ACCOUNTING, REGULATORY & TAX NEWSLETTER

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INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ("ICAI")

EAC Opinion – Accounting treatment of borrowing costs incurred by parent company in respect of borrowings made for acquisition of investments in subsidiary company

Facts of the case

A Company is a wholly owned subsidiary of a listed government company and is in the business of exploration and production (E&P) of oil and gas and other hydrocarbon related activities outside India. The Company has adopted Indian Accounting Standards (Ind ASs) w.e.f. April 01, 2016 (Transition Date: April 01, 2015). The functional currency of the Company is assessed as US Dollar (USD) in accordance with the provisions of Ind AS. The Company presents its financial statements in presentation currency which is Indian Rupee (INR).

The Company operates overseas projects directly and/or through subsidiaries, by participation in various joint arrangements and investment in associates. Globally, E&P business is carried out by way of joint arrangements or investments in form of subsidiaries/associates.

The Company has informed that during the financial year (F.Y.) 2013-14, the Company acquired 60% shares in an overseas company (subsidiary company X) which was having 10% participating interest (PI) in an overseas discovered oil and gas project under development (Project-A). Total purchase consideration for the acquisition of 60% shares was USD 1502.82 million. At the time of acquisition, net assets of the subsidiary company X, proportionate to the Company's holdings, were USD 195.68 million and accordingly a goodwill of USD 1307.14 million (USD 1502.82 million – USD 195.68 million) was recognised in the consolidated financial statements of the Company. The purchase consideration for the acquisition was financed partly by market borrowings and partly by internal accruals. As noted above, at the time of acquisition of the shares in subsidiary company X, the subsidiary company was holding 10% PI in an oil and gas asset under development with assets under construction in the form of Capital Work in Progress (CWIP) of USD 69.37 million and Exploratory Wells in Progress (EWIP) of USD 173.80 million. The said in-progress oil and gas assets were under development as at March 31, 2021.

In the standalone financial statements of the Company, the acquisition of 60% shares in subsidiary company X was accounted as an investment in the subsidiary company X. The Company also recognised liabilities in respect of the borrowings made from the market to finance the acquisition. The associated borrowing costs are charged off as expenditure in the standalone statement of profit and loss for the respective financial years.

In the consolidated financial statements of the Company, the subsidiary company X is consolidated following the provisions of Ind AS 110, 'Consolidated Financial Statements', inter alia combining like items of assets, liabilities, equity, income, expenses and cash flows of the Company with those of its subsidiary company X. Hence, in the consolidated financial statements, the assets under construction (CWIP and EWIP) of the subsidiary company X are combined with like items as per line by line consolidation method. Similarly, the borrowings costs charged off as expense in the standalone financial statements are also combined with like items of expenditure and, therefore, are treated as expense in the consolidated financial statements as well.

The Company has further informed that, during the course of supplementary audit of F.Y. 2020-21, Comptroller and Auditor and General (C&AG auditors) referred to Question 22 of Educational Material on Ind AS 110, Consolidated Financial Statements, issued by the erstwhile Ind AS Implementation Group of the Accounting Standards Board of the ICAI which is reproduced below:

"Question 22

AB Limited obtains a term loan from PQR Bank. The loan has been raised by AB Limited specifically for the purpose of making a further equity investment in BC Limited, its wholly-owned subsidiary, which is in need of funds for construction of an asset. The said asset meets the definition of a qualifying asset under Ind AS 23, 'Borrowing Costs' and is not excluded from the scope of Ind AS 23. Since, equity investment made by AB Limited using the proceeds of the borrowing does not qualify as a qualifying asset from its perspective; it expenses the associated borrowing costs in its standalone financial statements. On the other hand, since the proceeds of borrowing made by AB Limited have been provided by AB Limited to BC Limited as an equity investment and not as a loan, BC Limited does not have any associated borrowing costs from the perspective of its standalone financial statements.

How should AB Limited deal with the borrowing costs associated with the term loan in its consolidated financial statements?"

The response of the above question as provided in the Educational Material, after analysing the various provisions of Ind AS 23, 'Borrowing Costs', states that the interest payment on loan taken by the holding company for equity investment in its wholly owned subsidiary company and the funds obtained by the subsidiary company are utilised for construction of qualifying assets in subsidiary company. Therefore, holding company must capitalise the borrowing cost incurred in relation to the construction of the qualifying asset in its consolidated financial statements.

As per the Company, drawing an analogy from the above case study given in the Educational Material, C&AG auditors observed as follows:

"As per Education Material on Ind AS 110, it was clarified that interest payment on loan taken by the holding

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company for equity investment in its wholly owned subsidiary company and loan was for construction of an asset in subsidiary company. The said asset meets the definition of a qualifying asset under Ind AS 23 and therefore, from the perspective of the consolidated financial statements, the reporting entity (i.e. the group) has raised a loan from an external party and has used the proceeds of the loan to finance the construction of a qualifying asset. Hence, to the extent the borrowing costs associated with the loan are directly attributable to the construction of the qualifying asset, same should be included in the cost of the asset in the consolidated financial statements of holding company."

On the basis of above observations, auditor was of the opinion that though the Company is correct in charging off the borrowing costs relating to the borrowings made for acquisition of the shares in the subsidiary company X as expenditure in the standalone financial statements, however, in the consolidated financial statements, the Company should have capitalised such borrowing costs with the cost of related assets under construction of the subsidiary company.

The Company has stated that paragraph 8 of Ind AS 23, 'Borrowing Costs' states that an entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them. Paragraph 10 further states that the borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset are those borrowing costs that would have been avoided if the expenditure on the qualifying asset had not been made. In case of difficulty in identifying direct relationship between particular borrowings and a qualifying asset, paragraph 11 of Ind AS 23 states inter alia that such a difficulty occurs, for example, when the financing activity of an entity is coordinated centrally. As a result, the determination of the amount of borrowing costs that are directly attributable to the acquisition of a qualifying asset is difficult and the exercise of judgement is required.

In the opinion of the Company, the facts as mentioned in the Question No. 22 of Educational Material on Ind AS 110 as reproduced above are very much different from the Company's case. Therefore, the accounting treatment as suggested in the response of said question of Educational Material cannot be made straightaway applicable on the Company's case. Therefore, exercise of judgement, as required in paragraph 8 of Ind AS 23, is required for identifying direct relationship between particular borrowings and a qualifying asset.

In the question given in Educational Material, the subsidiary company is in need of funds for construction of a qualifying asset and the holding company borrows the funds from market and provides these funds to the subsidiary company through equity investment. Therefore, the subsidiary company actually obtains the funds borrowed by the holding company and utilises the same for creation of qualifying assets. However, in the Company's case, the Company acquired the shares of the subsidiary company X in a secondary transaction, i.e., the Company acquired the shares from the previous holder of shares by paying the purchase consideration to the said holder for which the borrowings were made from the market and, therefore, the subsidiary company did not receive any funds from the Company as a result of this acquisition. Moreover, the subsidiary company was already having assets under construction in its financial statements as at the date of acquisition and therefore, in the Company's case there is no direct association of the funds borrowed by the Company for financing the purchase consideration (paid to the previous investor from which the shares in subsidiary company were acquired) and the assets held by the subsidiary company as at the time of acquisition.

The Company has also highlighted that the main objective of the Company, in respect of the acquisition of subsidiary company X, was to obtain the mineral rights in the form of participating rights in view of the hydrocarbon reserves of the underlying project. It is demonstrated in the Company acquiring the investment in the subsidiary company X by paying a significant proportion (around 86%) of purchase consideration towards the goodwill. Thus, the purchase consideration paid by the Company for the acquisition of investment in subsidiary X and hence the borrowings made for such acquisition were aimed at the futuristic potential of the underlying project in terms of its hydrocarbon reserves. Therefore, the assets under construction (CWIP and EWIP) are acquired by the Company, not as a primary purpose of acquisition but as an incidental takeaway of the acquisition of the participatory mineral rights in the underlying project. Accordingly, the borrowings made for such acquisition and the associated borrowing costs are not directly associated with the in-progress qualifying assets held by the subsidiary company X at the time of acquisition. Association of the borrowing costs with these assets, if any, is only indirect, remote and secondary.

Without prejudice to the above, the Company has also stressed that paragraph B86 of Ind AS 110, in respect of accounting requirements of consolidation procedures provides as follows:

"B86 Consolidated financial statements:

(a) combine like items of assets, liabilities, equity, income, expenses and cash flows of the parent with those of its subsidiaries.

(b) offset (eliminate) the carrying amount of the parent's investment in each subsidiary and the parent's portion of equity of each subsidiary (Ind AS 103 explains how to account for any related goodwill).

