

**The Institute of Chartered Accountants of India  
(Set up by an Act of Parliament)**



**PUNE BRANCH OF WIRC OF ICAI  
NEWSLETTER**

**Issue No. 2 - February 2019**

**(Subscribers copy not for sale)**

*"Fear is death, fear is sin, fear is hell, fear is unrighteousness, fear is wrong life.*

*All the negative thoughts and ideas that are in the world have proceeded from this evil spirit of fear."*

**CONGRATULATIONS**

## **Our Torch Bearers F.Y. 2019-2020**



**CA. Prafulla Chhajer**  
President - ICAI



**CA. Atul Kumar Gupta**  
Vice-President - ICAI



**CA. Priti Savla**  
Chairperson - WIRC of ICAI



**CA. C. V. Chitale**  
Central Council Member - ICAI



**CA. Yashwant Kasar**  
Treasurer - WIRC of ICAI



**CA. Arun Anandagiri**  
Regional Council Member



**CA. Anand R. Jakhotiya**  
Regional Council Member

*"However we may receive blows, and however knocked about we may be, the Soul is there and is never injured. We are that Infinite."*



# Congratulations



***We have Bagged  
Two National Level Awards***

**Second Prize in the category of Best Branch to  
Pune Branch of WIRC of ICAI (Mega Category)  
and**

**First Prize in the category of Best Branch Of  
Students Association to Pune WICASA (Large Category)**



## Flag Hoisting on the occasion of Republic Day



## Seminar on "Code of Ethics of ICAI"



**CA. C. N. Vaze**  
Speaker



**CA. Bipeen Mundade**  
Speaker

## Lecture Meet on "Prosecution Provisions under ITA Theory and Practice"



**CA. Shashank Patki**  
Speaker



**Participants**

## **Co-operative Banking in India and NPA Management for Co-operative Banks (Part-2)**

**Contributed by :- CA. Aalhad V. Deshmukh**

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In the last part, we learned about presence of UCBs in the country. We discussed that Maharashtra has highest number UCBs registered. We also read about Financial Performance of Scheduled and Non-scheduled UCBs as per the data available on the website of the Reserve Bank of India.

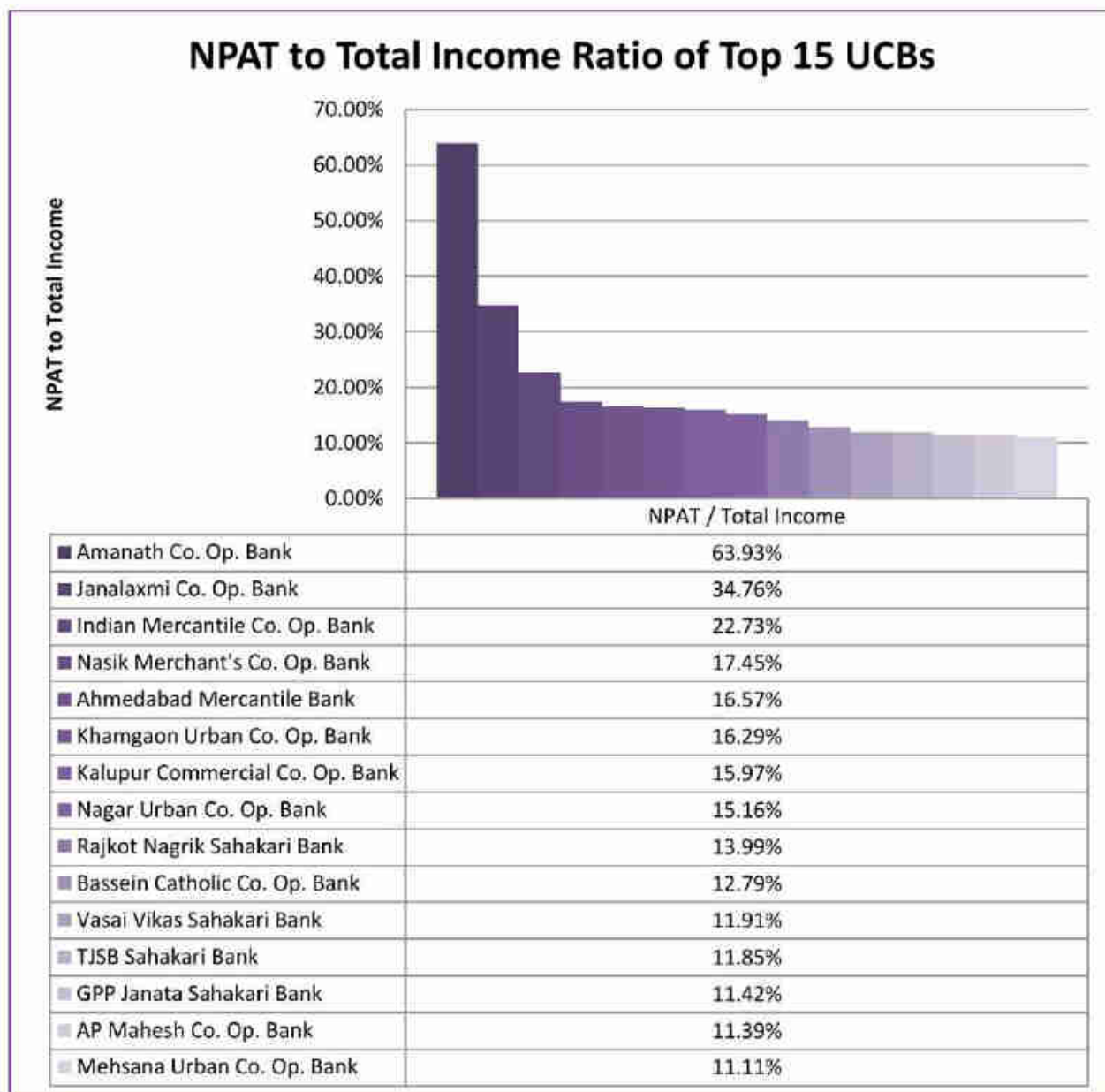
In this part, we shall continue the discussion with respect of performance of UCBs and learn about select Key Financial Indicators. We shall also start discussion about NPA Management in UCBs and early warning signs of NPAs.

