ACCOUNTING, TAX & REGULATORY NEWSLETTER
VOLUME 77

www.bdo.in
June 2023

TABLE OF CONTENTS

- Accounting Update 01
- Regulatory Updates 07
- Tax Updates
  - Direct Tax 09
  - Indirect Tax 13
  - Transfer Pricing 19

ACCOUNTING UPDATES

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

EAC OPINION

TIMING OF CAPITALISATION OF IRRIGATION ASSETS

Facts of the Case:

A company (hereinafter referred to as 'the Company') is wholly owned by the Government of Karnataka and is formed for the purpose of completion of the irrigation projects in the Krishna River basin of Karnataka. The Project is being implemented in several stages. Stage I and Stage II of the Project have been completed and fully capitalised in the books of account prior to the Company transiting to the Indian Accounting Standards (Ind AS).

The Stage III of the Project is under implementation to utilise 130 thousand Million Cubic Feet (TMC) of water allocated to the Upper Krishna Project (UKP) under the Inter-State Water Disputes Tribunal – II award. The notification of the award of the Krishna Water Dispute Tribunal is still awaited from the Government of India, as some of the riparian states have approached the Hon'ble Supreme Court for modification of the allocation. However, the Government of Karnataka has issued an administrative order to implement the Project.

The expenditure incurred on the Project was being continued till the year 2018-19 under Capital Work-in-Progress (CWIP), as the storage of water could not be accomplished and let out in the canal systems due to the litigation pending before the Hon`ble Supreme Court and awaiting notification of the Krishna Water Disputes Tribunal (KWDT) award. Meanwhile, some stretches of the canals were being completed and they were in a maintenance period.

The Government of Karnataka had been requested to take a legal opinion from the Advocate General of Karnataka regarding legal impediments, if any, in capitalising the UKP Stage III completed canals. The Government communicated the opinion of the Advocate General, Karnataka, according to which there were no legal impediments to capitalising the UKP Stage III assets. Based on the legal opinion of the Advocate General, the Company started capitalising the UKP Stage III assets to the extent they were completed, and for which, completion certificates have been issued by the Chief Engineer of the respective projects.

The components of an irrigation project comprise (1) the head works of the Lift Irrigation Scheme, including civil and electro-mechanical components to pump water into the canal system (2) the Canal System comprising (i) Main Canals (ii) Distribution Canals (iii) Lateral Canals (iv) Minors and ultimately, (v) Field Irrigation Canals (FICs) which carry water to the agricultural fields of the farmers.

Prior to the implementation of Ind AS, the Company capitalised on the canals only when they were substantially completed and put to use. To assess the stage of completion for the purpose of capitalisation, the Company had evolved a policy that if the project had achieved 90% of the contemplated irrigation potential, it would be capitalised. Till then, the expenditure was being carried out under capital work-in-progress.

The canals, including all their subsidiary conveyance networks, are very lengthy, and to facilitate speedy implementation, tenders are awarded for shorter stretches. Tenders for the work may or may not be awarded simultaneously and in chronological order as the water flows. As such, in a canal network, some of the stretches

may be completed and a completion certificate issued. For instance, while in a canal network, the stretch from km 1 to km 10 of the main canal may be completed, the balance canal system in km 10 to 20 or its distributary, laterals, and FIC may not be completed and ready for the ultimate use of the water by the farmer. Similarly, a farther stretch of canal, say 10 km to 20 km may be completed and ready to use, but the prior reach from km 0 to 10 may not be ready. All these canals could be put to ultimate use only when the FIC is completed and the whole canal system is completed and ready for use. However, in reality, it takes many years before the FICs are completed and the entire canal system is put to use, even though, the lift irrigation system (water lifting machinery and related infrastructure), main canals, and distributor canals are ready and in place for the intended use.

The Company has stated that Ind AS 16, 'Property, Plant, and Equipment' stipulates that the cost of an item of property, plant, and equipment (PPE) should be recognised as an asset if, and only if:

- it is probable that future economic benefits associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Further, with regard to the fulfilment of recognition criteria, the Company has stated as follows:

- a) Regarding the criteria of future economic benefits, the water rates on the water let out to farmers (revenue to the Company) can be realised by the Company only when the water is let out to the farmers in the FICs.
- b) Regarding criteria of the measurement of cost, the same is the historic expenditure, incurred on the construction of the canals and hence capable of being measured reliably.

The Company is of the view that the canal system completed is physically in a usable condition, the only impediment to its non-usage is that the canal system in the initial part is not complete and hence water cannot be made to flow through it. Since for a stretch of the canal system, the completion certificate has been issued, it is in the location and condition necessary for the intended use, and the same can be deemed to be available for use. Further, the stretches of the completed canals are subject to normal wear and tear as they are open to elements and their condition deteriorates due to the long gestation before the FICs are completed. Accordingly, the Company has been in the practice of capitalising the irrigation system, based on the works completion certificates issued for each component or stretch of the canals independently and claimed depreciation keeping in view paragraph 55 of Ind AS 16.

Query

In view of the above, an opinion is sought as to whether it is appropriate to capitalise the irrigation assets comprising the water lifting system and canals, prior to completion of the FICs based on completion certificates issued in respect of individual components of the canal system. If not, what are the criteria to be adopted?

Points Considered by the Committee

The Committee notes that the basic issue raised relates to The Committee notes that the basic issue raised by the Company relates to the timing of capitalisation of various irrigation assets comprising the water lifting system and canals under Stage III of UKP, prior to the completion of the entire network of the FICs. The Committee has, therefore, examined only this issue and has not examined any other issue that may arise from the Facts of the Case. Further, the Committee wishes to point out that the Standards hereinafter referred are the Ind AS notified under the Companies (Indian Accounting Standards) Rules, 2015, as revised or amended from time to time. Furthermore, the opinion expressed hereinafter is purely from an accounting perspective and not from a legal perspective including legal interpretation of the opinion of the Advocate General, Karnataka, administrative order of the Government of Karnataka, the status of the pending litigation before the Hon'ble Supreme Court etc.

With regard to the issue raised, the Committee notes the following paragraphs of Ind AS 16, 'Property, Plant and Equipment:

"Property, plant, and equipment are tangible items that:

a) Are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and
b) Are expected to be used during more than one period."

"7 The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:

a) It is probable that future economic benefits associated with the item will flow to the entity; and
b) The cost of the item can be measured reliably."

"16 The cost of an item of property, plant and equipment comprises:

a) Its purchase price, including import duties and non-refundable purchase taxes, after deducting trade discounts and rebates.
b) Any costs directly attributable to bringing the asset to the location and condition necessary for it to be capable of operating in the manner intended by management.
c) The initial estimate of the costs of dismantling and removing the item and restoring the site on which it is located, the obligation for which an entity incurs either when the item is acquired or as a consequence of having used the item during a particular period for purposes other than to produce inventories during that period."

"20 Recognition of costs in the carrying amount of an item of property, plant and equipment ceases when the item is in the location and condition necessary for it to be capable of operating in the manner intended by management. Therefore, costs incurred in using or redeploying an item are not included in the carrying amount of that item. For example, the following costs are not included in the carrying amount of an item of property, plant, and equipment:

a) Costs incurred while an item capable of operating in the manner intended by management has yet to be brought into use or is operated at less than full capacity;
b) Initial operating losses, such as those incurred while demand for the item's output builds up; and
c) Costs of relocating or re-organising part or all of an entity's operations."

"22 The cost of a self-constructed asset is determined using the same principles as for an acquired asset. If an entity makes similar assets for sale in the normal course of business, the cost of the asset is usually the same as the cost of constructing an asset for sale (see Ind AS 2). Therefore, any internal profits are eliminated in arriving at such costs. Similarly, the cost of abnormal amounts of wasted material, labour, or other resources incurred in self-constructing an asset is not included in the cost of the asset. Ind AS 23, Borrowing Costs, establishes criteria for the recognition of interest as a component of the carrying amount of a self-constructed item of property, plant, and equipment."

The Committee notes from the above that recognition of costs in the carrying amount of an item of PPE (including self-constructed asset) should cease at the time when an item is in the location and condition necessary for it to be capable of operating in the manner intended by management. Thus, from such a point in time, the item under construction should be transferred from capital work in progress to the gross block of PPE. The Committee is of the view that the point in time when an asset is in the location and condition necessary for it to be capable of operating in the manner intended by management is a question of fact which should be determined in the specific facts and circumstances on the basis of various factors, such as technical evaluation of the readiness of the asset, completion of test runs to ensure that the asset is functioning properly etc. The Committee further notes that what is important is when the asset is in the location and condition necessary for it to be capable of operating in the manner intended by management and not the intended capacity to be achieved.

In this regard, the Committee also notes paragraphs 24 and 25 of Ind AS 23, 'Borrowing Costs', notified under the Companies (Indian Accounting Standards) Rules, 2015, which addresses the issue from the point of view of the borrowing costs, however, the Committee is of the view that the principle enunciated in these paragraphs can be applied to other expenditures also. Paragraphs 24 and 25 of Ind AS 23 are reproduced below:

"24 When an entity completes the construction of a qualifying asset in parts and each part is capable of being used while construction continues other parts, the entity shall cease capitalising borrowing costs when it completes substantially all the activities necessary to prepare that part for its intended use or sale.

25 A business park comprising several buildings, each of which can be used individually, is an example of a qualifying asset for which each part is capable of being usable while construction continues in other parts. An example of a qualifying asset that needs to be complete before any part can be used is an industrial plant involving several processes which are carried out in sequence at different parts of the plant within the same site, such as a steel mill."

From the above, the Committee is of the view that in case of an integrated PPE/project having several units/parts, those units/parts of the PPE/ project which are capable of being usable while the construction continues for the other units/ parts and can be operated independently of the remaining units/parts, should be considered to be in the location and condition necessary for it to be capable of operating in the manner intended by management and should be capitalised as PPE.