(c) eliminate in full intragroup assets and liabilities, equity, income, expenses and cash flows relating to transactions between entities of the group (profits or losses resulting from intragroup transactions that are recognised in assets, such as inventory and fixed assets, are eliminated in full). …"

Since the Company (being a parent company) recognises the borrowing costs in respect of the borrowings made

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for acquisition of subsidiary company X as expenses in its separate statement of profit and loss, the same, not being an intragroup transaction, is required to be consolidated on line by line basis as per paragraph B86 of Ind AS 110 as mentioned above. If the said borrowing costs are not combined as expenditure in consolidated financials on line by line basis and is instead capitalised therein, it may not be in alignment with the requirements of paragraph B86 of Ind AS 110. Similar will be the case with in-progress assets which will have a different carrying value in the separate financial statements of the Company from carrying value in consolidated financial statements as a result of the capitalisation of borrowing costs while consolidation. Therefore, the suggested accounting treatment that the borrowing costs should be treated as expenditure in separate financial statements, but in consolidated financial statements, the same should be capitalised, is not in accordance with the consolidation accounting procedure as given in Ind AS 110.

Moreover, it may also be highlighted that the opinion of the Expert Advisory Committee (EAC) was also obtained by the Company in respect of the same arrangement earlier in February, 2015. In the EAC opinion, the query asked by the Company is that whether the following suggested accounting treatment is appropriate or not in the light of Accounting Standard (AS) 16, 'Borrowing Costs':

"In the standalone books, the borrowing cost related to acquisition of PI through the subsidiary company would be charged off to the statement of profit and loss. However, in the consolidated financial statement of the company, the borrowing cost incurred by the company relating to acquisition of PI through the subsidiary company will be capitalised to the respective eligible assets by necessary adjustment to the statement of profit and loss."

While responding to the above query after duly analyzing the applicable provisions, EAC responded in the opinion that:

"No, the suggested accounting treatment of capitalising the borrowing cost related to acquiring PI in the oil and gas project through the overseas subsidiary company to the respective eligible assets held by the subsidiary company in the underlying oil and gas project in the consolidated financial statements as per paragraph 7 of the EAC opinion is not appropriate."

The Company has also pointed out that the provisions of Ind AS 23 and AS 16 are similar in respect of the capitalisation of borrowing costs directly associated with the qualifying assets. Therefore, in the opinion of the Company, EAC opinion as obtained previously on the issue should still hold good.

In the light of foregoing, the Company is of the view that considering the specific facts of the extant case, the Company has correctly not capitalised the borrowing costs associated with the acquisition of investment in subsidiary company X in the consolidated financial statements.

Query

In view of the above, the Company has sought the opinion of the Expert Advisory Committee as to whether in the light of provisions of Ind AS 23 and Ind AS 110, the facts of the Company's case, Educational Material on Ind AS 110 and the previous EAC opinion on the same issue, the Company is correct in not capitalising the borrowing costs associated with the borrowings made for acquisition of shares in subsidiary X with the costs of in-progress assets held by the subsidiary company and charging off the same as expenditure in the separate as well as consolidated financial statements.

Points considered by the Committee

The Committee notes that the basic issue raised in the query relates to accounting treatment of borrowing costs incurred by the Company in respect of borrowings made for acquisition of investments in subsidiary company in a secondary transaction in its separate and consolidated financial statements. The Committee has considered only this issue and has not examined any other issue(s). Further, the accounting Standards referred hereinafter are Indian Accounting Standards, notified under the Companies (Indian Accounting Standards) Rules, 2015, as amended/revised from time to time.

At the outset, with regard to the earlier opinion issued to the Company on similar subject, the Committee wishes to point out that the earlier opinion was issued in the context of Accounting Standards, notified under the Companies (Accounting Standards) Rules, 2006 whereas the current opinion has been sought from the perspective of Indian Accounting Standards. Since the frameworks governing the two sets of Standards are different, the Committee's opinion under Accounting Standards framework may not necessarily apply under Indian Accounting Standards framework. Therefore, the earlier opinion has not been examined by the Committee.

With regard to the issue raised, the Committee notes the following paragraphs of Ind AS 23;

"A qualifying asset is an asset that necessarily takes a substantial period of time to get ready for its intended use or sale."

"8 An entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. An entity shall recognise other borrowing costs as an expense in the period in which it incurs them."

"Borrowing costs eligible for capitalisation

10 The borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset are those borrowing costs that would have been avoided if the expenditure on the qualifying asset had not been made. When an entity borrows funds

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specifically for the purpose of obtaining a particular qualifying asset, the borrowing costs that directly relate to that qualifying asset can be readily identified.

11 It may be difficult to identify a direct relationship between particular borrowings and a qualifying asset and to determine the borrowings that could otherwise have been avoided. Such a difficulty occurs, for example, when the financing activity of an entity is co-ordinated centrally. Difficulties also arise when a group uses a range of debt instruments to borrow funds at varying rates of interest, and lends those funds on various bases to other entities in the group. Other complications arise through the use of loans denominated in or linked to foreign currencies, when the group operates in highly inflationary economies, and from fluctuations in exchange rates. As a result, the determination of the amount of borrowing costs that are directly attributable to the acquisition of a qualifying asset is difficult and the exercise of judgment is required."

"17 An entity shall begin capitalising borrowing costs as part of the cost of a qualifying asset on the commencement date. The commencement date for capitalisation is the date when the entity first meets all of the following conditions:

(a) it incurs expenditures for the asset;

(b) it incurs borrowing costs; and

(c) it undertakes activities that are necessary to prepare the asset for its intended use or sale."

From the above, the Committee notes that an entity shall capitalise borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset as part of the cost of that asset. Further, paragraph 11 of Ind AS 23 also acknowledges the fact that there should be a direct relationship between particular borrowings and a qualifying asset. In other words, the borrowings should have been directly used/ utilised for acquisition/construction/ production of a qualifying asset.

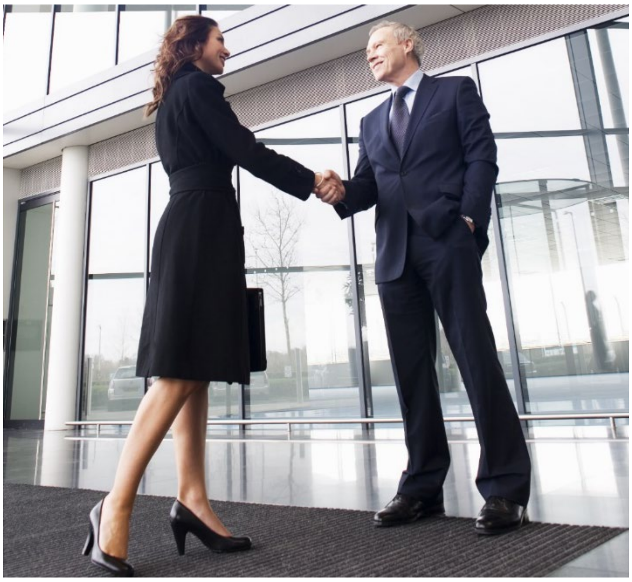
The Committee notes from the Facts of the Case that the Company acquired 60% shares in an overseas company (subsidiary company X) which was having 10% participating interest (PI) in an overseas oil and gas project under development (Project-A). Total purchase consideration for the acquisition of 60% shares was financed partly by market borrowings and partly by internal accruals. Further, these shares were acquired from a third party.

From the perspective of separate financial statements of the Company, the Committee notes that funds paid by the Company were not directly used for acquisition of oil and gas project under development; rather these were used for acquisition of shares which cannot be considered as a qualifying asset (as these do not take a substantial period of time to get ready for their intended use or sale). Accordingly, borrowing costs incurred on acquisition of shares in subsidiary X cannot be capitalised in the separate financial statements of the company. Further, since from the perspective of separate financial statements, the asset capitalised is investment in shares of subsidiary and not the oil and gas project, the question of capitalisation of borrowing costs with the oil and gas project/asset under development does not arise in the separate financial statements of the Company.

With regard to the consolidated financial statements, the Committee notes that at the time of acquisition of shares in subsidiary company, subsidiary company was already holding 10 percent PI in an oil and gas asset under development with asset under construction (Project A). Since in the extant case, the Company has acquired the shares of the subsidiary company X in a secondary transaction, the subsidiary company did not receive any funds from the Company as a result of this acquisition. Thus, even from the Group perspective, the funds paid by the Company for acquisition of shares in subsidiary X were not directly used to acquire participating interest in oil and gas project (Project A) under development or for development activities on the project A. Therefore, the Committee is of the view that in the extant case, the borrowed funds cannot be considered to have been utilised for the acquisition/construction/ development of a qualifying asset and there is no direct relationship between the borrowings made by the reporting entity (viz., the Group) and the expenditure incurred on acquisition/construction/ development of the qualifying asset. Accordingly, the borrowing costs incurred on borrowings taken for acquiring investment in subsidiary company cannot be capitalised even in the consolidated financial statements.

Opinion

On the basis of the above, the Committee is of the opinion that the borrowing costs incurred on acquisition of shares of subsidiary company in a secondary transaction cannot be capitalised either in the separate financial statements or in the consolidated financial statements of the Company.



