

DIRECTTAX

Judicial Rulings

Customs data to be more reliable than the price published by industry associates/brokerages under CUP

- The Assessee selected Comparable Uncontrolled Price ('CUP') Method to benchmark the transaction relating to import and export of agriculture commodities by relying upon rates offered by authenticated independent market report/ third party broker quotes.
- The TPO accepted the CUP method, however he relies upon Custom data instead of data reported by independent market report, and proposed an adjustment.
- The Hon'ble DRP confirmed the TPO order subject to certain reduction in adjustment due to range benefit.
- The Hon'ble ITAT rejected the assessee appeal and uphold custom data to be more reliable under CUP by stating the following -
 - Customs data serves as a more reliable CUP as it compares value of identical or similar goods imported/exported at or around the same time;
 - OECD Commentary on TP guidelines also allow for the adoption of a price-setting date which is different from the stated contract date;
 - Customs data at the port of shipment/delivery would better reflect the price of the commodity as it is inclusive of interest, insurance, freight costs, etc., and would be a more reliable indicator of the uncontrolled arm's length transaction value;

- Disregard the assessee's contention that data shared by the Customs Department does not specify the quality and price variations of the commodities, refers to the OECD Commentary on TP guidelines wherein impact of such variables on price determined under CUP is recognized;
- Apprises that "even where no tariff rate is notified as in the case of sugar, cotton, meals and grains, the transaction values of customs data can be relied upon as it is based on transaction of similar nature and items on the same date at the same port
- Refers to coordinate bench ruling in Sinosteel India Pvt. Ltd. wherein it was held that bare quotation price cannot be accepted under CUP method for benchmarking purposes under Rule 1QBA(l)(a) of the IT Rules, 1962;
- Also, refers to rulings namely Coastal Energy Pvt. Ltd., Rohm And Haas India (P) Ltd. and Tilda Riceland Pvt. Ltd) wherein reliability of customs data as CUP has been upheld.

[Louis Dreyfus Company India Pvt Ltd [TS-163-ITAT-2023(DEL)-TP]

Notifications & News

CBDT signs record 21 Advanced Pricing agreements ('APAs') in a single day

As per Income Tax India Twitter Handle, CBDT signed 21 APAs on 24 March 2023; It is a landmark achievement in the history of Indian APA program as 8 Bilateral & 13 Unilateral Agreements were signed, marking a single-day record.

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Notifications & News

CBDT signed record 95 APAs in Financial Year 2022-23

- CBDT signed a record 95 APAs in FY 2022-23 with Indian taxpayers. This includes 63 Unilateral APAs and 32 Bilateral APAs.
- Total number of APAs since inception of the APA programme has gone up to 516, comprising 420 Unilateral APAs and 96 Bilateral APAs.
- FY 2022-23 has been a record year as CBDT recorded the highest ever APA signings in any financial year since the launch of the APA programme and also signed the maximum number of BAPAs in any financial year till date.
- BAPAs were signed as a consequence of entering into Mutual Agreements with India's treaty partners namely Finland, the UK, the US, Denmark, Singapore, and Japan.
- The APA Scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the arm's length price of international transactions in advance for a maximum of 5 future years. Further, the taxpayer has the option to rollback the APA for 4 preceding years, as a result of which, tax certainty is provided for 9 years. The signing of bilateral APAs additionally provides the taxpayers with protection from any anticipated or actual double taxation.

[Press Release dated 31 March 2023]

Key direct tax amendments to Finance Bill 2023 at the enactment stage

- The tax rate on royalty and fees for technical services (FTS) paid to non-residents is enhanced from the existing rate of 10% (plus surcharge & cess) to 20% (plus surcharge & cess) for amounts payable on or after 1 April 2023. However, Non-residents having DTAA with India can avail lower treaty rate subject to compliance of treaty eligibility conditions.
- Marginal relief in rebate for resident individuals covered under new concessional tax regime introduced for net taxable income over INR 7 lakhs. Currently, if a taxpayer has an income of 7 lakhs, they pay no tax, but if their income exceeds 7 lakhs (i.e. 7,00,100), they pay tax of 25,010. The marginal relief is proposed so that the tax one pays should not be more than the income that exceeds Rs 7 lakhs.
- The securities transaction tax (STT) on sale of options contracts increased from 0.05% to 0.0625% and 0.01% to 0.0125% on sale of futures.

CBDT allows Non-resident taxpayer not having PAN to manually file Form 10F till 30 September 2023

- CBDT vide Notification No. 3 of 2022 dated 16 July, 2022 mandated non-resident taxpayer availing treaty benefits, to file Form 10F online on the income-tax portal.
- Considering practical challenges being faced by the non-resident taxpayers who does not have PAN and who are not required to obtain PAN, CBDT relaxed these provisions and exempted them from mandatory e-filing of Form 10F till 31 March, 2023.
- These non-resident taxpayers can avail treaty benefits by furnishing manual Form 10F as earlier.

- Now, vide recent notification dated 28 March, 2023, CBDT has extended this relaxation till 30 September, 2023.
- A good relief to non-resident taxpayers as compliance burden deferred for such non-resident taxpayer in India.

INDIRECT TAX

Judicial Rulings

No input tax credit to purchasing dealer in absence of proof of genuine transactions & physical movement of goods

Ecom Gill Coffee Trading Pvt Ltd, Respondent, is a purchasing dealer and has purchased green coffee beans from other dealers for the purposes of further sale.

- The Revenue Department ("the Appellant") issued a notice to the respondent under Section 39 of the KVAT Act upon finding irregularities in Input Tax Rebate claimed for AY 2010-2011.
- Subsequently, upon re-assessment, it was found that the Respondent had claimed ITC from 27 sellers, out of which 6 were de-registered, 3 had not filed taxes despite selling to the dealer, and 6 had denied turnover and not paid taxes. As a result, ITC worth INR 10.52 lakhs was disallowed.
- The Respondent preferred an appeal, but it was rejected by the first Appellate Authority, however the second appellate authority & High court allowed the appeal on the grounds that the Respondent purchased the coffee from the registered dealer under genuine tax invoices and consequently allowed the ITC claimed vide its judgment.

- The Hon'ble Supreme Court quashed and set aside the order passed by the Hon'ble Karnataka High Court stating –
- Until the purchasing dealer discharges the burden of proof under Section 70 of the Karnataka Value Added Tax Act, 2003 and proves the genuineness of the transaction/purchase and sale by producing the relevant materials, such as name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc, such purchasing dealer shall not be entitled to ITC.
- Relied on the judgment of On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi [Writ Petition (Civil) No. 6093/2017 dated October 26, 2017], wherein, it was noted that, the ITC can only be claimed on genuine transactions of sale and purchase as per Section 70 of the KVAT Act and the burden is upon the purchasing dealer to prove the same while claiming ITC.

[State of Karnataka Vs Ecom Gill Coffee Trading Private Limited (Supreme Court)]