In this context, the Committee notes from the Facts of the Case that the Company is executing an irrigation project comprising of (1) the head works of the Lift Irrigation Scheme, including civil and electro-mechanical components to pump water into the canal system and (2) Canal System comprising of (i) Main Canals (ii) Distribution Canals (iii) Lateral Canals (iv) Minors and ultimately, (v) FICs which actually carry water to the agricultural fields of the farmers, which is the ultimate/intended use of the Project. The Committee further notes that FIC is the end stage of the canal system which carries water ultimately to the farmer's field. It is also stated by the Company that in a canal network, some of the stretches are completed and a completion certificate is issued; however, all these canals could be put to ultimate use only when the FICs are completed and the whole canal system is completed and ready for use. The Lift Irrigation System (water lifting machinery and related infrastructure), main canals and distributor canals are ready and, in the location, and condition but it will take many years before the FICs are completed and the entire canal system is put to use, for the intended use.

From the above, it appears to the Committee that in the extant case, the different parts/ units of the project, such as the lift irrigation system, canal system and its various components, etc. are interdependent and interlinked (as being contended by the Company) making the entire irrigation project an integrated project. Further, it appears that unless FIC is completed, which ultimately carries water to the farmer's field, the entire project is not capable of being usable, and other components/units cannot be operated independently of the FIC. Therefore, the Committee is of the view that till FIC(s) is(are) completed, the various units/parts of the Project cannot be considered to be in the location and condition necessary for it to be capable of operating in the manner intended by management, as mentioned above and accordingly, cannot be capitalised as an item of PPE. However, the Committee is of the view that in the extant case, it is possible that as soon as a section of FIC is complete and is ready (while construction of another section of FIC is being undertaken), it may enable the functioning of other inter-linked assets of irrigation project and make the entire project capable of being used, although in a limited area and not at the intended irrigation potential or capacity or catering to the entire group of intended farmers' fields. In that case, the

project to that extent may be considered to be in the location and condition necessary for it to be capable of operating in the manner intended by management, as per the requirements of Ind AS 16 and accordingly, may be capitalised as an item of PPE, only to such extent, even prior to completion of entire FICs. In this context, the Committee also wishes to point out that once the relevant assets are capitalised, depreciation should be provided on such capitalised asset(s) as per the provisions of Ind AS 16. Further, the Company should also comply with the requirements of Ind AS 36, 'Impairment of Assets' even when the project/asset is still under construction.

Opinion

On the basis of the above, the Committee is of the view that in the extant case, since the irrigation project is an integrated project and unless FIC is completed, the entire project is not capable of being usable, the various units/ parts of the Project cannot be considered to be in the location and condition necessary for it to be capable of operating in the manner intended by management. Accordingly, such units/parts cannot be capitalised as an item of PPE, prior to completion of the FIC(s) based on completion certificates issued in respect of individual components of the Project.

However, in case, it is possible that as soon as a section of FIC is complete and is ready (while construction of another section of FIC is being undertaken), it may enable the functioning of other inter-linked assets of irrigation project and make the entire project capable of being used, although in a limited area and not at the intended irrigation potential or capacity or catering to the entire group of intended farmers' fields, the project to that extent may be considered to be in the location and condition necessary for it to be capable of operating in the manner intended by management, as per the requirements of Ind AS 16 and accordingly, may be capitalised as an item of PPE, only to such extent, even prior to completion of entire FICs. Further, the Company should also comply with the requirements of Ind AS 36, 'Impairment of Assets' even when the project/asset is still under construction.

REGULATORY UPDATES

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

DEFERMENT OF THE SECOND PHASE OF THE PEER REVIEW MANDATE

ICAI issued an announcement dated 10 May 2023, stating that it has been decided to defer the applicability of the second phase of the Peer Review mandate by three months to be made effective from 1 July 2023, as a one-time measure. This has been decided considering that some Practice Units which require to get themselves Peer Reviewed under the 2nd phase of the Peer Review mandate are not ready for the same.

It is clarified that audit firms without peer review certificates cannot undertake statutory audits — with effect from 1 July 2023, of specified large unlisted companies.

Accordingly, the second phase of the mandate is applicable w.e.f. 1 July 2023, for the following Practice Units:

Practice Units which propose to undertake Statutory Audit of unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in the aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31 March of immediately preceding financial year: For these Practice Units, there is a pre-requisite of having Peer Review Certificate.

OR

Practice Units rendering attestation services and having 5 or more partners: For these Practice Units, there is a pre-requisite of having a Peer Review Certificate before accepting any Statutory audit.

Accordingly, Practice Units which accept Statutory audits on or before 30 June 2023, should ensure that they have a Peer Review Certificate at the time of signing.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

ADDITIONAL REQUIREMENTS FOR THE ISSUERS OF TRANSITION BONDS

SEBI has issued a circular dated 4 May 2023, to prescribe certain additional requirements for the issuance and listing of transition bonds in order to facilitate transparency and informed decision-making amongst the investors in the transition bonds and to ensure that the funds raised through transition bonds are not being misallocated.

'Transition bonds' are a type of 'green debt security'. These bonds are generally used for raising funds for transitioning to a more sustainable form of operations in line with India's Intended Nationally Determined Contributions.

Issuers who wish to offer these bonds are obligated to provide the following additional disclosures:

- Disclosure in the offer document for public issues/private placement of such transition bonds:
  - The issuer must use the denotation 'GB-T,' which should be prominently stated on the cover page of the offer document and indicated as the type of instrument in the term sheet.
  - The transition plan for implementing sustainable operations must contain detailed information on interim targets, along with an approximate timeline for achieving these targets. It should also include an indicative figure indicating the amount of emissions reduction the issuer aims to achieve.
  - Additionally, the transition plan should outline the project implementation strategy, including the utilisation of technology, and establish a mechanism to monitor the utilisation of funds raised through transition bonds and the implementation of the transition plan.

- Disclosure in the Centralised Database for corporate bonds - An issuer will have to disclose the denotation GB-T in the centralised database for corporate bonds. The depositories will update this denotation as a prefix in the "instrument details" field in the centralised database for corporate bonds.
- Disclosure to Stock Exchanges - In case of a revision in the transition plan, an issuer of transition bonds, during the year is required to disclose the revised transition plan along with an explanation for any revision to the already disclosed plan, if applicable.
- Disclosure in Annual Report - An issuer is required to disclose the transition plan along with a brief on the progress of the implementation of the transition plan in the annual report.

The provisions of the circular shall come into force with immediate effect.

DIRECT MARKET ACCESS (DMA) TO SEBI REGISTERED FOREIGN PORTFOLIO INVESTORS (FPIS) FOR PARTICIPATING IN EXCHANGE TRADED COMMODITY DERIVATIVES (ETCDS)

SEBI vide its circular dated May 10, 2023, allowed stock exchanges to extend direct market access facility to foreign portfolio investors (FPIs) for participation in Exchange Traded Commodity Derivatives (ETCDs) in order to promote institutional participation in ETCDs, subject to the following conditions:

- Stock exchanges/brokers shall adhere to the provisions stipulated in various SEBI circulars issued to date, which include a procedure for application for DMA, operational specifications, client authorisation and broker-client agreement, risk management, etc.
- The provisions of the circular dated 29 September 2022, allowing FPIs to participate in ETCDs shall remain applicable.

Direct Market Access (DMA) facilitates the clients of a broker to directly access the exchange trading system through the broker's infrastructure to place orders without manual intervention by the broker. Also, DMA provides certain advantages to brokers such as direct control over orders, faster execution of orders, reduced risk of errors associated with manual order entry, maintaining confidentiality, lower impact costs for large orders and implementation of better hedging and arbitrage strategies.

The provisions of the circular shall come into force with immediate effect.

RISK DISCLOSURE WITH RESPECT TO TRADING BY INDIVIDUAL TRADERS IN EQUITY FUTURES & OPTIONS SEGMENT

SEBI issued a circular dated 19 May 2023, to introduce the 'Risk Disclosures' framework with a view to facilitating informed decision-making by investors trading in the derivatives market. The following has been stated in the circular:

- All the stockbrokers shall display the 'Risk disclosures' given in Annexure-I of the said circular on their websites and to all their clients in the manner as follows:
  - Upon login into their trading accounts with brokers, the clients may be prompted to read the 'Risk disclosures' (which may appear as a pop-up window upon login) and shall be allowed to proceed ahead only after acknowledging the same.
  - The 'Risk disclosures' shall be displayed prominently, covering at least 50% area of the screen.
  - All Qualified Stockbrokers (QSBs) shall maintain the Profit and Loss (P&L) data of their clients on a continuous basis as per the format given in Annexure II of the said circular. The P&L data of the clients shall be retained for at least 5 years.
- It further directs the Stock Exchanges and Depositories to perform the following:
  - Bring the provisions of this circular to the notice of their members/participants and disseminate the same on their websites.
  - Display the 'Risk disclosures' on their respective websites, with a link to a study conducted by SEBI.

The provisions of this circular shall come into force with effect from 1 July 2023.

Extract of Risk Disclosure from the circular:

Annexure-I: Risk disclosures

RISK DISCLOSURES ON DERIVATIVES
• *9 out of 10 individual traders in equity Futures and Options Segment, incurred net losses.*
• *On an average, loss makers registered net trading loss close to ₹ 50,000.*
• *Over and above the net trading losses incurred, loss makers expended an additional 28% of net trading losses as transaction costs.*
• *Those making net trading profits, incurred between 15% to 50% of such profits as transaction cost.*

Source:

1. *SEBI study dated January 25, 2023 on "Analysis of Profit and Loss of Individual Traders dealing in equity Futures and Options (F&O) Segment", wherein Aggregate Level findings are based on annual Profit/Loss incurred by individual traders in equity F&O during FY 2021-22.*

MODEL TRIPARTITE AGREEMENT BETWEEN THE ISSUER COMPANY, EXISTING SHARE TRANSFER AGENT AND NEW SHARE TRANSFER AGENT AS PER REGULATION 7(4) OF SEBI (LISTING OBLIGATION AND DISCLOSURE REQUIREMENTS) REGULATION, 2015 (SEBI LODR REGULATIONS)

SEBI vide its circular dated May 25, 2023, issued the Model Tripartite Agreement in accordance with Regulation 7(4) of SEBI LODR Regulations. The agreement requires the listed companies to enter into a tripartite agreement with both the existing share transfer agents and the newly appointed share transfer agents.