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SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

Circular dated 8th March 2022 and 22nd March 2022: Revision to Operational Circular dated 10th August 2021 for issue and listing of Non-convertible Securities, Securitized Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Papers

Key highlights of the amendments are as under:

- Option to investors to apply in public issues of debt securities through Unified Payments Interface mechanism for application value up to INR 2 Lacs has been enhanced to INR 5 Lacs. This amendment shall be applicable to public issues of debt securities to be opened on or after 1st May 2022.
- SEBI, vide another circular dated 22nd March 2022 has amended the provisions related to Centralized Database of Corporate Bonds, which shall be applicable to all issuance of debt securities to be opened on or after 1st April 2022, details of which are as under:
  - Issuer shall submit information in the requisite fields (as prescribed) to the stock exchanges within 30 days from the end of the financial year and/ or 'as and when' basis.
  - The format which provides for list of the data fields to be submitted by issuer to depositories at the time of allotting of ISIN is modified.

Circular dated 16th March 2022: SEBI (Alternative Investment Funds) ("AIFs") (Second Amendment) Regulations, 2022 ("Amended AIF Regulations")

The highlights of Amended Regulations are as under:

Category III AIFs shall invest maximum up to 10% of the investable funds in an Investee Company directly or through investment in the units of other AIFs except for large value funds for accredited investors of Category III AIFs which may invest up to 20%.

However, for investment in listed equity of an Investee Company, Category III AIFs & large value funds for accredited investors, may calculate the investment limit of 10% & 20% respectively of either the investable funds or the net asset value of the scheme.

Notification dated 22nd March 2022: SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022 ("Amended LODR Regulations")

The Amended LODR Regulations provides for the following:

- The requirement of at least 1/3rd of the Board of Directors ("BOD") to comprise of independent directors with the chairperson being a non-executive director and at least half of the BOD to comprise of independent directors where the listed entity does not have a regular non-executive chairperson, is done away with.
- The listed entity can appoint separate persons for the post of Chairperson and the Managing Director ("MD") or the Chief Executive Officer ("CEO") provided that such Chairperson shall be non-executive director and not related to the MD or the CEO.

Circular dated 23rd March 2022: Change in control of Sponsor and/or Manager of AIF involving Scheme of Arrangement under Companies Act, 2013

SEBI, vide its previous circulars (July 2014) prescribed the procedure to be followed for change in control of Sponsor and/or Manager of AIFs. Vide this circular, SEBI has streamlined the procedure for cases where such change is pursuant to a Scheme of Arrangement ('Scheme").

The circular shall be applicable to all the Schemes which are filed with National Company Law Tribunal ("NCLT") on or after 1st April 2022.

The details of this circular are as under:

- The application seeking approval for the change in control of Sponsor and/or Manager of the AIF (under the applicable AIF Regulations) shall be filed with SEBI prior to filing the same with the NCLT.
- SEBI shall grant an in-principle approval upon being satisfied with the compliance of applicable regulatory requirements, validity of which shall be 3 months from the date of issuance within which the relevant application shall be made to the NCLT.
- Within 15 days from the date of order of NCLT, the applicant shall submit the NCLT approved application & its order along with other specified the documents to SEBI for final approval.
- All other provisions prescribed in previous circulars regarding the process shall remain unchanged.

Circular dated 30th March 2022: Clarification on applicability of Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations") in relation to Related Party Transactions

SEBI vide. its notification dated 9th November 2021 amended Regulation 23 of the LODR Regulations enhancing the scope of a Related Party ("RP"), Related Party Transactions ("RPTs") and the materiality threshold for seeking shareholder's approval.

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In this connection, SEBI has now clarified that:

- No fresh approval from shareholders is required for an RPT that has been approved by the audit committee and shareholders prior to 1st April 2022.
- For RPTs approved by the audit committee prior to 1st April 2022 that become material as per the revised materiality threshold, it shall be placed before the shareholders in their first general meeting held after 1st April 2022.
- The circular reiterates that RPTs for which the audit committee has granted omnibus approval shall continue to be placed before the shareholders if it is material in terms of Regulation 23(1) of the LODR Regulations.
- It is also clarified that the explanatory statement contained in the notice sent to the shareholders for seeking approval for an RPT shall provide relevant information to enable the shareholders to take a view of whether the terms and conditions of the proposed RPT are not unfavorable to the company, compared to the terms and conditions, had the similar transaction been entered into between two unrelated parties.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

Notification dated 4th March 2022: The Limited Liability Partnership ("LLP") (Second Amendment) Rules, 2022 ("Amended LLP Rules")

Key highlights of the Amended LLP Rules are as under:

- An application for allotment of Designated Partner Identification Number can now be made by up to 5 individuals (instead of 2 individuals earlier).
- The certificate of incorporation will be allotted inclusive of Permanent Account Number ("PAN") and Tax Deduction and Collection Account Number ("TAN").
- For making an application for alternation of name of a LLP which has its name resembling to that of the existing LLP, the requirement of payment of fees and providing authority letter for making application on behalf of LLP, is done away with.
- Where a Corporate Insolvency Resolution Process ("CIRP") has been initiated against any LLP or the LLP is under liquidation under the Insolvency and Bankruptcy Code, 2016 ("IBC Code") or the LLP Act, 2008 ("LLP Act"), the Statement of Account and Solvency of the LLP shall now be signed by an Interim Resolution Professional ("IRP") or Resolution Professional ("RP"), or liquidator or LLP administrator.
- Where a CIRP has been initiated against any LLP under IBC Code or the LLP Act, having turnover up to INR 5 Crores during the corresponding financial year or contribution up to INR 50 Lacs has come under liquidation under the said IBC Code or the said LLP Act, then the Annual Return shall be signed on behalf of LLP by IRP or RP or liquidator or LLP administrator.
- Form 8 (Statement of Solvency and Annual Return) would now include disclosures concerning contingent liability(ies).

THE RESERVE BANK OF INDIA (RBI)

Master Direction – Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022

The RBI vide master direction dated March 14, 2022 issued 'Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022' for regulating microfinance loans and also to bring uniformity in the sector and to safeguard the interest of various types of borrowers. These directions are effective from April 01, 2022. As per the directions, a microfinance loan is a collateral-free loan given to a household having an annual income of up to Rs 3 lakh.

Some of the important provisions of the Framework are as follows:

- **Applicability** – The provisions of these directions are applicable to following entities:
  - All Commercial Banks (including Small Finance Banks, Local Area Banks, and Regional Rural Banks) excluding Payments Banks;
  - All Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks; and
  - All Non-Banking Financial Companies (including Microfinance Institutions and Housing Finance Companies).

  The entities referred in i and ii above are referred to as 'Regulated Entities (Res)'.
- **Assessment of Household Income:**
  - Each RE shall put in place a board-approved policy for assessment of household income.
  - Self-regulatory organisations (SROs) and other associations/ agencies may also develop a common framework based on the indicative methodology. The REs may adopt/ modify this framework suitably as per their requirements with approval of their boards.
  - Each RE shall mandatorily submit information regarding household income to the Credit Information Companies (CICs).
- **Limit on Loan Repayment Obligations of a Household**
  - Each RE shall have a board-approved policy regarding the limit on the outflows on account of repayment of monthly loan obligations of a household as a percentage of the monthly household income. This shall be subject to a limit of maximum 50% of the monthly household income.
  - The computation of loan repayment obligations shall take into account all outstanding loans (collateral-free microfinance loans as well as any other type of collateralized loans) of the household. The outflows capped at 50% of the monthly household income shall include repayments (including both principal as well as interest component) towards all existing loans as well as the loan under consideration.
  - Existing loans, for which outflows on account of repayment of monthly loan obligations of a

