Nangia Andersen LLP

Tax & Regulatory Newsletter

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What's Inside?

01

Direct Tax

TVS Finance's gain from land received against loan foregone, business income

M/s TVS Finance & Services Ltd. v. Asst. Commissioner of Income Tax
[2022] IT Appeal Nos. 1174 of 2019 (Chennai Tribunal)
Issue(s) – Taxability of gains on sale of land as business income
Outcome - In Favour of Revenue

Background

TVS Finance & Services Ltd. ('the Assessee Company') engaged in equipment leasing, hire purchase financing and bill discounting, assigned/sold some of its outstanding receivables to another entity which was partly paid to Assessee by cheques and partly by transfer of certain properties. During AY 2009-10, the Assessee sold some of the land so acquired and disclosed the income under the head of 'capital gains' as long term capital gains. SC held that assignment of debt in favor of another entity partly in exchange of land was integral part of the business activities of the Assessee and any gain / loss arising on such an asset should be viewed as business profits only.

Brief Facts and Contentions

- The Assessee Company is a resident corporate. The Assessee provides auto financing services. The Assessee Company offers bike, car, and heavy vehicles financing services. The Assessee assigned / sold some of its outstanding receivables valuing at INR 51.07 Crores to M/s Piramal Financial 30.09.1999. Services Ltd. for consideration of INR 40 Crores vide assignment deed dated
- The consideration was settled partly by cheques and partly by transfer of certain properties in favor of the assessee which were under litigation and finally, sold in the concerned AY.
- The assessee sold parcels of land so acquired and admitted gains under the head 'Capital Gains'. The Ld. Assessing Officer ('Ld. AO') held that the gains would be business profits since the assessee claimed loss on repossessed vehicles which was allowed.
- Similarly, the land was also part of business assets which was re-possessed and therefore, it would be assessable as business income only. Consequently, indexation benefit was denied to the assessee and the gains were assessed as Business Income.
- The Hon'ble CIT(A) upheld the order of Ld. AO on the basis that the land was received in lieu of a business loan foregone and further held that the assets so received by the assessee would assume the character of same business assets by relying on a plethora of judgements by Hon'ble Supreme Court.

ITAT's Judgement

- The undisputed facts that emerge are that the assessee is engaged in equipment leasing, hire purchase financing and bill discounting and it has assigned/ sold its outstanding receivables valuing at INR 51.07 Crores for consideration of INR 40 Crores.
- The consideration was settled partly by cheques and partly by transfer of certain vacant parcels of land in favor of the assessee which were sold in concerned AY. For assessee, the receivables constitute business debt and any loss / gains arising in settlement thereof would be business income / loss for the assessee.
- In fact, the assessee has claimed losses on re-possessed assets as business loss. The assignment of debt in favor of another entity partly in exchange of land was integral part of the business activities of the assessee and any gain / loss arising on such an asset should be viewed as business profits only.
- The situation is no different from a situation wherein the assessee in exchange of loan debts, repossesses the assets of the borrower and sell the same subsequently in discharge of loan assets. Any resultant gains / losses arising therefrom would be part of normal business activities of the assessee.
- The assets so received by the assessee company would assume the character of same business assets irrespective of its treatment by the assessee in the books of accounts. However, it is settled position that entries in the books of accounts would not be determinative of nature of income of the assessee.
- In light of the above, ITAT rejected the Assessee Company's appeal by upholding the decision of Hon'ble CIT(A) that the gain from the sale of land would be taxable as business income instead of capital gain.

Nangia Andersen LLP's Take

In this particular case, assessee acquired land in exchange of its outstanding receivables in the normal course of business and the same was sold. The gain on the same was treated as capital gain by the assessee. However, transaction shall be looked at a broader level as the same was acquired in the exchange of outstanding receivables being the normal course of Assessee's business and be treated as business income. This judgement protects the interest of the revenue as the land received partakes the character of business income when received in such an arrangement.

Assessee not to qualify as a charitable institution if charging the customers at market rates

Fernandez Foundation, Hyderabad vs. CIT(E), Hyderabad
ITA No.1884 & 1885/Hyd/2019 and ITA No.299/Hyd/2020
Issue(s) - Applicability of Section 12AA where Assessee converted itself into section 8 company but continued providing services at market rates
Outcome - In Favour of Revenue

Background

In a recent verdict, Income Tax Appellate Tribunal ('ITAT') dismissed the Assessee's appeal and upheld CIT(E)'s order rejecting application under Section 12AA, Section 10(23C) and 80G of the Income Tax Act, 1961 (the 'Act'). Fernandez Foundation, Hyderabad (the 'Assessee') converted itself to section 8 company, however continued to provide services at market rates. ITAT relies on the recent SC ruling in ***Ahmedabad Urban Development Authority*** on the issue of generating profit and held that the Assessee charged on the basis of commercial rates from the patients and failed to demonstrate that the charges / fee charged by it were on a reasonable markup on the cost.

Brief Facts and Contentions

- The Assessee was a private limited company and on August 3, 2018 which converted itself into a charitable company under section 8 of the Companies Act, 2013 and changed the name to "Fernandez Hospital". However, the Assessee violated the provision of section 13 of the Act as huge amounts were paid to the directors/ interested persons.
- Further, while filing Form 10A/10G online, the Assessee had given the name as "Fernandez Hospital Foundation". The certificate issued by the Registrar of Companies was given to the Assessee foundation as "Fernandez Hospital".
- The Assessee had earned a profit of INR 23.54 crores on total revenue from operations of INR 141.90 crore in FY 2017-18, which indicated that the Assessee is a profit-making company. Further, the Assessee has not reduced its charges/fee for giving the treatment at a subsidized rate after its conversion from a private company into a Section 8 charitable company.

ITAT's Judgement

- Where the company owning the hospital was converted from private limited company to section 8 company and the hospital continued to charge the patients at market rates even after such conversion and treatment at concessional rate provided by the hospital to patient accounted for less than 1% of revenue, the CIT(E) was justified in denying registration/approval u/s 12AA, 10(23C) and 80G of the Act to the section 8 company.
- Further it was held that if only financials post-conversion were considered, being a profit earning private company converted into a section 8 company, "then it will be a handy tool for an otherwise profit-making company to conveniently convert into a so-called charitable company and avoid payment of due taxes to a welfare state".

