

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
LOK SABHA**

**UNSTARRED QUESTION No. 4948**

**TO BE ANSWERED ON FRIDAY THE 31<sup>st</sup> MARCH, 2017**

**10 CHAITRA, 1939 (SAKA)**

**'Tax Evasion by Companies'**

**4948. SHRI JAGDAMBIKA PAL:**

Will the Minister of FINANCE be pleased to state:

- (a) whether the Government has noticed that several companies are evading taxes through amalgamation and consequent creation of goodwill in its books of account used for tax depreciation leading to lower tax;
- (b) if so, the details thereof;
- (c) whether the Government proposes to restrict such tax evasion by amending Section 32(1) of Income Tax Act, 1961 providing that no depreciation on goodwill as an intangible asset would be allowed to the successor company; and
- (d) if so, the details thereof and the action taken so far in this regard?

**ANSWER**

**(MINISTER OF STATE IN THE MINISTRY OF FINANCE)  
(SHRI SANTOSH KUMAR GANGWAR)**

(a)& (b): On the legal issue of claim of depreciation on "goodwill", Supreme Court in *CIT v. Smirf Securities Ltd. [(2012) 348 ITR 302 (SC)]* has held that "goodwill" is to be treated as an asset under Explanation 3 (b) of Sec. 32(1) of the Income-Tax Act, 1961 and is, therefore, eligible for depreciation. However, its quantification/valuation, being a factual issue, remains a contentious one. Therefore, the said judgement and specific facts and circumstances of a case require consideration to determine if there is any tax avoidance in such transactions.

However, specific instances on this issue are not maintained in a centralized manner.

(c)& (d): No proposal to amend the provision is presently under consideration.

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