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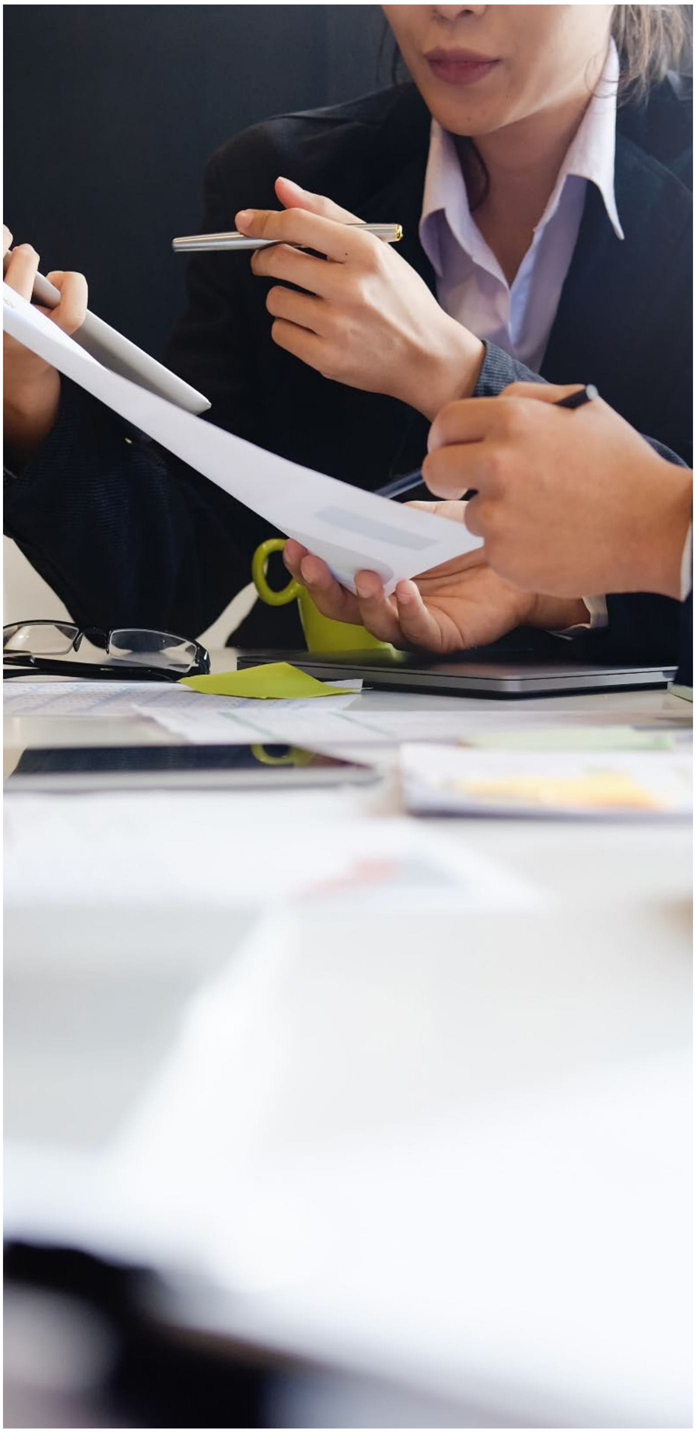
household as a percentage of the monthly household income exceed the limit of 50% shall be allowed to mature. However, in such cases, no new loans shall be provided to these households till the prescribed limit of 50% is complied with.

- **Pricing of Loans:**
  - Each RE shall put in place a board-approved policy regarding pricing of microfinance loans.
  - Interest rates and other charges/ fees on microfinance loans should not be usurious subjected to supervisory scrutiny by the Reserve Bank.
  - Any fees to be charged to the microfinance borrower by the RE and/ or its partner/ agent shall be explicitly disclosed in the factsheet.
  - Each RE shall prominently display the minimum, maximum and average interest rates charged on microfinance loans in all its offices, in the literature (information booklets/ pamphlets) issued by it and details on its website.
- **Qualifying Assets Criteria:**
  - The maximum limit on microfinance loans for such NBFCs (NBFCs other than NBFC-MFIs) now stands revised at 25 per cent of the total assets. In December 2021, RBI had fixed the applicable average base rate to be charged by NBFC-MFIs to their borrowers for the quarter beginning January 1, 2022 at 7.89%.
  - Under the earlier guidelines, an NBFC that does not qualify as a non-banking financial company – microfinance institution (NBFC-MFI), cannot extend microfinance loans exceeding 10% of its total assets. The maximum limit on microfinance loans for such NBFCs (i.e., NBFCs other than NBFC-MFIs) now stands revised to 25% of the total assets.



Master Direction - Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021 – Amendment

The RBI vide master direction dated March 23, 2022 has brought few amendments to ‘Classification, Valuation and Operation of Investment Portfolio of Commercial Banks (Directions), 2021’.

The Master Direction outlines the prudential treatment for investment in Venture Capital Funds (VCFs). With this amendment, it is clarified that the investment in Category I and Category II AIFs, which includes VCFs, shall receive the same prudential treatment as applicable for investment in VCFs.

This circular is applicable to all Commercial Banks (excluding Regional Rural Banks) and these instructions shall come into force with immediate effect.

TAX UPDATES
Direct Tax

CIRCULARS/ NOTIFICATIONS/PRESS RELEASE

CBDT notifies Faceless Inquiry or Valuation Scheme, 2022

With a view to bring transparency in assessment proceedings, the Faceless Assessment Scheme, 2019 was introduced. Subsequently, the Taxation & Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020 (TOLA 20) codified this Scheme by introducing section 144B in the Income-tax Act, 1961 (IT Act). Section 142B of the IT Act grant powers to the Central Government to make a scheme for the purposes assessment proceedings in a faceless manner. In this regard, recently, the CBDT notified Faceless Inquiry or Valuation Scheme, 2022 (the Scheme). The key features of the scheme are as below:

Scope of the Scheme

- The Scheme provides that:
  - issuing a notice under section 142(1) of the IT Act;
  - making an inquiry before an assessment under section 142(2) of the IT Act;
  - directing the taxpayer to get his accounts audited under section 142(2A) of the IT Act;
  - estimating the value of any asset, property or investment by a Valuation Officer under section 142A of the IT Act;
  - shall be in faceless manner, through automated allocation, in accordance with and to the extent provided in section 144B of the IT Act.
- The Scheme shall come into force from 30 March 2022.

[Notification No.19/2022, dated 30 March 2022]

Income-tax return forms for Fiscal Year 2021-22 notified

The CBDT has notified the income-tax return (ITR) for Fiscal Year (FY) 2021-22. No significant changes have been made to the forms compared to the last year barring few additional disclosure requirements. Many changes are consequential to the amendments made by the Finance Act, 2021 to the IT Act and TOLA 20. Key changes are tabulated hereunder:

Sr. No.	ITR - 2	ITR - 3	ITR - 5	ITR - 6
1	The requirement to furnish details of all foreign assets for "relevant accounting period" is replaced with "calendar year". Thus, the Form now requires a taxpayer to furnish the details of all foreign assets held between 01 January 2021 and 31 December 2021 in return to be filed for FY 2021-22 irrespective of the FY followed in the foreign country.			
2	Additional disclosures in the Schedule CG (Capital Gains) which are as below: ▪ Date of purchase and sale of land/ building and year-wise details of cost of improvement to such land/building; ▪ Separate disclosure of cost of acquisition and indexed cost of acquisition; ▪ Country and Zip Code, if property is situated in a foreign country; ▪ Fair Market Value (FMV) of capital assets and consideration received / accruing in a slump sale transaction is to be disclosed[1].			
3	Dividend income as per section 2(22)(e) of the IT Act to be reported separately			
4	New schedule for reporting of tax deferred on ESOPs.[2]			
5		Requirement of confirmation on whether there is a Significant Economic Presence (SEP) in India or not. In case, there is a SEP in India, then such taxpayer is required to mention details of transactions and users in the ITR Form.		
6		Separate disclosure of Income from Units located in IFSC in Schedule AMT (non-company taxpayers) and Schedule MAT (company taxpayers).		

[1] The Finance Act, 2021 has amended Section 50B of the IT Act to provide that in case of a slump sale, FMV of the Undertaking or Division transferred shall be deemed as the full value of consideration received / accruing as a result of the transfer of such Undertaking. Pursuant to this, CBDT inserted Rule 11UAE in the IT Rules, 1962 (IT Rules) prescribing the method for determining the FMV of such undertaking.

[2] This Schedule will keep a track on the amount of tax deferred by the employee and the year it should be taxed

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7			Additional disclosures requirement in Exempt Income Schedule: ▪ Section 10(23FB): Venture Capital Fund and Venture Capital Company; ▪ Section 10(23FBA): Investment Fund and Unit Holder; ▪ Section 10(23FC) / 10(23FCA): Business Trust; ▪ Section 10(23FE): Wholly owned subsidiary of ADIA or Sovereign wealth fund or pension funds; ▪ Section 10(23FF): Capital gains from transfer of shares of a company resident in India on account of relocation of offshore funds; ▪ Section 10(4D): Specified Fund.	
8				Insertion of new Schedule IF requiring companies to disclose certain information in respect of the investment made in unincorporated entity

[Notification No. 21/2022, dated 30 Marcy 2022]

CBDT exempts taxpayers who are not resident of India from Section 206C(1G) of the IT Act

The Finance Act 2020 expanded the scope of Tax Collected at Source (TCS) provisions with effect from 1 October 2020. The ambit of section 206C of the IT Act has been expanded to cover below tabulated transactions:

Sr. No.	Nature of transaction	Person required to collect tax	Person from whom tax is to be collected (Buyer)
1	Remittance out of India under the LRS Scheme of RBI[3]	Authorized Dealer	Person remitting such amount out of India under LRS
2	Purchase of overseas tour program package	Seller of such tour package	Purchaser of such tour package

Recently, the CBDT has notified person who are exempted from applicability of this provision. To read our detailed analysis, please go to : https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-exempts-taxpayers-who-are-not-resident-of-india-from-section-206c(1g)-of-the

[Notification No. 20/2022, dated 30 March 2022]

