Token exceeding Rs. 5,000/-. Whether the whole value of the Gift, Voucher or Token would be taxed as a perquisite or only the amount exceeding Rs. 5,000/- would be liable to tax ?

As already pointed out that clause (iv) of R. 3 (7) provides a benefit or concession in respect of the value of gift, voucher or token below Rs. 5,000/- in the aggregate during the previous year.

It is a settled position in law that a beneficial provision has to be interpreted in a liberal manner. Besides, construction of a provision must be made having regard to its context and purpose. This view is supported by the following judgements:

(i) **Parshottam Nagindas & others Vs. B.R. Adwalpalkar, 218 ITR p.392 (Guj.)**

This judgement deals with waiver or reduction of interest as per the provisions of S.273A of the Act.

It was, inter-alia, laid down in this case that beneficial provision to be interpreted in a liberal manner.

(ii) **J.K. Abdul Jabbar Vs. CIT, 237 ITR p.389 (Mad.)**

This judgement deals with the special deduction U/S 80-U in respect of permanent physical disability.

It was held in this case, inter-alia, that beneficial provision should be liberally construed.

(iii) **CIT Vs. Smt. R. Bharathi, 240 ITR p.697 (Mad.)**

This judgement deals with S.64 – exclusion from provision where spouse had professional or technical qualifications.

It was held in this case, inter-alia, that a beneficial provision must be construed liberally and construction of a provision must be made, having regard to its context and purpose.

In the light of the aforesaid judgements, it may be safely concluded that in case the value of a gift, voucher or token exceeds Rs. 5,000/-, then only the amount exceeding Rs. 5,000/- would be liable to tax. In other words, a gift, voucher or token upto Rs. 5,000/- in value in the aggregate during the relevant previous year would be exempt from tax irrespective of the fact whether the total value of such gift, voucher or token exceeds Rs. 5,000/- or not.

## **VI. One important clarification**

As already explained, R.3 of the I.T. Rules, 1962 covers valuation of perquisites only. It does not cover payment by cash, cheque, demand draft, money transfer, etc. It also does not cover reimbursement of expenses incurred. Therefore R. 3(7)(iv) will also not cover the payments of the aforesaid nature.

In the light of the aforesaid reasons, it is clear that other payments by cash, cheque, demand draft, etc. or by way of reimbursement of expenses, will not be covered by the provisions of R. 3(7)(iv).

It would imply that any other gift, by way of payment in the form of cash, cheque, demand draft, etc., as also reimbursement of expenses incurred, will not affect the exemption of any gift, voucher or token in lieu of which such gift may be received by the employee or by member of his household, upto Rs. 5,000/- in value during the previous year concerned.

## VII. Answers to the queries

There are in all nine queries raised in the aforesaid letter. All the queries are being answered in the light of the aforesaid discussion in paras (I), (II), (III), (IV), (V) and (VI). The queries are answered in the same sequence in which they are raised in the aforesaid letter.

- (1) The aforesaid clause (iv) of R. 3(7) of the I.T. Rules, 1962 has already been dealt with in detail in the earlier paras (I) to (VI).
- (2) From the aforesaid discussion, it is evident that gift, voucher or token, should not be encashable.  
The interpretation of the querist that the gift vouchers should enable the receiver to buy gift of his choice from the establishment accepting the gift voucher against the value of the gift article sold by the establishment; is correct.
- (3) As already explained, R. 3(7)(iv) covers only a gift, voucher or token and does not cover payment of cash to employees.  
Merely taking an undertaking from an employee that the amount has been spent by him for purchasing a gift, would not fulfil the requirement of the aforesaid R. 3(7)(iv).
- (4) As explained in para (I), any reimbursement in respect of expenses incurred cannot be treated as perquisite. Therefore, reimbursement of the amount against the bills submitted by the employee, would not qualify for exemption under R. 3(7)(iv).
- (5) The term 'token' would not cover monetary payments in the form of cash or cheque.
- (6) The items mentioned in query No.6, namely, cash, bank cheque, bank draft, money transfer and gift cheque issued by the bank, which can be encashed for cash; do not qualify for exemption under R.3(7)(iv).
- (7) Rule 3(7)(iv) refers to only gift, voucher or token received by the employee or by member of his household, on ceremonial occasions **or otherwise**. It would, therefore, imply that the gift etc. may be given by the employer on any occasion or without any occasion as per his choice and judgement in a previous year.
- (8) As explained in earlier para (V), in view of the beneficial nature of the relevant part of the provisions of R. 3(7)(iv), value of gift upto Rs. 5,000/- would be exempt and anything over

and above Rs. 5,000/- would be a taxable perquisite. In other words, only balance Rs. 1,000/- would be taxable.

- (9) Rule 3 applies to all categories of employees whether belonging to the private sector, the Government Undertakings or the employees of the Central or State Governments. There is no distinction in respect of the aforesaid categories of employees and R.3 equally applies to all of them.

Therefore, R. 3(7)(iv) would also apply equally to all the employees of the private sector, employees of the Government Undertakings or employees of the Central or State Governments.

All the aforesaid queries stand answered accordingly.

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