Nangia Andersen LLP's Take

This judgement of ITAT relies on SC's judgement in the case of ***Ahmedabad Urban Development Authority*** and upholds the intent behind exemptions given to charitable institutions. Charging the customers at market rates and generating a huge profit is against the principle of charity. In effect, all the charitable institutions will have to, going forward, be very specific about their objectives and arrange their operations accordingly.

Exclusivity in section 40(a)(iib) to be considered with reference to nature of undertakings on which levy is imposed & not on number of Undertakings on which levy is imposed

Kerala State Beverages Manufacturing & Marketing Corporation Ltd. vs ACIT
Civil Appeal Nos. 11 TO 14 OF 2022
Issue(s) - Allowability of Royalty, License fee etc. paid by the state government undertaking to the state government
Outcome - In Favour of Revenue

Background

In a recent verdict, Hon'ble Supreme Court examined whether Kerala State Beverages Manufacturing & Marketing Corporation Ltd (the 'Assessee'), a state government undertaking shall be allowed a deduction under section 40(a)(iib) of the Income Tax Act, 1961 (the 'Act'). The Assessee has paid gallonage fees, licence fee and shop rental (kist) to the State Government and claimed the same as business expenditure. The Hon'ble Supreme Court disallowed the same under section 40(a)(iib) of the Act.

Brief Facts and Contentions

- The Assessee is engaged in wholesale and retail trade of beverages. The Assessee is holding FL-1 licence for retail trade of foreign liquor in sealed bottles and is also having FL-9 licence for wholesale of foreign liquor. The Assessee claimed deduction under section 40(a)(iib) on gallonage fees, licence fee and shop rental (kist), which was levied upon it on account of FL-1 and FL-9 licences granted to it.
- The Assessing Officer disallowed same on the ground that such payment was on account of exclusive levy imposed on the Assessee.
- On appeal by the Assessee, the High Court drew a distinction between FL-1 licence and FL-9 licence on the ground that FL-1 licence was not exclusively issued to the Assessee but was also issued to one other State Government Undertaking.

- It was held that such levy of gallonage fee, licence fee and shop rental (kist) with respect to FL-9 licences granted to the Assessee falls within the purview of section 40(a)(iib) as it is exclusively applicable on the Assessee and the amounts paid in this regard shall be disallowed.
- Further it was held that the amount of gallonage fee, licence fee and shop rental (kist) paid with respect to FL-1 licences granted to the Assessee was not an exclusive levy as FL-1 licence was also issued to one other government undertaking and accordingly such disallowance shall not be made.
- Further, the High Court held that the surcharge on sales tax and turnover tax is not in nature of 'fee' or 'charge' as under section 40(a)(iib) and accordingly, the same amount shall not be disallowed.

Supreme Court's Judgement

- Hon'ble Supreme Court held that the rationale behind the word 'exclusivity' as mentioned in Section 40(a)(iib) of the Act was not with respect to the number of entities to whom such levy was imposed but the nature of such entities. Accordingly, in the present case, the other entity to whom FL-1 license is issued is in the same nature of company as the Assessee.
- If it is not interpreted in the manner as aforesaid it would defeat the very intention of the legislation. To defeat the said provision, the State Governments may issue licences to more than one State owned undertakings and may ultimately say it is not an exclusive undertaking and therefore section 40(a)(iib) is not attracted.
- The gallonage fee, licence fee and shop rental (kist) with respect to FL-9 and FL-1 licences granted to the appellant will fall within the purview of section 40(a)(iib) and accordingly shall be disallowed.
- The surcharge on sales tax and turnover tax, is not a fee or charge coming within the scope of section 40(a)(iib) and disallowance made in this regard is rightly set aside by the High Court.

Nangia Andersen LLP's Take

The State Governments used to levy different charges / fees on their undertakings so as to secure more funds for state government treasury and ultimately reduce the implication of tax on such undertakings. To mitigate the same, disallowance under section 40(a)(iib) of the Act was introduced. Through the above judgement the interest of the revenue is protected.

Instruction No 2 of 2022

CBDT issues SOP for preferring SLPs, modifies timelines for processing proposals & filing

CBDT, vide Instruction No. 2/2022 dated Dec 15, 2022 issues revised SOP for filing of appeals/SLP by Income Tax Department before the Supreme Court. It has also revised proforma for submission of proposal to file SLP and modifies the timelines for processing of proposals for filing SLPs. The summary of the instruction issued by CBDT has been given below:

Institutional Mechanism

- Pr. CCIT/CCIT having jurisdiction shall ensure a proper institutional mechanism for timely dissemination of downloaded copy/certified copy of High Court's order/judgment
- Pr. CCIT/CCIT shall set-up a High Court Cell at each station within their jurisdiction where a Bench of the High Court is situated, which shall be headed by a DCIT/ACIT/ITO with adequate number of Inspectors and other support staff and appropriate infrastructural facilities to make it properly functional
- High Court Cell shall:
  - Obtain particulars of cases finally heard from Standing Counsels at the end of each working day
  - Intimate particulars of the cases with a summary of the proceedings to the Pr. CIT/CIT concerned without any delay.
  - track orders/judgments pronounced on a daily basis and transmit the information so compiled to Pr. CIT/CIT concerned immediately on a regular basis
- Administrative Pr. CsIT/CsIT shall also set up proper institutional mechanism in their respective charges to access the website of the High Court to download orders/Judgments relating to their charge as soon as these are uploaded

Points to be noted while processing of proposals for SLPs

- Period of limitation for filing SLP begins from date of HC order/judgement
- In case of application for grant of certificate of fitness under Section 261, the limitation to file Civil Appeal/SLP is 60 days from disposal of the application.
- Pr.CCIT/CCIT need not seek legal opinion in every case from the Standing Counsels and should consider the SLP proposals as per their judicial appreciation of the impugned order/judgment of the High Court
- Process of filing SLP proposal should invariably be initiated only at the level of jurisdictional Pr.CIT/CIT

Timeline to be observed in the office of the Pr.CIT/CIT:

S.No.	Course of Action	No. of Days	Cumulative Days
1	Scrutiny of the judgment by the Pr.CIT/CIT to take a view to contest or accept the same	15	15
2	CCIT's view & specific comment	2	17
3	Preparation of proposal with annexure ++	2	19
4	Transit to Directorate of Income tax (L&R)	1	20