Amendments proposed in Finance Bill 2022

The Finance Bill 2022 was introduced by the Hon'ble Finance Minister Smt. Nirmala Sitharaman in the Lok Sabha on 1 February 2022. Subsequently, on 24 March 2022, supplementary amendments to the Bill have been tabled in the Lok Sabha by notice of amendments. The revised Finance Bill 2022 is passed in both the houses and has received Presidential Assent. To read our detailed analysis of the amendments made in the Finance Bill 2022, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-amendments-proposed-in-finance-bill-2022

CBDT notifies e-Assessment Scheme of Income Escaping Assessment Scheme, 2022

TOLA 20 codified the Faceless Assessment Scheme, 2019 by introducing section 144B in the IT Act. Section 151A of the IT

[3] Liberalised Remittance Scheme (LRS) of the Reserve Bank of India

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Act grant powers to the Central Government to make a scheme for the purposes of assessment, reassessment or re-computation under section 147 of the IT Act or issuance of notice under section 148 of the IT Act or sanction for issue of such notice under section 151 of the IT Act. In this regard, recently the CBDT notified e-Assessment of Income Escaping Assessment Scheme, 2022. To read our detailed analysis, please go to : https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-notifies-e-assessment-of-income-escaping-assessment-scheme,-2022

[Notification No.18/2022, dated 29 March 2022]

CBDT excludes certain assessment from the Faceless Assessment Scheme

With a view to bring transparency in assessment proceedings, the Faceless Assessment Scheme, 2019 (the Scheme) was introduced. Subsequently, TOLA 20 codified this Scheme by introducing section 144B in the IT Act. In order to implement the Scheme, the CBDT issued an order directing that all the Assessment Orders be passed by the National Faceless Assessment Centre barring few exceptions. In this regard, recently, the CBDT had issued another order to further expand the exemption list. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-excludes-certain-assessment-from-the-faceless-assessment-scheme

[CBDT Order F. No. 187/3/2020-ITA-I dated 17 March 2022]

Certain matters excluded from Faceless Penalty Scheme

Faceless Penalty Scheme, 2021 was notified with effect from 12 January 2021. Subsequently, the CBDT had issued two orders to exclude certain penalty matters from the scope of said Scheme. Recently, the CBDT has further expanded the exclusion list by issuing another order. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-certain-matters-excluded-from-faceless-penalty-scheme

[CBDT Order F No. 187/4/2021-ITA-I, dated 10 March 2022]

CBDT relaxes the timeline for filing Form 10-IC for FY 2019-20

For taxpayers opting for concessional tax rate of 22% (i.e. section 115BAA of the IT Act), Form 10-IC is required to be filed on or before the due date of filing tax return.

Recently, the CBDT has issued a circular relaxing the timeline for furnishing Form 10-IC for FY 2019-20, subject to fulfilment of certain conditions. To read our detailed analysis, please go to: https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-relaxes-the-timeline-for-filing-form-10-ic-for-fiscal-year-2019-20

[Circular No 6/2022 dated 17th March 2022]

CBDT relaxes the requirement of e-filing Form 3CF

In 2021, the income-tax portal was completely revamped. Subsequently, many taxpayers were facing challenges / technical glitches in filing forms (including income-tax return forms). Taking cognizance of the issues faced, the CBDT has issued a circular to relax the requirement of electronic filing of Form 3CF for seeking approval under Section 35(1) of the IT Act. To read our detailed analysis, please go to : https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-cbdt-relaxes-the-requirement-of-e-filing-form-3cf

[Circular No. 5/2022, dated 16 March 2022]

JUDICIAL UPDATES

Interest on IT refund is not effectively connected with Indian Permanent Establishment

Taxpayer, a resident of USA, received interest on income-tax (IT) refund. The said interest was offered to tax in terms of Article 11 of the India-USA DTAA. However, the Tax officer opined that since the taxpayer was carrying on business through its Permanent Establishment (PE) in India and that the said interest was not covered by the provisions of Section 44BB of the IT Act, he treated it as business income. As CIT(A) did not grant the relief, the taxpayer filed an appeal before the Dehradun Tax Tribunal. While pronouncing that the interest on IT Refund cannot be regarded as effectively connected with PE and thereby should be taxed at 15%, Dehradun Tax Tribunal following observations:

- As per Section 90(2) of the IT Act, in a case where the provisions of the DTAA apply to taxpayer, provisions of IT Act shall apply to the extent they are more beneficial to the taxpayer.
- Para (4) of Article 7 to India-USA DTAA relieves the Source State from the rigors of Para (1) and (2) in case the interest is found to be effectively connected with the PE, even if it is not in the nature of business income of the taxpayer. If interest is the business income, then such income falls automatically within the ambit of Article 7 without taking recourse to Para (4).
- Interest income need not be necessarily business income in nature for establishing the effective connection with the PE because that would render provision contained in Para (4) of Article 7 redundant. Thus, there may cases where

TAX UPDATES
Direct Tax

interest may be taxable under the IT Act under the residuary head and yet be effectively connected with the PE. For example- bank interest.

- After going through the definition of "interest" under Article 11 of India-USA DTAA, it can be concluded that interest on IT Refund is not effectively connected with the PE either on the basis of the asset-test or activity-test. Hence, it is taxable as per Para (2) of Article 11 of India-USA DTAA.

  [Baker Hughes Singapore Pte Vs. ACIT (International Taxation), ITA No. 5337 & CO No. 165/Del/2018 (Dehradun Tribunal)]

Section 56(2)(vii)(c) of the IT Act not attracted where rights shares are issued proportionately

Taxpayer is a director and majority shareholder in an entity namely KPFL. For the relevant year under consideration, KFPL offered right issue at face value (FV) of INR 1 per share which was subscribed by the taxpayer. The tax officer observed that the Face Value (FV) of INR 1 per share is less than the Fair Market Value (FMV) and that there was disproportionate allotment of shares. Hence, he brought the differential amount (i.e. FMV – FV) to tax under Section 56(2)(vii)(c)(ii) of the IT Act read with Rule 11U and 11UA of the IT Rules. Aggrieved, taxpayer filed an appeal before First-Appellate Authority which granted relief to the taxpayer. Aggrieved, tax authorities filed an appeal against which taxpayer also filed cross-objection before the Mumbai Tax Tribunal. While holding that the section 56(2)(viic) of the IT Act is not attracted in the instant case, Mumbai Tax Tribunal made the following observations :

- There was clear fallacy in the conclusion of lower authorities that the allotment was dis-proportionate. The said conclusion has overlooked the fact that there were two right offers during the year and the right issue was offered, on both occasions, to existing shareholders in the ratio of 7:8 on first occasion and 5:8 on the second occasion. The issue was offered to existing shareholders in proportion to their holding at the same price i.e. Re.1/- per share.
- The taxpayer subscribed his entitlement, but the other shareholders did not subscribe to the entitlements. As a result, the taxpayer's overall holding increased at the year-end and the holding ratio got skewed in taxpayer's favour.
- The ratio of Mumbai Tax Tribunal in the case of Sudhir Menon HUF would be applicable in present case wherein, on similar factual matrix, the coordinate bench held that as long as there was no disproportionate allotment i.e. shares are allotted pro-rata to the shareholders, based on their existing holdings, there is no scope for any property being received by them on the said allotment of shares; there being only an apportionment of the value of their existing holding over a larger number of shares. In such a case, the provisions of sec.56(2)(vii)(c) of the IT Act would not get attracted. A higher than proportionate or a non-uniform allotment though would, and on the same premise, attract the rigor of the provision.
- The provision of section 56(2)(vii) of the IT Act were anti-abuse provision inserted post abolition of Gift Tax Act. The same is evident from CBDT Circular No. 05/2010 dated 3 June 2010 which provided that section 56 is being introduced as an anti-abuse measure. The same is fortified in CBDT Circular No. 01/2011 dated 6 April 2011 which also provided that these provisions are anti-abuse provisions which were applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision. Further, the provisions of section 56(2)(vii) of the IT Act were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income.
- On perusing orders of lower authorities, there are no such allegations, and no case of tax evasion or tax abuse has been made out against the taxpayer. The transactions are ordinary transactions of issue of right shares to existing shareholders in proportion to their existing shareholding and therefore, no case of abuse or tax evasion could be made out against the taxpayer.
- To clarify the legislative intent, a joint reading of CBDT circular No. 10/2018[4], circular no. 02/2019[5] and circular no. 03/2019[6] leads to conclusion that intent of introducing the provisions was anti-abusive measures still remain intact and there is no reason to depart from the understanding that the provisions were counter evasion mechanism to prevent laundering of unaccounted income. Therefore, the same do not apply to genuine issue of shares to existing shareholders. This position is duly supported by the decision of Bangalore Tax Tribunal in DCIT vs. Dr. Rajan Pai[7] which is further affirmed by the Hon'ble Karnataka High Court in Pr. CIT v. Dr. Rajan Pai[8].

