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Contents

Article
The Government Giveth and the Government Taketh Away: Charitable Institutions satisfied but facing accounting complexities 2

Notifications and Circulars 4

Ratio Decidendi 8

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Article

The Government Giveth and the Government Taketh Away: Charitable Institutions satisfied but facing accounting complexities

By **Tanmay Bhatnagar**

Introduction

The year 2022 has witnessed major changes in exemption regimes available to charitable institutions under the Income-tax Act, 1961 ('**IT Act**'). Through these changes, while the Government has seemingly decayed one issue faced by charitable institutions, it has also given birth to a new one. The following paragraphs will discuss both these issues and analyze the Jekyll and Hyde nature of the amendments of 2022.

Meaning of 'application of income' – Opening a new can of worms

Section 11 and Section 12 of the IT Act provide for exemption for income derived from property held by charitable institutions in certain cases.

Section 11(1) of the IT Act exempts the income derived from property held under trust to the extent such income is 'applied' for charitable purpose in India, subject to certain conditions.

Through Finance Act, 2022, the Legislature has sought to define the term 'application of income'. Any sum payable by a charitable trust or institution shall be considered as 'application of income' in the previous year in which such sum is actually paid by it. This would be irrespective of the previous year in which the liability to pay such sum has been incurred by the trust or institution. Similar meaning has been provided in Section 10(23C).

The Memorandum explaining the Finance Bill states that these amendments affirm the position taken by various Courts. However, an analysis of various decisions of High Courts ('**HC**') indicates that the settled position of law regarding the meaning of 'application of income' has been changed by this amendment.

In this regard, it is important to firstly refer to the decision of Allahabad HC[1]. In this case, HC took the view that the word 'applied' necessarily does not mean 'spent', and even if a particular amount has been earmarked and allocated for the purposes of the charitable institution, it would be considered to have been applied for its purposes.

Another important decision in this regard is that of the Andhra Pradesh HC[2]. Here also it was held that it would be incorrect to equate the words 'applied' with the word 'spent'. Had the Legislature intended that an amount should actually have been 'spent', it would have used the said term. Thus, actual payment was irrelevant for purposes of finding out if there had been an application of funds.

Thus, as per judicial interpretation, even the setting aside or allocation of income for the charitable purposes will be considered as 'application of income'. The position laid down in the aforesaid decisions has been accepted and followed by other High Courts as well as Tribunal in many decisions.

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[1] *CIT* v. *Radhaswami Satsang Sabha* [1954] 25 ITR 472 (All HC).

[2] *CIT* v. *Trustees of H.E.H. The Nizam's Charitable Trust* [1981] 131 ITR 497 (AP HC).

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By these amendments, method of accounting for charitable institutions has become complicated where the institutions are following mercantile system of accounting. This is because while income is getting recognized as and when it accrues, application of such income will have to be recognized only when money is actually spent (for tax purposes).

These amendments have forced charitable institutions to:

- shift from mercantile system of accounting to cash system of accounting;
- alter their agreements with their donors; and
- rely more on the provisions that allow for accumulation of more than 15% of the income and hence, increase the compliance burden.

Impact of violating certain conditions – Contentious issue has got settled

Another major change brought by Finance Act 2022 is the introduction of a new Section 115BBI into the IT Act. To appreciate the newly inserted section, it is important to delve into the clauses (c) and (d) of Section 13(1) of the IT Act as well as the judicial decisions whereby these clauses have been interpreted.

Clause (d) of Section 13(1) of the IT Act lays down that if a charitable institution holds investments in any of the restricted modes or forms of investment which are not provided in Section 11(5) or are not the shares of public sector company, then Sections 11 or 12 will not operate to so as to exclude '*any income thereof*' from the total income of such charitable institution.

On the other hand, clause (c) of Section 13(1) of the IT Act lays down that if during a particular year any part of the income of the charitable institution enures or if any part of its income or property is applied directly or indirectly for the benefit of one of the prohibited persons listed in Section 13(3), then Sections 11 or 12 will not operate to so as to exclude '*any income thereof*' from the total income of such charitable institution.