Regulation 7(4) of SEBI LODR Regulations states “In case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity, in the manner as specified by the Board from time to time.”

In addition to the above, a model Tripartite Agreement has been prepared in consultation with the Registrar Association of India (RAIN) and some issuer companies. The format of the Tripartite Agreement is given in the circular.

Registrar and Transfer Agents (RTAs) are advised to submit compliance with this direction to SEBI vide email latest by 1 June 2023, along with the link to their website containing the format of the Tripartite agreement.

MINISTRY OF FINANCE

PREVENTION OF MONEY-LAUNDERING ACT, 2002 (PMLA)

The Central Government has issued a notification dated May 9, 2023, to make amendments in Section 2(1)(sa) of PMLA. It has been notified those certain activities, when carried out on behalf of or for another person in the course of business, will be regarded as activities for the purpose of this sub-clause. These activities are as follows:

- Acting as a formation agent of companies and Limited Liability Partnerships (LLPs);
- Acting as (or arranging for another person to act as) a director / secretary of a company, a partner of a firm / a similar position in relation to other companies & LLPs;
- Providing a registered office, business address or accommodation, correspondence or administrative address for a company or an LLP or a trust;
- Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- Acting as (or arranging for another person to act as) a nominee shareholder for another person.

However, the notification also provides clarification that certain activities will not be regarded as activities for the purposes of section 2(1)(sa)(vi) of the PMLA:

- **Lease/ Tenancy Agreements** - any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax;
- **Activity in the course of employment** - any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment;
- **Exclusion of certain professional services** - any activity carried out by an advocate, chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company to the extent of filing only a declaration form;
- **Activities by Intermediary** - any activity which falls within the meaning of an intermediary.

The recent amendment to the PMLA by the Central Government has broadened the scope of the Act and imposed additional compliance obligations on various individuals and entities. These amendments are designed to address the challenges of money laundering by extending the scope of reporting requirements and strengthening the accountability of entities engaged in financial transactions.

REGULATORY UPDATES

MINISTRY OF CORPORATE AFFAIRS (MCA)

NOTIFICATION DATED 10 MAY 2023: COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES) SECOND AMENDMENT RULES, 2023 (AMENDMENT RULES)

As per the Amendment Rules,

- An application for the removal of the name of a company can only be filed if the company has filed its financial statements and annual returns, up to the end of the financial year in which such a company ceased to carry out its business operations.
- Where an action has already been initiated by the Registrar, the company can file an application for removal only after filing all its pending financial statements and annual returns.
- Once the Registrar has issued notice for publication, the company shall not be allowed to file an application for removal of name.

NOTIFICATION DATED 15 MAY 2023: THE COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2023 (AMENDED AMALGAMATION RULES)

The MCA, vide this notification, has introduced Amended Amalgamation Rules, defining the maximum time (60 days) for the Central Government (CG) to act in relation to a Scheme of fast-track merger (Scheme), beyond which the Scheme is deemed to be accepted (60 days).

- **Case 1:** If CG receives no objection from Liquidator or the Registrar within 30 days of the receipt of the Scheme, and if the CG thinks that the scheme is in the public interest or the interest of creditors, it shall issue a confirmation order within 15 days of the expiry of the above mentioned 30 days (aggregate: 45 days). If CG does not issue a confirmation order within 60 days from receipt of the Scheme, it will be deemed that there is no objection, & confirmation order will be issued.
- **Case 2:** If the CG receives objections or suggestions from Liquidator or the Registrar within 30 days, the CG can take the following resorts:
  - It shall issue a confirmation order within 30 days of the expiry of the above-mentioned 30 days (if the objections/ suggestions are not sustainable, and the CG thinks that the Scheme is in the public interest or the interest of creditors).
  - If the CG thinks that the Scheme is not in the public interest or interest of creditors, it can file an application stating the objections/opinion to consider the Scheme under 232 of the Companies Act, 2013 before the Tribunal within 60 days of the receipt of the Scheme.

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

CIRCULAR DATED 3 MAY 2023: INTRODUCTION OF LEGAL ENTITY IDENTIFIER (LEI) FOR ISSUERS WHO HAVE LISTED/PROPOSED TO LIST NON-CONVERTIBLE SECURITIES (NCS), SECURITISED DEBT INSTRUMENTS (SDI) AND SECURITY RECEIPTS (SR)

The Circular, inter-alia, provides for the applicability and reporting requirements with respect to LEIs, which is mentioned here under:

Category of security	Applicability	Timeline
Non-Convertible Securities	Issuer proposing to issue and list NCS	On or after 1 September 2023
	Issuer having outstanding listed NCS as of 31 August 2023	On or before 1 September 2023
Securitised Debt Instruments and Security Receipts	Issuer proposing to issue and list SDIs or SRs	On or after 1 September 2023
	Issuer having outstanding listed SDIs and SRs as of 31 August 2023	On or before 1 September 2023

Further,

- The issuers having outstanding listed NCS as on 31 August 2023 and the new issues after that date are to be reported in the Centralised Database of Corporate Bonds on or before 1 September 2023 and at the time of allotment of ISIN, as the case may be.
- The issuers having outstanding listed SDIs and SRs as on 31 August 2023 and the new issues after that are to be reported to depositories on or before 1 September 2023 & at the time of allotment of ISIN, as the case may be.

CIRCULAR DATED 22 MAY 2023: DEMATERIALISATION OF SECURITIES OF HOLDING COMPANIES (HOLD COS) AND SPECIAL PURPOSE VEHICLES (SPVS) HELD BY INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) AND REAL ESTATE INVESTMENT TRUSTS (REITS)

The circular mandates InvITs and REITs to hold the securities of Hold Cos and SPVs in dematerialised form only. Further, the existing security holdings of Hold Cos and SPVs, held in physical form must be dematerialised on or before 30 June 2023.

NOTIFICATION DATED 23 MAY 2023: SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) SECOND AMENDMENT REGULATIONS (AMENDED ICDR REGULATIONS)

The Amended ICDR Regulations, amongst other matters, provide for the following Underwriting related provisions in case of Initial Public Offers (IPOs) on the Main Board and Further Public Offer (FPO).

The notification recognises two types of underwriting, (i) underwriting covering undersubscription and (ii) underwriting covering the risk of application rejections.

MAKING AN OFFER THROUGH A PROCESS OTHER THAN THE BOOK-BUILDING PROCESS

In case a company desires to cover underwriting on account of undersubscription, the underwriting agreement with the merchant bankers or stockbrokers is required to be executed before the filing of the prospectus. On the other hand, in the case of underwriting covering the risk of application rejections, the agreement with the merchant bankers or stockbrokers will be required to be executed at a pre-determined price, prior to the filing of the final prospectus.

MAKING AN OFFER THROUGH THE BOOK-BUILDING PROCESS

An issuer shall enter into an underwiring agreement with lead manager(s) and syndicate member(s) subject to prescribed conditions. Such an agreement must be entered into before the filing of the prospectus indicating therein the number of specified securities they shall subscribe to on account of rejection of bids, the price, which shall not be less than the issue price, etc. Further, the lead manager(s) to fulfil the underwriting obligations if the syndicate member(s) fail to fulfil theirs.

DIRECT TAX

CIRCULARS / NOTIFICATIONS / PRESS RELEASE

CBDT NOTIFIES DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA) BETWEEN INDIA AND CHILE

Pursuant to the powers conferred under section 90 of the Income-tax Act, 1961 (IT Act), the Central Board of Direct Taxes (CBDT) has notified DTAA between the Republic of India and the Republic of Chile. The said DTAA shall be effective from 19 October 2022.

[Notification No. 24/2023, dated 3 May 2023]

FT & TR DIVISION OF FINANCE MINISTRY ISSUES CLARIFICATION PURSUANT TO FAQ ISSUED BY US IRS IN RELATION TO FATCA REPORTABLE ACCOUNTS

With respect to US FATCA reportable accounts, US IRS has issued a FAQ relating to reporting Taxpayer Identification Numbers (TIN). Pursuant to said FAQ, the FT & TR Division of Finance Ministry has issued a Circular clarifying that Indian Reporting Financial Institutions (RFIs) should ensure that the U.S. TIN is reported in respect of all U.S. Reportable accounts. The Circular also clarifies that if the U.S. TIN is not obtained, the RFI may populate the TIN field with specified codes as mentioned in FAQ 6 (reporting) of the US IRS.

It also mentioned that reporting for the calendar year 2022 (due by 30 September 2023), being a transition year, RFIs must either use the TIN codes specified in the clarification issued on 31 January 2022 or the updated TIN codes mentioned in FAQ 6. For subsequent years, RFIs will have to follow the updated TIN codes referred to in FAQ 6.

Further, RFIs are requested to suitably revise the reports submitted in Form 61B in respect of U.S. reportable accounts pertaining to Calendar Year 2022, if applicable.

