Seshachalam & Co.
Chartered Accountants

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Corporate Social Responsibility Rules (CSR) - Amendments.

Jurisprudence on Section 135:

The Companies Act, 2013 ("**Act**") mandated for Corporate Social Responsibility ("**CSR**") and formally introduced it to the dashboard of the Boards of Indian companies. Section 135 of the Act read with Companies (CSR) Policy Rules, 2014 ("**CSR Rules**"), provided a robust framework for companies to partner in contributing to the country's development challenges through its managerial skills, technology, and innovation. It also provided them with ample autonomy and flexibility to design and implement programs.

Background:

Later in the year 2015, to consolidate and to grow further CSR awareness and CSR consciousness, the High-Level Committee was set up ("**HLC-2015**"). The said committee reviewed the provisions and legal framework of it at an incipient stage and made several useful recommendations and had also pointed on the inherent limitation of not having adequate learning experience as the new Act had just mandated CSR. Therefore, HLC-2015 recommended that another Committee be set up after three years to revisit the CSR framework.

In line with the same, in the year 2018, another committee ("**HLC–2018**") was set up to review the CSR existing framework and make recommendations to develop a more robust and coherent CSR regulatory and policy framework, and underlying ecosystem.

Based on the report of the committee submitted on August 07, 2019, amendments were made in the respective provisions of the Companies Act, 2013. One such change that has been made is regarding the Companies (Corporate Social Responsibility Policy) Rules, 2014 via a notification dated January 22, 2021.

Companies (CSR Policy) Amendment Rules, 2021 ("New Rules") – Key Changes and Analysis.

1. Definition of CSR activities:

a) Excluding activities benefitting employees of the company:

- The amended rule provides for the exclusion of any activity benefitting the employees under the term CSR activity. The said change is against the earlier provided law, which excluded those expenditures which benefit only the employees of the company and their families.
- In the above backdrop, the exclusion of the term 'only' has opened the pandora box of whether the expenditure made, for the public at large, where the employee was a beneficiary among them can be questioned. Additionally, in cases of families, being the beneficiary has been kept out of the exclusion in the amended rules.
- Although, MCA vide its Draft Companies (CSR Policy) Rules, 2020 dated 18.03.2020 ("Draft Rules 2020") did propose the term 'significantly' benefitting the employees of the company and their families shall be excluded. It was also clarified that the term significantly benefitting to mean 'activity benefitting, more than or equal to, 25% of its employees as beneficiary.
- However, in the said final rules, the use of the word "only" has been removed and even the term 'significantly' has been dropped.

b) Activities supported on a sponsorship basis deriving marketing benefits:

- Along with the other exclusions, specific exclusion has been made, pertaining to sponsorship activity done by various companies. An example of one such expense can be, funding of amateur sports tournaments as part of annual competitions at the State and National level, being conducted by recognized national sports federations.
- For the said exclusion, careful consideration is required by the companies doing CSR, as the term deriving marketing benefit has a wide amplitude. The company thus needs to remain cautious, while making an implementation contract with the implementing agencies, regarding the usage of its brand name. Also, expenditure incurred by various companies for CSR, being amount linked with the sale of product (as a marketing strategy expressed to the customers) can be questioned.

2. Ownership of Capital Asset created or acquired for CSR:

The New Rule provides that, the assets created or acquired from CSR amount shall be held by:

(a) the company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or

(b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

(c) a public authority

It has also been provided that any capital asset created by a company before the New Rules, shall within a period of 180 days comply with the requirement of this rule (the period can be further extended to days not more than 90 days with the approval of the Board).

The said change aligns with the report of the High-Level Committee, suggesting such change.

