HC: Amalgamation with Sun Pharma's' smoke screen' for tax fraud; Directs de-novo assessment

Dadha Pharma Pvt. Ltd [TS-489-HC-2023(MAD)]
30th August, 2023

CA Om Rajpurohit & Adv. Sakshi Bhardwaj
-AMRG & ASSOCIATES

Facts of the case

This case revolves around the merger of Tamil Nadu Dadha Pharmaceuticals Ltd (TNDPL) with Sun Pharma Industries Limited (SPIL). Initially, TNDPL was a joint venture between Dadha Group (DG) and Tamil Nadu Industrial Development Corporation Ltd. (TIDCO). DG held 25% of TNDPL's shares, while TIDCO held around 26%. SPIL wanted to acquire TNDPL shares but faced restrictions on purchasing TIDCO's shares. DG eventually bought TIDCO's shares using funds provided by SPIL. SPIL paid DG Rs. 290 per share for the consolidated shares after the acquisition. The Gujarat High Court approved a Scheme of Amalgamation, leading to TNDPL's merger with SPIL.

Assessee's contention

The Assessee argued that the transaction was an amalgamation, not a sale of shares. They maintained that the discussion of selling shares to SPIL remained a discussion and wasn't implemented. The Assessee contended that the amalgamation schemes were court-sanctioned, published, and received no shareholder objections.

Revenue's contention

The Revenue argued that substantial cash transfers occurred from SPIL to DG for share acquisition. They highlighted SPIL's provision of interest-free loans, advances, deposits, and trade advances to DG, which contradicted the amalgamation scenario. The Revenue asserted that SPIL's cash payments to DG members for shares constituted undisclosed income subject to taxation.

Held

The Madras High Court invalidated the ITAT order and ordered a fresh assessment. The Court determined that the transaction wasn't an amalgamation but rather a sale/transfer of shares. It ruled that SPIL's cash payments to DG members represented undisclosed income subject to taxation. The Court stressed that the subsequent amalgamation didn't impact the tax treatment. A new assessment was mandated based on actual records, as the share allocations were considered notional, and the nature of the amounts received remained unclear.

AMRG Take

This case underscores the significance of accurately categorizing transactions for tax purposes. It demonstrates that using an amalgamation as a cover to avoid income tax may not succeed if evidence points to a share sale. Proper documentation and transparency in financial transactions are vital to prevent tax-related disputes. Ultimately, tax authorities have the authority to scrutinize transactions and assess undisclosed income when necessary.

NEW DELHI
AMRG Tower, 23,
Paschim Vihar Ext.,
Main Rohtak Road,
New Delhi-110063

Rajat Mohan
Senior Partner
rajat@amrg.in

Priyanka Sachdeva
Partner - GST
priyanka@amrg.in

MUMBAI
304,Green Meadows C
H S Ltd, Lokhandwala
Township, Kandivali,
East Mumbai,400101

Madhu Mohan
Founding Partner
amrg@amrg.in

Kiran Awasthi Raghavendra
Partner - Assurance and Compliance
amrg@amrg.in

DEHRADUN
Villa No. 12, Upper Crest Avenue,
Jakhan, Rajpur Road, Dehradun,
Uttarakhand, India, 248001

Swati Ghoshal
Partner - Risk Advisory and compliance
swati@amrg.in

GURUGRAM,
204, 2nd Fllor, Time Center, Golf
Course Road, Sector 54, Gurugram,
Haryana 122002

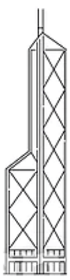
Gaurav Mohan
CEO
gaurav@amrg.in

INTERNATIONAL BRANCH -
AUSTRALIA
Unit 9, 14-15 Junia Avenue,
Toongabbie NSW 2146,
Sydney, Australia

Megha Gandhi
Director- Australia
amrg@amrg.in

INTERNATIONAL DESK - USA
Wiener & Garg LLC,
6000 Executive Boulevard,
Suite 520 | Rockville,
MD 20852T: 301.881.4244
D: 240.833.4002

Subhash Garg
Wiener & Garg LLC
amrg@amrg.in



INTERNATIONAL BRANCH
HONG KONG
Hong Kong Address - Flat B,
Floor 1, Tower - 7, Yee Mei Court,
South Horizons, ap lei chau,
Hongkong

Divya Malhotra
Director - Hong Kong
amrg@amrg.in