[Circular F. NO. 500/107/2015-FT&TR-III, dated 4 May 2023]

CBDT NOTIFIES RULES AND ISSUES GUIDELINES ON WINNINGS FROM ONLINE GAMES

Finance Act 2023 introduced section 115BBJ in the IT Act to tax net winnings from online games at the rate of 30% w.e.f. FY 2023-24. It further inserted section 194BA in the IT Act to bring the winnings from online gaming within the fold of tax withholding w.e.f. 1 April 2023. As per the section, a person who is responsible for paying to any person any income by way of winnings from any online game during the FY is required to deduct income tax (TDS) on the net winnings in the person's account at the time of withdrawal and the end of the FY. Given this amendment, CBDT has inserted Rule 133 in Income-tax Rules, 2022 (IT Rules) and has issued guidelines to remove difficulties in computing net winnings and related aspects. To read our detailed analysis please go to :

https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-notifies-rules-and-issues-guidelines-on-winnings-from-online-games

[Notification No. 28/2023 and Circular No. 5/2023, dated 22 May 2023]

CBDT ISSUES GUIDELINES FOR THE COMPULSORY SELECTION OF RETURNS FOR COMPLETE SCRUTINY

CBDT has issued guidelines wherein it has laid down the parameters for the selection of returns for complete scrutiny during FY 2023-24 and the procedure for conducting the assessment. The prescribed parameters are as under:

- Cases pertaining to survey under section 133A of the IT Act;
- Cases pertaining to search and seizure;
- Cases where a notice under section 142(1) of the IT Act, calling for a return, has been issued or no returns have been furnished[1];
- Cases where notices have been issued under Section 148 of the IT Act; Cases, where notices under Section 148 of the IT Act have been issued pursuant to search and seizure/survey actions conducted on or after 1 April 2021:
- Cases related to registration/approval under sections 12A, 12AB, 35(l)(ii)/(iia)/(iii), 10(23C), etc. of the IT Act ;
- Cases involving additions in earlier assessment years on a recurring issue of law and/or fact; and
- Cases related to specific information regarding tax evasion.

It is also clarified that where the return has been furnished in response to notice under section 142(1) of the IT Act and such notice under section 142(1) of the IT Act was issued due to the information contained in NMS Cycle/AIS/Statement of Financial Transaction / CPC-TDS information/information received from Directorate of I&CI, such return will not be taken up for compulsory scrutiny. Selection of such cases for scrutiny will be done through the CASS cycle.

The Guidelines also state that the last date to serve notice shall be 30 June 2023.

[F No. 225/66/2023/ITA-II, dated 24-5-2023]

CBDT NOTIFIES PERSONS EXEMPT FROM 'ANGEL TAX' RELATED PROVISIONS

As per Section 56(2)(viib) of the IT Act, where the premium is received in excess of fair market value (FMV) by closely-held companies from the resident investor(s), such excess is taxed in the hands of the recipient Company. Finance Act 2023 has extended the application of this section to shares issued to non-resident investor(s) as well. An exemption from applicability of section 56(2)(viib) of the IT Act is provided to venture capital undertaking (if received from venture capital company or venture capital fund) and Company (if received from specified class(es) of the person notified by the Central Government).

In this regard, CBDT has recently issued two notifications wherein it has notified classes or classes of persons to whom section 56(2)(viib) of the IT Act shall not apply. To read our detailed analysis please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-notifies-persons-exempt-from-angel-tax%E2%80%99-related-provisions.

[Notification No. 29 and 30/2023, dated 24 May 2023]

CBDT PROPOSES TO MODIFY VALUATION RULES FOR COMPUTING ANGEL TAX

In connection with the extension of angel tax provisions on non-resident investors, CBDT has proposed to amend Rule 11UA of the IT Rules to include 5 more valuation methods, available for non-resident investors, in addition to the DCF and NAV methods of valuation. CBDT has sought comments from stakeholders on draft Rule 11UA. The last date for submitting comments is 5 June 2023.

[Press Release dated 19 May 2023 and F No. dated 26 May 2023]

CBDT ENHANCES THE EXEMPTION LIMIT FOR LEAVE ENCASHMENT

As per the extant provisions of section 10(10AA) of the IT Act, leave encashment received by a non-government employee at the time of retirement is exempt to the extent of lower of the following:

- The actual amount received in respect of leave encashment;
- Average salary is drawn during last 10 months;
- Cash equivalent for unavailed leave calculated on the basis of average salary;
- INR 3Lakhs.

In pursuance of the Union Budget 2023 proposal, the Central Government has notified the increased limit for tax exemption on leave encashment on retirement or otherwise of non-government salaried employees to INR 25Lakhs. This increased limit shall be effective from 1 April 2023.

[Notification No. 31/2023, dated 24 May 2023 and Press Release dated 25 May 2023]

CBDT NOTIFIES E-APPEALS SCHEME 2023

Finance Act, 2023 substituted section 246 of the IT Act to establish a new authority – Joint Commissioner of Income Tax (Appeals) (JCIT(A)) who shall dispose of certain types of appeals. Section 246(5) of the IT Act grants power to Central Government to make a scheme to dispose of appeals expediently with transparency and accountability, by eliminating the interface between the JCIT(A) and taxpayer, during appellate proceedings to the extent technologically feasible. In this regard, recently, the CBDT has notified the e-Appeals Scheme, 2023 (the Scheme) for JCIT(A). To read our detailed analysis please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-notifies-e-appeals-scheme-2023-applicable-to-joint-commissioner-(appeals)

[Notification No. 32/2023 and 33/2023, dated 29 May 2023]

[1] Where return has been furnished pursuant to notice u/s 142(1) of IT Act issued due to the information contained in NMS Cycle/ AIS/ Statement of Financial Transactions (SFT)/ CPC-TDS information/ information received from Directorate of I&CI, then such return will not be taken up for compulsory scrutiny. Selection of such cases for scrutiny will be done through CASS cycle.

CBDT REVISES MONETARY LIMITS FOR CONDONING DELAY IN CLAIMING REFUNDS OR CARRYING FORWARD OF LOSS

CBDT vide its earlier circular no. 09/2015 dated 9 June 2015 provided monetary limits to deal with the applications for condonation of delay in filing tax returns claiming refund and tax returns claiming to carry forward of loss and set-off. With effect from 1 June 2023, the said monetary limits have been revised as under:

AUTHORITIES VESTED WITH THE POWER OF ACCEPTANCE/REJECTION OF APPLICATIONS FILED UNDER 119(2)(B)	ERSTWHILE MONETARY LIMIT	REVISED MONETARY LIMIT
The Principal Commissioners of Income-tax / Commissioners of Income-tax (Pr. CsIT/CsIT)	Upto INR 10Lakhs	Upto INR 50Lakhs
Chief Commissioners of Income-tax (CCsIT)	More than INR 10lakhs but upto INR 50lakhs	More than INR 50lakhs but upto INR 2crores
Principal Chief Commissioners of Income-tax (Pr. CcsIT)		More than INR 2crores but upto INR 3crores
CBDT	More than 50lakhs	More than INR 3crores

[Circular No. 07/2023, dated 31 May 2023]

CBDT AMENDS THE RULE RELATING TO THE INAPPLICABILITY OF SECTION 56(2)(X) OF THE IT ACT FOR STRATEGIC DISINVESTMENTS

CBDT has amended Rule 11UAC(4) of the IT Rules to provide that section 56(2)(x) of the IT Act shall not apply to any movable property, being equity shares, of a public sector company or a company, received by a person from a public sector company or the Central Government or any State Government under strategic disinvestment. To read our detailed analysis please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-amends-the-rule-relating-to-the-inapplicability-of-section-56(2)(x)-of-the-i

JUDICIAL UPDATES

SPECIAL BENCH OF MUMBAI TRIBUNAL HOLDS THAT DDT BEING A TAX ON DISTRIBUTED PROFITS NOT ELIGIBLE FOR A BENEFICIAL DTAA RATE

Taxpayer, an Indian company, declared and paid dividends during the Fiscal Year (FY) 2015-16. One of the shareholders to whom the dividend was paid was a tax resident of France. Considering that one of the shareholders was non-resident, the taxpayer raised an additional ground before the Mumbai Tax Tribunal that the Dividend Distribution Tax (DDT) rate under section 115-O[2] of the IT Act cannot exceed the tax rate as applicable on dividend income under India-France DTAA. In this regard, the taxpayer placed reliance on the co-ordinate bench rulings[3] wherein identical facts were analysed and Tribunals have made the following observations while ruling that DDT should not exceed the rate as specified in respective DTAA:

- DDT is a levy on the dividend distributed by the payer company and being an additional tax falls within the definition of 'Tax' as defined u/s 2(43) of the IT Act, which is subject to the charging section 4 of IT Act and charging section itself is subject to the provisions of IT Act. Hence, it brings DDT within the sweep of section 90 of the IT Act;
- Payment of DDT under section 115-O of the IT Act by the domestic company was for and on behalf of the shareholder and in the discharge of the shareholder's liability to pay tax on the dividend distributed.

The Division Bench of the Mumbai Tax Tribunal observed that DDT cannot be treated as tax paid on behalf of shareholders. Had it been the case, provisions of section 57 of the IT Act should enable such a shareholder to claim a deduction of expenditure incurred to earn the income on which such tax is paid. Furthermore, DTAAs do not grant tax credits of DDT paid by the company to the shareholders. Considering this contrary conclusion, Mumbai Tax Tribunal doubted the correctness of the aforementioned decisions and referred the matter to Special Bench Mumbai Tax Tribunal (Special Bench).

After evaluating the contentions of both the taxpayer and the revenue, the history of dividend taxation, the concept of

[2] As per erstwhile section 115-O of IT Act, the Indian company was required to pay additional income-tax on any amount declared, distributed or paid by way of dividend at the prescribed rate.
[3] Giesecke & Devrient India Private Limited v. ACIT [2020] 120 taxmann.com 338 (Delhi ITAT)
DCIT v. Indian Oil Petronas Private Limited [2021] 189 ITD 490 (Kolkata ITAT)

double taxation and the DTAA, the Special Bench accorded with the view of Revenue that the benefit of a lower rate as prescribed in DTAA is not applicable to DDT being additional income-tax on the company's profits and not on income in the hands of the shareholder. While coming to this conclusion, Special Bench made the following observations:

Meaning of the term 'Dividend'

- A dividend means the portion of the profit received by the shareholder from the company's net profit, which is legally available for distribution among the members. Therefore, a dividend is a return on the share capital subscribed for and paid to its shareholders by a company
- The character of profits distributed by the company as a dividend may not retain the same character when it reaches the hands of the shareholders.