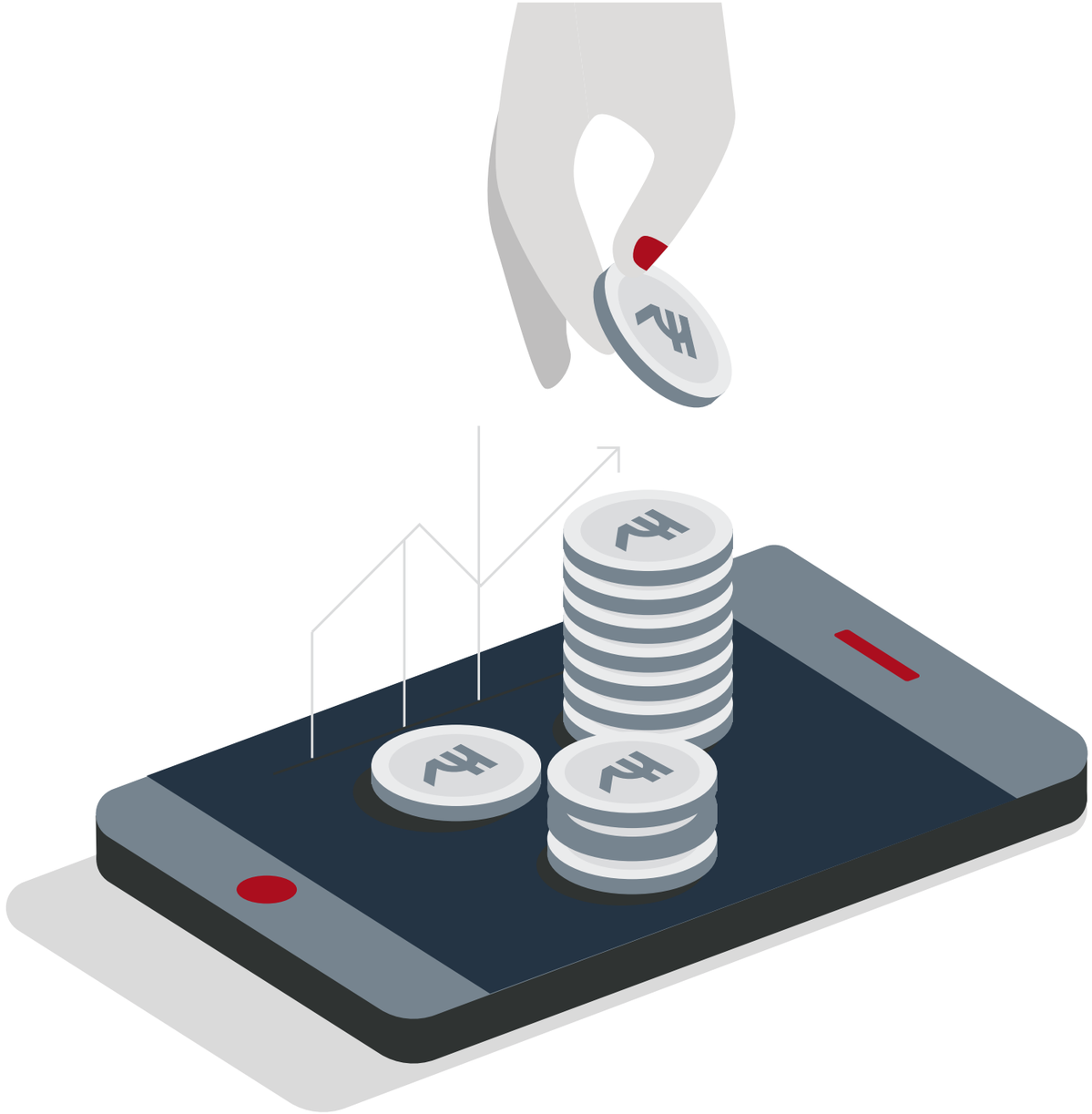
++ : This activity should begin as soon as Pr.CIT/CIT takes a view to propose SLP.

Timeline to be observed in the Directorate of Income-tax (L&R)

S.No.	Course of Action	No. of Days	Cumulative Days
1	Directorate of Income Tax (L&R)	16	36
2	Member (A&J)	3	39
3	Transit to MOL	1	40

Timeline to be observed in the Ministry of Law/Central Agency Section (Internal breakup of the timelines may be decided by DoLA/ld. ASG)

S.No.	Course of Action	No. of Days	Cumulative Days
1	Analysis by DoLA, Opinion of Law officer and drafting of SLP	30	70
2	Transit to the Directorate	1	71
3	Vetting in Directorate	7	78
4	Transit back to CAS	1	79
5	Paper book preparation, Affidavit/AOR, Filing of SLP	6	85



02

Indirect Tax

The Supreme Court held that Purchaser of Sugar-Mill in slump sale not liable for the pre-sale transactions liabilities.

Brief Facts:

- M/s. Wave Industries Private Limited (‘Applicant’) entered into a Slump Sale Agreement dated 17 July 2010, followed by the sale deed dated 4 October 2010 for the Amroha sugar mill with UPSSCL [one of the loss making sugar mill owned by the Uttar Pradesh State Sugar Corporation Limited (‘UPSSCL’] and the applicant got the possession of the Amroha unit on 17 August 2010;
- The Sale deed agreement stated that seller shall be liable to bear all assessments, rents, rates, taxes, outgoing and impositions of whatsoever nature relating to the Unit upto the signing date and thereafter these will be the liability of the purchaser;
- The dispute here relates to liability of unpaid duty, penalty, and interest. The Appellant filed writ petition before the Lucknow Bench of the High Court of Allahabad for the payment of certain liabilities. Consequently, declared to be borne by the Appellant and not by the seller;
- The appeal is to solve the issue whether those outstanding liabilities are to be discharged by the seller or the purchaser.

Observations

- The Supreme Court observed that liability of duty, interest and penalty for the period prior to the date of signing of agreement has been fastened on the purchaser on the basis that the recovery of all contingent liabilities after the date of signing of agreement would be from purchaser and not from the seller;
- The Supreme Court further observed that there is no dispute that the liability towards the duty in question for the Amroha unit are in respect of business transactions for the period anterior to the signing date of the Slump Sale Agreement. Moreover assessment orders and recovery citations have been issued by the taxing authorities in the name of the UPSSCL;

- It referred to case of ‘Bharat Earth Movers vs. Commission of Income Tax’, Karnataka where Justice R C Lahoti stated on the issue of contingent liability. Furthermore, detailed provisions with regard to distribution of liabilities in respect of the dues whereby duties in respect to the transactions upto the date of agreement are to be borne by the seller and buyer is responsible for the post-sale transactions;
- The Supreme Court stated that liability in question, not being a contingent one, cannot be fastened on the purchaser who were not operating the unit, prior to the Slump Sale Agreement dated 17 July 2010;
- The Supreme Court further held that prior to 17 July 2010, the Appellant was neither a dealer nor a manufacturer. Therefore, not liable for duty and tax obligations to satisfy for the operation of the sugar mill.