In case of breach of certain conditions resulting in loss of exemption, the 'extent' to which the income of a charitable institution will become taxable has been a matter of differing judicial opinions under aforesaid clauses. This is highlighted below:

- In the context of clause (d) of Section 13(1), High Courts[3] have consistently held that only the income from a restricted investment should be taxed; and that complete exemption should not be denied under Section 11 on the total income of the charitable institution.
- In the context of clause (c) of Section 13(1), Delhi HC[4] held that the charitable institution would lose the complete exemption in respect of its entire income if there was violation of Section 13(1)(c) of the IT Act on account of even a single instance of application or use of the income or property of the trust directly or indirectly for the benefit of any prohibited person mentioned in Section 13(3).

In order to address this inconsistency in the two sub-clauses of Section 13(1), Finance Act 2022 introduced Section 115BBI. Section 115BBI

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[3] *DIT (Exemption)* v. *Sheth Mafatlal Gagalbhai Foundation Trust* [2001] 114 Taxman 19 (Bom HC), *CIT* v. *Fr. Mullers Charitable Institutions* [2014] 363 ITR 230 (Karnataka HC), *CIT* v. *Orpat Charitable Trust*, [2015] 230 Taxman 66 (Gujarat HC), *CIT* v. *Working Women's Forum*, [2014] 365 ITR 353 (Madras) with Department's SLP against this decision being dismissed in [2015] 235 Taxman 516 (SC), *CIT* v. *Santokba Durlabhji Trust Fund*, [2018] 406 ITR 457 (Rajasthan) with Department's SLP against this decision being admitted in [2018] 255 Taxman 368 (SC).

[4] *DIT (Exemption)* v. *Charanjiv Charitable Trust* [2014] 223 Taxman 71 (Delhi HC).

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lays down a flat tax rate of 30% for certain 'specified' non-exempt income under both the regimes. Among other things, this 'specified' income has been defined to mean income that is not exempt under Section 11 of the IT Act due to the operation of clauses (c) and (d) of Section 13(1).

Based on the above, it is possible to argue that the introduction of this new section would ensure that complete exemption would not be denied to charitable institution for a minor breach. Similar amendments have been made for some of the institutions registered under 10(23C). These amendments would remove difficulties for such institutions and provide them with certainty in future.

Conclusion

As may be seen from the above discussion, for charitable institutions, the Finance Act, 2022 has been a case of the Government giveth and the Government taketh away. While accounting has been made more complex for these institutions, certainty has been provided on the other hand.

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Notifications and Circulars

Use of functionality under Sections 206AB and 206CCA clarified

Sections 206AB and 206CCA as introduced *vide* Finance Act 2021, prescribed for tax deduction and tax collection at higher rates (such as twice the rates prescribed) for payment/ collection being made from certain 'specified person'. The condition for qualifying as specified person is linked to verifying whether the payee has filed return of income in the previous two years or not.

To enable smooth compliance with the provision, the income-tax department had come out with the functionality 'Compliance Check for Sections 206AB & 206CCA'.

Vide Finance Act 2022, the provisions of aforesaid sections were amended. Due to the changes in the underlying provisions, Income-tax department has made certain changes in the functionality for 'Compliance Check for Section 206AB & 206CCA'. Some of the key changes and their impact in the current year are summarized below:

- A list of specified persons will be prepared in accordance with the amended provisions at the start of FY 2022-23.
- No new names will be added to the said list during FY 2022-23.
- If any person files a return of income (including belated and revised) for AY 2021-

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22 during FY 2022-23, his name would be removed from the list of specified persons.

- If any specified person files a return of income for AY 2022-23, his name would be removed from the said list.
- If the aggregate of tax deducted and tax collected is less than INR 50,000 for a specified person as on 31 July 2022, his name will be removed from the said list.

In addition to the above, it has also been clarified that the functionality does not have any visibility regarding non-residents having Permanent Establishment in India. Therefore, tax deductors and collectors are required to carry out necessary due diligence in respect of such payees.

Further, Circular No. 10, dated 17 May 2022 also discusses about the prevailing practice whereby deductors/ collectors are asking the payee to file evidence in respect of furnishing of return of income in order to be compliant with aforesaid sections. The circular states that this functionality has been developed to ease the compliance burden of the deductors/ collectors. Asking for evidence of filing of return defeats the purpose of the tax friendly measure taken by income-tax department.

Transactions where PAN is required to be mandatorily obtained notified

Section 139A(1) provides list of persons who are required to obtain PAN. Clause (vii) of said sub-section provides that every person undertaking transactions as specified by the CBDT is mandatorily required to obtain PAN. In this regard, sub-section (8) of Section 139A empowers the Central Board of Direct Taxes (‘**CBDT**’) to make rules for notifying certain specified transactions.

