



KANU DOSHI GROUP

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TAX UPDATES

Sum paid as Bonus or Commission to Employees of a company disallowable u/s. 36(1)(ii) of the Income Tax Act, 1961 if the same is in lieu of Profit or Dividend

INTRODUCTION:

As per the Provisions of Section 36(1)(ii) of the Income tax Act, 1961 (“the Act”), any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission is deductible while computing the Income. This provision is an enabling provision allowing deduction on account of bonus or Commission paid to employees. The said payments is to be made out of profits subject to conditions mentioned in the section. Any expenditure incurred on account of Payment of Commission to a person other than an employee is not covered by this provision.

ALLOWABILITY:

The sum paid as Bonus or Commission is allowable as deduction u/s 36(1)(ii) of the Act in following cases:

- The sum paid is bonus or commission for services rendered.
- If the bonus or commission not been paid, it would have not added to the profits or dividend of the company. [A Test laid by The Bombay HC ruling in Loyal Motors Service Company Limited vs. Commissioner of Income Tax (1946) 14 ITR 647 (Bom.)]
- The bonus paid to employees is not to reduce profit of the company and not to avoid payment of taxes.

Hence, if the sum is paid as Bonus or Commission in lieu of Dividend, it is not a permissible deduction u/s. 36(1)(ii) of the Act.

REFERENCE:

Decision of Delhi High Court in SRC Aviation Private Limited vs. Assistant Commissioner of Income Tax, (2022) 114 CCH 0006 (Del HC).