Decision

- The Supreme Court concluded that the rejection of the representation of the Appellant appears to be arbitrary and the speaking order could not therefore have been sustained by the High Court in the impugned judgment.
- The appeal is accordingly allowed by setting aside the impugned judgment and the liability in question, not being a contingent liability, cannot be fastened on the shoulders of the Appellant.

[M/s. Wave Industries Private Limited [TS-548-SC-2022-NT, dated 16 December 2022]

Gujarat Appellate Authority for Advance ruling (‘AAAR’): Tata Motors eligible for input tax credit (ITC) on canteen charges recovered from ‘direct’ employees only.

Brief Facts:

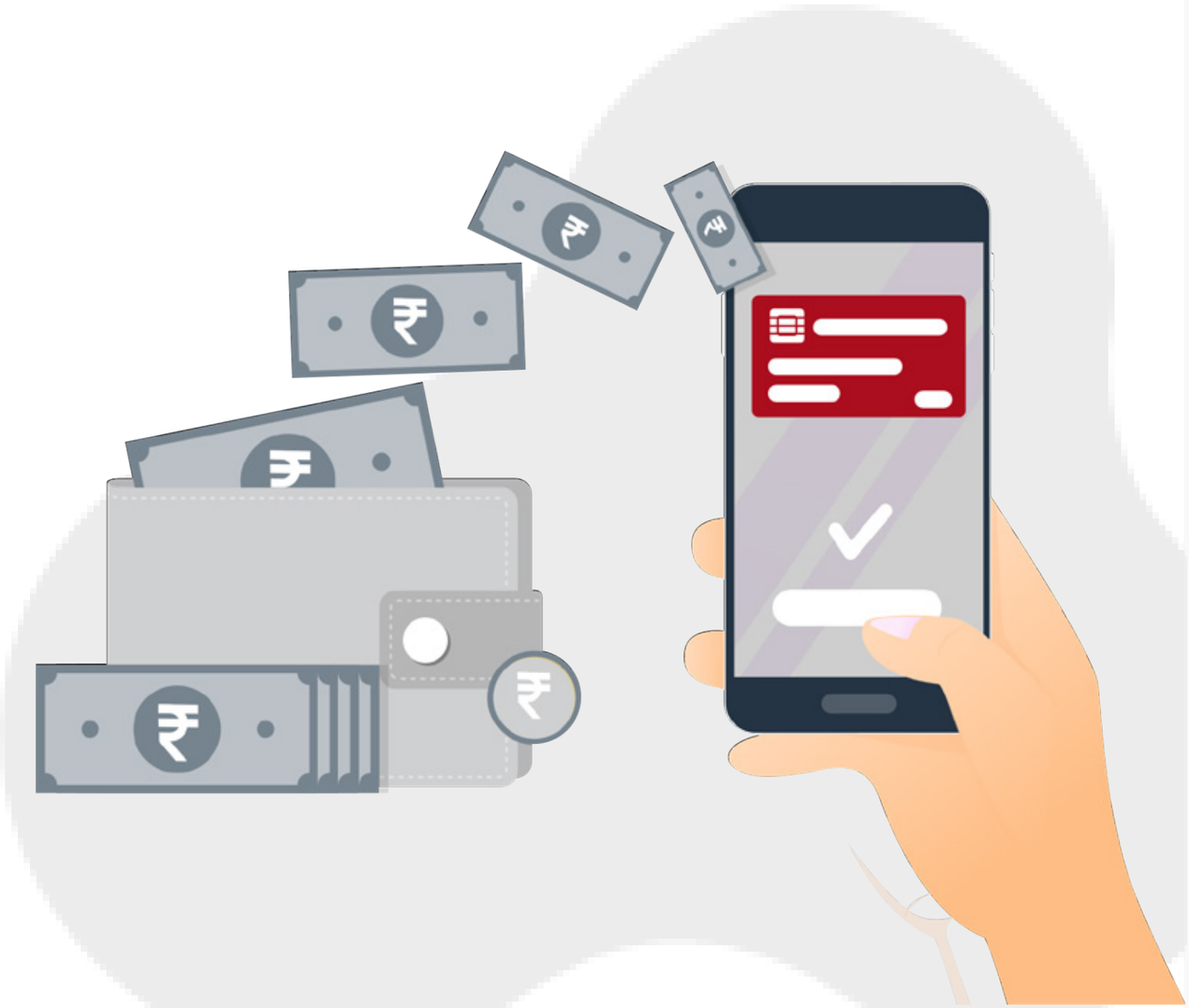
- M/s TATA Motors Limited (‘Appellant’) submitted that they are a manufacturing unit and are maintaining a canteen facility for their employees at their factory premises to comply with the mandatory requirement under the Factories Act, 1948.
- The Appellant is recovering nominal amount from employees and expenditure incurred towards canteen facility borne by Appellant is part and parcel cost to Company.
- The Appellant has sought Advance ruling on inter-alia “whether ITC is available to applicant on GST charged by service provider on canteen facility provided to employees working in factory?”
- The Gujarat Authority for Advance Ruling (‘GAAR’) ruled that ITC on GST paid on canteen facility is blocked credit under Section 17(5)(b)(i) of Central Goods and Services Tax Act, 2017 (‘CGST Act') and inadmissible to applicant.
- Dissatisfied with the ruling of GAAR, the Appellant further filed an appeal with the AAAR.

Observations and Ruling

AAAR modified the advance ruling of the AAR, placing reliance on the clarification issued by CBIC vide Circular No. 172/04/2022-GST dated 6 July 2022 which states that the ITC in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force and ruled the following:

- ITC will be available to the Appellant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory, in view of the provisions of Section 17(5)(b) as amended effective from 1 February 2019 and clarification issued by CBIC vide Circular No. 172/04/2022-GST dated 6 July 2022, read with provisions of Section 46 of the Factories Act, 1948, and Gujarat Factory Rules , 1963;
- ITC on the above is restricted to the extent of the cost borne by appellant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of food recovered from such employees.