Essence of section 115-O of the IT Act

- Section 115-O of the IT Act is an additional income-tax liability on 'distributed profits' and not a tax on 'dividend distributed'
- Further, the said section is a code in itself as it starts with a non-obstante clause indicating that the said section is independent and divorced from the concept of "total income" under the IT Act.

Nature of DDT: Tax on distributed profits of the Company or dividend income of a shareholder

- Reliance was placed on the decision of the Supreme Court and Jurisdictional High Court in the case of Godrej & Boyce[4] wherein it was held that DDT was not a tax on the income of the shareholder but was instead a tax on the company.
- Unlike TDS and Tax collected at source (TCS) provisions which allow the payee to claim the credit of taxes paid on its behalf, provisions of section 115-O of the IT Act do not allow the shareholder to take credit of DDT paid by the Company as it is treated as final payment of tax. These features demonstrate that DDT is a charge to tax the company's profits and not a charge in the hands of the shareholder. Furthermore, these provisions show that shareholders do not enter the domain of DDT at all.

Interplay of DDT with DTAA provisions:

- Since DDT is a tax on the amount declared, distributed and paid by way of dividend and not a tax on shareholder's income, no question of double taxation arises.
- If a domestic company has to enter the domain of DTAA, the countries should have agreed specifically in the DTAA to that effect as agreed in India – Hungary DTAA where both the countries have extended the DTAA protection to the DDT.
- In the present facts of the case, as the India-France DTAA does not contain any specific provision for extending the benefit of a lower rate, DDT shall be computed at the rate specified in section 115-O of the IT Act and not as per the DTAA rate.

  [Total Oil India Pvt. Ltd. & Others (ITA NO.6997/MUM/2019) (Special Bench Mumbai Tribunal)]

SC HOLDS NO PENALTY LEVIABLE UNDER SECTION 271C OF THE IT ACT FOR THE DELAY IN TDS REMITTANCE

Section 271C of the IT Act provides that if any person fails to withhold the whole or part of the tax as required in terms of the IT Act, then such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay. A question was raised before the judiciary as to whether section 271C of the IT Act is attracted where the tax is withheld but there is a delay in remitting to the Government Treasury. Recently, the Supreme Court analysed whether a delay in remitting tax withheld at source (TDS) can attract rigours of Section 271C(1)(a) of the IT Act. To read our detailed analysis please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-sc-holds-no-penalty-leviable-under-section-271c-of-the-it-act-for-the-delay-in-td

INTEREST INCOME FROM ECB IS TO BE TAXED AS PER THE PROVISIONS OF DTAA AND NOT AS BUSINESS PROFIT

The Mumbai Tax Tribunal has analysed whether interest income earned from External Commercial borrowings (ECBs) should be taxable according to general or specific clauses articulated in India-Netherlands DTAA. Mumbai Tax Tribunal has held that interest income on ECB should be taxed as per Article 11 of the India-Netherlands DTAA. To read our detailed analysis, please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-interest-income-from-ecb-is-to-be-taxed-as-per-the-provisions-of-dtaa-and-not-as

SC HOLDS THAT THE DETERMINATION OF PROFIT ATTRIBUTABLE TO A PE IS A QUESTION OF FACT

The Supreme Court had an occasion to interpret whether the issue pertaining to the attribution of profit in India is a question of fact or law. Hon'ble Supreme Court has held that this issue is a question of fact and not a question of law. To read our detailed analysis, please go to https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-sc-holds-that-determination-of-profit-attributable-to-a-pe-is-a-question-of-fact

[4] Godrej & Boyce Mfg. Co. Limited v. DCIT (394 ITR 449) (SC)

INDIRECT TAX

GOODS & SERVICES TAX (GST)

JUDICIAL UPDATES

HOMOEOPATHY 'HAIR OIL' HAVING THERAPEUTIC/PROPHYLACTIC USE IS CLASSIFIABLE AS 'MEDICAMENT' AND NOT AS 'COSMETIC'

Facts of the case

- M/s. Ashwani Homeo Pharmacy (Taxpayer), inter alia engaged in the manufacture and sale of Aswini Homeo Arnica Hair Oil (Product), classifies the said product under Tariff item 3003 90 14 of Chapter 30 of First Schedule to the Central Excise Tariff Act, 1985 (CET Act) (Chapter 30), as 'medicament', and pays Excise Duty at a lower rate as applicable on medicaments.
- The aforesaid classification was previously examined and duly accepted on multiple occasions by the Tax Authorities. However, after the amendment to the CET Act (in 2012), the aforesaid classification was re-examined, and the Taxpayer was issued Show Cause Notice (SCN) alleging that the Product was classifiable as 'cosmetic or toilet preparations' under Tariff item 3305 09 19 of Chapter 33 of the First Schedule to the CET Act (Chapter 33).
- The Taxpayer filed its reply stating that the Product has been rightly classified as a medicament and is not cosmetic. However, the Adjudicating Authority, vide Order-in-Original, confirmed the aforesaid SCN on the following grounds:
  - An amendment in tariff headings requires a relook into the Product's classification.
  - The Product fails to meet any of the three criteria of the common parlance test for classifying a product as 'medicament' (provided in Circular no:333/49/97-CX dated 10 September 1997).
  - Note 1(e) to Chapter 30 does not cover the preparation of the goods covered under Chapters 3303 to 3307, even if they have therapeutic or prophylactic properties.
  - The Product is classifiable as "Hair Oil" under tariff item 3305 09 19 under Chapter 33 and not under Chapter 30.
- Against this, the Taxpayer filed an appeal against the aforesaid order before the CESTAT, Hyderabad which, vide the Impugned Order, allowed the Taxpayer's appeal on the ground that there exists no reason to classify the product as 'cosmetic' under Chapter 33.
- Aggrieved by the above, the Tax Authorities filed an appeal before the Hon'ble Supreme Court of India.

Contentions of the Tax Authorities

- The CESTAT erred in holding that the Product falls under Chapter 30 and not under Chapter 33 of the amended CET Act on account of the following:
  - The orders prior to 2012 have lost their precedential value due to amendments in the tariff structure. By virtue of the amendment, Chapter 30 has been reworded to remove the distinction between patent/proprietary and generic medicines and to classify them in terms of whether they are put in unit containers for retail sale or not.

- The aforesaid amendment conveys the legislative intent to tax the Product as "Hair Oil" which was added under Chapter 33, as a distinct category. Reliance was placed on Collector of Central Excise, Guntur Vs. Andhra Sugar Ltd. Venkataraypuram [1989 Supp (1) SCC 144].
- The Product does not meet the criteria for classification under Chapter 30 and as per Note 1(e) to Chapter 30, even if the Product possesses certain curative or prophylactic value, it would still be classified as 'cosmetic'.
- As per the settled law, a specific entry prevails over a general entry. Thus, when "Hair Oil" is specifically mentioned in Chapter 33, and when the Product's common parlance is that of a general cosmetic requisite, classifying it as a 'medicament' is a far-fetched proposition.
- The Product fails the common parlance test as a 'medicament' for the following reasons:
  - It is not prescribed by any medical practitioner.
  - It is available Over the Counter (OTC) in medical & general stores without a prescription.
  - The condition of sale by an authorised medical distributor or retailer under prescription as mandated by the Drugs & Cosmetics Act, 1940 (DC Act) is absent on its label.
  - It does not cure any specific disease, the claims on its label are for marketing purposes only, and it is advertised, sold, and perceived as Hair Oil and not as 'medicament'.

Contentions of the Taxpayer

- The Product's classification was examined by the Tax Authorities on multiple occasions and the same has attained finality. The Product is manufactured under a drug license and its label clearly states that it is a homoeopathic medicine under Schedule K to the Drugs and Cosmetics Rules, 1945 (DC Rules) besides its composition, indications, contra-indications, and mode of application.
- Although there are changes in the tariff structure, the Product is still classifiable as a 'medicament' as its ingredients or manufacturing process did not undergo any change warranting its classification as a 'cosmetic'. Accordingly, the insertion of Sub-Headings in Chapter 33 does not impact the Product's classification as the same would not fit into any of the revised descriptions of 'Hair Oil' since it is clearly covered by the definition of 'medicament'.
- The composition, manufacturing process and use of the Product have remained the same even after the tariff amendments. Further, the Product is an oil-based therapeutic and prophylactic medicament and is not marketed as 'Hair Oil'.
- Invoking the common parlance test is unnecessary due to the following reasons:
  - The Product is certified as a medicament by the competent authority.
  - Tax Authorities have not made any market enquiries to prove the Product as a cosmetic.
  - The method of usage is clearly stated on the Product label and the therapeutic properties of its ingredients are clearly stated in the authoritative textbooks on homoeopathy.
  - A product sold as OTC without a prescription does not per se establish that it is not a medicament. All homoeopathic drugs and even many other drugs are sold OTC without a prescription.
- Reliance was also placed on ***Bakson Homeo Pharmacy (P) Ltd. Vs CCE, New Delhi [2001 (136) ELT 485 (Tri.-Del.)]*** wherein the CESTAT had classified a similar product as a 'medicament'.

Observations and Ruling by the Hon'ble Supreme Court

- To determine the classification of the Product as a 'medicament', the Product is required to satisfy the twin tests viz., the common parlance test and the ingredients test.
- The product is composed of 4 homeopathic medicines as mentioned in the authoritative textbooks on the subject viz., Homeopathic Pharmacopoeia of India and Dictionary of Practical Materia Medica.
- A product having prophylactic use is envisaged under Tariff Heading 3003 and 3004. If the Product claims to control hair fall by improving blood circulation, its prophylactic use cannot be denied. Further, the Product is also covered by the license under DC Act and under Schedule K of DC Rules.
- In BPL Pharmaceuticals (supra) it was held that a product must be a 'cosmetic' to be classified under Chapter 33. However, the Product is predominantly of pharmaceutical value and the phrase 'hair oil' would only mean the medium of application of the Product.
- Chapter 33 relating to the tariff item "Hair Oil" under Heading 3305 is a general entry and when hair oil is used as a medium for application for medicine, it falls under the specific entry pertaining to medicament under Headings 3003 or 3004.
- A product sold OTC without a prescription cannot conclude that the product is not a medicament.
- A change of classification cannot be done merely on the ground of changes to the tax structure without substantiating that the Product's nature has been changed. Hence, the broad basing of entries in Chapters 30 and 33 cannot be justified to re-classify the Product.