3. Expense in the nature of Administrative overhead:

- As per the CSR Rules, administrative expenses included the expenses incurred on the capacity building and the was capped to 5% of the total CSR spend. Even the term administrative expense was nowhere defined in the said CSR rules.
- Within the New Rules, Rule 2(b) has been added to define the term 'Administrative expense'. The term has been defined to mean expenses incurred by the company for 'general management and administration' of CSR functions, excluding the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or program. Though, the capping of the said expense has remained unchanged i.e. 5%, as it was earlier, however, an additional amount of 50 lakh has been provided, subject to an additional 5% of the CSR expenditure, for impact assessment expenditure (for impact assessment refer to point no. 6).
- Considering the above amendment going ahead, the expenses incurred on the capacity building have been excluded from the capping of 5% which was earlier mentioned in old Rule 4 of the CSR Rules.
- The above changes relating to, additional 5% for impact assessment expense and exclusion of expense on capacity building from its preview, are in line with the suggestions of the High-level committee report. The said changes bring clarity on the term administrative expense and are also welcoming, as it takes into factor the practical difficulty of restricting the amount of capacity building. Needless to say, that adherence to the 5% cap of administrative expense must be kept in mind even in the cases of finalizing the budgets with the executing agencies and granting funds to them.

4. Mandatory registrations requirement introduced:

a) Registration with MCA:

- Rule 4 of the CSR Rules has been amended to cast a mandatory registration requirement on the companies intending to undertake any CSR activity. The registration is to be obtained with the Ministry by filing e-Form CSR-1 and the same is effective from 01.04.2021.
- It must be noted that earlier there was no database to cross-check CSR activities which are being carried out by several agencies. Thus, keeping this in mind, Ministry may maintain a register of implementing agencies and as such CSR Registration number of implementing agency now needs to be disclosed in Annexure-II as per the new rules. This identification number would be quoted while reporting on any CSR activity, which would put a suitable check-in place.

b) Mandatory 12A and 80G registration and exclusion of Private trusts:

- Additionally, the New Rules provides that in case of CSR activities undertaken through the establishment, the said establishment (along with other eligibility criteria) must be the one registered under section 12A and 80G of the Income Tax Act, 1961. It may be noted here that even a mere registration under 12A will not make an entity eligible, registration under both the section must be obtained.
- Further, under the category of establishment, registered trust has now been replaced with the term registered public trust. Therefore, private trusts have now been excluded for undertaking CSR under the provisions and all those currently undertaking the said activities will now be required to covert themselves into a public trust.

5. Setting off excess amount incurred in a particular year:

With the New Rules, Rule 7(3) has been added to allow the companies to set-off expenditure incurred, over and above the requirement, on CSR activity. However, the set-off can be done, against the requirement of CSR spend up to immediately succeeding 3 financial years. The setting off is also subject to the following conditions:

- The surplus arising out of CSR activity referred to in Rule 7(2) shall not be included for set-off;
- The Board of the company shall pass a resolution to that effect.

Though the above changes made are welcoming but a broader approach of an inter-group setting off (set off between entities within the group) should have also been considered.

Also, what would be the possible treatment of the expenditure incurred for the earlier years i.e. years before the applicability of said rules. Going by the rule of purposive interpretation, even the excess of earlier years must be allowed to be set off, but clarifications from the ministry in this regard would be required.

6. Requirement of Impact Assessment:

The amended rules now mandate companies with an average CSR obligation of INR 10 crore or more in immediate 3 preceding FYs to take impact assessment through an independent agency. Further, it has been clarified that impact assessment shall be taken for such CSR projects where there is a total outlay of INR 1 crore or more is involved.

The impact assessment will serve as feedback for companies to plan and better allocate resources and shall also deepen the impact of CSR.

The Government's idea here is to encourage the corporates to make better-informed decisions before deploying CSR amounts. However, a question here remains unanswered regarding the applicability of the aforesaid impact assessment in case the implementation of CSR projects made through implementing agencies.

COMPLIANCE CALENDER MARCH 2021

GST	
GSTR 3B FEB 2021(Turnover in the previous financial year more than Five Crores)	20-03-2021
GSTR 3B FEB 2021 (Others)	22-03-2021
GSTR 1(Turnover more than Rs. 1.5 Crores)	11-03-2021
Income Tax	
Deposit of TDS	07-03-2021
ESI	
Payment for the month of FEB 2021	15-03-2021
PF	
Payment for the month of FEB 2021	15-03-2021
Return Filing for the month of FEB 2021	25-03-2021