[M/s TATA Motors Limited - GUJ/GAAAR/APPEAL/2022/23 dated 22 December 2022]
[M/s TATA Motors Limited - GUJ/GAAR/R/39/2021 dated 30 July 2021]



03
Transfer Pricing

ITAT: Rejects CCD's characterization as equity; Remits ALP computation for interest

Outcome: In favour of Revenues

Facts of the Case

- During the relevant assessment year, CAE Flight Training (India) Pt. Ltd. ("the taxpayer") has undertaken an international transaction with its Associated Enterprise ("AE") in relation to payment of interest on compulsory convertible debentures (CCDs).
- The Taxpayer benchmarked the subject transaction by applying Comparable Uncontrolled Transaction ("CUP") method.
- During the course of assessment proceedings, the Transfer pricing Officer("TPO")/Assessing Officer ("AO") made an upward adjustment to the total income of the taxpayer in relation to the subject transaction by re-characterising CCDs as 'equity' and re-determining the ALP.
- The TPO/AO concluded that the CCDs were actually equity and not debt since it was compulsorily convertible to equity shares and that the Reserve Bank of India ("RBI") also recognised CCDs as equity instruments in FEMA/FDI regulations. Also, the TPO was of the view that the assesse had junk credit rating, having no operating income or source of cash flow to service the interest payable at 15% and that no third party would make investment in CCDs and that the arrangement amounted to this capitalisation.
- The TPO/AO compared the CCDs issued by the taxpayer and with the equity investment in the taxpayer for determining the ALP as 'Nil' by applying Internal CUP method. Further, the TPO/AO made reference to the transfer pricing guidelines of foreign companies such as UK and Australia on thin capitalisation.
- Consequently, the TPO/AO concluded that the interest on CCD is not allowable as deduction under section 36(1)(iii) of the Act from total income by re-characterising CCDs as equity.
- The Taxpayer contended that TPO/AO did not appreciate the difference between CCDs and equity while re-determining ALP for payment of interest on CCDs and erred in making reference to TP guidelines of foreign countries on thin capitalization, in contravention to confining the assessment based on the principles provided in the Act and the Rules.

ITAT's Ruling

- The ITAT relied on the decision of the coordinate bench in taxpayer's own case for AY 2016-17, wherein the coordinate bench had decided the case in assesses favour wherein the bench rejected TPO's application of Thin Capitalisation principle to disallow interest by following decision of **Mumbai ITAT in the case of Besix Kier Dabhol SA vs DDIT**.
- The ITAT noted that the coordinate bench in taxpayer's own case as mentioned above clearly stated that the definition of convertible debentures given by RBI is in the context of FDI policy to exercise control on future repayment obligations in convertible foreign currency and such definition cannot be applied in other context such as allowability of interest on such debentures during pre-conversion period. Accordingly , the coordinate bench stated that interest paid on CCD for pre-conversion period cannot be said to be interest on equity and that such interest paid on CCD are allowable as expenditure under section 36(1)(iii) of the Act.
- Accordingly, the ITAT in the present case, rejected characterization of CCDs as equity and remitted ALP computation for interest on CCD and directs computation in accordance with TP provisions.

Nangia Andersen LLP's Take

Over the years, the trend of business funding has evolved in the sense that the corporates now prefer to invest in hybrid instruments rather than plain vanilla debt and equity financing. Consequently, the tax authorities now have to address tax disputes concerning interest or dividend relating to transactions pertaining to CCDs, Fully convertible debentures, optionally fully convertible debentures etc.

CCDs are unique and complex instrument and the risk and return profile is entirely dependent on the characteristics or feature of the instrument in question. The moot point is the recognition of the fact that such instrument possess not only the feature of the equity but of debt as well.

In the instant ruling, the ITAT provided clarity on the characterization of CCDs as debt instrument until conversion in equity and treatment of interest on CCDs thereof. Rightly so, from an income tax stand point, CCDs are debt instruments until converted into equity and interest on CCD is allowable as a deduction under section 36(1)(iii) of the Act. Thus, this ruling further adds to the bunch of rulings that the taxpayer can rely on against the actions by the transfer pricing authorities on such TP issues of re-characterization of financial instruments.

04 Regulatory

Updates under companies act, 2013 ("ACT")

Mca plans to introduce staggered deadlines

The Ministry of Corporate Affairs (MCA) is planning to introduce staggered deadlines for the submission of compliance documents, said a senior government official. The move is aimed at addressing overburdening of the MCA portal servers during the peak filing season, which often leads to glitches or slowing down of the portal.

The servers typically receive large amount of traffic in the last one or two weeks before the filing deadline as Companies and Limited Liability Partnerships (LLPs) have same filing deadlines. The MCA has now proposed to divide the companies and LLPs into four or five subsets, with each having a separate filing deadline.

Launch of second set of forms on mca21 v3 portal

In continuous endeavour to serve better, the MCA is launching Second set of Company Forms covering 56 forms in two different lots on MCA21 V3 portal. First 10 out of 56 forms will be launched on 09th January 2023 at 12:00 AM and the remaining 46 forms on 23rd January 2023.

Forms to be rolled-out on 9 January 2023 are pertaining to Company Incorporation consisting of SPICe+ PART A, SPICe+ PART B, RUN, AGILE PRO-S, INC-33, INC-34, INC-13, INC-31, INC-9 and URC-1.

The 46 forms which will be rolled-out on 23rd January 2023 are with respect to the approval and intimation services such as DIR-12, DIR-11. DIR-6, INC-20A, INC-22, INC-23, INC-28, SH-7, FC-2, FC-3, FC-4 to name a few.

To facilitate implementation of these forms in V3 MCA21 portal, stakeholders are advised to note that Company e-Filings on V2 portal will be disabled from 07th January 2023 12:00 AM to 08th January 2023 11:59 pm for 10 forms which are planned for roll-out on 09th January 2023 and from 7 January 2023 12:00 AM to 22 January 2023 11:59 pm for 46 forms which are planned for roll-out on 23 January 2023.

All stakeholders are advised to ensure that there are no SRNs in pending payment and Resubmission status. Portal for company filing will remain available for all the forms excluding above mentioned 56 forms. Stakeholders may plan accordingly.

