

# Skill vs chance: Taxman the referee in online gaming

Rate at which winnings are taxed depends on level of skill applied and whether there is 'luck' involved

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The 2020 lockdown saw the virtual world become a reality for millions. Many, like Mumbai-based M. Lal (*name changed on request*), spent a lot of time playing online games. "I work in the travel industry that came to a standstill during the lockdown and has not picked up yet. Stuck at home, I play online games for entertainment. But with some games like rummy, poker, cricket, quizzes, and battleground games, you can make good money," says Lal.

According to a Deloitte India study, the amount of time spent by Indians on gaming apps increased 21 per cent during the initial lockdown, while the number of users crossed 300 million.

Players need to be aware of the income-tax (I-T) rules that govern winnings from online games. Also, as Naveen Wadhwa, deputy general manager, Taxmann, says: "Any income, irrespective of its quantum, earned from online gaming must be reported while filing I-T returns."



## Is skill involved?

Recently, there was controversy regarding how winnings from fantasy sport should be taxed. Says Wadhwa: "The essence of the controversy is whether income from online games should be regarded as income from a game of skill or a game of chance." He informs that a game that does not involve any skill is taxed according to the provisions of Section 115BB. If it requires application of skill, it is taxed at the applicable slab rate.

Based on court rulings regarding fantasy games, Wadhwa says: "Participation in fantasy games requires skill and knowledge of the game. It cannot be regarded as gambling. Winnings from such games should be charged to tax at normal rates."

Winnings from games that involve chance are taxed under Section 115BB. Says Suresh Surana, founder, RSM India: "Section 115BB provides for taxing income derived by winnings from lottery, crossword puzzle, racing, including horse racing, cards and other games, gambling or betting of any form, including online gaming."

## TAXATION IN GAMES OF CHANCE

	Amount (₹)
Joining fee*	500
Amount bet	1,000
Amount won	5,000
Taxable amount	5,000
Tax payable @ 31.2%	1,560
Post-tax amount	3,440

\*Entry fee for participating in the contest will not be allowed as deduction

Such income is subject to tax at 30 per cent (plus applicable surcharge and cess).

## No skill, no deductions

In cases where Section 115BB applies, income earned is taxed on gross basis at 30 per cent. According to Section 58(4), no deduction is allowed for expenditure incurred on earning such income. Gopal Bohra, partner, NA Shah Associates, says, "The taxpayer cannot claim any benefit of tax slab on such income, or deduction under Section 80C or 80D while computing his tax liability on such income."

## TDS has to be paid

The taxpayer receives his winnings after paying tax deducted at source (TDS). Kapil Rana, founder, and chairman, HostBooks, says, "According to Section 194B, the person responsible for paying to any person any income by way of winning from lotteries, crossword puzzles or card and other games of an amount that exceeds ₹10,000 shall at the time of payment deduct tax at 30 per cent."

In the case of games that involve knowledge or skill, TDS may not be required to be deducted. Says Wadhwa: "However, the platforms play safe and deduct tax at 30 per cent. If a participant takes the stand that such income will be charged to tax at normal tax rates, he can claim refund of the excess tax."

The TDS deducted will be reflected in the taxpayer's Form 26AS. Credit for this amount should be taken while filing I-T return. Says Bohra: "Keep track of all your winnings, especially if they are below ₹10,000, on which TDS is not deducted."