Recently, exercising the above power, CBDT has introduced Rule 114BA in the Income-tax Rules 1962 (‘**IT Rules**’) w.e.f. 25 May 2022. The rule prescribes the following transactions for the purpose of the aforesaid Section 139A(1)(vii):

- Cash deposit or deposits aggregating to INR 20,00,000 or more in a financial year, in one or more accounts of a person with a banking company, co-operative bank, or post office.
- Cash withdrawal or withdrawals aggregating to INR 20,00,000 or more in a financial year, in one or more accounts of a person with a banking company, co-operative bank, or post office.
- Opening of a current account or cash credit account by a person with a banking company, co-operative bank, or post office.

In above cases, application to obtain PAN is required to be made at least seven days prior to entering into the transactions.

Further, CBDT has also introduced Rule 114BB (w.e.f. 8 July 2022) in the IT Rules. The rule prescribes that a banking company, co-operative bank, and Postmaster General shall duly authenticate the PAN or Aadhar number as submitted by persons entering into the aforesaid transactions.

Faceless Penalty Scheme, 2021 amended

In order to ensure greater efficiency, transparency, and accountability within the tax administration, Finance Act, 2020 empowered Central Government to make different faceless schemes by way of notifications. In exercise of this power, Central Government, *inter alia*, introduced the Faceless Penalty (‘**FP**’) Scheme, 2021 *vide* Notification No. 2/ 2021 dated 12 January 2021.

In order to align the aforesaid scheme with the amendments made in Finance Act, 2022, the Central Government recently introduced the Faceless Penalty (Amendment) Scheme, 2022 *vide* Notification No. 54/2022 dated 27 May

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2022. Some of the key amendments made in the said scheme are summarized below:

- **Clarification regarding 'Penalty Unit' and 'Penalty Review Unit'**: The amended FP scheme has specifically clarified that the term 'Penalty Unit' and 'Penalty Review Unit' shall refer to 'Assessing Officer'.
- **Penalty order will be passed by penalty unit:** In the erstwhile scheme, the National Faceless Penalty Centre was responsible to pass the penalty order. In the amended scheme, the penalty order is to be passed by the Penalty Unit i.e., Assessing Officer after the National Faceless Penalty Centre ('**NFPC**') conveys its approval for the same to the Penalty Unit.
- **Regional Faceless Assessment Centre ('RFAC') and Regional Faceless Penalty Centre ('RFPC')**: All references to RFAC and RFPC have been omitted in the amended FP scheme. Now there are only National Faceless Penalty Unit, Penalty Unit and Penalty Review Unit who will play role in the penalty assessment proceedings.
- **Personal hearing mandated:** Unlike the erstwhile FP scheme, the amended FP scheme has mandated that a personal hearing shall be granted to the taxpayer *via* video conference, or video telephony, if a request in this regard has been made to the Income-tax authorities.
- **Changes in procedure where matter referred to Penalty Review Unit:** As per the proposed scheme, if the case has been assigned by NFPC to the 'Penalty Review Unit', the report of the Review Unit will be sent to the Penalty Unit who has proposed to pass the draft order. The penalty unit may accept or reject the changes proposed after recording reasons for the same. With this amended process, the complex procedure proposed in the earlier scheme stands amended if the matter has been referred to the review unit.
- **No rectification proceedings:** Under the erstwhile FP scheme, NFPC was empowered to rectify any mistake or error apparent on record *via* an order in writing. The provision in respect of the rectification proceedings now stands omitted in the amended FP Scheme. According to us, after said amendment, the taxpayer should be open to file rectification application under Section 154 before the Assessing office (i.e., Penalty Unit) who passed the penalty order.
- **Empowering different units to authenticate the electronic records**: Under the erstwhile scheme, only NFAC and taxpayers were empowered to authenticate the electronic records. This power has now been extended to the different units (i.e., penalty unit, penalty review unit, technical unit, and verification unit) as well.

Manner of filing appeal against Order of Board of Advance Ruling before the High Court clarified

Section 245W of the IT Act provides that the assessee and Assessing Officer can file an appeal against an order or ruling passed by the Board of Advance Ruling ('**BAR**') within sixty days, in such form and manner as may be prescribed.