  [ITO v. Rajeev Ratanlal Tulshyan, ITA No. 5748/Mum/2017 & CO No. 118/Mum/2018 (Mumbai Tribunal)]

Where personal hearing is not granted under faceless scheme, penalty order set aside

Taxpayer, an individual, during the course of penalty proceedings (undertaken in faceless manner) requested for a personal hearing. However, without granting personal hearing, the Tax Officer passed the penalty order. Aggrieved, taxpayer filed a writ petition challenging the penalty order in Delhi High Court. The Delhi High Court set aside the penalty order for fresh adjudication and made following observations:

[4] Circular No. 10/2018, dated 31 December 2018
[5] Circular no. 02/2019, dated 4 January 2019
[6] Circular no. 03/2019 dated 21 January 2019
[7] DCIT v. Dr. Rajan Pai, ITA No. 1290/Bang/2015 (Bangalore Tribunal)
[8] Pr. CIT v. Dr. Rajan Pai, ITA No. 501 of 2016 (Karnataka High Court)

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- Upon perusal of paper book as well as screenshot of the Income Tax Portal, it is observed that taxpayer had filed his replies to the notices issued to him by the tax authorities;
- Despite filing of the said replies, the same were not considered while passing the penalty order. In fact, the impugned order states that despite giving several opportunities, the taxpayer had not filed any reply/response;
- In Bharat Aluminium Company Ltd , it has been laid down that a taxpayer has a vested right to personal hearing and the same has to be given if such a request is made by the taxpayer.
- Consequently, the impugned order is set aside on the ground of it being violative of the principle of natural justice.

[Mayur Batra v. ACIT, WP (C) 4447/2022 & CM Appls. 13280-13281/2022 (Delhi High Court)]

TAX UPDATES
Transfer Pricing

Outstanding payable to AE is a separate international transaction, uphods ALP of interest as NIL for payment beyond stipulated credit period:

The taxpayer purchased goods from Associated Enterprises (AEs) and Non-Associated Enterprises. The taxpayer paid interest to AE if the amount payable remained outstanding beyond the trade credit period of 90 days but did not pay similar interest to Non-AE where payment exceeded stipulated credit period of 30 days. The taxpayer benchmarked this transaction following TNMM and submitted that the transactions were at arm's length. The AO and CIT(A) benchmarked the transaction under the internal CUP method and determined the arm's length price of interest payment to AE as Nil.

The Tax Tribunal observed the following:

- Outstanding payable by the taxpayer to AE being capital financing in nature is a separate international transaction in terms of provisions of Explanation [i][c] of Section 92B of the Income-tax Act, 1961 (Act). There are no reasons to hold that above transaction is interlinked with other transactions and therefore should be aggregated.
- Internal CUP would provide highly accurate results. The difference in credit period is a differentiating factor only for the purposes of purchase transaction. For capital financing, the moment the credit period is over, both the outstanding of AE as well as Non-AE stands at Par.
- Benchmarking of payment of interest beyond the allowed credit period does not get impacted by the margins earned by the taxpayer or consideration of working capital adjustments.

Hence, the Tax Tribunal confirmed the orders of the lower authorities and upheld the arm's length price of interest paid to AE in the instant case as Nil.

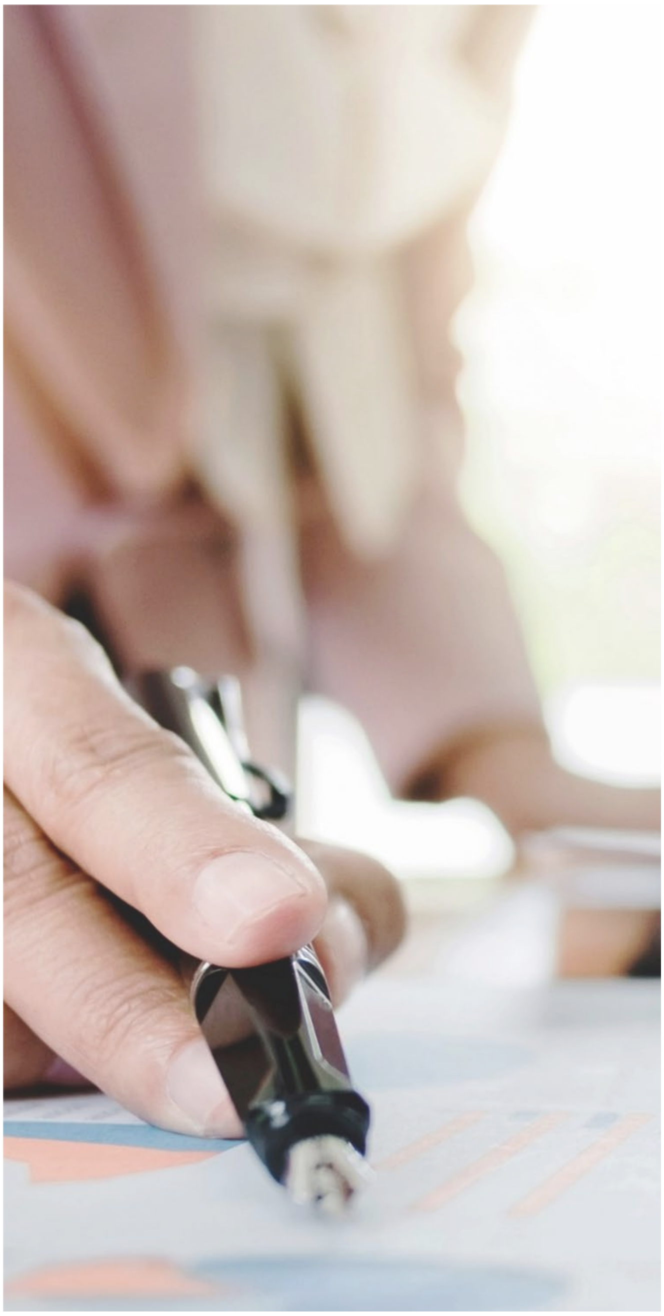
Peri (India) Private Limited Vs. JCIT [TS-142-ITAT-2022(Mum)-TP]

Tribunal accepts Operating Profit/Value Added Expenses, as an appropriate PLI over Operating Profit/Total Cost for Logistics service provider:

The taxpayer was engaged in the business of transportation as principal, agent at home and overseas, customs clearing agents, to provide every kind of operations in connection with transportation, import, export, packing, warehousing and handling of goods by sea, air and land. The question before the Tax Tribunal was the selection of the most appropriate Profit Level Indicator – **Operating Profit/Value Add Expenses taken by the taxpayer vis-à-vis Operating Profit/Total Cost taken by the TPO.**

The Tax Tribunal relied on the decision of taxpayer's own case for AY 2010-11, AY 2011-12 and AY 2015-16. In these decisions, it was observed that costs pertaining to services obtained by the taxpayer from third parties namely shipping/airlines, clearing and forwarding agents, transport service provider etc. neither involved any service element of the taxpayer nor did the taxpayer carry any risk or employed any of its assets with respect to the same. Hence, inclusion of the freight cost in the total cost base of the taxpayer was not permitted and necessary direction was issued to the TPO to adopt OP/VAE as PLI to benchmark taxpayer's international transactions. The Tribunal also held that TP adjustments should be restricted only to the international transactions entered into by the taxpayer.

DHL Logistics Private Limited Vs. ACIT [TS-174-ITAT-2022(Mum)-TP]



TAX UPDATES
Indirect Tax

GOODS & SERVICE TAX

JUDICIAL UPDATES

ORDERS BY AUTHORITY FOR ADVANCE RULING (AAR)

Pure Service of collection and disposal of bio-medical waste from clinical establishments, exempt from GST

Facts of the case

- M/s. SNG Envirosolutions Private Limited ('Taxpayer') entered into an agreement with Department of Health Services, Department of Health & Family Welfare, Government of West Bengal (GoWB) for collection and disposal of bio-medical waste from clinical establishments.
- In order to fulfil its obligations under the aforesaid agreement, the taxpayer entered into an agreement with Medicare Environmental Management Private Limited ("Medicare"/ sub-contractor) where Medicare was appointed as a sub-contractor for collection and disposal of bio-medical waste.
- The taxpayer approached AAR seeking clarification on taxability of services provided by them under the agreement with the GoWB.

Questions before the AAR

- Whether the provisions of entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017 are applicable to the taxpayer or not?
- Whether the provisions of entry no:3 of notification no:12/2017-CT(R) dated 28 June 2017 are applicable to the sub-contractor of the taxpayer or not?
- Whether the provisions of entry no:75 of notification no:12/2017-CT(R) dated 28 June 2017 are applicable to the sub-contractor of the taxpayer or not?