Updates under securities and exchange board of India ('SEBI')

Foreign investment in alternative investment funds (aifs)

SEBI on 9 December 2022, came out with a framework for Alternative Investment Funds (AIFs) raising capital from foreign investors. At the time of onboarding investors, the manager of an AIF would have to ensure that the foreign investor is a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commission's (IOSCO) Multilateral Memorandum of Understanding or a signatory to a bilateral Memorandum of Understanding with SEBI. Further, the investor contributing 25 per cent or more in the corpus should not be a person mentioned in the Sanctions List notified by the United Nations Security Council and should not be a resident in a country identified in the public statement of the Financial Action Task Force (FATF).

Updates under reserve bank of India (RBI)

Rbi migrates fraud reporting module to 'daksh' to streamline reporting & enhance efficiency

Previously, RBI had operationalised the Central Payments Fraud Information Registry (CPFIR) with reporting of payment frauds by scheduled commercial banks and non-bank Prepaid Payment Instrument (PPI) issuers. Now, to streamline reporting, enhance efficiency and automate the payments fraud management process, the fraud reporting module has been migrated to DAKSH – Reserve Bank's Advanced Supervisory Monitoring System. The migration will be effective from January 01, 2023.

In addition to the existing bulk upload facility to report payment frauds, DAKSH provides additional functionalities, viz. maker-checker facility, online screen-based reporting, option for requesting additional information, facility to issue alerts/advisories, generation of dashboards and reports, etc.

Now, Entities are required to validate the payment fraud information reported by the customer in their own systems to ensure authenticity and completeness, before reporting the same to RBI on an individual transaction basis.

Further, after the go-live of payment fraud reporting in DAKSH effective January 01, 2023, entities shall not be able to report any payment frauds in Electronic Data Submission Portal (EDSP). Entities may, however, continue to update and close payment frauds that were reported in EDSP until December 31, 2022. Reserve Bank shall subsequently migrate the historical data from EDSP to DAKSH.

Updates under production linked incentive scheme (RBI)

PLI steel

Selection of Applications for Speciality Steel by Ministry of Steel

Ministry of Steel Select 67 Applications under PLI scheme for Speciality Steel, to Attract INR 42,500 Crores Investment and Capacity Addition to go up to 26 million Tonnes with the Employment Generation Capacity of 70,000.

Production Linked Incentive (PLI) Scheme for Specialty Steel was approved by Union Cabinet on 22 July 2021, with a five-year financial outlay of INR 6322 Crore to promote the manufacturing of 'Speciality Steel' within the country by attracting capital investment, generate employment and promote technology up-gradation in the steel sector. The Scheme was Notified in the official Gazette on 29 July 2021 and detailed Scheme Guidelines were published on 20 October 2021.

The application window for participation in the PLI scheme was closed on 15 September 2022. A total of 79 applications were received from 35 small and large steel-making companies, committing to investment of INR 46,000 Crore and downstream capacity addition of 28 million tonne over by 2030.

Out of 79 applications from 35 companies, 67 applications from 30 companies have been selected. This will attract committed investment of Rs. 42,500 Crore with a downstream capacity addition of 26 million tonne and employment generation potential of 70,000.

The top five steel companies -- Tata Steel, JSW Steel, JSPL, AMNS India and SAIL -- dominate the list of qualifiers under the PLI scheme for specialty steel. As per an official document, Tata Steel has submitted applications to manufacture seven types of speciality steel products, while JSW Steel submitted for six categories.

Jindal Steel Odisha, a subsidiary of Jindal Steel and Power Limited, has submitted the highest number of entries to manufacture eight types of specialty steel products.

ArcelorMittal Nippon Steel (AMNS) India submitted four entries, while state-owned Steel Authority of India Limited (SAIL) has submitted the least number of applications for just two specialty steel categories.

Tata Steel, JSW Steel, JSPL, AMNS India and SAIL along with Rashtriya Ispat Nigam Limited (RINL) account for about 60 per cent of India's total steel production.

Updates Under Food Safety And Standards Of India (FSSAI)

Food safety and standards (advertising and claims) second amendment regulations, 2022

The Food Safety and Standards Authority of India has, *vide* notification dated 13 December 2022, released the Food Safety and Standards (Advertising and Claims) Second Amendment Regulations, 2022 which came into force from the date of its publication in the official gazette.

Some of the key highlights of the said amendment are as follows:

1. Use of Certain Adjectives in Trade Mark, Brand Name or Fancy Name

   In cases where the meaning of a trade mark, brand name or fancy name contains adjectives such as “natural", “fresh", “pure", “original", “traditional", “authentic", “genuine", “real" and such adjectives appears in the labelling, presentation or advertising of a food in such a manner that it is likely to mislead the consumer as to the nature of the food, the following disclaimer is required to be mentioned prominently on the front of the pack of the label-
   “**This is only a brand name or trademark, or fancy name and does not represent its true nature**”

2. Claims Pertaining to Non-Addition of Sodium Salts

   Claims regarding the non-addition of sodium salts to a food, including the claim regarding “no added salt” can be made, if the following conditions are fulfilled:

   - Such food contains no added sodium salts, including but not limited to sodium chloride and sodium tripolyphosphate;
   - Such food contains no ingredients that contain added sodium salts including but not limited to sauces, pickles, pepperoni, soya sauce, salted fish and fish sauce; and
   - Such food contains no ingredients that contain sodium salts that are used to substitute for added salt, including but not limited to seaweed

3. Claims Pertaining to Non-Addition of Additives

   Claims regarding the non-addition of additives to a food can be made, if the following conditions are satisfied:

   - Any additive has not been added or removed from the food at the time of manufacture;
   - Any additive is not contained in any ingredient of the food, except where it is naturally present;
   - In case any additive is present in the food, it is the one which is allowed to be added in particular products as specified in Food Regulations; and
   - Any additive has not been substituted by another additive giving the food equivalent characteristics.

4. Equivalence Claims

   In case where an equivalence claim is to be made in the form of phrases such as "contains the same amount of [nutrient] as a [food]" and "as much [nutrient] as a [food]", the same may be made on the label of foods only if:

   - the amount of the nutrient in the reference food is enough to qualify that food as a "source" of that nutrient, and
   - the labelled food, on per 100 g or 100 ml, is an equivalent source of that nutrient, or
   - where the food nutrient is at the same level as the naturally occurring reference food nutrient, the same shall be indicated on the label and through nutritional information (e.g., "as much fibre as an apple," and "contains the same amount of vitamin C as ….. glass of orange juice.").