In exercise of this power, CBDT *vide* Notification No. 57/ 2022, dated 31 May 2022 has inserted Rule 44FA in the IT Rules which provides that the form and manner of filing an appeal against an order or ruling of BAR shall be the same as provided in the applicable procedure laid down by the jurisdictional High Court for filing an appeal to the High Court.

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Re-assessments – Implementation of Supreme Court judgment in Ashish Agarwal case clarified

Supreme Court recently in the case of *UOI* v. *Ashish Agarwal* [2022 SCC Online SC 543] revived the reassessment notices issued between 1 April 2021 to 30 June 2021 ('**specified period**') under the erstwhile reassessment regime while exercising powers under Article 142 of the Constitution of India.

In order to implement the Supreme Court's judgment in a uniform manner, the Central Board of Direct Taxes ('**CBDT**') issued Instruction No. 1 of 2022, dated 11 May 2022. The instruction provides that the SC judgment will uniformly apply to all cases where reassessment notices have been issued, irrespective of the fact whether they have been challenged or not.

CBDT has also clarified that by reading the SC judgment with the timeline extension provided under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('**TOLA**'), all notices issued during the specified period will travel back in time to their original date, and the limitation period prescribed under the new regime will apply from that point.

Based on the aforesaid principle, CBDT has clarified the following:

- **AY 2013-14 to AY 2015-16:** Reassessment notices can be issued provided that the conditions mentioned in Section 149(1)(b) of the IT Act are satisfied
- **AY 2016-17 to AY 2017-18:** Reassessment notices can be issued under Section 149(1)(a) of the IT Act since such notices will be within 3 years period

In addition to the above, CBDT has also laid down the procedure to be followed by the Assessing Officers during the reassessment proceedings, in accordance with the SC directions.

TDS on perquisites and benefits – CBDT issues guidelines on new Section 194R

The Central Board of Direct Taxes (CBDT) has issued elaborate guidelines on the provisions of Section 194R of the Income Tax Act, 1961 which mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ 10% of the value or aggregate of value of such benefit or perquisite. These provisions are set to be effective from 1 July 2022. The CBDT has vide Circular No. 12 of 2022, dated 16 June 2022 clarified as follows:

- The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient, and the section under which it is taxable.
- Section 194R covers the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.
- The deductor is required to deduct tax under said provisions in all cases where benefit or perquisite (of whatever nature) is provided.
- No tax is required to be deducted under said provisions on sales discount, cash discount and rebates allowed to customers. Relaxation however would not apply to a situation of free samples and to other benefits provided by the seller in connection with its sale.
- TDS under Section 194R is required to be deducted in the name of the recipient entity even though the benefits/perquisites may be used by owner/director/employee of the recipient entity.

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- Provision of Section 194R shall not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.
- Valuation would be based on fair market value of the benefit or perquisite, except where the benefit/perquisite provider had purchased or manufactured the said perquisite/benefit. GST will not be included for the purposes of valuation of benefit/perquisite.
- TDS is to be deducted if the product given to social media influencer for use and thereafter making audio/video, etc., is retained by the influencer.
- Reimbursement of out of pocket expense is perquisite/benefit: Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession. Except, where the invoice is raised in the name of service recipient.
- Expenditure pertaining to dealer/business conference is not to be considered as benefit/perquisite in a case where dealer/business conference is held with the prime object to educate dealers/customers and is not in the nature of incentives/benefits to select dealers/customers who have achieved particular targets.
- The benefit or perquisite which has been provided on or before 30 June 2022, would not be subjected to tax deduction under section 194R of the Act.

Ratio Decidendi

Commission paid to directors and relatives to be disallowed as expenditure under Section 37 of Income-tax Act in case of insufficient evidence on receipt of service

In this case, Assessee was engaged in the business of manufacturing and sale of woven sacks meant for packing fertilizer, cements etc. The Assessee procured an export order for supplying Iron Ore Fines (‘**IOF**’). It paid commission for procuring IOF for export order to 7 individuals including three directors and four relatives of directors. The Assessing Officer (‘**AO**’) disallowed payment of commission to Directors and their relatives.

The Assessee explained payment of said commission by stating that it had to engage Directors and his relatives for procuring quality IOF against an export order which was to be met within a short span of time. It was claimed by the Assessee that no adverse inference can be drawn against the Assessee as commission was paid entirely through banking channels after deducing tax at source (‘**TDS**’). The Assessee

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claimed that each of the commission agents disclosed the said commission amounts in their respective returns and paid tax thereon and that again subjecting said payment to tax again would amount to double taxation in the hands of the Assessee.