Contention of the taxpayer

- The taxpayer submitted that following are the basic qualifications for exemption under entry no:3 of notification no:12/2017 dated 28 June 2017;
  - The service provider must provide 'pure services' (i.e. excluding works contract service or other composite supplies involving supply of any goods);
  - The services in question must be provided to the Central/State Governments, Union Territory or Local authority;
  - As far as 'Governmental Authorities' or 'Government Entities' are concerned, the service in question must be in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.
- Based on the above, the taxpayer satisfies the above conditions as the taxpayer is providing 'pure services' of bio-medical waste disposal in terms of the Master Service Agreement(MSA) to Department of Health Services, Department of Health & Family Welfare, GoWB. i.e., the State Government;

- Medicare also satisfies the above conditions as Medicare is performing activity of collecting bio-medical waste from premises of clinical establishment which can be considered as supply of service. Also, On a harmonious reading of MSA (between the taxpayer and the State Government), agreement with the clinical establishment (between the taxpayer and State General Hospital) and the sub contract agreement (between the taxpayer and Medicare), it is clear that for all purposes, Medicare provides the services in question to the GoWB;
- The taxpayer further submitted that following are the elements need to be satisfied in order to be eligible for exemption under entry no:75 of notification no:12/2017 dated 28 June 2017 by sub-contractor:
  - The services in question have to be provided by an operator of a Common Bio-Medical Waste Treatment Facility (CBMWTF);
  - The services in question have to be provided to a clinical establishment;
  - The service should be of treatment or disposal of bio-medical waste or any process incidental thereto.
- The taxpayer also submitted that the sub-contractor has satisfied all the above conditions as the sub-contractor owns/controls a CBMWTF, satisfies the definition of clinical establishment and the zones allocated has a direct interaction with the clinical establishments for disposal of bio-medical waste or any other process;
- Further, taxpayer has placed reliance on various rulings, High Court decisions and submitted that once it assigns work to Medicare, the taxpayer ceases to execute the contract for the zones concerned and the Medicare wholly and solely performs the service.

Contention of the Tax authority

- With regard to question no:1, the tax authority submitted that the service provided by the taxpayer is exempted as per entry no:3 of notification 12/2017-CGST(R) dated 28 June 2017 as the taxpayer is providing 'pure services' and does not supply any goods. Further, in the instant case service recipient is department of Health & Family Welfare, GoWB;
- With regard to question no 2, the tax authority submitted that the sub-contractor is providing pure

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services and does not supply any goods. Further, in the instant case service recipient is department of Health & Family Welfare, GoWB. Also, they are carrying-out their responsibilities by providing services of bio medical waste disposal through their sub-contractor in terms of service agreement. In this case no specific guideline is found in CGST Rules and Acts;

- With regard to question no:3, the tax authority submitted that the service provided by the sub-contractor is exempted as per entry no:75 of notification no:12/2017 CGST(R) dated 28 June 2017 as the sub-contractor is an operator of common bio-medical waste treatment facility and satisfies the requirement of the entry.

Observations and ruling by the AAR

- With regard to the first question AAR noted that the taxpayer has to satisfy the following 2 conditions in order to claim exemption on services provided:
  - Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central/State Government, Union territory or local authority;
  - By way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.
- Based on the submissions provided by the taxpayer, the AAR is satisfied that taxpayer is providing pure services and does not supply any goods and also providing services to state Government and wants to decide whether the supply is provided by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution;
- AAR noted that functions entrusted to a Panchayat as listed in the eleventh schedule of the Constitution of India include the functions like 'health and sanitation, including hospitals, primary health centres and dispensaries'. Further, the functions entrusted to a municipality as listed in the twelfth schedule includes 'public health, sanitation conservancy and solid waste management';
- Further, 'sanitation and similar services' (Group: 99945) falls under heading 9994: sewage and waste collection, treatment and disposal and other environmental protection services;
- Based on the above observations, AAR ruled that services provided by the taxpayer for the collection and disposal of bio-medical waste from various clinical establishments is found to be a matter as listed in the eleventh and/or twelfth schedule of the Constitution of India in relation to functions entrusted to a Panchayat under Article 243G and/or to a municipality under Article 243W of the Constitution of India;
- With regard to the second and third question the AAR refused to give the ruling as the taxpayer is only the recipient of services in respect of supplies involved in the aforesaid questions.

[AAR-West Bengal- M/s. SNG Envirosolutions Private Limited, order no:21/WBAAR/2021-22 dated 29 March 2022]

Transportation of parcels on behalf of Courier agencies is business support service

Facts of the case

- M/s. Gujarat State Road Transport Corporation ('GSRTC' or 'Taxpayer') is mainly engaged in inter-state and intra-state passenger transportation services;
- GSRTC entered into an agreement with M/s. Ashapura Trade and Transport Private Limited ('Ashapura') to provided space in its buses, on top of the bus as well as in bus cabin, for transporting parcels of Ashapura;
- The parcels booked by Ashapura and transported by the buses run by GSRTC from one station to another station which comes in its (bus route) scheduled route;
- GSRTC submitted that it is not issuing any consignment note, nor is engaged in door-to-door delivery of the parcels booked by Ashapura. For the transportation of said parcels, GSRTC receives consideration as per the agreement.

Questions before the AAR

- Whether GST will be applicable on the parcels of Ashapura that are being transported by GSRTC?
- Whether GSRTC is eligible to avail exemption in terms of entry no:18 of notification no:12/2017- CT(R) whereby GSRTC is transporting parcels of Ashapura, but is neither GTA nor courier agency?
- What will be the rate at which GST is required to be charged by GSRTC, if it is held that GSRTC is not eligible for exemption?
- What will be the SAC code for the transportation of goods by road other than courier and GTA provided by GSRTC?
- Whether the tax in case it is required to be paid as held in (3) above, be considered to be covered under notification no:13/2017-CT(R) whereby the service recipient is required to make payment of tax instead of service provider?

Contention of the Taxpayer

- GSRTC submitted that the mentioned activity is exempt in terms of entry no:18 of notification no:12/2017-CT(R) i.e., this activity will be taxable when it is of a courier agency or a goods transportation agency. Except that, all other activity of road transportation is exempt;

TAX UPDATES
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- As per para 2(u) of notification no:12/2017-CT(R) dated 28 June 2017, "courier agency" means any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;
- In the present case, GSRTC is not engaged in door-to-door transportation of time sensitive documents. Rather, it is Ashapura which is collecting documents and parcels and it delivers to the ultimate customer at their address;
- The buses run by GSRTC are as per the schedule framed by it and not as per the instructions of Ashapura to deliver its time sensitive documents and parcels that it has booked for its customers;
- No consignment note has been issued by GSRTC for the goods transported of Ashapura, therefore, the activity done by GSRTC is not classifiable under the category of 'goods transport agency';
- Thus, the activity performed by GSRTC is transportation of goods by road other than courier agency and goods transport agency and therefore, is exempt in terms of entry no:18 of notification no:12/2017-CT(R).

Observations & Ruling by the AAR

- GSRTC charges two types of fees on the service recipient for the following:-
  - Fees for transportation for parcel service
  - Fees towards rent of parcel offices
- GSRTC's services to Ashapura is supporting the business of Ashapura, by transporting the parcels of Ashapura from one destination to other, wherein Ashapura is both the consignor and consignee at the respective bus stations;
- Ashapura utilises the services of GSRTC for enabling it (Ashapura) for door-to-door delivery of parcels. Further, the specific activity of GSRTC supplying parcel office space/cabin/shed to Ashapura falls under the category of infrastructural support services which is a subset of business support services;
- Although a parcel receipt is issued by GSRTC, it absolves itself from any responsibility of the parcels after receipt. Thus, it is hard to equate this parcel receipt to a consignment note wherein the responsibility of the goods being transported is not on the consignee. Thus, cannot be categorized as goods transport agency service. Further, considering GSRTC is not involved in door-to-door delivery of goods, it cannot be classified as a courier service as well;
- Therefore, the service of transporting the parcels of Ashapura from one destination to other should be categorized under business support service under SAC 998599 and is taxable @ 18%;
- Based on the above observations the AAR held as follows:
  - GSRTC supplies business support service to its recipient.
  - SAC is 998599, covering other support services; GST rate being 18%.
  - GSRTC is neither a GTA nor a courier agency, thus the ruling with respect to question (2) & (5) is thereby not applicable.

  [AAR-Gujarat, M/s. Gujarat State Road Transport Corporation, Ruling No:Guj/GAAR/R/2022/15 dated 22 March 2022]

ORDERS BY APPELLATE AUTHORITY FOR ADVANCE RULING (AAAR)

Renting of immovable properties to Social Justice Department of Government of Maharashtra exempt from GST

Facts of the case

- Mr. Tukaram Pundalik Borade ('Taxpayer') is unregistered and is engaged in providing the services of renting out of immovable property, situated at Nashik, and is in the receipt of rental income;
- He is one of the co-owners of the immovable property, which are jointly owned by five individuals. All the five co-owners, including the taxpayer, hold proportionate share in the property vide three separate agreements;
- The property is let out to Social Welfare Department ("Samaj Kalyan Vibhag"), Nashik Division of Maharashtra Government. The services are being provided for 36 months and receives rental income;
- The taxpayer has let-out his property to Social Justice and-Special Assistance Department, Government of Maharashtra, who is using the same property for providing residential accommodation to under-privileged girls belonging to scheduled tribes;
- The total rental received exceeds the threshold provided under section 22(1) of the CGST Act, 2017 but the share of each of the five co-owners does not cross the said threshold limit;
- Since the service is provided to Maharashtra Government Department, that is Sahayak Ayukt, Samaj Kalyan Vibhag, it deducts TDS under section 51 of the CGST Act, 2017. Thus, the taxpayer's funds are being blocked and ITC for the same cannot be utilized-as the taxpayer is unregistered;
- The taxpayer had raised the below mentioned questions before the AAR, but AAR has given an unfavorable order. Aggrieved by the order the taxpayer approached the AAAR.