5. Claims Pertaining to Reduction of Disease Risk

   Claims pertaining to reduction of disease risk are mandatorily required to specify the number of servings of the food per day for the claimed benefit.

Other regulatory updates

Ministry of electronics and information technology (meity)

Ministry of Electronics and Information Technology has published ‘Digital Personal Data Protection Bill, 2022’, along with an Explanatory Note, which was released by this Ministry on its website on 18th November 2022. Feedback from public was sought by 17th December 2022. In response to the requests received from several stakeholders, the Ministry has decided to extend the last date for receipt of comments till 2nd January 2023.

Ministry of consumer affairs, food & public distribution

Online Consumer Reviews - Principles and Requirements for their Collection, Moderation and Publication

To safeguard and protect consumer interest from fake and deceptive reviews in e-commerce, **Bureau of Indian Standards (BIS)** has notified framework on 'Online Consumer Reviews — Principles and Requirements for their Collection, Moderation and Publication' on 23rd November, 2022. The standards are voluntary and are applicable to every online platform which publishes consumer reviews.

The standard prescribes multiple methods to verify whether the review author is a real person and confirm the identity of the review author. These include –

- Verifying the email address by sending one or more emails and awaiting a response;
- Verifying the review author's domain name and email address extension in comparison with the online review subject and/or the name of the evaluated product or service;
- Sending an email that asks the review author to confirm their registration by clicking on a link;
- Verification by a programme that protects websites;
- Verification by telephone call or SMS;
- Verification of identification by Single Sign-On (SSO);
- Verification of identification by geolocation or IP address;
- Verification by the review administrator that the review author's email address is valid prior to publishing a first review; and
- Verification by using a single user per email address; and
- Verification using the captcha system.

The organization is required to develop a written code of practice, communicated and made available to all management and staff, which outlines how the standard and the guiding principles in it will be met and maintained.

Ministry of textiles

Centre launched PLI scheme to enable textiles industry to achieve size and scale and become competitive

The Rs. 10,683-crore production-linked incentive scheme for India's textiles sector attracted investments of Rs 1,536 crore as approval letters were issued to 56 applicants who met the eligibility criteria, the government said on Monday.

Applications under the PLI Scheme for textiles were received through a web portal from January 1, 2022, to February 28, 2022.

The Centre launched the PLI Scheme with an approved outlay of Rs 10,683 crore to promote the production of MMF apparel, MMF fabrics and Products of Technical Textiles in the country to enable the textiles industry to achieve size and scale and to become competitive.

"Selection Committee chaired by Secretary (Textiles) has selected 64 applicants under the scheme. 56 applicants have completed the mandatory criteria for the formation of a new company and approval letters have been issued to them. Investment to the tune of Rs 1,536 crore has been made so far," an official statement said.

The ministry said that domestic cotton cultivation has increased by 5 per cent to 125.02 lakh hectares as against 119.10 lakh hectares during last year, and a brand named 'Kasturi Cotton India' for Indian cotton has been launched to encourage mechanized harvesting of cotton, improving its quality of cotton and reduce labour cost.

Besides, 74 research proposals amounting to Rs 232 crore have been approved under National Technical Textile Mission (NTTM) for speciality fibre and technical textiles, the Textiles Ministry stated in the year-end review for the segment

Orders/judgements

Regional director (rd) order for non-compliance of the section 118 read with secretarial standards -2

The appeal was filed against the adjudication order dated 30.06.2022 passed by ROC Chennai ("ROC") for default compliance of Section 118(10) of the Companies Act, 2013 ("the Act") read with Clause 14 of Secretarial Standards 2 (SS-2) issued by ICSI.

Madras Fertilizers Limited ("the company"), an unlisted public company conducted its 54th AGM on 29.12.2020 via video conferencing due to COVID-19 restrictions pursuant to which it provided SBI Card to all 53 minority shareholders based on their requests. With this action, it was affirmed that the company made a non-compliance of the Section 118(10) read with Clause 14 of SS-2 which states that No gifts, gift coupons, or cash in lieu of gifts shall be distributed to the members at or in connection with the meeting.

The ROC examined the said default and imposed penalty of INR 25,000 upon the company and INR 5,000 each upon both MD and WTD of the company.

In appeal to the above stated order, the company stated that as prior to the aforesaid AGM refreshments were given to shareholders when attended physically and in pursuant to the same company took a humanitarian approach by giving the shareholders a complimentary gift cards in lieu of refreshment.

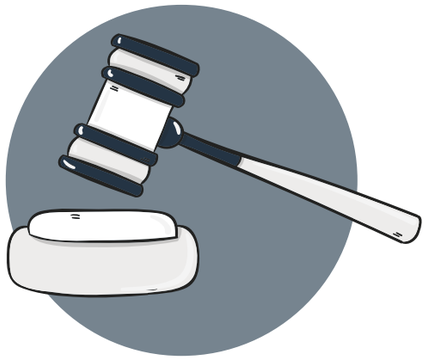
In this case, RD took a different view and stated that as per the provisions of Section 205 (1) (b) of the Act, one of the functions of the company secretary is to ensure the compliance of the applicable Secretarial Standards and it was observed that the company has a whole time company secretary. It is the duty of the Company Secretary to take the utmost care regarding compliance of Secretarial Standards.

In light of the above facts, the RD made a position that the Company Secretary will alone be held responsible for the mistake committed. In furtherance to this the penalty imposed on company, MD and WTD was set aside and ROC was directed to initiate necessary action against the Company Secretary alone as Section 205(2) specifically states that provisions contained in Section 205 shall not affect the duties and functions of Board of Directors, Chairperson of the company, Managing Director or Whole Time Director under this Act or any other law for the time being in force.

Registrar of companies (roc) for non-compliance of the provisions of section 12 of the companies act, 2013.

ROC, Bihar issued an order dated 06 December, 2022 under Section 454 read with Section 12 of the Companies Act 2013 in the matter of M/s **Sukhasan Farmer Producer Company Limited.**

As per section 12(3)(a), every company shall paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters. Further, as per Section 12(8), if any default is made in complying with the requirements of section 12, the company and every officer who is in default shall be liable to a penalty of Rs. 1,000 for every day during which the default continues but not exceeding Rs, 1 Lakh.



Further, Section 446B states that, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or **Producer Company**, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of Rs. 2 Lakh in case of a company and Rs. 1 lakh in case of an officer who is in default or any other person, as the case may be.