- In view of the above, it was held that the Product cannot be classified as 'cosmetic' under Chapter 33, and hence, the appeal filed by the Tax Authorities has been dismissed.

  [Commissioner of Customs, Central Excise & Service Tax, Hyderabad Vs. M/s. Ashwani Homeo Pharmacy, [TS-192-SC-2023-EXC], dated 3 May 2023]

A PRODUCT CANNOT BE RECLASSIFIED DUE TO AMENDMENTS IN THE TAX STRUCTURE, PROVIDED THAT THE NATURE OF THE PRODUCT REMAINS UNCHANGED.

Facts of the case

- M/s. Heinz India Pvt. Ltd. and M/s. Glaxo Smithkline Pharmaceuticals Ltd. (Taxpayers) are inter alia engaged in the manufacture and sale of 'Nycil Prickly Heat Powder' (Nycil) having its units in Kerala and Tamil Nadu (States) respectively.
- The classification adopted by the Taxpayers and the Tax Authorities under the Kerala General Sales Tax Act, 1963 (KGST Act) is as under:

CLASSIFICATION	REFERENCE	RELEVANT ENTRY
By Taxpayers	Entry 79 of the First Schedule	Medicines and Drugs including allopathic, ayurvedic, homoeopathic, Siddha and Unani preparations and glucose IP.
By Tax Authorities	Entry 127 of the First Schedule	Shampoo, Talcum Powder including medicated talcum powder, Sandalwood Oil, Ramacham Oil, Cinnamon Oil, other perfumeries, and cosmetics not falling under any other entry in this Schedule

The aforesaid matter eventually reached before the Hon'ble Kerala High Court wherein it was held that Nycil cannot be classified under Entry 79 but would be classified under Entry 127 of the First Schedule to the KGST Act (Kerala High Court decision).

- Similarly, the classification sought by the Taxpayers and the Tax Authorities under the Tamil Nadu General Sales Tax Act, 1959 is tabulated below:

CLASSIFICATION	REFERENCE	RELEVANT ENTRY
By Taxpayers	Entry 20(A) of Part C of the First Schedule	Medicines conforming to the following description: ***Any medicinal formulation or preparation ready for use internally or externally for treatment or mitigation or prevention of diseases or disorders*** in human beings or animals (excluding products being capable of being used as creams, hair oils, toothpaste, tooth powders, cosmetics, toilet articles, soaps and shampoos), but including …
By Tax Authorities	Entry 1(iii) of Part F of the First Schedule	(iii) Lipsticks, lip-salve, nail polishes, nail varnishes, nail brushes, beauty boxes, face powders, ***toilet powders***, ***baby powders***, ***talcum powders***, powder compacts … Explanation – ***Any of the items listed above even if medicated or as defined in Section 3 of the Drugs and Cosmetics Act, 1940 or manufactured on the license issued under the said act will fall under this item***[1]

The aforesaid matter eventually reached the Hon'ble Madras High Court wherein the Hon'ble Madras High Court relied upon the Kerala High Court decision and held that Nycil would be classified as toilet powder and considering the Explanation to Entry 1 of Part F of the First Schedule (inserted with effect from 1 April 1994), the said entry would expressly include medicated products (Madras High Court decision).

- Aggrieved by the above, the Taxpayers filed an appeal before the Hon'ble Supreme Court.

1. Explanation was inserted vide the 1994 amendment with effect from 1 April 1994

Contentions by the Taxpayers

- About 32% of Nycil's ingredients are medicinal in nature viz. Chlorphenesin B.P. 1%, Zinc Oxide I.P. 16% and Boric Acid 16%. Nycil ensures skin cleanliness and protects it against prickly heat and infection and provides freshness and comfort.
- Chlorphenesin is a potent antifungal, antibacterial and trichomonacidal substance of low toxicity. Reliance was placed on B. Shah & Company Vs. State of Gujarat [(1971) 28 STC 5 (Guj)] wherein it was held that Nycil as powder or ointment is recommended for the treatment of prickly heat and dhobie itch and active skin protection during ringworms and other fungicidal infections. The same is also mentioned on the face of Nycil's container in which it is sold.
- Referring to the definition of "drugs" and "cosmetics" under the DC Act, Nycil must be treated as medicine since it is used to treat several dermatological conditions, including prickly heat.
- The TNGST Authorities have merely relied on the Explanation of Entry 1(iii). However, Nycil, by its description, purpose, and applying the common parlance test, squarely falls under Entry 20A (under the TNGST Act). Further, referring to medical literature and noting the use of the product, it cannot be classified as cosmetic, even in view of the aforesaid Explanation.
- The Explanation must be considered in the context of the settled rule that though a proviso excepts something from the statute which falls under its purview, if its language so requires, a different rule may apply.
- Reliance was placed on various judicial precedents of the Hon'ble Supreme Court in the context of the CET Act which had established the principles for determining the classification of products whether as a 'medicament' or as a 'cosmetic'.

Contentions by the Tax Authorities

- The correct test to be applied is whether Nycil is capable of use as a medication. Reliance was placed on CCE Vs. CIENS Laboratories [2013 (14) SCR 38] wherein an elaborate three-step test viz. the therapeutic or prophylactic nature of the ingredients, the irrelevance of the fact that the product is sold with or without prescription and what the product is considered by its consumers, was adopted in deciding the nature of the product in question.
- The expression "medicated" implies that a substance is filled with or covered in medicine, or medication.
- In respect of the classification of Nycil under the KGST Act, it was submitted that when the legislature has consciously used the expression "medicated" in conjunction with "talcum powder", the classification of Nycil is classified as a 'cosmetic' cannot be disputed.
- Products sold as OTC may be hybrid in nature, such as lozenges, cough drops etc which are curative of certain ailments, as well as used as sweets or eatables. Similarly, Nycil is also a hybrid product as it can be used as a cosmetic as well as a medicament.
- As regards classification under the TNGST Act, it was contended that the Explanation to Entry 1(iii) specifically includes the listed items even if they are medicated or drugs as defined in Section 3(b) of the DC Act or manufactured under a license issued under the DC Act and hence, medicated talcum powder will fall under Entry 1(iii).

Observations and Ruling by the Hon'ble Supreme Court

- The decisions relied upon by the Taxpayers are substantially based on classification under the CET Act and the classifications thereunder are elaborate. In the present case, the distinguishing feature of both the KGST Act and TNGST Act is that, unlike the CET Act, neither of them has General or Chapter Notes, which sets them apart from the decisions based on the CET Act. Further, an entry which is as specific as "medicated talcum powder" was not examined by these decisions.
- As per the settled principles for interpretation of fiscal legislation, words used in a statute must be given their plain meaning. The Court cannot give a strained and unnatural meaning to the provision.
- Accordingly, in the context of the KGST Act, the use of the term "includes" after talcum powder, which is followed by "medicated talcum powder" is conclusive that the legislative intent is to classify any talcum powder-containing medications as 'cosmetics', and thus, falling under Entry 127 of the First Schedule to the KGST Act.
- Similarly, in the context of the TNGST Act, the Explanation consciously inserted to include talcum powder, whether medicated or not in the specific entry or class of entries for 'cosmetics', and hence, plain, and unambiguous meaning is to be given to that taxing entry.
- In view of the above, the Kerala High Court decision and the Madras High Court decision are justified. Accordingly, the appeals filed by the Taxpayers are dismissed.

  [M/s. Heinz India Pvt. Ltd. Vs. State of Kerala, [TS-199-SC-2023-VAT], dated 4 May 2023]

SUBSEQUENT LEGISLATION SHOULD BE USED TO INTERPRET EARLIER LEGISLATION WHICH IS AMBIGUOUS.

Facts of the case

- M/s. Devyani International Ltd. (Taxpayer) is inter alia engaged in providing restaurant services, provides 'pizza' and 'sandwich' (Products) to its customers and

paid VAT @ 5% as per under Notification no: F.12(22)FD/Tax/10-87 dated 9 March 2010 (Notification) which provides a concessional rate of VAT @ 5% on the sale of self-cooked food by hotels and restaurants below three-star category.

- The Tax Authorities, vide the assessment order, rejected the classification of the Products as cooked food, and sought to classify them as 'branded baked products' basis the following factors:
  - Cooked food only contains fresh ingredients and no preservatives, whereas pizza toppings contain preservatives.
  - Preparation of cooked food takes time whereas pizza can be prepared in very less time.
  - The toppings and pizza base are preheated and precooked which makes pizza a fast food.
  - Cooked food is necessarily served with traditional cutlery whereas the same is not required with 'pizza' and 'sandwiches' which are fast foods as per Wikipedia's definition of fast food.
  - 'Pizza' is the same as a pizza base, a baked product covered under Entry 154 of Schedule IV to the Rajasthan Value Added Tax Act, 2003 (RVAT Act) and the addition of toppings does not change the character.
  - In India, pizza and sandwiches are treated as snacks and not as wholesome food.
- The Taxpayer filed an appeal before the Rajasthan Tax Board (RTB) which, vide the Impugned Order, upheld aforesaid order on the ground that cooked food includes meals consumed at regular intervals for the satisfaction of hunger and sustenance, like vegetables, chapati, rice etc and the Products do not fall within cooked food based on the common parlance theory.
- Aggrieved by the above, the Taxpayer filed a Sales Tax Revision (STR) against the Impugned Order before the Hon'ble Rajasthan High Court.