### **Performance of UCBs**

Banking Performance is measured in terms of certain financial parameters. As per the data available in the Time-Series Publication of the Reserve Bank of India, financial performance of select UCBs in the country was as under:

	<b>Minimum</b>	<b>Maximum</b>
<b>Average Cost of Deposits</b>	Rupee Co-operative Bank Ltd. (1.75%)	Indian Mercantile Co-operative Bank Ltd. (7.52%)
<b>Average Yield on Advances</b>	Rupee Co-operative Bank Ltd. (3.00%)	Mapusa Urban Co-operative Bank Ltd. (15.04%)
<b>Return on Assets (ROA)</b>	Kapol Co-operative Bank Ltd. (-7.39%)	Amanath Co-operative Bank Ltd. (2.04%)
<b>CRAR</b>	Rupee Co-operative Bank Ltd. (-513.98%)	Nashik Merchants' Co-operative Bank Ltd. (43.88%)
<b>Business per Employee</b>	Janalaxmi Co-operative Bank Ltd. (INR 1.06 Crores)	Bassein Catholic Co-operative Bank Ltd. (INR 17.90 Crores)
<b>Profit per Employee</b>	Kapol Co-operative Bank Ltd. (INR -0.23 Crores)	Amanath Co-operative Bank Ltd. (INR 0.16 Crores)

The average Net Profit After Tax to Total Income ratio for Top-50 UCBs for the year 2017-18 was 9.48%. Most of these banks reported positive NPAT. COSMOS and Bombay Mercantile Bank reported loss for the year 2017-18. Amanath Co-operative Bank reported highest NPAT to Total Income ratio of 63.93%. The bank reported total expenses of INR 11.79 Crores as against total income of INR 32.70 Crores in the year 2017-18. Though it is not appropriate to compare financial performance of these banks with one another as these banks operate at different levels altogether, it gives us broad picture of the industry averages. Diagram – D below gives representation of NPAT to Total Income Ratio of Top-15 UCBs in the year 2017-18.



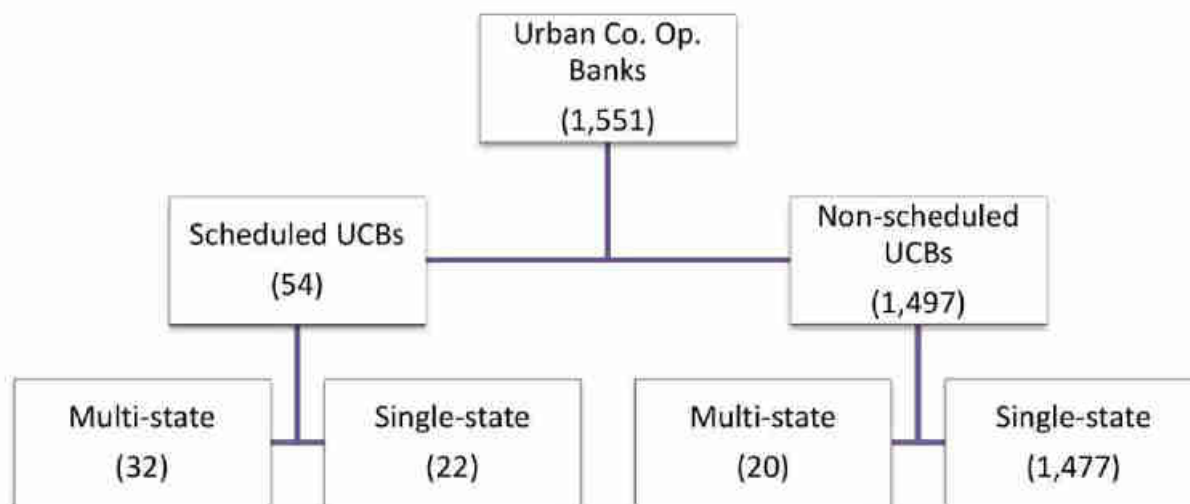
**Diagram – D: NPAT to Total Income Ratio of Top-15 UCBs**

For any UCB, it is pertinent to make note of the Financial Performance of the industry as whole. Financial Indicators like Return on Assets, Return on Equity and Net Interest Margin determine the way UCB is making money. It has direct impact on the NPAs. Provisions for Risks and Contingencies for all UCBs grew from INR 2,524 Crores in 2016-17 to INR 2,740 Crores in 2017-18 i.e. 8.56% growth. Whereas, total income grew only by 1.55%. One can easily note that higher the provision, lower is the profitability.

It is also evident from the analysis of Financial Indicators that higher cost of deposits would increase the probability of higher NPAs. Furthermore higher yield on advances would mean that the bank is charging higher interest rates. If inappropriate, the same would increase the chances of an asset turning into a Non-Performing Asset.

### **Non-Performing Assets**

Before we discuss the NPA trend, let us go through the framework of Co-operative Banks in India. As at March 31, 2018, there were 1,551 UCBs out of which only 54 are scheduled and 1,497 are non-scheduled. There are around 52 Multi-state Co-operative Banks in the country.



It is important to understand the framework because level of operations and geographical presence of UCBs would impact its NPA management.