The Assessee relied on the case of Supreme Court in *J.K. Wollen Manufacturing* v. *Commissioner of Income-tax*, (1969) 72 ITR 612 to submit that commission paid could not be termed as excessive or unreasonable. In this case, the SC had applied the test of commercial expediency and noted that the reasonableness of an expenditure had to be adjudged from the point of view of the businessman and not the Income Tax Department.

The Commissioner of Income-tax, Appeals ('**CIT-A'**) and Income Tax Appellate Tribunal ('**ITAT**') however upheld the action of AO based on the reasoning that the Assessee failed to bring on record the expertise of Directors and their relatives to render services and also what services had in fact been rendered to enhance the business of the Assessee. The ITAT also noted that mere deduction of TDS would not justify allowing the entire amount claimed towards commission as expenditure under Section 37 of the IT Act.

The High Court upheld the disallowance of commission paid to Directors and their relatives by observing that the Assessee failed to demonstrate the expertise of the Directors and their relatives in procuring the material from the markets in India. The Court further observed that the supply of IOF was not in line with the business of the Assessee and it was not a sheer coincidence that the persons to whom commission was paid happened to be Directors of the Assessee and their relatives. The Court also observed that the test of commercial expediency was applied in the present case and even from the point of view of a businessman, the commission cannot be said to be for the purpose of business of the Assessee. [*Oripol Industries Ltd.* v. *JCIT* – Order dated 12 May 2022 in ITA No. 41 of 2017, Orissa High Court]

Power of compounding of offences is a quasi-judicial power, hence covered by SC decision extending period of limitation during Covid

In this case, prosecution was initiated under Section 276B of the IT Act against the Petitioner company through its Directors for delayed submission of TDS for the Financial Year 2012-13. Section 276B of IT Act provides for rigorous imprisonment of a term of 3 months to 7 years if a person fails to pay to the credit of Central Government tax deducted under Chapter XVII-B of IT Act.

The Petitioner filed a writ petition before the Delhi High Court against an order by which Petitioner's application under Section 279(2) of IT Act for compounding of offences was rejected. Section 279(2) of IT Act provides that any offence under Chapter XXII of IT Act may be compounded by the Principal Chief Commissioner/Chief Commissioner/Principal Director General/ Director General. Such compounding can happen either before or after the institution of proceedings. The Petitioner's application for compounding was rejected on the ground that it was not filed within the limitation period.

The Petitioner argued that order rejecting the compounding application was in disregard of the order of SC in *In Re: Cognizance for Extension of Limitation,* Suo Motu W.P. (C) No. 3/2020. The SC in said order extended limitation during Covid-19 pandemic. On the other hand, the revenue department argued that the Petitioner's compounding application was rejected in accordance with the Clause 7(ii) of the Guidelines for Compounding of Offences dated 14 June 2019 inasmuch as the petitioner's

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compounding application was delayed by thirty-three months.

The Court set aside the order of rejecting compounding application and held that the Petitioner is entitled to the benefit of extension of limitation as directed by the SC in *Cognizance for Extension of Limitation* (supra). The Court observed that the power of compounding of offences is a quasi-judicial power as it entails a judicial element/ function and the discretion in compounding is not unfettered. Consequently, the Court directed the Revenue to consider the Petitioner's compounding application afresh on merits. [*SKA Infrastructure Pvt. Ltd.* v. *Union of India* – Order dated 23 May 2022 in W.P.(C) 7912/2022, Delhi High Court]

Reassessment notice issued under erstwhile law, for AY 2014-15, invalid on account of being time barred under the new law

In this case, notice under Section 148 of IT Act was issued on 1 April 2021 for the assessment year 2014-15. Thereafter, the National Faceless Assessment Centre, Delhi passed re-assessment order on 31 March 2022 under Section 147 read with Section 144B of IT Act. In this case, the income of the Petitioner escaping assessment to tax was less than INR 50 lakh.