Contentions by the Taxpayer

- As per the settled law, the onus to prove that a product falls within a specific tariff item is always on the Tax Authorities which is not fulfilled by the Tax Authorities.
- The Tax Authorities have not discharged the onus to prove that 'pizza' and 'sandwiches' are not cooked foods. Neither any expert nor technical opinion was sought, nor any evidence was put forward to demonstrate that the Products are not cooked food.
- The term 'food cooked by him' and the Products sold by the Taxpayer are squarely covered by the Notification. A specific entry must prevail over the general entry and the residuary clause can be invoked only if the Tax Authorities can evince that the goods in question cannot be brought under any specific tariff item. As the Products are covered under the Notification, the Taxpayer has rightly collected and paid tax @5%.
- Both, the Tax Authorities and the RTB have relied upon decisions prior to the introduction of 'pizza' and 'sandwiches' in the Indian food market. Further, the decision in ***CST Vs. Shri Ballabhdas Ishwardas [1968 (21) STC 309 (MP)]***, relied upon by RTB, was distinguished by the Division Bench of the Hon'ble Court in ***ACTO Vs. Azad Bakery and Ors. [1976 WLN (UC) 539]*** wherein it was held that even biscuits and bread fall within the definition of cooked food and are cooked by the process of baking. Thus, there is no reason not to classify 'pizza' and 'sandwiches' as 'cooked food' which are also prepared by the same process.
- The State Government has included 'pizza' and 'sandwich' in the broad category of 'cooked food' in subsequent notifications dated 14 July 2014 and 9 March 2015. Thus, the Government intended to treat 'pizza' and 'sandwiches' as 'cooked food' throughout. It is a settled legal position that subsequent legislation can be referred to interpret earlier legislation which is obscure or ambiguous.

Contentions by the Tax Authorities

- There does not arise any question of law which is worth consideration by the Hon'ble High Court. The Products do not fall within the ambit of 'cooked food' but are rather 'branded baked products'. Hence, the Taxpayer is not entitled to the benefit of the Notification.
- As per the common trade parlance, in India and more particularly in the State of Rajasthan, 'pizza' and 'sandwich' are not understood as 'cooked food' and the Tax Authorities have proved this sufficiently before the authorities below and have discharged the onus on their part.
- As per the settled legal position, words used in a law imposing tax should be construed in the same way in which they are understood in ordinary parlance, in the area in which the law is in force and during which it was in force.
- In case of any ambiguity in an exemption notification, the benefit of such ambiguity must be strictly interpreted in favour of the Tax Authorities. Reliance was placed on ***Annapurna Biscuit Manufacturing Co. Vs. CST [(1981) 3 SCC 542] and Commissioner (Customs) Vs. Dalip Kumar & Co. [(2018) 9 SCC 1]***.

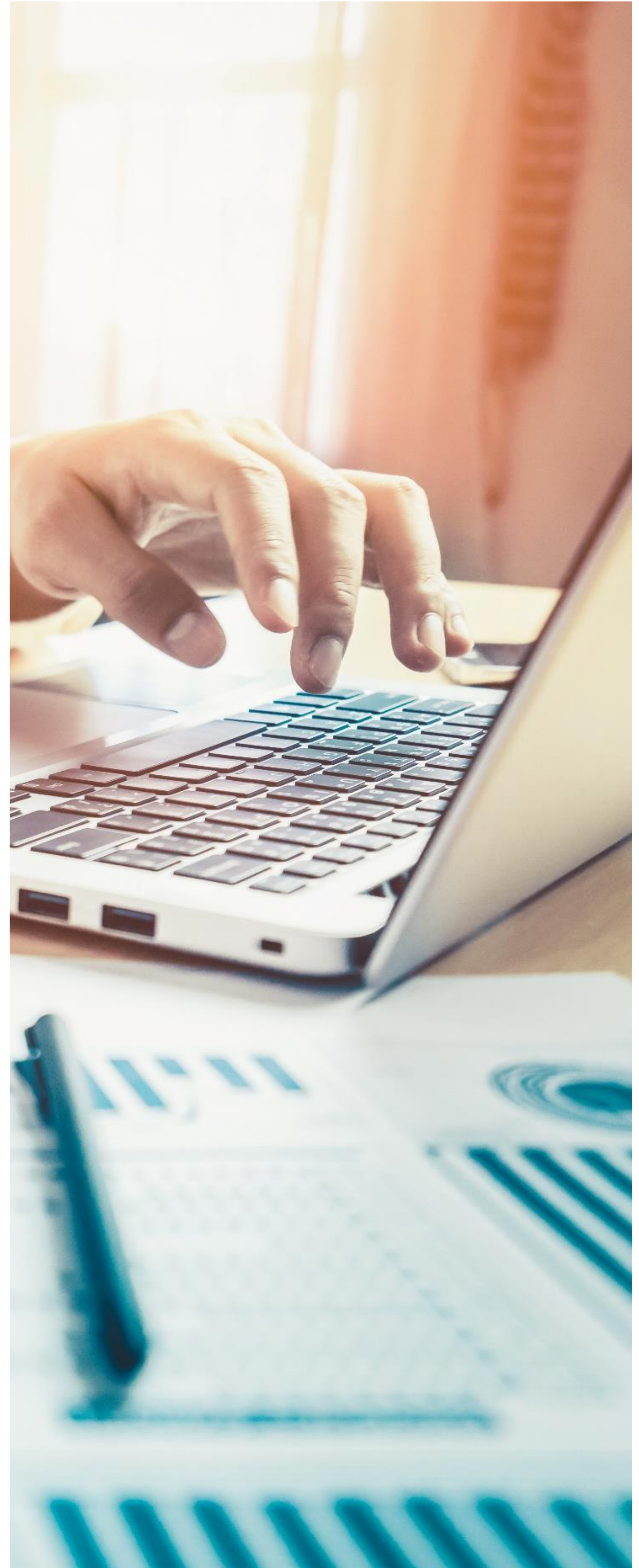
Observations and Rulings by the Hon'ble High Court

- The issue to be considered is whether 'pizza' and 'sandwich' fall within the ambit of 'cooked food' and hence, would be entitled to the concessional rate of VAT under the Notification.
- Both, the Tax Authorities and RTB have relied on extraneous and ill-founded factors, and reached a perverse conclusion for the following reasons:
  - The burden to prove that a specific product falls within a particular tariff is always on the Tax Authorities, more so, when the Tax Authorities intend to classify a product in the residual entry instead of the specific entry.

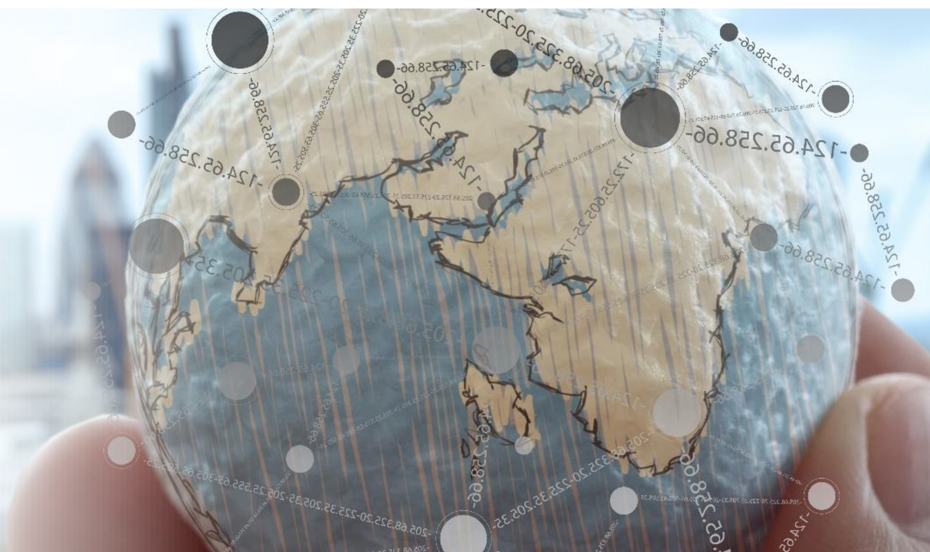
- In the present case, the Tax Authorities have failed to adduce any evidence, technical or otherwise and have not brought on record any expert opinion, scientific study, or survey to substantiate their claim that pizza and sandwiches are not cooked food.
- Reliance placed on Wikipedia definition is also erroneous, as per the decision of the Hon'ble Supreme Court in Ponds India Ltd. (Merged with H.L. Ltd) Vs. CTT, Lucknow [(2008) 15 VST 256 (SC)].
- The factors, as stated in the assessment order and the Impugned Order, for the classification of the Products were neither proven nor substantiated and are entirely irrelevant.
- If the Tax Authorities intend to rely on the aforesaid factors (as mentioned in the aforesaid orders), it is their duty to establish that these factors are true and essential for the determination of what construes as cooked food which was not done by them.
- The RTB has relied upon judgments that neither deal with the present case nor is in consonance with the present time. The decision in ***Ballabhdas Ishwardas (supra)*** relied upon by RTB, wherein it was held that biscuits are not cooked food is already distinguished by the Division Bench of this Court in ***M/s Azad Bakery (supra)***.

- The Taxpayer is correct in contending that subsequent legislation can be referred to properly interpret the earlier legislation which is obscure and ambiguous. A perusal of the subsequent notification clarifies that the State Government has considered items like pizza and sandwiches to be cooked food and thus, the sale of the same qualifies to be eligible for a concessional rate of VAT under the Notification.
- Given the above, the STR is allowed in favour of the Taxpayer.