Speaking about NPAs, RBI's statistical data reports the position of UCBs as under:  
(Amount in INR Crores)

Sl. No.	Particulars	Scheduled UCBs		Non-Scheduled UCBs		Total	
		RPQW	RPQX	RPQW	RPQX	RPQW	RPQX
1	Gross NPAs	9,019.37	8,512.63	9,901.46	11,390.43	18,713.47	19,903.06
2	Gross NPA Ratio	6.98%	6.21%	7.50%	7.93%	7.16%	7.09%
3	Net NPAs	3,976.86	3,289.55	3,153.62	3,926.28	6,792.67	7,215.83
4	Net NPA Ratio	3.20%	2.49%	2.51%	2.88%	2.72%	2.69%
5	Provisioning	5,042.51	5,223.08	6,747.85	7,464.15	11,920.80	12,687.23
6	Coverage Ratio	55.90%	61.35%	68.15%	65.53%	63.70%	63.74%

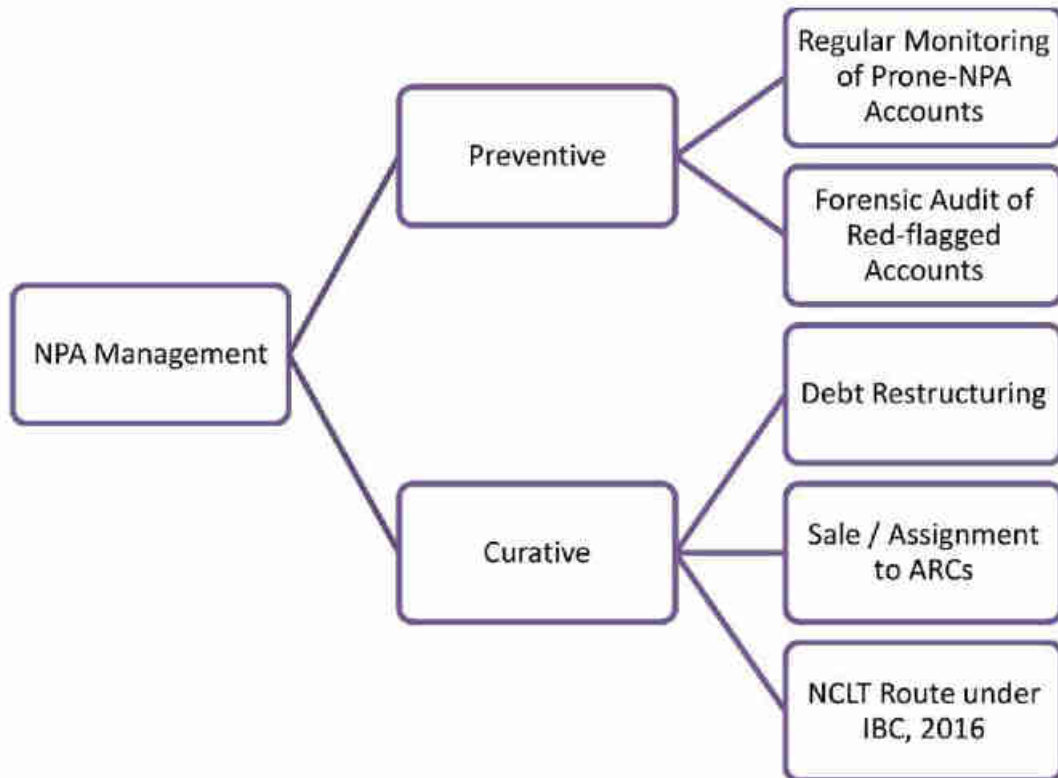
There was an overall growth of 6.36% in aggregate Gross NPAs in 2017-18. Net NPAs grew by 6.23% in 2017-18 over 2016-17. Total Cumulative Provisioning of all UCBs as at March 31, 2018 stood at INR 12,687.23 Crores.

The above figures including the movement in NPAs are meager as compared to the corresponding figures of PSU Banks which are facing the wrath of the harsh economic downturns. However, NPA Management is still one of the major concerns for the UCBs.

## **NPA Management**

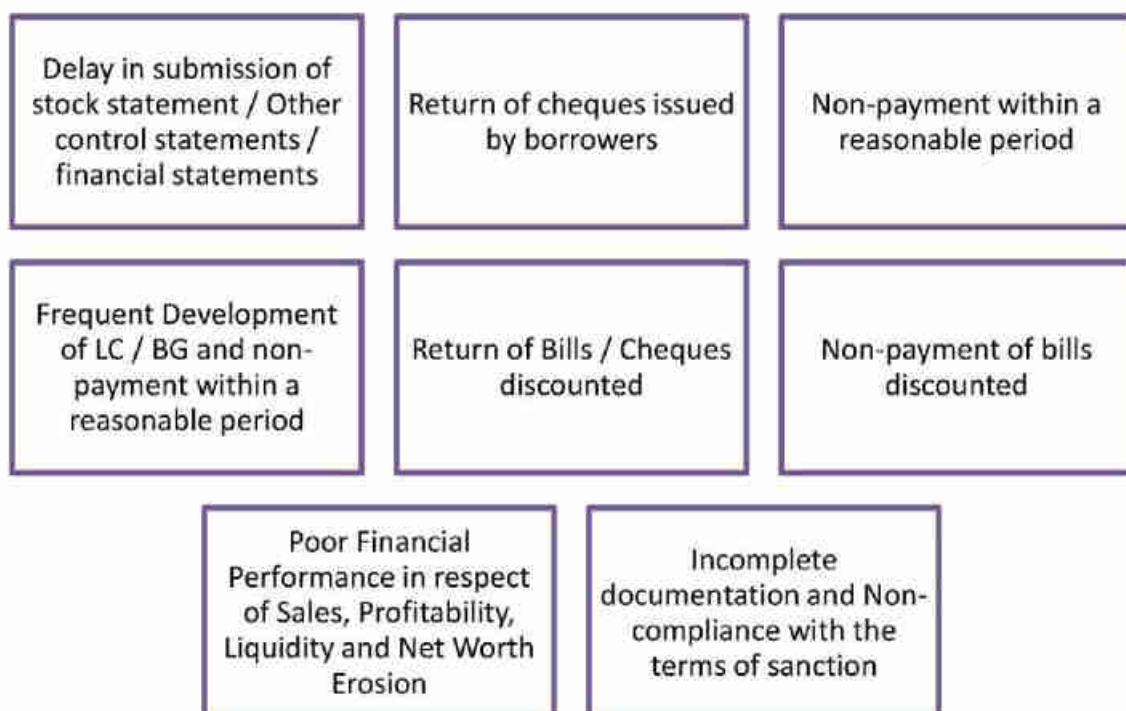
NPA Management is a broader concept. Banks have established dedicated NPA Management Cells / Distressed Asset Management Centre to tackle the rising issue of Non-Performing Assets. However, for small banks, especially UCBs, it becomes difficult to dedicate considerable resources for managing the Non-Performing Assets.