The Allahabad High Court quashed the impugned reassessment notice holding that the same is barred by limitation as the limitation period under the amended provisions of Section 148A and Section 149 of the IT Act had expired on 31 March 2018. The Court relied upon the clauses 6.2 and 7.1 of the CBDT instruction dated 11 May 2022. The said clauses provide that if a case does not fall under clause (b) of sub-section (i) of Section 149 of IT Act for the AY 2013-14, 2014-15 and 2015-16 (where the income of an assessee escaping assessment to tax is less than INR 50,00,000) and notice has not been issued within limitation under the unamended provisions of Section 149, then proceedings under the amended provisions cannot be initiated. [*Ajay Bhandari* v. *Union of India* – Order dated 17 May 2022 in Writ Tax No. 347 of 2022, Allahabad High Court]

Interest on loan availed for investment in subsidiary allowed as revenue expenditure as investment based on business necessity

The assessee made investment in equity shares of Bitwise Inc. For purposes of said investment, the assessee took a term loan. The AO disallowed the interest paid on said loan under Section 36(1)(iii) of the IT Act based on the reasoning that interest on loan taken for purchasing shares for acquiring controlling interest in the company cannot be held to be expenditure incurred wholly and exclusively for business. The Revenue department argued that the amount borrowed was not for the purpose of business as investment was not the business of the Assessee.

The assessee argued that investment in Bitwise Inc. was for getting controlling interest in the company and not for earning dividend. Assessee invested in the said company to ensure continuous flow of business as Bitwise Inc. was the only customer of Assessee since beginning. Hence, Assessee submitted that the entire expenditure was incurred for the business of the Assessee.

The ITAT allowed the interest expenditure on the aforesaid loan under Section 36(1)(iii) of IT Act. The ITAT observed that Assessee has demonstrated that investment in Bitwise Inc. was a business decision based on business necessity.

The ITAT relied on the Bombay HC case in *PCIT* v. *Concentrix Services (P.) Ltd.* [(2019) 111 taxmann.com 269] wherein the court allowed the interest on loan taken for acquiring controlling interest in the business of the company which is

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in the same line of business as the Assessee for purposes of expansion of business. [*Bitwise Solutions Pvt. Ltd.* v. *DCIT* – Order dated 29 April 2022 in ITA No. 756/PUN/2017, ITAT Pune]

Fees paid to investigators for providing clinical trial services to Associated Enterprise cannot be treated as pass-through cost and mark-up should be charged while billing to AE

Assessee was a domestic company having Associated Enterprise ('**AE**') in USA. It was engaged in the business of facilitating and coordinating clinical trial services for its AE. For providing the services, the Assessee was also making payment to third party investigators. For benchmarking the transaction of provision of clinical trial services, the Assessee selected TNMM as the most appropriate method. Further, for benchmarking the international transaction of recovery of expense (i.e., investigator's fee) from AE, Assessee had applied 'other method' and concluded both transactions to be at arm's length.

Assessee's case was selected for scrutiny and reference was made to Transfer Pricing Officer ('**TPO**'). During assessment, the TPO proposed TP adjustment by treating investigator's fee (treated as pass through cost by the Assessee) as part of operating cost of the assessee-company. Further, TPO also undertook a fresh search and selected some new comparables. On said facts, the matter travelled to ITAT.

The key issues and the observation of ITAT on said issues are as follows:

Treatment of investigator's fees as reimbursement/ pass through cost:

ITAT relied on its decision in assessee's own case of previous assessment year wherein the Tribunal on a similar issue ruled in favour of the revenue authorities. The reasoning given by ITAT in said case was as follows:

- In the earlier years, investigators payments were reimbursed to the assessee-company with a mark-up. However, for the AY in consideration the same was treated as a pass-through cost even though there is no change in the nature of functions performed by the assessee-company.
- Assessee-company placed reliance on the addendum to the inter-company agreement to substantiate its claim that the investigator's fee is indeed a pass-through cost. However, ITAT in this regard observed that since the addendum was solely made with an intention to evade payment of taxes it was only a self-serving document between related parties.
- Accordingly, ITAT in earlier year observed that this intra-group service is not a pass-through cost or reimbursement of expenses.

On comparable selection:

ITAT deleted one comparable (i.e., Clinigene) considering its risk profile was different from the assessee company. The assessee-company was outsourcing the clinical research activities as per direction off the sponsor but the comparable was performing the clinical research activities in its own research centre and was assuming greater risk.

Working capital adjustment:

In applying TNMM, the assessee requested for granting working capital adjustment. The ITAT granted working capital adjustment in view of Bangalore ITAT decision in the case of *Huawei Technologis Pvt. Ltd.* v. *JCIT.*

[*Paraxel International Clinical Research Pvt. Ltd.* v. *ACIT* – TS 271 ITAT 2022(Bang) TP]

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