- The adjudicating officer visited the registered office of the company on 29.08.2022 and found that the company has failed to paint or affix its name and address outside its office.
- ROC issued Show Cause Notice dated 15.11.2022 to the company and its directors u/s 12 of the Act.
- Reply was received on 29.11.2022 from the company stating that since registration, a sign board properly showing the name of the company was displayed at the entrance of the registered office. But in the mid of august 2022 due to rain and stormy weather, the display board was damaged and thus sent to Patna for repairing purposes. It took the time of 20 days and ultimately it was affixed back on 31.08.2022.
- Penalty imposed for the period 29.08.2022 (date of visit) till 30.11.2022 (date of receipt of company reply) i.e. **94 days:**
  - Company: 94*1000 = 94000/2 = 47000
  - Officers in default: 94*1000 = 94000/2 = 47000 each.

04

Compliance Calendar

Direct Tax

Due dates	Particulars
7th December 2022	Due date for deposit of Tax deducted/collected for the month of November 2022.
	Due date for payment of Equalisation Levy on online advertisement and other specified services, referred to in Section 165 of Finance Act, 2016 for the month of November 2022.
	Due date for payment of Equalisation Levy on e-commerce supply of services, referred to in Section 165A of Finance Act, 2016 for the quarter ending December 31, 2022.
14th January 2023	Due date for issuance of TDS Certificate for tax deducted under section 194-IA in the month of November, 2022
	Due date for issuance of TDS Certificate for tax deducted under section 194-IB in the month of November, 2022
	Due date for issuance of TDS Certificate for tax deducted under section 194M in the month of November, 2022
15th January 2023	Due date for filing of quarterly return of TCS for the quarter ending December 31, 2022
30th January 2023	Due date of issue of quarterly TCS certificate in respect of quarter ending December 31, 2022
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of December, 2022
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of December, 2022
	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of December, 2022
31st January 2023	Due date for filing of quarterly return of TDS for the quarter ending December 31, 2022

Indirect Tax

S. No.	Compliance Category	Compliance Description	Frequency	Due Date	Due Date falling In September 2022
1	Form GSTR-1 (Details of outward supplies)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	11th day of succeeding month	For Tax Period December 2022 - 11 January 2023
2	Form GSTR-3B (Monthly return)	Registered person having aggregate turnover more than INR 5 crores and registered person having aggregate turnover up to INR 5 crores who have not opted for Quarterly Returns Monthly Payment ('QRMP') Scheme	Monthly	20th day of next month	For Tax Period December 2022 - 20 January 2023
3	QRMP Scheme				
	Invoice furnishing facility ('IFF')	• Optional facility to furnish the details of outward supplies under QRMP Scheme	Monthly	1st day to 13th day of succeeding month	For Tax Period December 2022 – 1 to 13 January 2023
	Form GST PMT-06 (Monthly payment of tax)	• Payment of tax in each of the first two months of the quarter under QRMP Scheme	Monthly	25th of the succeeding month	For Tax Period December 2022 – 25 January 2023
	Form GSTR-1 (Details of outward supplies)	• Registered person having aggregate turnover up to INR 5 crores who have opted for QRMP Scheme	Quarterly	13th day of the subsequent month following the end of quarter	For the quarter October 2022 to December 2022 – 13 January 2023

Indirect Tax

	Form GSTR-3B (Monthly return)	• Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 1 states[1] and union territories	Quarterly	22nd day of the subsequent month following the end of quarter	For the quarter October 2022 to December 2022 – 22 January 2023
		• Registered person with aggregate turnover up to INR 5 crore (opted for QRMP Scheme) having place of business in Group 2 states[2] and union territories		24th day of the subsequent month following the end of quarter	For the quarter October 2022 to December 2022 – 24 January 2023
4	Form GSTR-6 (Return for input service distributor)	• Return for input service distributor	Monthly	13th of the succeedin g month	For Tax Period December- 13 January 2022

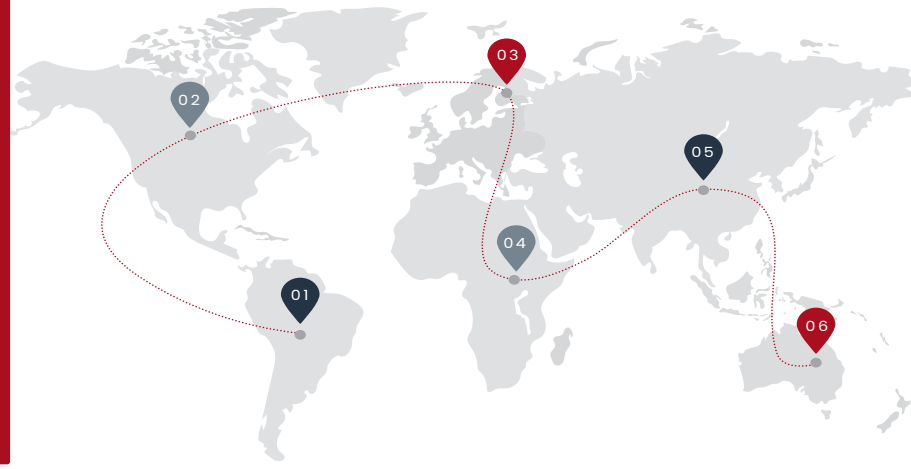
[1]Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.

[2]Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, , Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh and Delhi

Regulatory

Segment	Particulars	Due dates
ECB Borrowers	ECB Return (ECB-2)	7th January, 2023
R 13(3) of SEBI (LODR) Reg. 2015	Submit Statements of Investors Complaints to STX	21st January, 2023
R55A of SEBI (Depositories and Participants) Reg. 1996	Submit Audit Report to STX for Reconciliation of Share Capital Audit by PCA or PCS for shares held in Physical or D-mat mode	21st January, 2023
R33(3)(a) of SEBI (LODR) Reg. 2015	Submission of half yearly financial results (Unaudited + Limited Review Report / Audited) and Statement of Assets and Liabilities	14th February, 2023
R32(1) of SEBI (LODR) Reg. 2015	Submission of Statement of deviation(s) or variation(s)	14th February, 2023
R31(1) of SEBI (LODR) Reg. 2015	Submit a Statement showing Shareholding Pattern to STX	21st January, 2023
R27(2)(a) of SEBI (LODR) Reg. 2015	Submit a Corporate Governance Report	21st January, 2023

Our Locations



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