NPA Management can be divided in two major parts as below. These parts are further divided in sub-parts and explained thereafter.



The Reserve Bank of India had issued Guidelines on preventing slippage of NPA accounts on September 12, 2002. The guidelines still hold good even in today's circumstances. It was recommended that the problem must be recognized early. An Early Alert System should be introduced wherein banks would get to know about red flags raised in respect of unusual conduct of the account. Banks need to assess whether the default is due to some inherent weakness or due to a temporary liquidity or cash flow problem. It was recommended that a special category of asset to be formed and accounts showing following characteristics would then be transferred to such category for close monitoring.

Such early warning signs could be any one of the following:



**Please Note :- Part – 3 will be continued in next newsletter**

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## Scholarships for CA Students

Board of Studies, ICAI invites applications for the award of Scholarships to the selected candidates to be paid from April 1, 2019 onwards under following categories:

Sr. No.	Scholarship Category	No. of Scholarships	Amount (p.m.)	Eligibility Criteria
1.	<b>Merit-cum-Need</b>	As per eligibility criteria	Rs.1500/-	Rank holders (other than covered under Merit category) of Intermediate (IPC)/ Intermediate Course November, 2018 Exam whose parents/guardians total annual income does not exceed <b>Rs.2,50,000/-</b>
2.	<b>Need Based and Weaker Sections</b>	<b>300</b>	Rs.1250/-	Students of Intermediate (IPC)/Intermediate Course whose parents/guardians total annual income does not exceed <b>Rs. 2,00,000/-</b>
		<b>200</b>	Rs.1250/-	Students of Final Course whose parents/guardians total annual income does not exceed <b>Rs. 2,00,000/-</b>
		As per eligibility criteria	Rs.1250/-	The children undergoing Intermediate (IPC)/Intermediate or Final Course of the deceased members of ICAI where financial assistance is provided to spouses of the deceased members from the Chartered Accountants Benevolent Fund (CABF) shall also be eligible for scholarship.
3.	<b>Sri Dhanraj Kanhaiyalal Dudheria Scholarships</b>	6	Rs.1250/-	Students of Intermediate (IPC)/Intermediate/Final from Karnataka State under Need Based & Weaker Sections criteria
4.	<b>R.K. Khanna Memorial Scholarships</b>	2	Rs.1250/-	Students of Intermediate (IPC)/Intermediate/Final under Need Based & Weaker Sections criteria
5.	<b>J.S. Lodha Memorial Scholarships</b>	2	Rs.1250/-	Students of Intermediate (IPC)/Intermediate/Final under Need Based & Weaker Sections criteria
6.	<b>J.M. Sethia Charitable Trust Scholarships</b>	2	Rs.1250/-	Students of Intermediate (IPC)/Intermediate/Final under Need Based & Weaker Sections criteria
7.	<b>BCCO Foundation Scholarships</b>	2	Rs.1250/-	Students of Intermediate (IPC)/Intermediate/Final under Need Based & Weaker Sections criteria
8.	<b>R. P. Dalal Memorial Scholarship</b>	2	Rs.1250/-	Students of Intermediate (IPC)/Intermediate/Final under Need Based & Weaker Sections criteria
9.	<b>Out of Joint Corpus formed by Donors</b>	6	Rs.1250/-	Students of Intermediate (IPC)/Intermediate/Final under Need Based & Weaker Sections criteria

Board of Studies, ICAI also awards **Merit Scholarships** to the Meritorious Students as a token of appreciation. Students whose names are appearing at Sl. No. 1-10 of Merit lists of Intermediate (IPC)/ Intermediate of November, 2018 Exam, in case the Rank at Sl. No.10 continues to Sl. No. 11 or 12 or so on, then all such rank holders shall be granted @ Rs. 2000/- p.m. Such students are not required to apply.

The detailed guidelines along with the requisite application forms (Form no. 3 & 4) are available on the Institute's Website ([www.icai.org](http://www.icai.org)) (link: [http://www.icai.org/post.html?post\\_id=6486](http://www.icai.org/post.html?post_id=6486) ).

### Terms for award of Scholarships:

- Applicants shall be the registered students of Intermediate (IPC)/ Intermediate or Final Course.
- In the case of Intermediate (IPC)/Intermediate Students, Scholarship shall be paid for a maximum period of 18 months.
- In the case of Final students, Scholarship shall be paid for a maximum period of 30 months or balance period of their articleship, whichever is less.
- An additional amount of Rs. 100/- p.m. shall be paid to SC/ ST/ OBC students, under Need-based and Weaker Section Category on submission of certificate/ documentary proof duly attested by a gazetted officer or a member of the Institute.
- One scholarship under the Need-Based and Weaker Section Category is reserved for a Physically Challenged student.
- Income Certificate (Form No. 4) is to be submitted on the letter head of the Principal under whom the Student is undergoing Articleship (Practical Training) (Part I) / letter head of any member of ICAI in case the Student is not undergoing Articleship (Part-II). The applications without Form No. 4 will not be processed.

