Taxman disallows AMP deductions sought by MNCs

The income-tax department has started issuing notices to several multinational consumer firms, disallowing deductions on expenses of advertising, marketing and sales promotion under a hitherto unused provision of the Income Tax Act.

Notices have been issued to consumer companies such as Hindustan Unilever, P&G, L'Oreal, LG and Maruti Suzuki. Industry experts peg the total demand raised by the tax department on this count at about Rs 10,000 crore.

As AMP (advertising, marketing and promotional) expenses is a cost head, disallowing the deduction would inflate pre-tax accounting profits, translating into increased tax outgo for a company if tax claims are upheld.

The government claims that these expenses are not relevant for the India business and are mostly related to overseas brand building. Hence, they are sought to be disallowed under Section 37 of the Income Tax Act, which deals with the recognition or legitimacy of business expenses.

For instance, if a company has a profit of Rs 100 that is arrived at after deducting AMP costs of Rs 50, the tax at 30% would come to about Rs 30. If these costs are disallowed, the profit would jump to Rs 150 and tax would increase to Rs 45. Tax sleuths have been questioning these expenses for some years now but this is the first time that Section 37 of the I-T Act has been used in this manner.

Tax experts have been calling these adjustments just another way of making transfer pricing or AMP adjustments for multinationals.

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"Even as many multinationals have been litigating around AMP, the tax department is looking to explore whether deduction of advertising and marketing expenses toward the supposed foreign brand building would be disallowed. This is nothing but transfer pricing and AMP dispute in a new bottle," said Munjal Almoula, partner, Grant Thornton India.

Several MNCs in India are already battling tax demands on their advertising, marketing and sales promotion (AMP) expenses. Even before their settlement, fresh notices have arrived, largely at consumer goods makers, although they don't mention the AMP or transfer-pricing but use the same logic to compute the liabilities.

The income-tax department has started issuing notices to several MNCs, disallowing deductions on expenses incurred toward advertising, marketing and sales promotion over the last few years. As this is a cost head, disallowing the deduction would inflate pre-tax accounting profits, translating into increased tax outgo for a company.

The government now claims that expenses incurred on advertising, marketing, brand building and other sales promotions are not relevant for the India business: Hence, they be disallowed under section 37 of the Income Tax Act, which deals with the recognition or legitimacy of business expenses.

In the past including this year notices have been issued to companies such as Hindustan Unilever, P&G, L'Oreal, LG and Maruti Suzuki under transfer pricing. Industry experts peg the total demand raised by the tax department on this count at about Rs 10,000 crore.

(Economic Times)