DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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Central Board of Direct Taxes notifies Monetary Limits for reduction or waiver of interest paid or payable under Section 220(2) of the Income Tax Act, 1961

Section 220(2) of the Income-tax Act ('the Act') deals with the consequences of non-payment of income tax by a taxpayer. As per Section 220(2) of the Act, if a taxpayer fails to pay the amount specified in any notice of demand under section 156 of the Act. she shall be liable to pay simple interest at the rate of 1 % per month or part of the month for the period of delay in making the payment. Further, **section 220(2A) of the Act empowers the Principal Chief Commissioner (Pr. CCIT) or Chief Commissioner (CCIT) or Principal Commissioner (Pr. CIT) or Commissioner (CIT) for reduction or waiver of the amount paid or payable undersection 220(2) of the Act in the circumstances specified therein.**

In accordance with the powers vested with the income-tax authorities specified in section 220(2A) of the Act in respect of reduction or waiver of the interest paid or payable under section 220(2) of the Act, the Central Board of Direct Taxes, for the proper administration of the Act, hereby specifies the following monetary limits as under:

Sr No.	Income Tax Authority	Monetary Limit for reduction or wavier of interest
1	Pr. CIT/CIT	Upto Rs. 50 Lacs
2	CCIT/DGIT	Above Rs. 50 Lacs to Rs. 1.5 crore
3	Pr. CCIT	Above Rs. 1.5 crore

The powers of reduction or waiver of the interest paid or payable under section 220(2) of the Act in respect of any income-tax authority shall continue to be subject to satisfaction of all the following conditions specified under section 220(2A) of the Act—

- payment of such amount has caused or would cause genuine hardship to the Assessee;
- default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the Assessee; and
- the Assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The above shall come into effect from the date of issue of this Circular.

(Circular No. 15/2024 [F. NO. 400/08/204-IT(B)] dated 4-11-2024)

Where Assessee, engaged in trading of imported luxury goods, did not add any value to goods imported and sold, RPM was most appropriate method – Delhi High Court

FACTS OF THE CASE:

- The Assessee was engaged in trading of imported luxury goods bearing the trademark **"Burberry".** The Assessee had undertaken the international transaction of import of finished goods and reflected the same in Form 3CEB. **The Assessee had used Comparable Uncontrolled Price (CUP) method as the most appropriate method and had corroborated the same by RPM method to establish the ALP.**

- The TPO did not accept that the CUP or the RPM were the most appropriate method. **The TPO adopted the Transactional Net Margin Method (TNMM) as the most appropriate method** and selected operating profit/operating cost (OP/OC) as the profit level indicator (PLI) for determining the ALP.

- Based on the mean PLI, the TPO had determined the adjustment.

- The DRP accepted the Assessee's objection regarding the requirement to make an adjustment on account of working capital and to confine the application of mean PLI only to the value of the international transactions in question.

- Thereafter, the Assessing Officer passed the final assessment order, based on the directions issued by the DRP.

- On appeal, the Tribunal held that the RPM would be the most appropriate method and had accordingly, directed the TPO to adopt the same for benchmarking the international transaction.

- Aggrieved by the order of Tribunal, Revenue filed an appeal before High Court.

CONCLUSION:

- In the instant case, the Assessee had used the RPM as a corroborative method for benchmarking the international transactions relating to the import of the finished goods. **The Assessee had compared gross profit margin from the sale of such imported luxury products with the gross profit margin of comparable entities in respect of the similar transaction (namely sale of the imported products in domestic markets)**. The Assessee also relied upon the OECD Guidelines as well as the Guidance Note issued by the ICAI in support of its contention regarding use of RPM as the most appropriate method for benchmarking the international transactions in question. The same being in respect of the activities for purchase of the goods from related parties and resale to the unrelated parties. **The Assessee had highlighted that RPM would be the most appropriate in cases where the reseller does not add any value to the products purchased and sold.**

- In the instant case, **the DRP had accepted the TPO's conclusion that RPM was not the most appropriate method, essentially, for the reason that the Assessee had incurred about Rs. 5.44 crores towards AMP expenses, which the DRP considered as**

substantial. Accordingly, the DRP had also concluded that the Assessee is not a simple distributor.

- Before the Tribunal, the Assessee contended that it had not incurred heavy expenditure on AMP expenses and other comparable entities had also incurred similar expenses.

- The Tribunal accepted the said contention and faulted the DRP for finding that the Assessee is not a simple distributor. The Tribunal noted that there was no dispute as to the Assessee merely purchased and sold the products without adding any value to the core products. And, the Assessee's functional profile as a routine distributor was not disputed by the TPO.

- The question whether RPM is the most appropriate method in cases of the distributor that purchases the products from its AE and resells the same to unrelated parties without any further processes is covered by the several decisions.

- In the instant case, as noted above, **the Tribunal had accepted the Assessee's contention that its AMP expenses were not excessive and were similar to those incurred by other comparable entities.**

- There is no cavil that the AMP activities are a part of the functional profile of the Assessee. In the given facts, the DRP's decision that the Assessee was not a 'routine distributor' is clearly sustainable.

- In view of the above, the High Court found no merits in the revenue's challenge to the decision of the Tribunal.

[Principal Commissioner of Income-tax-2 v. Burberry India (P.) Ltd [2024] 169 taxmann.com 6 (Delhi)]