Duly completed and signed Application Forms in the prescribed formats as mentioned above should reach the Director, Board of Studies, The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, Sector-62, NOIDA-201309 **latest by 1<sup>st</sup> April, 2019.**

In case of any clarification, please contact the Board of Studies, Telephone Nos. 0120-3045914/931; email: [ajay.kumar@icai.in](mailto:ajay.kumar@icai.in)

**Director, Board of Studies**

## **The Finance Bill- 2019 –APPLICABLE AY 20-21**

Contributed by :- CA. Shekhar Sane  
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### **Direct Tax Proposals**

#### **1. Amendment -Income Salaries**

The Income chargeable under the head salaries shall be computed after making the following deductions. This is section 16 of income tax Act, 1961. – Section 16(ia)

The amount of standard deduction is increased by Rs. 10,000 from 40,000 to 50,000/-.

Summary: This benefit is available to all tax payers in all tax brackets, who are earning income under the head "Salaries".

#### **2. Amendment -Income from house property**

##### Amendment - Section 23(4)

Under Section 23 sub-section (4) of the Income tax act, 1961, the word "Two houses" is inserted instead of "One house".

The Subsection (4) before amendment states: - "Where the property referred to in sub-section (2) consists of more than one house. . . .

The Subsection (4) after amendment states: - "Where the property referred to in sub-section (2) consists of more than two houses . . .

Under Section 24 of income tax Act, in the first proviso and second proviso, after the amount of deduction, the words "or as the case may be, aggregate amount of deduction" are inserted.

The union budget has inserted the explanation to proviso 3, that the aggregate amount of deduction shall not exceed Rs. 2,00,000/-.

The amount of standard deduction as well as interest on borrowed money deducted for computation of income from house property is restricted to Rs. 2,00,000/-

Summary: To give tax relief to the taxpayer by allowing him option to claim "NIL" annual value in respect of any "two" houses, declared as self-occupied, instead of "one" as currently provided. However, deduction of interest from both such houses is restricted to Rs.2 lakhs only.

**Amendment - Section 23 (5)** : Proposed to tax the annual value **after the period of two years** (earlier one year) from the end of financial year in which the completion certificate is obtained.

Summary :- If a building / flats are held as stock in trade by builders, developers etc., then their taxation on "deeming fiction" will get postponed further by 1 year and they can get a chance to liquidate property by availing 1 more year, without payment of tax under "Notional Value" concept.

### **3. Amendment - Income from Capital Gains**

#### **Section 54**

With effect from **AY 2020-21**, the taxpayer to have option to purchase or construct **"two" residential houses** in India; provided that LTCG on the sale of a residential house does not exceed **Rs. 2 crores**.

Taxpayer can avail of this benefit only **once during his / her lifetime**.

### **4. Amendment to Section 87A - Rebate**

The income tax attributable to an **Assessee, being individual** whose total income does not exceed Rs. 5 Lakhs, is eligible for rebate up to Rs.12,500/-. If an individual's income exceeds Rs. 5 Lakhs, then he or she will not be eligible for Rs. 12,500/-.

Summary:- As earlier, this benefit is not available to any assessee other than an individual. Secondly, if the income exceeds after considering all Chapter VI-A deductions etc. Rs.5 lakhs, then the above benefit is not available. Tax will be worked out as per "presently applicable provisions". Objective is to give total relief to tax payers who are from lower middle class by giving "elevation in threshold limit in rebate up to Rs.12,500/-

### **5. Amendment relating to Tax Deduction at Source -**

<b>Section</b>	<b>Particulars of income</b>	<b>Existing Threshold Limits</b>	<b>Proposed Threshold Limits</b>
194-A	Threshold for non-deduction of TDS on interest income, paid by a banking company, co-operative society or a post-office @10%	Rs. 10,000 p.a.	Rs. 40,000 p.a.
194-I	TDS on rental income, paid by individual/HUF liable for audit u/s 44AB and any other person @2% in case of plant and machinery and 10% in case of land and building	Rs. 1,80,000 p.a.	Rs. 2,40,000 p.a.

Summary: Compliance burden is reduced by elevation in "threshold limits"

### **6. Amendment relating to Section 80 IBA of the Income Tax Act, 1961-**

For **making more homes available under affordable housing**, approval time of the scheme before such competent authority has been **extended for one more year** i.e. till 31/03/2020;

Summary:- Above amendment is useful for promoters, developers and builders who have opted to claim deduction under above Section.

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## **Registered Valuers: New Opportunities for Chartered Accountants**

**Contributed by :- CA. Anandkumar Gawade**

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Valuation exercise is not new to our profession. It is prevalent since many years, especially post liberalisation of economy in 1992. However, valuation as a profession was neither under purview of any authority nor any specific guidelines or standards were issued for the same. For the first time, Companies Act, 2013 incorporated provisions of Registered Valuers and made mandatory to obtain reports from Registered Valuers w.e.f. 1<sup>st</sup> February 2019.

In this regards, Ministry of Corporate Affairs (MCA) has issued notification dated 18/Oct/2017 to notify section 247 of the Companies Act, 2013. Section 247 is governing section for Registered Valuers. MCA has issued The Companies (Registered Valuers and Valuation) Rules, 2017 for procedural matters. Accordingly, IBBI is appointed as Authority to overall supervision, management and registration of Valuers under the Act. Such recognition of Registered Valuers has opened a new Pandora of Opportunities to Chartered Accountants and financial professionals.

Lets see what Section 247 states:

### **247. Valuation by registered valuers.—**

(1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

(2) The valuer appointed under sub-section (1) shall,—

- (a) make an impartial, true and fair valuation of any assets which may be required to be valued;
- (b) exercise due diligence while performing the functions as valuer;
- (c) make the valuation in accordance with such rules as may be prescribed; and
- (d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after the valuation of assets.