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Question before the AAAR

- Whether the services provided to Special Assistance Department, Government of Maharashtra (Social Welfare Department) for residential accommodation of underprivileged girls is exempt from GST?
- Whether TDS provisions will be applicable if the supply of services is exempt?
- As the taxpayer is not registered under the GST and provide services to Special Assistance Department, a department of State Government, whether TDS notification issued under section 51 would be applicable for deduction of TDS?
- In case TDS is deducted, whether they would be entitled for refund of the same?

Contention of the taxpayer

- The taxpayer co-owns immovable property, which is given on rent to Sahayak Ayukt Samaj Kalyan Vibhag, Public Welfare Department (PWD), Maharashtra Government. All the co-owners, including the taxpayer, hold proportionate share in the property in three separate agreements;
- The taxpayer stated that since the rental income from the properties split per person, per annum, does not exceed the GST registration threshold (i.e. INR. 2Mn), the taxpayer is not registered under CGST Act, 2017. However, Sahayak Ayukt Samaj Kalyan Vibhag is deducting TDS under section 51 of the CGST Act, 2017 which is resulting into cost for the taxpayer;
- The taxpayer also added that each of the co-owners receives the rental income proportionate to their share in the immovable property and the income tax authority assesses him separately on the income so received. Merely because several persons jointly own an immovable property, they cannot be treated as 'an association of persons' or 'a body of individuals'. A similar order has been passed in the case of M/s. Sri Rabi Sankar Tah [2019-TIOL-418-AAR- GST] case no:34 of 2019, which is in supporting for the same;
- The function carried-out by Samaj Kalyan Vibhag is in relation to function entrusted to a municipality under Article 243W/243G of the Constitution of India, hence it shall be exempted as rent received from the Social Justice and Special Assistance Department is exempt from tax in view of notification no:12/2017-CT (R);
- The taxpayer relied on the ruling in the case of Sri Puttahalagaiah G.H.[AAR Karnataka ruling no:KAR ADRG 19/2021 dated 06 April 2021] wherein it was held that "the taxpayer has rented his property to Backward Classes Welfare Department, Government of Karnataka, who in turn using the same for providing hostel facilities to the post matric girls of backward classes. This is in relation to the function entrusted to a panchayat under article 243G of the Constitution, which is covered by 27th entry of the 11th schedule;
- Hence TDS is not applicable when payment is made to an unregistered person or if the supply is exempted as stated under section 51 of the CGST Act, 2017.

Contention of the Tax authority

- It was submitted that since it is not clear whether the activities of the Social Welfare Department of Maharashtra Government will be covered under Article 243G or 243W of the Constitution of India, the provisions of the exemption notification no:12/2017-CT(R) dated 28 June 2017 will not be, applicable in the present case;
- It was further submitted that since the value of supply made by the taxpayer to the Social Welfare Department, as per the agreement, exceeds INR 0.25Mn, therefore, the recipient, i.e., the Social Welfare Department of the Maharashtra Govt., is eligible to deduct TDS in accordance with provisions of section 51 of the CGST Act, 2017.

Observations and ruling by the AAAR

- As per the ruling of the AAR "the taxpayer has not submitted any evidence or submissions to state as to how his activities are covered under Article 243G/243W of the Constitution. There are no submissions made to show that the impugned services are supplied by the taxpayer by way of any activity in relation to any functions entrusted to a panchayat under article 243G of the Constitution of India or in relation to any function entrusted to a municipality under article 243 W of the Constitution of India;
- In this regard, the taxpayer has submitted that the agreement with Social Justice and Assistance Department had been submitted with the MAAR;
- The AAAR noted that the moot issue is whether the subject activity of renting-out of immovable properties to the Social Welfare Department of Maharashtra Govt, for residential accommodation of girls from the backward class/scheduled tribes would amount to be in relation to any function entrusted upon the panchayat under Article 243G of the Constitution of India or any function entrusted upon the municipality under Article 243 W of the Constitution of India;
- The AAAR observed that the 11th schedule of 243G and 12th of 243W read together makes it clear that panchayats and municipalities have been entrusted with the responsibilities of planning and implementation of the various schemes for ensuring social justice and development of the weaker section of the society, which clearly includes the girls and women from the backward class/scheduled tribes;
- Thus, any welfare measure undertaken by the panchayats and municipalities for the social

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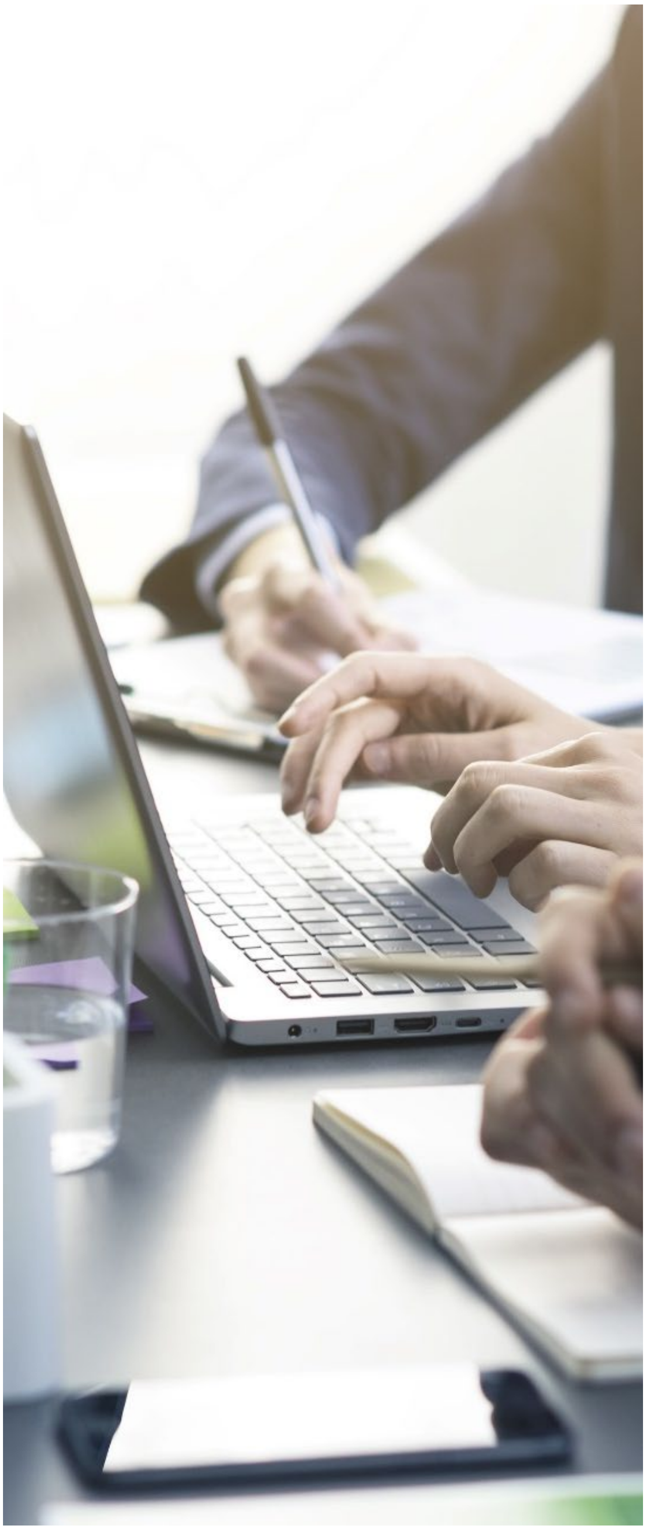
development of the girls belonging to the backward classes/scheduled tribes, including the residential accommodation of the girls or women, will come under the ambit of the responsibilities/functions entrusted to panchayats and municipalities;

- Based on the above observations the AAAR had set-aside the ruling of the AAR and held that the impugned services of the renting-out of immovable properties provided by the taxpayer to the Social Justice Department of the Government of Maharashtra will be exempt from the levy of GST in terms of Article 243G/243W of the Constitution of India as provided in the notification no:12/2017-CT(R) dated 28June 2017, and accordingly, the TDS provisions made under section 51 of the CGST Act, 2017, will not be applicable therein.

[AAAR-Maharashtra, Mr. Tukaram Pundalik Borade, Ruling Order no:MAH/AAAR/AM-RM/03/2022-23, dated, 01 April 2022]



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