[M/s. Devyani International Ltd. Vs. The Additional Commissioner (CT), Jaipur, [2023-VIL-324-RAJ], dated 5 May 2023]



TRANSFER PRICING



INAPPROPRIATE TO TREAT A PARTICULAR EXPENDITURE AS A SEPARATE INTERNATIONAL TRANSACTION, WHEN THE ENTITY-LEVEL MARGINS ARE ACCEPTED BY THE TPO

The taxpayer has entered into various international transactions with its Associated Enterprises (AEs) including payment of fees for technical know-how. The said fees were capitalised in the books of accounts of the taxpayer and depreciation was claimed on the same. The taxpayer aggregated all its international transactions on account of them being inextricably and closely linked to each other and benchmarked the same under the Transactional Net Margin Method (TNMM). The Transfer Pricing Officer (TPO) accepted the analysis of the taxpayer for all the other international transactions but concluded that the fees for technical know-how should not have been paid and made an adjustment by considering its arm's length price (ALP) as 'Nil'. The same was upheld in the appeal to the Commissioner of Income Tax (Appeals) (CIT (A)). Subsequently, the taxpayer filed an appeal before the Hon'ble Income-tax Appellate Tribunal (Hon'ble ITAT).

While delivering the Ruling, the Hon'ble ITAT observed the following:

- Technical know-how is an integral part of a business, and it will be impractical to evaluate the payment for the same on a standalone basis;
- The taxpayer has proved the need for the technical know-how and the benefit derived from the same by way of submission of documents; and
- The TPO accepted the entity-level benchmarking analysis carried out by the taxpayer for all other transactions except payment of fees for technical know-how, which was absurd.

Accordingly, following the decisions in multiple judicial precedents, the Hon'ble ITAT ruled in favour of the taxpayer by holding that where the TPO accepts the entity-level margins, it would be inappropriate to treat a particular expenditure as a separate international transaction.

Tata Power Solar Systems Limited Vs. ACIT [TS-287-ITAT-2023(Bang)-TP]

APPLICATION OF 'RPM' OVER CUP AS MAM TO BENCHMARK PURCHASE OF FINISHED GOODS FROM AE, IN THE ABSENCE OF COMPLETE DATA FOR CUP ANALYSIS

The taxpayer is part of the Schlumberger Group and engaged in reselling products (8K SIM cards) purchased solely from its AEs. The gross margin ratio fell from 23.26% to 6.35% in the relevant year. The taxpayer adopted Resale Price Method (RPM) for benchmarking the said transaction.

During the Transfer Pricing assessment proceedings, the TPO observed that the taxpayer was purchasing 8k SIM cards of identical nature from two of its AEs situated in the United States of America (US) and Hong Kong (HK) respectively at different rates. The price paid to US AE was much higher than the price paid to HK AE. The aforesaid product was sold by the taxpayer in the Indian market at nearly the same rate. By application of the RPM method, the TPO made a total adjustment of INR 132.19mn.

During the course of the second appeal, the taxpayer filed additional evidence, namely details of sales made by US AE and HK AE to third parties. By reviewing the additional evidence filed by the taxpayer, the CIT(A) reduced the adjustment by INR 113.39mn by applying Comparable Uncontrolled Price (CUP) method, by considering the HK AE third-party sales price as comparable to the taxpayer's purchases from the US AE.

The CIT(A) based his analysis on:

- Incomplete data;
- Ignoring geographical differences by claiming that the same is immaterial to the electronics market;
- Aggregating transactions pertaining to the import of non-SIM cards products such as
- E-cards, pay phone cards and POS components at an entity level.

Aggrieved by the order of CIT(A), the Revenue Department preferred an appeal before the Hon'ble ITAT. The Hon'ble ITAT ruled in favour of the Revenue Department by observing the following:

- The CIT (A)'s claim that geographical differences are immaterial to the electronics market is incorrect;
- Comparability cannot be decided in the absence of important data such as the name of the customers, volume, terms, etc.;
- The taxpayer itself determined RPM as the MAM in its TP analysis;
- Hence, CUP is not the MAM for the transaction of import from AEs; and
- Purchase of E-Cards, Pay Phone Cards, and POS Components cannot be aggregated for benchmarking analysis since these transactions are not inextricably interlinked.

Thales DIS India Pvt Ltd [TS-278-ITAT-2023(DEL)-TP]

BRIGHT LINE TEST (BLT) APPLICABLE IN THE ABSENCE OF AN EXPRESS AGREEMENT BETWEEN THE TAXPAYER AND THE AE AND WHEN THE MANUFACTURING SEGMENT HAS ALREADY BEEN HELD TO BE AT ARM'S LENGTH

The taxpayer is involved in the manufacturing and selling of advanced weight management and nutritional products. The taxpayer characterised itself as a licensed manufacturer and aggregated all its international transactions with its primary transaction of manufacturing of goods, for benchmarking.

During the TP assessment proceedings, the TPO applied the bright line test (BLT) (AMP expenses as a percentage of the sale of goods) for the AMP expenses incurred by the taxpayer, claiming that the AMP expenses incurred by the taxpayer resulted in a benefit to the AE. Consequently, the TPO made an adjustment towards the AMP expenses aggregating to INR 2,718mn, in spite of concluding that the international transactions relating to the manufacturing segment were at arm's length. The taxpayer filed an appeal before the Hon'ble ITAT when the DRP also upheld the said adjustment.

The Hon'ble ITAT ruled in favour of the taxpayer by observing the following:

- Bright-line test alone cannot be considered an indicator that the AMP expenditure constitutes an international transaction under the Income Tax Act.
- Even if the foreign entity is to gain from the AMP services carried out by the domestic entity, that will not be proof of an international transaction if the services were carried out specifically for the development of the domestic entity in India.
- TPOs must look for further evidence such as subsidies, grants, or contractual arrangements between the AEs to prove that such expenses were a part of an international transaction.
- The expenditure incurred by a taxpayer is to carry out its day-to-day business activity of distribution and is directly linked with the business carried out by the taxpayer in India; and
- All AMP-related expenses have been considered by the taxpayer while computing the margin of its manufacturing segment, which has already been held to be at arm's length by the TPO.

Herbalife International India Pvt Ltd [TS-289-ITAT-2023(Bang)-TP]

ABOUT BDO GLOBAL

BDO is a leading professional services organisation and are global leaders of the mid-tier, with a presence in 160+ countries and over 111,300 people working out of more than 1,800 offices. We endeavor to deliver an exceptional client experience through a tailored solutions approach, while partnering with our employees and clients globally.

ABOUT BDO IN INDIA

BDO in India offers Assurance, Tax, Advisory, Business Services & Outsourcing and Digital Services for both domestic and international clients across industries. The team at BDO in India consists of over 5,500 professionals led by more than 270 partners and directors operating out of 16 offices, across 11 key cities.

CONTACT US

For any content related queries, you may please write to the service line experts at taxadvisory@bdo.in

For any other queries or feedback, kindly write to us at marketing@bdo.in

BDO IN INDIA OFFICES

Ahmedabad
The First, Block C - 907
Behind ITC Narmada, Keshavbaug
Vastrapur, Ahmedabad 380015, INDIA

Bengaluru - Office 1
Prestige Nebula, 3rd Floor,
Infantry Road,
Bengaluru 560095, INDIA

Bengaluru - Office 2
SV Tower, No. 27, Floor 4
80 Feet Road, 6th Block, Koramangala
Bengaluru 560095, INDIA

Chandigarh
Plot no. 55, Floor 5,
Industrial & Business Park,
Phase 1, Chandigarh 160002, INDIA

Chennai
No. 443 & 445, Floor 5, Main Building
Guna Complex, Mount Road, Teynampet
Chennai 600018, INDIA

Delhi NCR - Office 1
The Palm Springs Plaza
Office No. 1501-10, Sector-54,
Golf Course Road, Gurugram 122001, INDIA

Delhi NCR - Office 2
Windsor IT Park, Plot No: A-1
Floor 2, Tower-B, Sector-125
Noida 201301, INDIA

Goa
701, Kamat Towers
9, EDC Complex, Patto Plaza
Panaji, Goa 403001, INDIA

Hyderabad
1101/B, Manjeera Trinity Corporate
JNTU-Hitech City Road, Kukatpally
Hyderabad 500072, INDIA

Kochi
XL/215 A, Krishna Kripa
Layam Road, Ernakulam
Kochi 682011, INDIA

Kolkata
Floor 4, Duckback House
41, Shakespeare Sarani
Kolkata 700017, INDIA

Mumbai - Office 1
The Ruby, Level 9, North West Wing
Senapati Bapat Marg, Dadar (W)
Mumbai 400028, INDIA

Mumbai - Office 2
601, Floor 6, Raheja Titanium, Western
Express Highway, Geetanjali, Railway
Colony, Ram Nagar, Goregaon (E),
Mumbai 400063, INDIA

Mumbai - Office 3
Floor 20, 2001 & 2002 - A Wing, 2001 F
Wing, Lotus Corporate Park, Western
Express Highway, Ram Mandir Fatak Road,
Goregaon (E) Mumbai 400 063, INDIA

Pune - Office 1
Floor 6, Building No. 1
Cerebrum IT Park, Kalyani Nagar
Pune 411014, INDIA

Pune - Office 2
Floor 2 & 4, Mantri Sterling, Deep
Bunglow, Chowk, Model Colony, Shivaji
Nagar
Pune 411016, INDIA

This publication has been carefully prepared, but it has been written in general terms and should be seen as containing broad statements only. This publication should not be used or relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained in this publication without obtaining specific professional advice. Please contact BDO India LLP to discuss these matters in the context of your particular circumstances. BDO India LLP, its partners, employees and agents do not accept or assume any responsibility or duty of care in respect of any use of or reliance on this publication, and will deny any liability for any loss arising from any action taken or not taken or decision made by anyone in reliance on this publication or any part of it. Any use of this publication or reliance on it for any purpose or in any context is therefore at your own risk, without any right of recourse against BDO India LLP or any of its partners, employees or agents.

BDO India LLP, a limited liability partnership, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.

Copyright © 2023 BDO India LLP. All rights reserved. Published in India.

Visit us at www.bdo.in