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees: Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4) Where a valuer has been convicted under sub-section (3), he shall be liable to—

- (i) refund the remuneration received by him to the company; and
- (ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

### **IBBI has classified Registered Valuers into following three categories:**

- i. Land & Building
- ii. Plant & Machinery
- iii. Securities or Financial Assets

Accordingly, IBBI has prescribed eligibility criteria, rules, and syllabus and exam patterns for each class. More details are available at <https://ibbi.gov.in>

IBBI has recognized around 11 Registered Valuer Organisations (RVOs) who shall conduct the 50 hours training to its members, grant memberships, etc. Eligible member has an option to obtain membership of any one of the RVO. ICAI Registered Valuers Organization is one of the recognised RVO by IBBI.

Once the candidate has completed the mandatory 50 hours of training, it has to enroll with IBBI for examination. Exam is conducted by BSE Institute Ltd and can be given at many locations and multiple times. Exam shall have objective type 93 questions of 100 marks and shall carry 25% negative marks for each wrong answers. Overall passing score required is 60 marks. Time duration of exam is 2 hours and it shall be taken in computerized environment. Results are announced immediately. Once exam is passed, candidate has to be registered with IBBI through RVO. Entire registration process is online.

So far, IBBI has registered total 792 Registered Valuers for all three classes. Out of total 792, there are 180+ candidates registered under Securities or Financial Assets Class.

### **REQUIREMENTS OF VALUATION FROM REGISTERED VALUERS**

**As Per Companies Act 2013, Following Sections Requires Valuation From Registered Valuers In Following Areas:**

<b>Sl. no.</b>	<b>Section/ Rule</b>	<b>Particulars</b>	<b>Details</b>
1	62(1)C	Valuation report for Further Issue of Shares	If any company plans to issue new shares (including a rights issue to existing shareholders or to employees under employees stock options), the price of such shares should be determined by the valuation report of a Registered Valuer.
2	192(2)	Valuation of Assets Involved in Arrangement of Non cash transactions involving Directors	In case of sale or purchase of any asset involving a company and the directors of the company (or its holding, subsidiary or associate company) or a person connected with the Director for consideration other than cash, the value of the assets has to be calculated by a Registered V
3	230(2)(c)(v)	Valuation of shares, property and assets of the Company under a scheme of Corporate Debt Restructuring	In case of a compromise or arrangement between members (such as in mergers or amalgamations) or with creditors (such as in corporate debt restructuring), a valuation report in respect of shares, property or assets, tangible and intangible, movable and immovable of the company, or a swap ratio report by a Registered Valuer is required. In case of mergers, the directors are also required to circulate a report to members specifying, inter alia, any
4	230(3)	Valuation report along with Notice of creditors/shareholders meeting –Under scheme of compromise/Arrangement	In case of a compromise or arrangement between members (such as in mergers or amalgamations) or with creditors, a valuation report in respect of shares, property or assets, tangible and intangible, movable and immovable of the company, or a swap ratio report by a Registered Valuer is required.
5	232(2)(d)	The report of the expert with regard to valuation, if any, would be circulated for meeting of creditors/Members	Same as above
6	232(3)(h)	The Valuation report to be made by the tribunal for exit opportunity to the shareholders of transferor Company –Under the scheme of Compromise/Arrangement in case the Transferor company is Listed Company and the Transferee-company is an unlisted Company	Same as above
7	236(2)	Valuation of equity shares held by the Minority Share	In case an acquirer or person acting in concert with the acquirer acquire 90% or more of the

**Provisions Under Insolvency & Bankruptcy Code:**

S. No	Regulation	Particulars	Details
1	2(1)(m)	Definitions	"Registered Valuer" means a person registered as such in accordance with the Companies Act, 2013 (18 of 2013) and rules made thereunder.
2	27	Appointment of Registered Valuers	The IRP shall within seven days of his appointment, appoint two registered valuers to determine the liquidation value of the corporate debtor in accordance with Regulation 35

**Sebi Too Has Asked For Valuation By Registered Valuers Under Section 247 Of The Companies Act, 2013 For Following Regulations:**

S. No	SEBI Regulation	Particulars
1	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018	<p>158(6)(b). Conversion price of debt, as part of a debt restructuring scheme shall be certified by two independent valuer</p> <p>163(3). Where the specified securities are issued on a preferential basis for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent valuer, which shall be submitted to the stock exchanges where the equity shares of the issuer are listed: Provided that if the stock exchange(s) is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may seek any information, as deemed necessary, from the issuer.</p> <p>165. Where the shares of an issuer are not frequently traded, the price determined by the issuer shall take into account the valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies: Provided that the issuer shall submit a certificate stating that the issuer is in compliance of this regulation, obtained from an independent valuer to the stock exchange where the equity shares of the issuer are listed.</p>
2	SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015	87C(1)(ii). An issuer whose security receipts are listed on a stock exchange shall ensure that the valuation is conducted by an independent valuer
3	SEBI (Appointment of Administrator and Procedure for refunding to the Investors) Regulations 2018	<p>7(2)(b). the Administrator shall engage the services of a registered valuer to evaluate the properties of defaulter that are attached by the Recovery Officer and for submission of a certified valuation reporting accordance with the guidelines issued by the Board.</p> <p>8(1). The Administrator shall undertake the process of sale of properties after conducting an independent valuation of such properties by a registered valuer.</p>
4	SEBI (Real Estate Investment Trust) Regulations, 2014	<p>21(4). A full valuation shall be conducted by the valuer atleast once in every financial year: Provided that such full valuation shall be conducted at the end of the financial year ending March 31st within three months from the end of such year.</p> <p>21(5). A half yearly valuation of the REIT assets shall be</p>

## **REPORTING CONTENTS:**

Each Registered Valuer shall following international accepted valuation standards or Valuation Standards issued by respective RVO. In India, so far only ICAI has issued Valuation Standards. Each valuation report should have following contents:

- (a) background information of the asset being valued;
- (b) purpose of valuation and appointing authority;
- (c) identity of the valuer and any other experts involved in the valuation;
- (d) disclosure of valuer interest or conflict, if any;
- (e) date of appointment, valuation date and date of report;
- (f) inspections and/or investigations undertaken;
- (g) nature and sources of the information used or relied upon;
- (h) procedures adopted in carrying out the valuation and valuation standards followed;
- (i) restrictions on use of the report, if any;
- (j) major factors that were taken into account during the valuation;
- (k) conclusion; and
- (l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

Additionally Registered Valuer can carry out valuations for following activities:

- i. Valuation of Business / Firm
- ii. Valuation of Intangibles such patents, copyrights, technical knowhow, franchise agreements, etc.
- iii. Valuation of Shares under Companies Act, Foreign Direct Investments, etc.
- iv. Valuation of Goodwill
- v. Valuation for Swap Shares in case of Amalgamation
- vi. Valuation for Family Settlement
- vii. Valuation for Arbitration/Dispute Settlement/ Dispute Resolution
- viii. Valuation for Specific Purpose
- ix. Valuation in case of Take Over of Companies
- x. Valuation of Shares for Transfer Pricing under Income Tax
- xi. Calculation of Fair Value as per IND-AS / IFRS/ Accounting Standards

As such, there is huge scope for services for CAs for valuation, as many corporate actions require Valuations from Registered Valuers. However, there are standards and reporting guidelines with lot of legal responsibility under various laws.

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## **Talk on "Happy Life & The Role of Wealth In It" jointly with Lions Club, Pune**



**Inauguration**



**Participants**

## Taxability of Goods Bearing Registered/ Unregistered Brand Names

**Contributed by :- CA. Yogesh Ingale**  
**Email :- [yogesh.ingale@yriassociates.com](mailto:yogesh.ingale@yriassociates.com)**

□ **Introduction –**

GST was implemented in India from 1<sup>st</sup> July, 2017 and a number of notifications have been issued since then. The Rules have been amended multiple number of times and the law as it stands today is a complex vortex requiring significant skills for merely comprehending basic facets of the law.

The amendment to principal notification no. 1/2017 – CT (R) dt. 28th June, 2017 vide notification no. 27/2017 – CT (R) dt. 22nd September, 2017 introduced concept of goods bearing registered / unregistered brand name and their taxability though the concept was in place in earlier tax regimes. In this article, let's have a walk through the legal provisions, rules and judicial pronouncements in this regard.

□ **Legal provisions:**

1. Notification no. 1/2017 – CT (R) dt. 28<sup>th</sup> June, 2017 -

Entry no.	HSN	Description of goods	Applicable tax rate
11	0406	Chena or paneer put up in unit container and bearing a registered brand name	5%
13	0409	Natural honey, put up in unit container and bearing a registered brand name	5%
25	0713	Dried leguminous vegetables, shelled, whether or not skinned or split [put up in unit container and bearing a registered brand name]	5%

**Explanation:**

The phrase “registered brand name” means a brand name or a trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

2. Notification no. 2/2017 – CT (R) dt. 28<sup>th</sup> June, 2017 -

Entry no.	HSN	Description of goods	Applicable tax rate
27	0406	Chena or paneer, other than put up in unit container and bearing a registered brand name	Exempt
29	0409	Natural honey, other than put up in unit container and bearing a registered brand name	Exempt
25	0713	Dried leguminous vegetables, shelled, whether or not skinned or split [other than put up in unit container and bearing a registered brand name]	Exempt

(\* only few entries have been taken for illustration purposes)

**Explanation:**

(I) The phrase “unit container” means a package, whether large or small (for example, tin, can, box, jar, bottle, bag, or carton, drum, barrel, or canister) designed to hold a pre-determined quantity or number, which is indicated on such package.



(ii) The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act, 1999.

3. Amendment to above notifications vide notification no. 27/2017 - CT (R) & 28/2017 - CT (R) dt. 22<sup>nd</sup> September, 2017 -

(i) For words "put up in unit container and bearing a registered brand name" the words, brackets and letters "put up in unit container and -

- (a) bearing a registered brand name; or
- (b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE]", shall be substituted

(ii) Explanation :

(a) The phrase "brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) The phrase "registered brand name" means,-

- (i) a brand registered as on the 15th May 2017 under the Trade Marks Act, 1999 irrespective of whether or not the brand is subsequently deregistered;
- (ii) a brand registered as on the 15th May 2017 under the Copyright Act, 1957(14 of 1957);
- (iii) a brand registered as on the 15th May, 2017 under any law for the time being in force in any other country."

Definition of unit container remained unchanged.

Let's analyse the above amendments in following three parts:

**Part no.1:**

Considering the amendment in definition of "registered brand name" and differentiation made between "brand name & registered brand name", what is the purpose of introducing such provision?

- a) Earlier, specified goods were taxable under GST, at the rate specified, if they were put up in unit container and were bearing a registered brand name.
- b) It is pertinent to note that only if both the conditions were satisfied, goods were liable to tax.
- c) Below given table specifies the situations in which specified goods were taxable/exempted between the period 1<sup>st</sup> July, 2017 to 21<sup>st</sup> September, 2017 i.e till the amendment took place -

Whether goods are put up in unit container?	Whether goods are bearing a registered brand name?	Whether goods are bearing a brand name which is not registered?	Whether goods are taxable / exempted?
Yes	Yes	No	Taxable
Yes	No	Yes	Exempted
No	Yes	No	Exempted
No	No	Yes	Exempted

Considering pattern of taxability, suppliers started to deregister their brands under Trade Marks Act, 1999 and getting the benefit of exemption. At the same time, these suppliers were enjoying the goodwill of their brand in the market.

e) To tackle this situation and to enhance the taxability of brands registered under the other acts also, amendment vide notification no. 27/2017- CT (R) dt. 22<sup>nd</sup> September, 2017 was introduced. Through this notification, the following conditions were prescribed for the taxability of goods –

I. Put up in unit container and

II. Bearing a registered brand name or

Bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily forgone, subject to the conditions as in the ANNEXURE],

f) Hence from 22<sup>nd</sup> September, 2017 onwards, where goods, as prescribed in the schedule, put up in unit container and bearing a registered brand name or even if brand name is not registered but on which an actionable claim or enforceable right in a court of law is available, are taxable at the rate specified.

**Part no. 2:**

Difference between registered brand name and brand name on which an actionable claim or enforceable right in a court of law is available

a) Registered brand name is defined under notification no. 27/2017 – CT (R) as follows: –

1. A brand registered as on the 15<sup>th</sup> May, 2017 under Trade Marks Act, 1999, irrespective of whether or not the brand is subsequently deregistered.

2. A brand registered as on the 15<sup>th</sup> May, 2017 under Copyright Act, 1957 (14 of 1957).

3. A brand registered as on the 15<sup>th</sup> May, 2017 under any law for the time being in force in any other country.

b) Apart from above, the phrase brand name is defined under the same notification as follows: -

The phrase "brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

c) In the eyes of law, registered brand name possesses legal benefits under respective laws. However, unregistered brand name does not possess legal benefits but still it can be protected by means of common law of tort. To succeed in such action, it is necessary to establish that unregistered brand names have comparable goodwill or reputation in connection with the product, service or business with which it is used.

**Part no. 3:**

Whether mere declaration mentioning the name and registered address of supplier as the manufacturer, as per the statutory requirement, can be considered as "not bearing a brand name or trade name" and hence eligible for exemption from payment of GST?

a) In case of brand names, which are not covered under definition of 'registered brand name', even a trade name which is used in relation to goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such goods and some person using such name or mark with or without any indication of the identity of that person, shall be considered as brand name.

b) Industry is facing problem as to whether declaration, mentioning the name and address of the manufacturer as per the statutory requirement (say as per Legal Metrology Act, 2009), is to be considered as brand name or not.

c) In this regard, we need to analyse provisions related to brand name under earlier laws and judicial pronouncements in this regard.

d) As per notification no. 8/2003 – CE dt. 1<sup>st</sup> March, 2003, SSI exemption was not applicable to specified goods bearing a brand name or trade name, whether registered or not, of another person, except few cases.

As per explanation A, "brand name or trade name means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of identity of that person."

e) Under GST, requirement of registration of brand name is prescribed separately. Remaining part of definition is identical. However, it is important to note that SSI exemption is not applicable in case of goods bearing a brand name of another person.

f) In case of Tarai Foods Limited Vs CCEx. Meerut-11-2006 (198) E.L.T. 323 (SC), honourable supreme court observed that "Under the standard Weights and Measures (Packets Commodities) Act, 1977 every packet is required to bear thereon or on label squarely affixed thereto a definite, plain and conspicuous declaration as to, inter alia, the name and address of the manufacturer. If the name of the manufacturer were to be a brand name, then this would mean that there would be no unbranded unit container at all in law and the distinctiveness of T.H. 2001.10 would be meaningless."

g) In terms of section 18 of the Food Safety and Standards Act, 2006, no person shall manufacture, distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations. Rule 6 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, in turn mandates provision of details of the manufacturer of the product on the food package. Hence, if name of the manufacturer is construed as a brand name, then every food product would be considered as branded.

h) Advance ruling in case of Aditya Birla Retail Limited –

It was held in above case that goods bearing a name and address of manufacturer, as per the statutory requirement cannot be considered as not bearing a brand name. Reliance was placed by authority on the decision in case of Commissioner of Central Excise, Trichy vs Grasim Industries Ltd [2005 (183) E.L.T. 123 (SC)], where it was held that even the name of some other company, if it is used for the purpose of indicating a connection between the product and that company would be sufficient to constitute a brand name. It was also contended that the said decision rendered by the three-member bench of the Honourable Supreme Court would have precedence over the decisions of the Honourable Supreme Court (rendered by two-member bench) in the case of Tarai Foods.

However, in the author's view, the premise of both the above cases was different. Advance Ruling Authorities could have distinguished both cases as the question before Honourable Supreme Court in the case of Tarai Foods was different than that was in case of Grasim Industries Ltd. In case of Grasim Industries Ltd., the Honourable Supreme Court was concerned with whether the use of words 'A subsidiary of Grasim Industries Ltd.' by manufacturer i.e. subsidiary company of Grasim Industries Ltd. (goods bearing a brand name or trade name of another person), can be construed as a 'brand name' or not and hence both the decisions operate in different domains.

I) Hence, to conclude, in the author's view, mere declaration mentioning the name and registered address of the supplier as the manufacturer, as per the statutory requirement, cannot be considered as "bearing a brand name or trade name" and hence shall be eligible for exemption under GST.

**Other points to be considered: -**

a) Provisions do not state that goods must itself bear or be physically affixed with brand name or trade name. Hence, in some situations, where an affixation may be impossible, such goods shall be considered as branded goods, as long as its environment conveys that it is branded.

b) Even a use of part of a brand name or trade name could be considered as goods bearing a brand name so long as it indicates a connection in the course of trade between such goods and some person using such brand name.

c) In case of unregistered brand name, for foregoing an actionable claim or enforceable rights on a brand name and to avail GST exemption –

the person undertaking packing of such goods in unit containers which bear a brand name, shall file an affidavit to that effect with the jurisdictional Commissioner of Central tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name and

the person undertaking packing of such goods in unit containers which bears a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.

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